



November 12, 2009

Mr. Kevin Neyland
Deputy Administrator,
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Mr. Neyland :

Thank you for your time today to consider our perspective on the pending rule making on Coal Combustion Byproducts. Our company is a leader in the beneficial reuse of these byproducts in various applications and believes strongly that the possible designation of these materials as hazardous under RCRA Subtitle C will severely cripple the beneficial reuse industry and damage our business. We believe, and have demonstrated over a long period of time that reuse of CCPs, if done properly, is a significant positive for both the economy and the environment.

Working with 10 Utility partners, Beneficial Reuse Management has successfully implemented beneficial reuse programs for ash byproducts as geotechnical construction material and use of FGD Gypsum in agricultural applications. Through these programs, we have successfully conserved natural resources, reduced CO2 emissions, strengthened local economies and preserved scarce landfill space. FGD Gypsum agricultural programs have the added benefits of improving crop yields while reducing chemical fertilizer requirements, reducing erosion and non-point source pollution and improving water quality. The scientific evidence demonstrates that these benefits are achieved without negative impact on the environment so long as programs are properly designed and implemented. We believe that all these benefits will be lost if CCPs are designated as hazardous materials.

Our company has been engaging with the environmental community and the EPA to expand the knowledge of the science behind use of these materials and address the justifiable concerns about proper beneficial reuse. We jointly sponsored, with the Environmental Integrity Project, two educational sessions, one on geotechnical uses in July and a second on agricultural use of FGD Gypsum in November. At these sessions, the top scientists in the area presented their research to a broad spectrum of ENGOs along with representatives of the EPA and other interested parties. Our sense from these meetings was that all parties agreed that safe beneficial reuse in both areas was environmentally responsible and should be encouraged.

The prospect of a Subtitle C Designation for CCPs has already severely impacted our business. Interest among utilities in expanded use of CCPs in geotechnical applications, strong and growing just 10 months ago, has been dramatically reduced because our utility partners cannot anticipate their liability and risk under an environment with possible Subtitle C designation. Users of the materials are equally concerned

about expanded risks and local and State governments have delayed project approvals as they anticipate a possible hazardous ruling from the EPA. Growing interest among farmers in use of FGD Gypsum for agriculture, propelled by recent supportive research findings, has been met by utilities unwillingness to commit materials to this use due to liability concerns. As a result of these factors, the business of Beneficial Reuse Management, which grew three fold in 2008, has already had to scale back its staff.

A final EPA hazardous ruling on CCPs, even with a Subtitle D carve out for some beneficial reuse applications, will cause severe economic damage to the beneficial reuse industry. State level regulators in those States that have established prudent and progressive regulations to encourage beneficial reuse have told us that those programs will be terminated for CCPs. Our utility partners have told us that they will be unwilling to continue to commit materials to beneficial reuse programs. Users of these materials, including farmers, municipalities, construction firms, and growing small businesses will no longer be willing to accept CCPs that have the stigma of a hazardous designation. In addition, local governments will be unwilling to allow use of CCPs for any purpose in their jurisdictions, effectively eliminating the reuse market for CCPs and losing all the environmental and economic benefits achieved in the past. The business of Beneficial Reuse Management would be severely damaged.

From our engagement with ENGOs and others, we believe the opportunity is present to work together to construct a framework for proper regulation of CCPs without the hazardous designation under Subtitle C. The environmental community does not want to destroy beneficial reuse and does not want possible litigation to delay implementation of safe standards for CCP disposal. The utility industry would like to preserve beneficial reuse and gain clarity on risks and liabilities. We strongly encourage the EPA to seek to bring these parties together to work out a solution that will preserve the benefits of CCP reuse while achieving appropriate federal enforceability of laws to protect the environment.

Thank you for considering our appeal today. We would be happy to provide additional information.

Very truly yours,

BENEFICIAL REUSE MANAGEMENT, LLC

Robert C. Spoerri
Chief Executive Officer

Cc: Administrator Lisa Jackson, EPA
Mathy Stanislaus, EPA
Matt Hale, EPA
Lawrence Elworth, EPA
John Sager, EPA
Thomas Gillis, EPA
Courtney Higgins, OMB

Beneficial Reuse of Materials contributes to a healthy environment and healthy economy

FGD Gypsum

The benefits suggest of FGD Gypsum suggest they should be considered a Best Management Practice for farmers who are seeking methods that protect soil integrity and water quality, while advancing productivity and economic security.

FGD Gypsum (Calcium Sulfate) Benefits:

- Reduces soil erosion as it improves soil structure, controlling surface sealing
- Reduces Soluble Reactive Phosphorous (SRP) thereby helping to reduce nutrient loads that contribute to hypoxia in systems like the Gulf of Mexico
- Enables farmers to apply less fertilizer, thereby saving them money and reducing nutrient loads that contribute to nonpoint source pollution
- Improves crop yields given enhanced soil structure and ability of roots to access nutrients deep in ground
- Sequesters more carbon given Increased root growth (90% of all carbon in roots gets assimilated into the ground); an important service given climate change concerns
- Contributes sulfur to help address the growing sulfur deficit in American soils
- Improves water quality for aquatic ecosystem health (less turbidity and pollution due to runoff of nutrients and sediments)
- Avoids land fill costs and mining of virgin gypsum with attendant environmental concerns

FGD Gypsum Environmental Risks – Extensive Studies by Ohio State University, Purdue University, University of Georgia, and USDA (see summary slides form conference) indicate that FGD Gypsum materials from new utility scrubber systems, when applied to agriculture, are safe for both human health and animal health.