



October 23, 2009

The Honorable Lisa P. Jackson  
EPA Administrator  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 1101A  
Washington, DC 20460

Re: Regulation of Coal Combustion By-Products

Dear Ms. Jackson:

The Texas Aggregates and Concrete Association (TACA) would like to express our concern regarding a potential Environmental Protection Agency (EPA) ruling that would create a regulation of fly ash as a hazardous waste material. As the statewide trade association that represents approximately 85% of the aggregate, 85% of the ready mixed concrete, and 100% of the cement produced in Texas, the members of our association have an acute interest in the promulgation of such a rule.

As you are aware, the EPA determined in 1993 and 2000 that fly ash (a coal combustion product) does not warrant regulation as a waste material. Since those determinations, all segments of the concrete industry have benefited in terms of producing high quality, increased durability, and more environmentally friendly concrete. Consumers and users have enjoyed lower up-front costs to purchase and use concrete, as well as reduced maintenance and warranty issues because of improved concrete performance.

Moreover, fly ash is recognized in the U.S. Green Building Council's LEED system as a post-industrial recycled material. The use of fly ash in concrete enhances the recycled material content of a building and is recognized as a beneficial strategy for CO<sub>2</sub> reduction. Strategically, the effective elimination of fly ash in concrete would be a step backward in the nation's efforts to provide a more sustainable infrastructure.

**TEXAS AGGREGATES & CONCRETE ASSOCIATION**

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It is our understanding that the EPA is giving consideration to regulating fly ash under Subtitle C of the Resource Conservation Recovery Act (RCRA) or under Subtitle D of RCRA and is also evaluating whether to require closure of all active surface impoundments managing this type of material. Given these two options, TACA contends that the best management alternative for regulating fly ash would be under Subtitle D of RCRA.

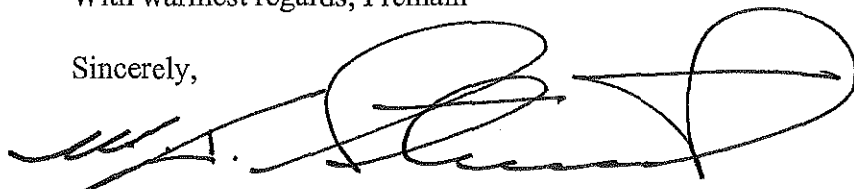
Most states, including Texas, have developed programs that successfully regulate the management and disposal of fly ash. As stated earlier, on May 22, 2000 EPA issued a determination that state regulatory programs were adequate to ensure proper management and disposal of fly ash. In addition, as recently as 2005 the EPA and the U.S. Department of Energy determined that such state regulatory programs have become even more stringent. TACA strongly believes that the regulatory program effective in Texas will provide that fly ash is managed and disposed in a manner that is protective of public health and the environment.

In summary, TACA respectfully requests that the EPA not provide regulations that would eliminate or reduce the environmental and material benefits of fly ash used in concrete when addressing the impoundment requirements for this material, nor restrict our ability to make effective and safe use of this industrial by-product. TACA suggests that a national enforcement program for fly ash impoundment be developed to strengthen the current regulations and reduce the likelihood of another catastrophic release. It is TACA's strongest contention that rules to this effect can be successfully promulgated without regulating fly ash under Subtitle C of RCRA, which would consequently label this by-product as a hazardous waste.

Thank you for your consideration of this letter. If I can be of any further service to you or answer questions, please do not hesitate to contact me at 512.451.5100 or via email to [stewartm@tx-taca.org](mailto:stewartm@tx-taca.org).

With warmest regards, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "M. Stewart", written over a horizontal line.

Michael K. Stewart  
President & CEO

cc: President Barack Obama

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Vice President Joe Biden  
Senator John Cornyn  
Senator Kay Bailey Hutchison  
Texas Congressional Delegation  
EPA Deputy Administrator, Scott C. Fulton  
EPA Regional Administrator, Region 6, Larry Starfield  
Texas Governor Rick Perry  
Texas Lieutenant Governor David Dewhurst  
Texas Attorney General Gregg Abbott  
Chairman, Texas Railroad Commission, Michael Williams  
Texas Railroad Commissioner Victor Carrillo  
Texas Railroad Commissioner Elizabeth Ames Jones  
Chairman, Texas Commission on Environmental Quality Buddy Garcia  
Texas Commission on Environmental Quality Commissioner Dr. Bryan Shaw  
Texas Commission on Environmental Quality Commissioner Larry Ross Soward  
Executive Director, Texas Commission on Environmental Quality Mark Vickery