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AGC of America
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
Quality People. Quality Projects.

ELECTRONIC DELIVERY

November 2, 2009

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (Mail Code 1101A)
Washington, D.C. 20460

RE: EPA Consideration of Coal Combustion Waste Regulation

Dear Ms. Jackson:

We are writing to express our concern that the U.S. Environmental Protection Agency (EPA) is too quickly preparing to propose federal requirements for the future management of coal combustion waste. In its haste to respond to a containment failure at a large Tennessee impoundment, EPA could easily jeopardize the many ways in which the construction industry makes beneficial uses of this material. We request and would welcome any opportunity to meet with your office to further explain the many ways in which the construction industry recycles such waste, and specifically fly ash, in the process of constructing roads and buildings. For both environmental and economic reasons, AGC believes that the many opportunities for the construction industry to make beneficial use of this material are critically important to preserve.

The Associated General Contractors of America is the largest and most diverse trade association in the construction industry. The association represents more than 33,000 companies in 96 chapters throughout the United States. AGC members include more than 7,500 of America's leading general construction contractors, 12,500 specialty contractors, and 13,000 material suppliers and service providers to the construction industry. AGC members are engaged in the construction of commercial buildings, factories and other industrial facilities, warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, and multi-family housing projects, and in-site preparation and utilities installation for housing development.

AGC has a history of working with EPA to facilitate and encourage both the recycling of construction and demolition debris and the beneficial use of industrial byproducts, such as fly ash. The construction industry's use of this material is a leading example of how industry can move towards a closed-loop cycle process, turning one industry's byproduct into another industry's raw material. This approach eases the strain on the nation's natural resources by reducing the requirements for new material and stretching landfill space. EPA estimates that substituting fly ash for the cement otherwise needed to produce concrete also helps the nation avoid 5 million tons of greenhouse gas emissions each year. In the case of fly ash, other benefits include an improvement in the performance of both concrete and hot-mix asphalt.

The construction industry has used fly ash for approximately sixty years in the construction of roads and highways, and the material also goes into a variety of construction materials. On its web site (at http://www.fhwa.dot.gov/pavement/recycling/fafacts.pdf) the Federal Highway Administration reports:

> Currently, over 20 million metric tons (22 million tons) of fly ash are used annually in a variety of engineering applications. Typical highway engineering applications include: portland cement concrete (PCC), soil and road base stabilization, flowable fills, grouts, structural fill and asphalt filler.

According to EPA, more than 14 million tons of coal ash are annually diverted into concrete. Fly ash and other coal combustion wastes are also diverted into floorings, landscape features, insulation, drywall/wall board, mortars and grouts, masonry blocks and building exteriors. Coal combustion wastes are also used as base, backfill, foundations and structural fill materials in building construction.

Notwithstanding the widespread use of coal combustion materials throughout the construction industry, AGC has yet to see any reports that the many ways in which the industry uses these materials have any negative effects on either the health of construction workers or the environment. AGC is extremely sensitive to the health and safety of such workers, and to the industry's impact on the environment. It is also aware of the concerns raised by the Tennessee incident, which involved one billion gallons of wet waste. Nevertheless, AGC remains far from certain that EPA has cause to act in such great haste.

AGC understands that EPA is currently evaluating its regulatory options under the Resource Conservation and Recovery Act, including the option of designating of coal combustion waste as a hazardous (Subtitle C) material. AGC believes that even a conditional designation of coal combustion waste as a hazardous material would strongly discourage the construction industry from making the any beneficial use of such material in the future. At a minimum, it would stigmatize all such material. It could also trigger a host of other regulatory requirements, including requirements for the transportation of such material, and both requirements for the storage and handling of even small quantities. It could also frighten the surety and insurance industries, making bonds or insurance coverage for any beneficial use of such material either difficult or impossible to purchase. It could even trigger a wave of frivolous but still expensive litigation.

Economic factors are also at work. Cement prices are heavily influenced by demand for construction. AGC has often witnessed steep increases in the price of cement based on that demand. Once the current recession passes, the market forces that were driving up that price are more than likely to reassert themselves. If EPA makes coal combustion waste impractical to substitute for cement, the next spike in the price of cement could be even worse. As noted, fly ash is a component of many construction materials, and price of those materials would also climb.

If EPA nevertheless feels compelled to act quickly, AGC urges the agency accurately to designate coal combustion waste as a non-hazardous (Subtitle D) material, encouraging appropriate state regulation of large impoundments, backed by national guidelines.

Thank you for taking our concerns into account. Again, we request and welcome a meeting with your office to discuss the best way for EPA to approach coal combustion waste and its beneficial use throughout the construction industry. To arrange a meeting, please contact me at tomainom@agc.org or (703) 837-5415.

Sincerely,

Melinda Tomaino

Melinda L. Tomaino
Director, Green Construction

cc: M. Hale, EPA Office of Resource Conservation and Recovery
A. Livnat, EPA Office of Solid Waste
B. Benson, EPA Office of Policy, Economics and Innovation, Sector Strategies Program
Office of Management and Budget (OMB) Office of Information and Regulatory Affairs (OIRA) attendees at October 16, 2009 meeting on coal combustion waste:
Cortney Higgins, OMB OIRA
Nancy Beck, OMB OIRA
Dominic Mancini, OMB OIRA