

The Environmental Protection Agency (EPA) issued a proposed rule in June of 2010 to regulate coal ash, the toxic waste left behind after coal is burned for energy. Coal ash contains elevated concentrations of toxic heavy metals like lead, mercury and arsenic and is a risk to human health and the environment. EPA's proposal gives two options for governance of coal ash. One option, known as Subtitle C, would create robust standards for regulating coal ash as a special hazardous waste. The second option, unbelievably, would treat coal ash like household garbage and EPA would merely set advisory guidelines that industry could choose to ignore and states could choose not to enforce.

Stigmatization and Beneficial Use

- ✓ EPA proposes to exempt all beneficial use from regulation under either Subtitle C or Subtitle D. Thus, ash destined for disposal would be regulated but ash destined for a beneficial use would be exempt from federal regulation.
- ✓ The primary concern of those opposed to Subtitle C regulation is that such classification will stigmatize coal ash, which will consequently limit or even kill the beneficial reuse industry of this waste stream.
- ✓ EPA contends that Subtitle C designation will not inhibit beneficial use and will, in fact, catalyze more beneficial use.
- ✓ In an effort to assist with perceptions of stigma, EPA agrees to call coal ash "Special Waste" under Subtitle C instead of "Hazardous Waste".
- ✓ EPA points to several specific examples of increased reuse after hazardous classification: (1) Furnace Dust, 42-51% is reused; (2) Electroplating wastewater sludge, 35% reused; (3) Chat; (4) Used Oil, 200 million gal. recycled by Safety Kleen in 2008; (5) Spent solvents and; (6) Spent etchants.
- ✓ Motor oil, gasoline, drain cleaners, household cleaners, cathode ray tubes and compact florescent light bulbs are all common household products that contain hazardous ingredients. No fear or stigma surrounds the markets for these items.
- ✓ Based on an expectation of increased beneficial reuse, the net benefit of Subtitle C classification should reach around **\$81.8 Million, a greater net benefit than any other regulatory option.**

EPA definition of Beneficial Use:

Beneficial Use of Coal Combustion Products (CCPs) means the use of CCPs that provides a functional benefit; replaces the use of an alternative material, conserving natural resources that would otherwise need to be obtained through practices such as extraction; and meets relevant product specifications and regulatory standards (where these are available). CCPs that are used in excess quantities, placed as fill in sand and gravel pits, or used in large-scale fill projects, such as for restructuring the landscape, are excluded from this definition.

In regard to the stigma argument:

"EPA questions this assertion, in fact, our experience suggests that the increased costs of disposal of CCRs [coal combustion residuals] as a result of regulation... under RCRA Subtitle C **would create a strong economic incentive for increased beneficial uses of CCRs.** We also believe that the increased costs of disposal of CCRs, as a result of regulation, but not beneficial uses, should achieve increased usage in non-regulated beneficial uses, simply as a result of the economics of supply and demand... Furthermore, it has been EPA's experience in developing and implementing RCRA regulation and elsewhere that material inevitably flows to less regulated applications."