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November 19, 2010

Hazardous Waste Management System  
Disposal of Coal Combustion Residuals From Electric Utilities Docket  
Attention Docket ID No., EPA-HQ-RCRA-2009-0640  
Environmental Protection Agency  
Mailcode: 5305T  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460.

## **I. Introduction**

The National Association of Manufacturers (the Manufacturers) welcomes the opportunity to comment on the Environmental Protection Agency's (EPA's or the Agency's) proposed rule regarding Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities ([EPA-HQ-RCRA-2009-0640](#)).

The Manufacturers are the largest industrial trade association in the U.S., representing over 11,000 small, medium and large manufacturers in all 50 states. We are the leading voice in Washington, D.C. for the manufacturing economy, which provides millions of high wage jobs in the U.S. and generates more than \$1.6 trillion in GDP. In addition, two-thirds of our members are small businesses, which serve as the engine for job growth.

Our mission is to enhance the competitiveness of manufacturers and improve American living standards by shaping a legislative and regulatory environment conducive to U.S. economic growth. While the Manufacturers support environmental regulations designed to provide real net benefits to the environment and public health, we consistently oppose

regulations that create adverse economic impacts without corresponding benefit to human health and the environment.

Manufacturers are attempting to fully recover from the steepest economic downturn since the 1930s and bring back the 2.2 million high-wage jobs lost during the previous recession. At the same time, our member companies are confronting an avalanche of additional rules and regulations from the EPA including new SO<sub>2</sub> and NO<sub>x</sub> National Ambient Air Quality Standards (NAAQS) the reconsideration of the 2008 “Ozone NAAQS,” the reconsideration of the 2007 “PM NAAQS,” Boiler MACT regulations, and the imposition of first-time federal regulations on greenhouse gas emissions.

The Manufacturers strongly urge federal policy makers to create conditions that will lead to economic expansion and not stifle the industrial and manufacturing vitality necessary to create jobs and spur innovation. Imposing unduly strict mandates on the manufacturing sector will not accomplish any of these objectives.

The EPA’s proposal to regulate the disposal of Coal Combustion Residuals (“CCRs”) will have a direct impact on many of our member companies. Not only will it impact the utilities and CCR generators that will have to comply with the new disposal requirements, but it will also directly impact the nearly 2,000 companies that use CCRs to manufacture products.

## **II. The EPA’s Reconsideration of its Prior Bevill Regulatory Determination is Contrary to Law**

The EPA’s proposal to reconsider its previous regulatory determination not to regulate CCRs is contrary to the procedures set forth in the *Resource Conservation and Recovery Act* (RCRA). RCRA establishes a one-time process for making a regulatory determination, and the EPA does not have the authority to revise it now. Alternatively, even if the EPA possesses the authority to revise that determination and promulgate Subtitle C regulations for CCRs , it must follow the detailed procedures specified in RCRA. The EPA has failed to do so here.

**A. EPA Has No Statutory Authority To Revise Its Prior Regulatory Determination**

RCRA establishes a one-time special process for making Bevill regulatory determinations, and the EPA has no authority to revise its prior determination. This conclusion flows from the text, history and judicial interpretation of the Bevill Amendment.

The Bevill Amendment was enacted in response to the EPA's decision to abandon the "special waste" concept it initially considered for high volume, low risk wastes, such as CCRs. See 45 Fed. Reg. 33,084 (May 19, 1980). The EPA's final rule identifying hazardous wastes under RCRA Subtitle C was scheduled to take effect on November 19, 1980. It would have treated CCRs as any other waste, subject to the full requirements of RCRA Subtitle C. Congress intervened before this rule could take effect, enacting the Bevill Amendment. See 42 U.S.C. §§ 6921(b)(3)(A), (c)6982(n).

The Bevill Amendment established a special process, which the EPA needed to follow before CCRs and other special wastes could be regulated as hazardous wastes under Subtitle C of RCRA. See *Env't'l. Defense Fund v. EPA*, 852 F.2d 1309, 1314 (D.C. Cir. 1988) ("Indeed, our reading of the statute and legislative history strongly suggests that Congress designed the Bevill Amendment to break with the previous approach to regulation of hazardous industrial wastes"). Until the EPA completed that process, Bevill wastes, including CCRs, were temporarily exempted from regulation under Subtitle C. 42 U.S.C. § 6921(b)(3)(A).

The Bevill process specified by Congress involved four separate steps:

1. First, the EPA was to conduct "a comprehensive study and submit a report on the adverse effects on human health and the environment, if any of the disposal and utilization of" CCRs to two Congressional Committees - the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives. 42 U.S.C. § 6982(n). This report to Congress (RTC) was to be submitted within 24

months of October 21, 1980 (*i.e.*, by October 21, 1982), and was to include an analysis of eight different issues. *Id.*; 65 Fed. Reg. 32218 (describing procedural and substantive requirements for preparing and submitting RTCs).

2. Second, the EPA was required to receive comments and hold public hearings on the RTC. 42 U.S.C. § 6921(b)(3)(C).
3. Third, following the public comment, and within six months of submission of the RTC, the EPA was to issue a “regulatory determination” as to whether Subtitle C regulation of CCRs (and the other special wastes identified in RCRA § 8002(n)) was warranted based on the “information developed or accumulated pursuant to such study, public hearings, and comment.” *Id.*; *In re: Leed Foundry, Inc.*, 13 E.A.D. \_\_\_, RCRA (3008) Appeal No. 07-02 (Feb. 20, 2008) at 9-10 (describing preparation and submission of report to Congress as “statutory prerequisite” to issuance of regulatory determination).
4. Finally, only after these preliminary steps were completed and only if the regulatory determination found it to be warranted, the EPA was to propose and issue regulations to require that CCRs be managed under Subtitle C. 42 U.S.C. § 6921(b)(3)(A); *see also American Portland Cement Alliance v. EPA*, 101 F.3d 772, 777 (D.C. Cir. 1996) (describing how RTC and regulatory determination precede rulemaking to establish Subtitle C regulations).

Although it missed the statutory deadlines, the EPA already completed this process, preparing two RTCs and issuing two regulatory determinations with respect to fossil fuel combustion wastes.<sup>1</sup> In 1988, the EPA submitted its first RTC related to fossil fuel combustion waste, limited to an analysis of CCRs from electric utilities. *See* 58 Fed. Reg. 42466 (Aug. 9,

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<sup>1</sup> Section 3001(b)(3)(A) exempts from regulation (until EPA complies with section 3001(b)(3)(C)) “fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.” CCRs are a subset of these wastes.

1993). This was followed by the EPA's regulatory determination that regulation of these wastes under Subtitle C was not warranted. *Id.* The EPA issued a second RTC for all other fossil fuel combustion wastes in March 1999. See [http://www.epa.gov/osw/nonhaz/industrial/special/fossil/volume\\_1.pdf](http://www.epa.gov/osw/nonhaz/industrial/special/fossil/volume_1.pdf). The EPA subsequently issued its regulatory determination regarding the wastes evaluated in this RTC. See 65 Fed. Reg. 32214 (May 22, 2000). In this regulatory determination, the EPA concluded, first, that all fossil fuel combustion wastes should remain exempt from regulation under Subtitle C, and, second, that it would develop Subtitle D regulations for CCRs disposed of in landfills or surface impoundments or used to fill surface or underground mines. *Id.* at 32215. The EPA never issued any such regulations.

The text, history and judicial interpretation of the Bevill Amendment make it clear that RCRA establishes a one-time, never-to-be-repeated process for evaluating CCRs and other special wastes. With the issuance of the 2000 regulatory determination, the Bevill process for fossil fuel combustion wastes, including CCRs, was completed. The EPA has no authority to begin the process anew.

The plain text of the Bevill Amendment makes this clear. It calls for a single "study" and a single "report." 42 U.S.C. §§ 6982(n). It establishes one set of deadlines for preparing and submitting the RTC (within 24 months of October 21, 1980), *id.*, and for issuing a regulatory determination (within six months of the submission of the RTC). 42 U.S.C. § 6921(b)(3)(C). The statute's use of the singular form and its establishment of a single set of dates by which the EPA was to complete the process is a clear expression that Congress intended for the EPA to perform the required analyses only once and not repeat them at the Agency's whim. Indeed, the Bevill Amendment established a *temporary* exemption from RCRA Subtitle C regulation for special wastes, until completion of the study, RTC and regulatory determination, providing further evidence that the Bevill regulatory process was to be performed only once. 42 U.S.C. § 6921(b)(3)(A). Moreover, the statute does not provide the EPA any explicit authority for

revisiting the Bevill process once completed is conclusive proof that Congress intended the process to be completed once, shortly after enactment, not thirty years later as the EPA is attempting to do now.

The D.C. Circuit's decision in *Solite Corp. v. EPA*, 952 F. 2d. 473 (D.C. Cir. 1991), confirms this conclusion. There, the court stated that “[t]he statutory provision directing the EPA to study Bevill wastes suggests by its terms that a one-time study is sufficient. See 42 U.S.C. § 6982(p) (“The Administrator shall conduct a detailed and comprehensive study. . . . [and] shall publish a report of such study. . . .”). *Id.* at 491; *see also id.* (“The way in which the temporary nature of the Bevill Amendment is expressed in the statute also lends support to the EPA’s interpretation [that the Bevill Amendment establishes a one-time Bevill process].

The EPA has long interpreted the Bevill Amendment as establishing a one-time process for the Agency to submit its RTC and issue a regulatory determination for special wastes that could not be later updated even in the face of additional evidence:

Congress directed EPA to conduct a single study of wastes generated by mineral mining and processing facilities, because of concern that existing wastes might not be readily amenable to Subtitle C controls and might pose relatively low hazard to human health and the environment. Moreover, contrary to some commenter’s assertions, the statutory language includes explicit time limit on the Bevill exclusion, which apply to the submission of the required Report to Congress and subsequent regulatory determination.

54 Fed. Reg. 15,316, 15,338 (April 17, 1989).

In sum, having completed the Bevill regulatory process for CCRs in the 1990s, the EPA may not start over again. RCRA does not authorize the EPA to revisit its regulatory determination nearly thirty years after it was supposed to have been completed (and nearly twenty years after it was completed).

**B. Alternatively, the EPA Has Failed To Follow the Mandatory Statutory Process for Revising its Prior Regulatory Determination and Issuing Subtitle C Regulations for Coal Combustion Residues.**

The Bevill Amendment clearly prohibits the EPA from revisiting its prior regulatory determination. But, even if the EPA did possess this authority, the Agency must, at a minimum, comply with the four-step process specified in RCRA. Thus, before issuing regulations to require management of CCRs under Subtitle C, the Agency must first (1) conduct “a comprehensive study and submit a report on the adverse effects on human health and the environment, if any of the disposal and utilization of” CCRs to Congress; (2) receive comments and hold public hearings on that RTC; and (3) issue a regulatory determination as to whether such regulation is warranted based on the “information developed or accumulated pursuant to such study, public hearings, and comment.” 42 U.S.C. §§ 6921(b)(3)(C), 6982(n). Only after completion of these initial steps may the EPA engage in notice and comment rulemaking to issue Subtitle C regulations for CCRs. *American Portland Cement Alliance*, 101 F.3d at 777. This procedural mandate is reflected in the plain text of RCRA, court decisions and the EPA’s prior consistent interpretation and practice with respect to Bevill Amendment wastes. There can be no dispute that the EPA has failed to satisfy any of these statutory prerequisites to support its proposal both to revise its prior regulatory determinations not to regulate CCRs under Subtitle C and to promulgate new Subtitle C rules for CCRs.

The text of RCRA makes it clear that before the EPA can issue rules to regulate CCRs under Subtitle C, it must first engage in the multi-step process described above. RCRA demands that the EPA prepare and submit a RTC. 42 U.S.C. § 6982(n). It requires the preparation of a regulatory determine to “either determine to promulgate regulations under [Subchapter C] or determine that such regulations are unwarranted.” 42 U.S.C. § 6921(b)(3)(C). The state demands that the EPA’s determination “**be based on information developed or accumulated pursuant to such study, public hearings, and comments.**” *Id.* (emphasis added). Only thereafter, if the EPA determines that such regulations are warranted, may the EPA initiate notice and comment rulemaking. *See American Portland Cement Alliance*, 101 F.3d

at 777 (describing how RTC and regulatory determination precede rulemaking to establish Subtitle C regulations); *In re: Leed Foundry, Inc.*, 13 E.A.D. \_\_\_\_, RCRA (3008) Appeal No. 07-02 (Feb. 20, 2008) at 9-10 (describing preparation and submission of report to Congress as “statutory prerequisite” to issuance of regulatory determination). The EPA has not complied with any of these requirements to support the proposed revision to its prior Bevill determination regarding the need to regulate the disposal of CCRs and its proposed Subtitle C regulations.

In support of its new proposal to regulate CCRs under Subtitle C, the EPA recognizes that it must revise its two prior regulatory determinations. See 75 Fed. Reg. 35419. The EPA, however, has not undertaken the necessary steps to support such a change. Most significantly, the EPA has not prepared a new study under section 8002(n) regarding the impacts of disposal which includes an evaluation of the eight statutory criteria. Having failed to conduct that study, the EPA has neither prepared nor submitted a RTC setting out its findings. The EPA also has not based its proposed revision to its earlier regulatory determinations, accepted comment, or held public hearings on such a RTC. In all these respects, the EPA has plainly failed to comply with the clear procedural mandate of section 3001(b)(3)(C).

RCRA is clear that the section 8002(n) RTC must precede the EPA’s regulatory determination. Section 3001(b)(3)(C) provides that the EPA’s regulatory determination “**shall** be based on information developed or accumulated pursuant to [the RTC], public hearings, and comment.” See also 65 Fed. Reg. 32218-19 (describing statutory requirements for issuing regulatory determinations under section 3001(b)(3)(C)). The use of the term “shall” in this section clearly indicates that the EPA has no discretion but must base its regulatory determination on a RTC. The text of section 3001(b)(3)(A) supports this conclusion by exempting from regulation the Bevill wastes – including fossil fuel combustion wastes - “until at least six months after the date of submission of the applicable study required to be conducted [under section 8002] and after promulgation of regulations in accordance with subparagraph

(C).” 42 U.S.C. § 6921(b)(3)(A). In other words, any decision to regulate Bevill wastes under Subtitle C must be preceded by (1) the RTC, (2) the regulatory determination, (3) comments on the RTC, and (4) public hearings. The EPA has not completed any of these required steps in support of its most recent proposal.

The EPA cannot claim that it has satisfied these requirements through the submission of its two prior RTCs regarding fossil fuel combustion wastes in 1988 and 1999. Those RTCs may have sufficed for the EPA’s earlier regulatory determinations, but a new study must be conducted and a new report submitted to Congress when the EPA proposes to revise or modify its earlier regulatory determination. Indeed, the EPA cannot claim that its current proposal is supported by its earlier RTCs such that it is relieved from the obligation to conduct the necessary study, collect the required data and prepare a new RTC on which it must accept comment and hold public hearings. It is clear that the EPA is not basing its proposed revision to the regulatory determination on the two prior RTCs (the latest of which is 11 years old). Rather, the EPA is relying on the new data and information that has been obtained since its earlier determinations and presented in the proposal. See 75 Fed. Reg. 35149-59. As such, the EPA has not complied with section 3001(b)(3)(C)’s requirement to base its regulatory determination on the RTC mandated by section 8002(n) (along with information obtained through public comment and hearings on that RTC).

The EPA’s prior statements and its consistent practice confirm that the Agency has interpreted the Bevill Amendment to mandate that it first conduct and submit a RTC, accept comments and hold public hearing on the RTC, and then base its regulatory determinations on that RTC. Each prior Bevill regulatory determination was preceded by these very steps, and was based upon and supported by a unique and specially prepared “detailed and comprehensive” RTC. For example, the two prior regulatory determinations for fossil fuel combustion residues were preceded by and based upon such RTCs. See 58 Fed. Reg. 42466 (Aug. 9, 1993)

(regulatory determination for CCRs generated at electric utilities, preceded by 1988 Report to Congress); 65 Fed. Reg. 32214 (May 22, 2000) (regulatory determination for wastes from combustion of fossil fuels, preceded by 1999 Report to Congress); *see also In re: Leed Foundry, Inc.*, 13 E.A.D. \_\_\_\_, RCRA (3008) Appeal No. 07-02 (Feb. 20, 2008) at 7 (describing history and basis of two prior fossil fuel combustion wastes regulatory determinations). Indeed, in the consent decree entered in *Gearhart v. Reilly*, C.A. No. 91-2435 (D.D.C. June 30, 2002), the EPA specifically acknowledged that, before it could issue its regulatory determination for all fossil fuel combustion wastes it needed first to conduct and submit the required Report to Congress).

The regulatory determinations for the other Bevill wastes were similarly preceded by and based upon a RTC. *See* 60 Fed. Reg. 7366 (Feb. 7, 1995) (regulatory determination for cement kiln dust preceded by December 31, 1993 RTC); 53 Fed. Reg. 25466 (July 6, 1988) (regulatory determination for crude oil and natural gas waste preceded by December 1987 RTC); 56 Fed. Reg. 27300 (June 13, 1991) (regulatory determination for 20 mineral processing wastes preceded by July 1990 RTC); 51 Fed. Reg. 24496 (July 3, 1986) (regulatory determination for extraction and beneficiation waste preceded by December 1985 RTC). As this history demonstrates, the EPA has never issued a regulatory decision regarding a Bevill waste without first preparing and relying upon a RTC. This consistent practice demonstrates the EPA's understanding that the RTC is a mandatory prerequisite for any regulatory determination.

The EPA's proposal here is not sufficient for the required RTC and associated process for issuing regulatory determinations for Bevill wastes. As the EPA has stated:

In the Bevill Amendment, Congress created a special process for the Agency to determine which wastes, if any, should retain the temporary statutory exclusions from RCRA Subtitle C. This process is similar to the rulemaking process, although it entails additional steps. In 1980, Congress required EPA to study certain wastes, . . . conduct a detailed and comprehensive study and

submit it to Congress, conduct public hearings and accept public comments, and finalize its decision in a *Report to Congress*.

See Complainant's Brief In Support of Its Notice of Appeal to the Environmental Appeals Board in *In re Leed Foundry, Inc.*, RCRA (3008) Appeal No. 07-02 (EAB) (Jul. 2, 2007) (available at [http://yosemite.epa.gov/OA/EAB\\_WEB\\_Docket.nsf/Filings%20By%20Appeal%20Number/D64D0A837C2CC2958525730C0075BDCA?OpenDocument](http://yosemite.epa.gov/OA/EAB_WEB_Docket.nsf/Filings%20By%20Appeal%20Number/D64D0A837C2CC2958525730C0075BDCA?OpenDocument)). In this definitive statement, the EPA thus correctly recognized that the process for adopting a regulatory determination differs from and entails additional Congressionally-mandated steps compared to the rulemaking process under RCRA. See also *American Portland Cement Alliance*, 101 F.3d at 777 (distinguishing between process for adopting a Bevill regulatory determination and regulations implementing and following such a determination). Congress had a good reason for creating this distinction and the additional procedures for issuing regulatory determinations – namely that the potential economic impacts of regulating high volume, low toxicity wastes like CCRs warrant extra study and careful consideration. In light of these concerns, the EPA cannot ignore these requirements in its rush to modify its earlier determinations and promulgate Subtitle C regulations for CCRs.

In short, even if the EPA believes that it has the authority and desires to issue regulations under Subtitle C for CCRs, it must first follow the statutorily mandated process for issuing regulatory determinations. It must start by conducting the study required by section 8002(n), submitting the RTC, and accepting comment and holding public hearings on that RTC. Only then may the EPA propose to modify its regulatory determination, after which it may undertake the process, if any, to promulgate Subtitle C regulations. Manufacturers believe the EPA's failure to follow this process here renders the proposed revision to its earlier regulatory determinations and proposed Subtitle C regulations as contrary to statutory mandates.

### **III. The EPA's Proposal to Regulate CCRs as a Hazardous Waste Will Have a Negative Impact on Manufacturers**

In addition to its failure to follow the procedures set forth in RCRA, the EPA's proposal to regulate CCRs as a hazardous waste is also flawed because of its potential negative impact on manufacturers and other CCR generators.

#### **A. The Beneficial Use of Coal Combustion Residuals Provide Benefits to the Economy and the Environment**

Of the 130 million tons of CCRs that are generated in the United States on an annual basis, approximately 45% of these materials were beneficially used.<sup>2</sup> The Manufacturers represent more than 2,000 companies who are in the business of making products which beneficially use CCRs. Examples include:

- Portland Cement – The American Coal Ash Association estimates that for every ton of CCRs used in place of Portland Cement about a ton of carbon dioxide is prevented from entering the Earth's atmosphere.
- Wallboard - One type of CCR, flue gas desulfurization (FGD) gypsum is the equivalent of mined gypsum rock and is used to make gypsum wallboard. Some companies manufacture wallboard that is made out of 100% recycled material.
- Structural Fill – These projects use ash in place of general fill, which reduces the amount of material that must be excavated elsewhere and trucked to the project.
- Asphalt – Bottom ash may be used as an additive in making asphalt.
- Concrete – Bottom ash, the heavier particles that remain after combustion, is similar in form and composition to fine aggregates like sand and gravel. Bottom ash can be used in concrete blocks.
- Plastics – Senospheres seen floating in CCR ponds can be processed to make plastics lighter and stronger.
- Wood Products – CCRs can be used as filler in wood products.

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<sup>2</sup> American Coal Council; [www.americancoalcouncil.org](http://www.americancoalcouncil.org).

According to the American Coal Council (ACC), the use of coal ash now contributes \$6-11 billion in annual economic benefit for the U.S. economy. These benefits include revenues from the sale of coal ash for beneficial use, avoided cost of disposal and savings from use as sustainable building materials. ACC also found that the beneficial reuse of CCRs resulted in an annual reduction in home energy consumption, water savings and significant greenhouse gas (GHG) reductions.<sup>3</sup>

The Manufacturers believe that federal policies should encourage the beneficial use of industrial byproducts and other manufacturing initiatives that make economic and environmental sense.

#### **B. Designating Coal Combustion Residuals as a Hazardous Waste Will Sharply Decrease Beneficial Use of this Industrial Byproduct**

The EPA has designated CCRs as a “Special Waste” under RCRA Subtitle C, which technically would allow manufacturers to beneficially use these materials in various applications 75 Fed. Reg. 35160 (June 21, 2010). The Manufacturers remain concerned, however, that classifying the material under Subtitle C will stigmatize the beneficial use of CCRs and seriously damage their ability to recycle this product. Manufacturers and other CCR marketers have already noticed growing reluctance among their customers to purchase products containing CCRs, even though the EPA has not yet promulgated a final rule. Tort liability concerns will continue to erode the market for this material, and more American jobs may be put at risk. Furthermore, the decrease in demand for products containing CCRs runs counter to RCRA’s underlying tenants of recycling and reuse.

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<sup>3</sup> Testimony from Janet Gellici, Executive Director of the American Coal Council, EPA Hearing in Charlotte, NC.

### **C. Regulating Coal Combustion Residuals as a Hazardous Waste Will Increase Disposal Costs of CCR Generators and Utilities**

The Manufacturers oppose regulation of CCRs as a hazardous waste because they are likely to increase transportation costs, both for power generators and manufacturers who generate their own CCRs. Subtitle C regulation will require these facilities to channel CCRs to special sites that are designed to handle hazardous waste. One food processing facility that generates CCRs estimates that their costs for transportation and disposal could increase from \$120,000 to approximately \$20 million per year if the material were regulated under Subtitle C.

Furthermore, power generators may need to raise electricity prices with skyrocketing disposal costs for CCRs. Manufacturers are especially vulnerable to high energy costs, and a noticeable increase in the price of energy may restrict this sector's ability to compete globally, expand and create jobs. This will further derail any hope of a robust economic recovery, preventing Americans from getting back to work.

### **D. U.S. Hazardous Waste Facilities Do Not Have the Capacity to Handle a Dramatic Increase in New Material**

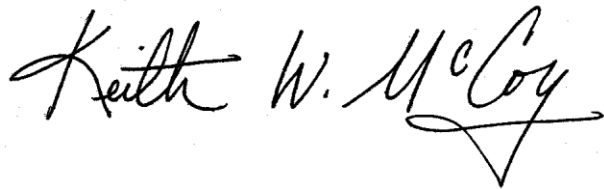
Should the EPA regulate CCRs as a hazardous waste under RCRA, the Manufacturers are extremely concerned that hazardous waste disposal sites will be completely overwhelmed by an influx of new waste material – CCRs may add an additional 100 million tons of material to these sites. One Midwestern manufacturer alone estimates they produce over one million tons of CCRs per year. Lack of disposal sites and capacity will likely adversely impact the pace of Superfund cleanups and other ongoing federal and state remedial and Brownfield programs.

## **IV. Conclusion**

The Manufacturers oppose the regulation of CCRs under Subtitle C of RCRA. As discussed in these comments, the EPA has not followed the proper statutory procedure for

revising previous regulatory determinations. Furthermore, regulation under Subtitle C will undoubtedly cost more American jobs and will stifle industrial recycling initiatives. The Manufacturers believe that the EPA's current state regulation coupled with voluntary industry improvements in CCR disposal practices provide adequate environmental protection. We urge the EPA to only issue proposals that will capitalize on the manufacturing sector's demonstrated record of technological innovation that continues to improve the quality of life for all Americans. For more information related to these comments, please contact Keith McCoy (kmccoy@nam.org) at 202-637-3175 or Alicia Oman (aoman@nam.org) at 202-637-3174 or aoman@nam.org. Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Keith W. McCoy". The signature is written in a cursive style with a large, stylized "K" and "M".

Keith McCoy  
Vice President  
Energy and Resources Policy  
National Association of Manufacturers