

## Testimony Regarding Proposed Coal Ash Regulation

Docket ID No. EPA-HQ-RCRA-2009-0640

Good Morning,

Bross Construction is a multi-faceted family owned construction company established in 1966. My father, two brothers and myself own and operate the company. Many of the construction services we provide involve the use of ready mix concrete, in fact we own several ready mix plants which incorporate the use of flyash. The ability to use coal ash as an additive in our ready mix concrete has lowered the cost to the consumer for concrete projects. Projects ranging from highways to driveways. From an employer perspective, the lowered costs of producing ready mix concrete allow us to invest scarce resources elsewhere, such as employee benefits, updated equipment and an expanded work force. At a time when our economy is so unstable and millions of Americans are unemployed an increased cost for any product is simply untenable.

The proposed regulation of coal ash as a hazardous material for coal producing plants while at the same time exempting that designation for those who wish to use it in ready mix concrete seems counter productive. The world in which we live and do business is very sensitive to any designation of any product as "hazardous". While the general public might not be aware of this "fine line" designation; those who put together requirements for projects will understand the designation and will be very reluctant to open themselves to any kind of "claim" by our trial attorney population. We in the business world could possibly be in the situation of being uninsured for the liability of a product that is "okay" for some uses and "hazardous" for others. How will we be protected from this type of claim? My understanding of the

Comprehensive Environmental Response and Liability Act indicates there would be no protection for end users such as our business should there be a suit brought. As we all know, this can translate into financial destruction for our business and our employees. Our bonding/insurance companies are not going to want to insure us against this type risk therefore, in effect, making the product unusable.

If we were simply making the argument that use of coal ash is financially a net positive for us it would not override the need to protect the citizens of this country. But that is not the sum total of our stance; coal ash has been reviewed many times in the past and determined not to be hazardous. As Governor Joe Manchin recently stated:

"The safety of fly ash was evaluated in 2000 by the Clinton administration, which determined after an exhaustive analysis that coal ash should not be designated as a "hazardous" waste.

In the 10 years since that decision, the EPA has calculated that ash recycling by the cement and concrete industry alone has reduced carbon emissions by 117 million tons. For comparison, all the SUVs on our country's roads emit about 70 million tons of carbon each year, according to the environmental group, Environmental Defense.

This view is not uncommon. Every key federal agency that has weighed in on the issue — the departments of Energy, Interior, Agriculture and Transportation, the Small Business Administration, and the Army Corps of Engineers -- opposes regulating coal ash as hazardous waste."

The toxicity characteristics of fly ash do NOT qualify it as a hazardous waste. The characteristics of fly ash are similar to that of soils, stone, sand and other materials used in the production of

concrete, such as Portland cement. Various government agencies have supported this finding.

In summary, while it is understandable that the disaster in Tennessee causes a "second look" at insuring the safety of our environment that is not a reason to label a product as hazardous when there's no scientific data to support that. If there needs to be further safeguards for disposal of CCRs then surely those can be implemented without destroying a large segment of our economy. The use of coal ash has been beneficial to all end users and a hazardous label can very quickly end that. The costs to our economy and workforce would be catastrophic.

Thank you for this opportunity to testify on behalf of Bross Construction.