



H.R. 2218 Is Not Needed to Protect Beneficial Reuse of Coal Ash

Committee on Energy and Commerce, Democratic Staff

Proponents of H.R. 2218 argue that the legislation is needed to protect the practice of recycling, or beneficially reusing, coal ash. However, this claim and others like it are myths. This fact sheet provides additional information on the beneficial reuse of coal ash.

MYTH: The Environmental Protection Agency (EPA) wants to regulate the beneficial reuse of coal ash.

FACT: EPA has not proposed to regulate beneficial reuse of coal ash. EPA's proposed rule applies to the disposal of coal ash. When coal ash is reused, it is not disposed. Many regulated wastes are exempt from regulation when reused. For example, the following materials are not regulated by EPA unless they are disposed: coke by-product wastes, pulping liquors, recovered oil from petroleum refining operations, processed scrap metal, shredded circuit boards, mineral processing spent materials, and used cathode ray tubes. If they are disposed, they are regulated as hazardous waste.

MYTH: EPA wants to label coal ash "hazardous" and that will put an end to beneficial reuse.

FACT: EPA has not proposed to label coal ash as hazardous. EPA has proposed two alternatives for regulating coal ash. One would regulate ash as a "special waste" under subtitle C of the Resources Conservation and Recovery Act (RCRA) and one would regulate it as a solid waste under subtitle D.¹ EPA has recently published a federal register notice indicating a preference for regulating under subtitle D.²

MYTH: Regulations to ensure the safe disposal of coal ash will kill the beneficial reuse industry.

FACT: Regulation will lead to more beneficial reuse, not less. Current rates of beneficial reuse of coal ash vary from state to state. The highest rates are in Wisconsin, where regulation of coal ash disposal is very strong. This just makes business sense. If a utility cannot cut corners in the disposal of coal ash, alternatives to disposal become more attractive.

MYTH: Under RCRA, EPA *could* determine coal ash to be hazardous even though the agency is not proposing to do so. Once consumers hear that coal ash is hazardous, they will never use a product that contains coal ash.

FACT: A hazardous designation does not discourage recycling. Like coal ash, Portland cement is a common ingredient in concrete. Portland cement is considered to be a hazardous chemical under the OSHA Hazard Communication Rule, qualifies as a hazardous substance with delayed health effects under the Superfund Amendments and Reauthorization Act (SARA), and is a hazardous substance subject to statutes promulgated under the Federal Hazardous Substances Act. This designation has not prevented the widespread use of Portland cement. There is no evidence that the so called "stigma" of a hazardous determination would have a different impact on use of coal ash than it has on the use of Portland cement.

¹ U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities*, 75 Fed. Reg. 35128 (Jun. 21, 2010).

² U.S. Environmental Protection Agency, *Effluent Limitation Guidelines for the Steam Power Electric Generating Point Source Category*, 78 Fed. Reg. 34432 (Jun. 7, 2013).