



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 6 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Mr. Jeff Ruch, Executive Director
Public Employees for Environmental Responsibility
2000 P Street, NW, Suite 240
Washington, D.C. 20036

Dear Mr. Ruch:

Thank you for your letter of July 7, 2010 to U.S. Environmental Protection Agency (EPA) Administrator, Lisa P. Jackson requesting information on several aspects of EPA activities regarding coal combustion residuals (CCRs). Specifically, you request that the criteria used in re-evaluating the Coal Combustion Products Partnership (C2P2) program, the basis for removal of the C2P2 website, as well as any necessary background documentation from the C2P2 website for review throughout the rulemaking process are all made publicly available. Your letter also indicates that the Public Employees for Environmental Responsibility (PEER) continues to remain concerned about "untested uses of coal combustion wastes and continues to urge EPA to consider toxic implications."

First, let me be clear that EPA continues to strongly support the safe and protective beneficial use of CCRs. The Agency believes that there are significant environmental and economic benefits when CCRs are used in an environmentally protective manner, including climate change benefits. This position has been expressed by the Administrator of EPA, and again was expressed in EPA's June 21, 2010 proposal to regulate the disposal of CCRs. In fact, the proposed rule maintains the Bevill exemption for beneficial uses, and therefore would not alter the regulatory status of coal ash that is beneficially used. With that said, the Agency also recognizes that concerns and questions have been raised regarding the beneficial use of CCR, especially when used in an unencapsulated form, and the need to fully consider the risk, management practices, and other pertinent information related to CCRs. Therefore, EPA is seeking comment on whether any additional requirements are necessary to ensure safe practices and has requested that commenters provide any available data on beneficial use.

Based on the statements in the proposed rule, the Agency was concerned that it may be sending a mixed message regarding the beneficial use of CCRs by soliciting comment on these uses, particularly those used in an unencapsulated form, while at the same time identifying some of these same uses on the C2P2 website. In addition, during a regulatory process, it is important that the Agency engage with all stakeholders evenhandedly, providing adequate transparency and

consistency with the rulemaking. Consequently, EPA decided to remove the C2P2 pages from the website, while we are taking and assessing comment on the beneficial use of CCRs.¹

With respect to EPA's re-evaluation of the C2P2 program, EPA intends to carefully assess the information that is provided in response to the solicitation of comments in the proposed rule, with the objective that beneficial uses be protective of human health and the environment. The preamble to the final rule will discuss the Agency's basis for the decisions that are made. In addition, the Agency will consider adequate transparency and consistency with the current rulemaking effort as it re-evaluates the future of the C2P2 program, including EPA's role in the program.

Finally, you request that EPA make publicly available any necessary background documentation from the C2P2 website for review during the rulemaking process. We agree with you that there are documents that were on the C2P2 website that were directly or indirectly referenced in the preamble to the proposed rule. Consequently, the relevant documents have been placed in the docket for this rulemaking.² We will also announce this in a technical correction notice that the Agency expects to issue shortly.³

I appreciate your interest in the C2P2 and the beneficial use of coal ash. If you have further questions or concerns, please contact me at 703-308-8895 or via email at rudzinski.suzanne@epa.gov.

Sincerely,



Suzanne Rudzinski, Acting Director
Office of Resource Conservation and Recovery

¹ On June 21, 2010, EPA also announced that it was suspending active participation in the C2P2 program.

² <http://www.regulations.gov/> (Docket ID No. EPA-HQ-RCRA-2009-0640)

³ In a recent Federal Register notice in which EPA announced the five public hearings to be held on the CCR proposal, EPA also noted that the Agency will be publishing in the Federal Register several administrative corrections that are needed to the June 21, 2010 proposed rule. We also noted that an unofficial pre-publication version of the corrected proposed rule is available at <http://www.epa.gov/coalashrule>.