

Document Log

From		To	
Seth Oster/DC/USEPA/US		Mathy Stanislaus/DC/USEPA/US@EPA	
CC		BCC	
Adora Andy/DC/USEPA/US@EPA Bob Sussman/DC/USEPA/US@EPA Lisa Feldt/DC/USEPA/US@EPA			
Subject		Date/Time	
Re: EPA Statement on C2P2 story		01/29/2010 08:45 AM	

Document Body

As I discussed briefly with Bob last night, there is some confusion -- not your fault, but confusion nonetheless -- on what unfolded here. Let's discuss in-person. Mathy, I will call you this morning.

Seth Oster
Associate Administrator
Office of Public Affairs
Environmental Protection Agency
(202) 564-1918
oster.seth@epa.gov

Mathy Stanislaus	I agree	----- Original Message -----	01/28/2010 03:32:32 PM
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From: Mathy Stanislaus/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA, Seth Oster/DC/USEPA/US@EPA
Cc: Adora Andy/DC/USEPA/US@EPA, Lisa Feldt/DC/USEPA/US@EPA
Date: 01/28/2010 03:32 PM
Subject: Re: EPA Statement on C2P2 story

I agree

Bob Sussman

----- Original Message -----

From: Bob Sussman
Sent: 01/28/2010 03:30 PM EST
To: Seth Oster
Cc: Adora Andy; Mathy Stanislaus; Lisa Feldt
Subject: Fw: EPA Statement on C2P2 story

has this message gone? i wish we could have reviewed. this is not what we would have wanted in light of our industry discussions on beneficial reuse.

Robert M. Sussman
Senior Policy Counsel to the Administrator
Office of the Administrator
US Environmental Protection Agency

----- Forwarded by Bob Sussman/DC/USEPA/US on 01/28/2010 03:27 PM -----

From: Lisa Feldt/DC/USEPA/US
To: Bob Sussman/DC/USEPA/US@EPA
Date: 01/28/2010 03:25 PM
Subject: Fw: EPA Statement on C2P2 story

Lisa Feldt
Deputy Assistant Administrator
Office of Solid Waste & Emergency Response
U.S. Environmental Protection Agency
Phone: (202) 566-0200;
Fax: (202) 566-0207
feldt.lisa@epa.gov

----- Forwarded by Lisa Feldt/DC/USEPA/US on 01/28/2010 03:25 PM -----

From: Adora Andy/DC/USEPA/US
To: Lisa Feldt/DC/USEPA/US@EPA
Cc: Seth Oster/DC/USEPA/US@EPA
Date: 01/28/2010 10:18 AM
Subject: EPA Statement on C2P2 story

Here you go. Sorry about the delay, Lisa.

"The American people deserve to know their EPA is protecting them and their children, not the interests of industry lobbyists. When Administrator Jackson took office she ordered an immediate review of the health and environmental concerns raised by coal ash, including "beneficial use." The Agency will issue a proposed rule to address those concerns shortly. EPA is also considering whether the C2P2 partnership should be continued. We will review all documents and emails in question to determine whether this process served the American people," said EPA Press Secretary Adora Andy.

Adora Andy
Press Secretary
U.S. Environmental Protection Agency
Office of Public Affairs
202-564-2715
andy.adora@epa.gov



Fw: Can you prepare a short summary of today's mtg with the Coal Ash Association?
Matt Straus to: Robert Dellinger, devlin.betsy, Richard Kinch

03/15/2010 02:09 PM

Attached are meeting notes I put together on a meeting that was held on March 3rd with the beneficial reuse industry on CCR. Can you please see that this gets into the docket for this proposed rule.
----- Forwarded by Matt Straus/DC/USEPA/US on 03/15/2010 02:08 PM -----

From: Matt Straus/DC/USEPA/US
To: Mathy Stanislaus/DC/USEPA/US@EPA
Cc: Matt Hale/DC/USEPA/US@EPA
Date: 03/04/2010 11:16 AM
Subject: Re: Can you prepare a short summary of today's mtg with the Coal Ash Association?



Minutes-reusemeeting3-3.doc Mathy, here is the summary I put together. I plan to send to ORCR to put in the docket, but will wait to see if you have any comments before I do that.

Mathy Stanislaus

Thanks - I sent the e-mail to the wrong Matt

03/04/2010 11:06:01 AM

From: Mathy Stanislaus/DC/USEPA/US
To: Matt Hale/DC/USEPA/US@EPA
Cc: "Matt Straus" <Straus.Matt@epamail.epa.gov>
Date: 03/04/2010 11:06 AM
Subject: Re: Can you prepare a short summary of today's mtg with the Coal Ash Association?

Thanks - I sent the e-mail to the wrong Matt

Matt Hale

----- Original Message -----

From: Matt Hale
Sent: 03/04/2010 09:31 AM EST
To: Mathy Stanislaus
Subject: Re: Can you prepare a short summary of today's mtg with the Coal Ash Association?
Matt S. is doing a summary; I got stuck in Dulles, and didn't make the meeting. -- Matt

Mathy Stanislaus

03/03/2010 08:56:59 PM

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SUBJECT: Notes from Meeting with Beneficial Reuse Industry
FROM: Matt Straus, Advisor
TO: CCR Docket

On March 3, 2010, a meeting was held between EPA and certain companies that beneficially use coal combustion residuals (CCRs), as well as the American Coal Ash Association (ACAA). Present at the meeting were: Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER), Barry Breen, Deputy Assistant Administrator of OSWER, Matt Straus, OSWER, David Cohen and Stephanie Owens from EPA's Public Affairs Office, Thomas Adams from ACAA, Lisa Cooper, PMI Ash Technologies, and Charles Price, PriceLite. This meeting is a followup to a meeting that the beneficial use industry had with the Administrator of EPA in January 2010. The following are a summary of the points raised/discussed at the meeting:

- It was noted that there are many green jobs created by those companies that beneficially use CCRs, many of which are small businesses, and that if one took a narrow view of defining "green jobs" to the use of fly ash in concrete and fluidized gas desulfurization (FGC) sludge in wall board, the industry today has about 4,000 green jobs; the number of green jobs would double in a year to a year and a half if the CCR rule "goes the right way." If one took a more expansive view of "green jobs," the beneficial use industry has about 10,000 to 15,000 green jobs.
- They indicated that they are beginning to see the markets being affected by the uncertainty, and that some of their customers are not willing to use such materials containing CCRs due to the uncertainty; they also noted that their competitors, who use other secondary materials, are claiming that their materials are not hazardous and using that against them. Furthermore, they noted that contracts they have signed, at least in some cases, includes clauses which suggests that if CCRs are identified as a hazardous waste, or they may be identified as a hazardous waste, that that may be reason to cancel the contract.

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- EPA representatives noted that EPA strongly supports the sound beneficial use of CCRs and that based on increased costs alone, the amount of CCRs that are beneficially used should increase and that the Agency does not see what this "stigma" issue is based on.
 - It was noted that they see the utility industry moving away from the use of impoundments, and indicated that from what they have seen, the utility industry (or most of the industry) will not be using this method of management in about 10 years. They also noted that new landfills are being built with composite liners (and they pointed to the new Maryland regulations as a model) and thus, the industry is moving in the right direction. (It was noted by EPA representatives that this may be the case for new units, but still much of the CCRs are managed in unlined units and will continue to be used in the future.)
 - The beneficial use industry has looked at a number of approaches for regulation of CCRs, such as contingent management (identify CCRs as non-hazardous and give the states some amount of time to adopt the regulations, such as two years, and if they do not adopt them, regulate CCRs under the hazardous waste provisions), retain the Bevill waste for CCRs, and indicate that CCRs that are beneficially used are not "solid wastes," and a listing scheme where CCRs are given a different label. Based on discussions with standards setting organizations and an attorney they hired who is expert in RCRA, they believe the solution is subtitle D of RCRA. They indicated that they were told, particularly by the standard setting organizations, that if CCRs had the label or was regulated under subtitle C of RCRA, it would have a severe impact on the beneficial use of CCRs. The primary reasons they provided were: (1) legal liability and (2) if managed as a hazardous waste will be considered a hazardous waste no matter what it is called. They also identified other issues, but they appeared to be secondary.
 - EPA representatives asked if the CCRs were not called hazardous waste, but were labeled differently, whether that would have an impact; they indicated that they were told no. The fact

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that there are subject to subtitle C regulation would be enough to impact the beneficial use of CCRs.

- EPA representatives then noted that the record is fairly clear that the mismanagement of CCRs does present a risk, and that even under a subtitle D scheme, if that is the approach that is considered, the regulations would be tight and the Agency would need to indicate that these wastes present a risk, based on the risk assessment, the damage cases, etc (and not that they are non-hazardous) and whether that would impact the beneficial use of CCRs. They said that they would support tight regulation, and indicated that they were informed by the standard setting organizations that if it would not be considered or labeled or managed as a hazardous waste, it would be seen differently.
- They did indicate that they believe that federal oversight of the management of CCRs is important, and that if CCRs were subject to the same management scheme as municipal solid waste, wouldn't that be protective and wanted to know if EPA would support subtitle D if the RCRA was amended. We indicated that we were not prepared nor was it appropriate to discuss legislation.
- They did suggest that they believed that they were caught in the middle of the dialogue and suggested that EPA sit down with the standard setting organizations, such as ACI, ASTM International, and AASHTO and have the dialogue with them.
- It was also noted that the sister organization to ACAA in other countries were asked how such a designation would impact the beneficial use of CCRs in their countries, and that once that information is obtained, that they would provide it to EPA.

ACAA meeting summary, April 1

John Sager ^t Betsy Smidinger, Thea Mcmanus, Janette
^c Petersen, Truett Degeare, Richard Kinch

04/05/2010
01:57 PM

From: John Sager/DC/USEPA/US

To: Betsy Smidinger/DC/USEPA/US@EPA, Thea
Mcmanus/DC/USEPA/US@EPA, Janette
Petersen/DC/USEPA/US@EPA, Truett
Degeare/DC/USEPA/US@EPA, Richard
Kinch/DC/USEPA/US@EPA

Tom Adams from ACAA came in last week, and I met with him mostly by myself, with Betsy and Truett coming in briefly just to say hello. I wanted to let you know the two main points that were discussed at the meeting.

The first point was that ACI and ASTM are planning to meet with Mathy tomorrow. I think we all know about the ASTM letter saying that ASTM would drop its standards for use of fly ash in cement and concrete if there is a hazardous waste rule; the news is that ACI apparently continued down the same path at its recent convention, where the ACI President recommended that ACI also drop its standards. They stopped short of a letter so as to take a wait and see approach.

The other point that Tom discussed was that he and a small group met with Mathy several weeks ago. This was in followup to Lisa Jackson's offer to work with the BU folks to find language that would support BU in the context of a hazardous waste rule. According to Tom, the message to Mathy was that they tried to find language, but it just does not work for them. Mathy apparently then asked them if they would support federal standards, and if ACAA would issue a resolution to this effect. Tom thought this would be possible, but he is finding the effort more difficult than he imagined, for at least two reasons he could discuss. The first issue is whether the resolution would be for national standards for "disposal" or "management." Tom said ACAA has is divided in this area. The second issue is that some ACAA members are not in favor of ACAA coming out with a resolution on its own, as they fear this could increase potential liability for past actions when there were no federal standards. At this time, it looks like Tom is not going to be able to get enough support for the resolution Mathy asked for, but it is still possible.



ACAA

American Coal Ash Association

Advancing the management and
use of coal combustion products.

July 9, 2010

Administrator Lisa P. Jackson
US Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, D.C. 20460

Dear Administrator Jackson:

We are writing to express our concern over the recent actions of the US Environmental Protection Agency (EPA) relative to the Coal Combustion Products Partnership (C2P2). Since the formation of the C2P2 in 2003 the beneficial use of coal combustion products (CCP) has increased significantly. Support from the C2P2 has been critical to this recycling success story.

During the period following the Kingston, TN spill of December 22, 2008 to today, the EPA has been working to develop regulations for the disposal of CCP. Unfortunately, beneficial use has been brought into this rulemaking. The Kingston event had nothing to do with beneficial use and everything to do with failure of the disposal facility to contain CCP in a safe manner. Having to defend beneficial use of CCP from unintended consequences resulting from new disposal regulations when no damage cases related to beneficial use are cited as the basis for creating regulation seems to be an effort to fix a problem that does not exist.

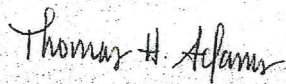
The C2P2 has been suspended by the EPA. This action has been taken without informing the American Coal Ash Association. We are assuming the other primary sponsors, the Federal Highway Administration, the US Department of Agriculture, US Department of Energy, and the Utility Solid Waste Activities Group were not informed either. While the EPA has its reasons for taking this action, it would seem to be a matter of professional courtesy to inform the other primary sponsors as well as the partners who have signed on in support of C2P2 prior to taking this action. This hardly seems to be the kind of action that speaks well of a future for this partnership.

We are also concerned that the agency has not publically responded to the unfounded accusations of Public Employees for Environmental Responsibility on greenhouse gas reductions attributed to fly ash use in concrete. The calculation of GHG reduction in this matter is well-established and accepted. Instead of standing up and defending this important contribution to the environment, the EPA has chosen to take the extreme action of shutting down the C2P2 website completely. It appears that EPA is now embarrassed to have any role in promoting the beneficial use of coal combustion products despite the language contained in the proposal published on June 21, 2010.

EPA Administrator Lisa P. Jackson
July 9, 2010
Page 2 of 2

We are concerned about these developments and request a meeting with you, senior EPA staff, and other C2P2 partners at your earliest convenience to discuss this matter.

Sincerely,



Thomas H. Adams
Executive Director

Cc: Assistant Administrator Mathy Stanislaus, Office of Solid Waste and Emergency Response
Robert Sussman, Senior Policy Counsel to the Administrator
Suzanne Rudzinski, Acting Director, Office of Resource Conservation and Recovery
Margaret Guerriero, Acting Deputy Director, Office of Resource Conservation and Recovery
Bob Dellinger, Director, ORCR, Materials Recovery and Waste Management Division
Betsy Devlin, Associate Director, ORCR, Materials Recovery and Waste Management Division
Betsy Smidinger, Director, ORCR, Resource Conservation and Sustainability Division
Richard Kinch, Chief, ORCR Industrial Materials Reuse Branch
Truett DeGeare, ORCR
John Sager, ORCR
Dr. Matt Smith, USDA ARS, National Program Leader, Manure and Byproduct Utilization
King Gee, FHWA, Associate Administrator, Office of Infrastructure
Jim Roewer, Executive Director, Utility Solid Waste Activities Group



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

JUL 21 2010

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

Mr. Thomas H. Adams
Executive Director
American Coal Ash Association
15200 E. Girard Avenue, Suite 3050
Aurora, CO 80014-3955

Dear Mr. Adams:

Thank you for your July 9, 2010, letter to U.S. Environmental Protection Agency (EPA) Administrator Jackson expressing your concern over recent actions the Agency has taken on the Coal Combustion Products Partnership (C2P2) program. Administrator Jackson has referred your letter to me for response.

First, I apologize that we did not formally notify the American Coal Ash Association (ACAA) and other C2P2 partners earlier concerning EPA's suspension of its active participation in the Partnership and that we were taking down the C2P2 website. The Agency continues to support the safe and protective beneficial reuse of coal combustion residuals (CCRs). This position was also expressed in EPA's June 21, 2010, proposal to regulate the disposal of coal combustion residuals. 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. However, in that same proposal, EPA identified concerns with some uses of CCRs, particularly in an unencapsulated form, such as the use of CCRs in road embankments and agricultural applications, in the event proper practices are not employed. These uses were among those included in the C2P2 program. While EPA does not want to negatively impact the legitimate beneficial use of CCRs unnecessarily, we are also aware of the need to fully consider the risks, management practices, and other pertinent information related to CCRs. EPA's proposed rule is not seeking to regulate beneficial reuse. However, EPA is seeking comment on whether any additional requirements are necessary to ensure safe practices and data on beneficial use.

During a regulatory process, it is particularly important that the Agency engage with all stakeholders evenhandedly, providing adequate transparency and consistency with the rulemaking. Consequently, EPA suspended active participation in the Partnership program while we are taking and assessing comment on the beneficial use of CCRs. We greatly appreciate the Partners' participation to date in helping promote the safe and protective beneficial reuse of CCRs.

You also expressed concern over the lack of a public response to the Information Quality Act complaint by the Public Employees for Environmental Responsibility. The Agency is currently evaluating that complaint which will be responded to consistent with the Agency's process for addressing Information Quality Act complaints. We continue to believe the evidence supports climate change benefits which need to be included in evaluating coal ash's beneficial uses.

Thank you again for your interest and active participation in C2P2. I encourage you and all stakeholders to provide comment to the regulatory docket. We would be pleased to meet as you suggested in your letter. If you think a meeting is needed, please contact me at (202)-566-0200, or Suzanne Rudzinski, Acting Director, Office of Resource Conservation and Recovery at (703)-308-8895.

Sincerely,

A handwritten signature in black ink, appearing to read "Mathy Stanislaus", written over a horizontal line.

Mathy Stanislaus
Assistant Administrator