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November 14, 2011

U.S. Environmental Protection Agency
Mailcode: 28221T
Attn: Docket ID No. EPA-HQ-RCRA-2011-0392
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes;
Disposal of Coal Combustion Residuals from Electric Utilities: Notice of Data Availability and Request
for Comment: *76 Federal Register* 63252-63257 (October 12, 2011)

To Whom It May Concern:

The Associated General Contractors of America (AGC) provides the following comments on the additional information and data the U.S. Environmental Protection Agency (EPA) has posted to the docket at EPA-HQ-RCRA-2011-0392 in conjunction with the proposed rule: Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities; Proposed Rule; *75 Federal Register* 35128-35264 (June 21, 2010) - EPA-HQ-RCRA-2009-0640. EPA has asked for public comment on whether, if at all, this additional information should affect the agency's decisions as it develops a final rule on the future management and disposal of coal combustion residuals (CCR).

AGC previously submitted comments dated November 19, 2010, on the agency's proposed hazardous or special waste designation options, which AGC incorporates herein by reference (EPA-HQ-RCRA-2009-0640-8787).

Because EPA has just released hundreds of pages of pertinent information related to the reuse of CCRs in construction applications and because the public has not had continuous access to the information in the docket during the comment period (many of the studies/materials are not accessible electronically and must be viewed by visiting the EPA docket reading room), AGC adds to the record its request for more time to respond to EPA's Oct. 12 notice of data availability (NODA). Much of the new information, data and reports are exceptionally long and complex; AGC's did not have sufficient time to adequately screen, review and assess all of the materials and would have greatly benefitted from an extended period for public comment.

AGC is aware that EPA denied all requests to extend the comment period. However, Given that there is not a statutory or judicial deadline for issuing the final CCR rule, AGC finds that there is no reasonable justification for providing the public with only 30 days to review, analyze and prepare comments on an array of new information that will be critical to EPA's final decision in this highly complex rulemaking.

AGC of America is the largest and most diverse trade association in the construction industry. The association represents more than 33,000 companies in 96 chapters throughout the United States. AGC members include more than 7,500 of America's leading general construction contractors, 12,500 specialty contractors, and 13,000 material suppliers and service providers to the construction industry.

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In reviewing the information in the NODA regarding alleged and proven damage cases, AGC finds it particularly significant to note that none of the alleged and proven damage cases include instances of beneficial use during construction applications. Two alleged damage cases are linked to “structural fill,” but an examination of the report makes it clear that these instances are akin to large scale disposal, not beneficial use. As stated in its November 2010 comment letter, AGC is not aware of any damages or injuries that have resulted from beneficial use in construction. To date, EPA has produced no evidence of damages from the beneficial uses of CCRs. Therefore, AGC stands firm that EPA must ensure that both the encapsulated and the unencapsulated uses of CCRs in construction will continue to be encouraged without risk that a present day use will give rise to unexpected future exposure to regulatory re-characterization as a subtitle C waste.

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In support of AGC's comments above, below are quotes and/or summaries of the conclusions presented in the beneficial use studies/reports that EPA included in the NODA and that AGC reviewed.¹

EPA-HQ-RCRA-2011-0392-0019: Leachability of Trace Metal Elements from Fly Ashes, and from Concrete Incorporating Fly Ashes

“Regardless of the type and percentage of the fly ash used, w/cm of the concrete, and curing condition, none of the trace metals in the leachates from the fly ash concrete samples exceed the regulated concentration limits by the United States Environmental Protection Agency and the Transportation of Dangerous Goods Act regulations of Canada. The concrete incorporating the fly ashes is, therefore, considered environmentally stable.”

EPA-HQ-RCRA-2011-0392-0029: A Life Cycle Comparison of Disposal and Beneficial Use of Coal Combustion Products in Florida: Part 1: Methodology and Inventory of Material, Energy and Emissions

“Beneficial use of CCPs [coal combustion products] is shown here to yield reductions in raw material requirements and various emissions to all environmental compartments, with potential tangible savings to human health and the environment.”

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traditional materials. With more rigorous description of the input parameters, the framework is a new approach (instead of best case or worst case designs) for prediction of the “correct” range of release

surface runoff concentrations generally did not exceed either the NPDWR limits or the Ohio EPA non-toxic criteria, suggesting that the use of these materials in roadway construction is environmentally benign.”

EPA-HQ-RCRA-2011-0392-0039: Environmental Properties of Fly Ash Bricks

In summation, this paper concludes that fly ash bricks (“compacted from a Class C fly ash resulting from burning a Powder River Basin Coal”)—

3. Do not emit mercury in the air,
4. Emit radon at approximately 50% of the level of concrete,
5. Leach negligible levels of pollutants when exposed to rain and
6. Are non-hazardous for handling and placing in landfills.

EPA-HQ-RCRA-2011-0392-0040: Evaluating the Thermal Stability of Mercury and Other Metals in Coal Combustion Residues Used in the Production of Cement Clinker, Asphalt, and Wallboard

“Research is underway by the U.S. Environmental Protection Agency (EPA) to document changes that may occur to coal combustion residues (CCRs) as a result of implementation of mercury and multipollutant control technology at coal-fired power plants. This work was cited as a priority in EPA’s Mercury Roadmap (<http://www.epa.gov/mercury/roadmap.htm>) to evaluate the potential for any crossmedia transfers from the management of coal combustion residues resulting from more stringent air pollution control at coal fired power plants.”

“This report focuses on the potential for an increase in the volatilization of mercury and other metals from the utilization of CCRs in the production of cement clinker, asphalt, and wallboard. All three of these processes require heating during the production process. The four metals evaluated in this study are mercury (Hg), arsenic (As), selenium (Se), and lead (Pb) (Table E-1). Heating temperatures of the CCRs for this study were chosen to simulate actual conditions encountered in the cement, wallboard, and asphalt industries (Table E-2).”

“The results from this laboratory study demonstrate the varying degree of volatility for mercury, arsenic, Se and Pb in CCRs depending on the process temperature being used. A high temperature process such as cement clinker production has the ability to release all four metals from fly ash when exposed to the high temperatures found in production. Laboratory simulation of the asphalt and wallboard production processes showed a significant release of mercury duri

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EPA-HQ-RCRA-2011-0392-0049: Leachability of Selected Chemical Elements from Concrete

“Results indicate metal concentrations in leachate are all less than one-tenth RCRA regulatory limits, and any concentrations are below detection limits. Chromium TCLP cement values correlate with concrete leachate values while lead values do not. ... Otherwise, it appears that metals, fluoride, and nitrate concentrations for the two aggregates and four cements tested do not present concerns in drinking water leachates from concrete.”

EPA-HQ-RCRA-2011-0392-0050: Leachability of Trace Metal Elements from Fly Ashes, and from Concrete Incorporating Fly Ashes

This is a duplicate item with EPA-HQ-RCRA-2011-0392-0019.

EPA-HQ-RCRA-2011-0392-0052: Leachate and Radon Production from Fly Ash Autoclaved Cellular Concrete

“ACC [Autoclaved Cellular Concrete] appears to be an environmentally benign material based on the following:

- The concentration of heavy metals in leachates of crushed ACC were below 100 times their applicable drinking water standards, which is the regulatory hazard threshold. The possible microencapsulation in the ACC structure and the moderate to high pH of ACC leachates, contributed to the low concentration of heavy metals released to and solubilized in the aqueous extractants.
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present within the materials controlled the early strength of the treated materials. A cement stabilised / solidified made ground material was crushed and subjected to five aggregate tests. The material was found to meet the UK Highways Agency physical specifications for earthwork Class 1 and 6 materials, aggregate in a cement bound material and Type 1 sub-base road construction materials. This study has demonstrated that aged S/S materials can meet existing UK environmental and construction specifications.”

EPA-HQ-RCRA-2011-0392-0128: Utilization of North Dakota Lignite Combustion By-Products in Road Building Applications

This report mainly focused on the suitability of North Dakota lignite combustion by-products in road building applications, except for a section of the report related to a leachate test.

“The characterization phase of this investigation included chemical, environmental, mineralogical, and physical components. The laboratory results from this study indicate that the North Dakota lignite by-products evaluated are environmentally benign and show excellent potential for utilization in a variety of applications. Results of the comprehensive environmental characterization showed all leachate concentrations of Resource Conservation and Recovery Act (RCRA) elements below RCRA limits and most leachate concentrations below primary drinking water limits. These results indicated that these materials are environmentally suitable for utilization and environmentally friendly, and it is recommended that the North Dakota State Health Department (NDSHD) consider development of preapproved use for the recycling of lignite combustion by-products.”

AGC is pleased that EPA included in the docket for the NODA several comments and a report on the specifications for beneficial use currently in use by state departments of transportation (DOTs). As AGC stated in its prior comments, DOTs have an enormous wealth of knowledge regarding fly ash use in highway and transportation construction. AGC again encourages EPA to carefully review the comments it receives from state DOTs and associated organizatio

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terms of disposal practices at the site and current status of the site. This information is critical to assure that the assessments do not rely solely on old or incomplete data.

EPA-HQ-RCRA-2011-0392-0005: Out of Control: Mounting Damages from Coal Ash Waste Sites

This report initially indicates that it includes “high hazard ash ponds,” and then goes on to state that two alleged damage cases relate to beneficial use—structural fill practices at Rocky Acres in Illinois and Swift Creek in North Dakota. However, it is evident from the report that these instances are not typical of beneficial use construction applications and are more aptly considered “landfilling”—as described by EPA in its proposed rulemaking

EPA has identified a few problems involving large-scale fill operations—most involved the placement of fly ash and bottom ash in sand and gravel quarries and one involved the beneficial use of 1.5 million yards of fly ash to contour a golf course. Because of these cases, EPA is proposing not to accept large-scale placement of CCRs (which it likens to disposal) as an approved beneficial use. However, EPA recognizes that these uses are not typical of the construction industry’s beneficial use of CCRs. (75 FR 35164) (AGC Comment Letter, November 2010)

Later, the report no longer describes the Rocky Acres site as beneficial use and instead refers to it as a disposal site in which allegedly 380,000 tons of CCRs were placed in a ravine. According to the report, the owner had stated their intention to build a structure on top of the CCR-filled ravine, which is why the owner had declared that the site was utilizing a beneficial use practice. Also according to the report, “State sent notice that the site was an illegal open dump in 2006; in 2007, Bunge Corp. agreed to monitor groundwater and submitted groundwater work plan.”

According to the report, the second alleged damage case involves placing of coal ash directly into a wetland and ground water in/or around Swift Creek for approximately a 10-year period. Again, the owner had allegedly declared the site to be utilizing a beneficial use practice. In this case, the report indicates “State issued Notice of Violation in 2002 and Co

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“Review of available and assembled information