



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

SECRETARY

November 29, 2011

The Honorable Robert P. Casey, Jr.  
United States Senate  
393 Russell Senate Office Building  
Washington, DC 20510

Dear Senator Casey:

The Commonwealth of Pennsylvania urges the Senate to support S 1751, the "Coal Residuals Reuse and Management Act (Act)." S 1751 provides a thoughtful and reasoned approach to the beneficial reuse or safe disposal of coal ash residue. The Act would establish a framework for states to continue to operate their existing programs and to adopt and implement a coal combustion residuals permit program. Each state's program is to comply with certain minimum environmental protection requirements. Any coal ash residue which is not beneficially reused would be disposed of properly with appropriate environmental protection measures such as standards for landfills or disposal sites, groundwater monitoring, and other measures the state would deem necessary.

As you know, the federal Environmental Protection Agency (EPA) seems to be rushing in the direction of requiring as a blanket matter that all coal ash residue to be deemed "hazardous waste" and placed under complete federal regulatory control. This is a misguided approach and the reason we need S 1751 to become law.

There is no scientific or technical basis for classifying coal ash residue as "hazardous waste." It is a fact that coal ash passes the Toxicity Characteristic Leaching Procedure (TCLP) test which is the demarcation test for determining whether a waste is a "hazardous waste." The issue of whether coal ash waste should be regulated as hazardous waste had been evaluated and researched at least four times before by EPA, and EPA had concluded each time that it should not be. The safety of coal ash was studied in 2000 by the Clinton Administration, and it determined that coal ash should not be designated as a "hazardous waste." Since then, EPA has calculated that ash recycling by the cement and concrete industry alone has reduced carbon emissions by 117 million tons. Groups as diverse as the United States Conference of Mayors, The National Governors Association, the Environmental Council of the States, labor unions, the American Society for Testing and Materials, 30 states, and a bipartisan group of 74 members of Congress have previously opposed regulated coal ash as hazardous waste and have pointed out to EPA that the evidence and the science shows that it would be inappropriate to classify coal ash waste as hazardous waste. Other federal agencies including Department of Energy, Department of Transportation, Small Business Administration, and the Army Corps of Engineers have reached the same conclusion.

We know that the level of public awareness on coal ash rose with the failure of the Tennessee Valley Authority coal ash impoundment failure in 2008. This might be the reason for

EPA's "rush" toward making all coal ash everywhere "hazardous waste" and brought under EPA's sole governance. However, Pennsylvania reacted quickly and decisively to the event. The Department of Environmental Protection (DEP) strengthened the applicable sections of our Chapter 287 regulations and added Chapter 290 to provide for additional water quality monitoring, the establishment of chemical (leachate) and physical standards and a procedure for qualifying ash for reclamation use, which we had done previously by policy.

Pennsylvania's experience is a testament to how well and how responsively the individual states can and do regulate in this area. Indeed, as Pennsylvania's experience with Chapter 287 demonstrates, the states are better and more agile at doing so than is the federal government which is one of the main underpinnings of S 1751.

Pennsylvania's comments filed in response to EPA's rush to label coal ash residue as "hazardous waste" bear repeating here. DEP specifically commented on November 19, 2010, to EPA's proposal by saying:

- The broad classification and regulation of Coal Combustion Residuals (CCR) as hazardous waste is not supported by science;
- The regulation of CCR as hazardous waste is unnecessary, as none of these wastes generated by Pennsylvania power plants have been observed exhibiting characteristics of hazardous waste;
- Classification of CCR as hazardous waste would have a chilling effect on its beneficial use, potentially ending that practice with no tangible increase in environmental protection;
- Pennsylvania has no commercial permitted hazardous waste disposal facilities at this time; therefore, all CCR generated in Pennsylvania would need to be transported to other states for disposal, causing the power industry to incur significant costs for transportation and disposal; and
- If CCR would be classified as hazardous waste, it would result in a detrimental economic impact to Pennsylvania, leading to higher electricity production costs for industry and increases in electricity costs for every business and citizen of the Commonwealth.

Pennsylvania was not alone. More than 30 states provided comments opposing a hazardous waste designation, citing environmental and economic reasons.

In addition, as has been pointed out before, jumping the gun to regulate coal ash as hazardous waste would actually be environmentally detrimental. We have particular concern on that front here in Pennsylvania since it would block the use of coal ash for beneficial reuse for such uses as, among other things, abandoned mine reclamation and acid mine drainage remediation.

Put simply, EPA's designation of coal residue as hazardous would put an end to the use of coal residue for acid mine drainage projects and abandoned mine reclamation projects. That would be devastating to the Commonwealth. We in Pennsylvania have a long history of using coal ash residue for mine reclamation. Pennsylvania carries the nation's heaviest burden of abandoned

mines, with the attendant health and safety problems that come with abandoned mines including water-filled pits, dangerous highwalls, open shafts, coal waste piles, acidic mine drainage and subsidence features.

There are more than 5,000 abandoned, un-reclaimed mine problem areas encompassing more than 190,000 acres in the Commonwealth. The beneficial use of coal ash, when properly managed, tested and monitored, has proven to be an effective means of reclaiming abandoned mines and addressing water pollution and the beneficial use of coal ash is a seminal part of our programs.

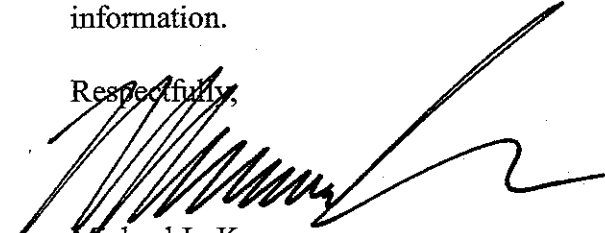
We average about 70 active sites each year with approximately ten million tons of ash being used statewide for coal mine reclamation. These sites are being completed at no or minimal cost to the Commonwealth. If the sites are not reclaimed with ash, the majority are historic sites with no responsible party. The burden to reclaim the site, including financially, would then fall to the Commonwealth. Also, if the ash is not used in reclamation, which is a proven safe use, it would have to be landfilled, so it would mean finding space for ten million tons a year. All of the ten million tons are certified ash sources or subject for use in reclamation via applicable statewide General Permits (GP). This does not account for ash approved by waste under GPs for structural fill on sites that are not mines.

While the EPA seems to be unaware of the benefits of the use of coal residue for reclaiming abandoned mines, their counterparts at the federal Office of Surface Mining (OSM) are quite aware. However, the OSM seems to be behind where we are in Pennsylvania on this. In fact, our mining program technical experts in Pennsylvania are currently actively engaged in providing input, guidance and advice to the OSM on potential amendments on this topic to the Surface Mining Control and Reclamation Act (SMCRA) that would enhance the use of coal residue for abandoned mine reclamation.

Finally, it is also important to note that a June 2011 Veritas Economic Consulting report states that jumping to classify coal ash waste as hazardous waste would result in the loss of 183,000 to 316,000 jobs nationwide and cost between \$78.9 billion and \$110 billion over the next 20 years. In addition, the Electric Power Research Institute has said that declaring coal ash as a hazardous waste would shut down hundreds of power plants.

I urge you to consider the many important aspects of S 1751 and provide an affirmative vote on this matter. I would be happy to discuss this further with you, if you would like additional information.

Respectfully,



Michael L. Krancer  
Secretary