

**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

July 18, 2012

The Honorable Ken Salazar  
Secretary  
Department of the Interior  
1849 C Street, NW  
Washington, DC 20240

Dear Secretary Salazar:

I write to request information regarding the development by the Department of Interior (DOI) Office of Surface Mining Reclamation and Enforcement (OSM) of a rule that will allow the waste left over from the combustion of coal in power plants, known as coal combustion waste (CCW), to be disposed of or used in reclaiming or recontouring mine lands. Because CCW contains some of the world's deadliest toxic metals such as arsenic, lead, mercury, cadmium, hexavalent chromium, and selenium, its disposal and reuse poses unique challenges. One of the main concerns about using this material in active and abandoned mines relates to the ability of the toxic constituents of CCW to leach into and contaminate groundwater sources, posing a significant health and environmental concern. As the DOI develops this rule it is imperative that it does so transparently, in consultation with the Environmental Protection Agency (EPA) and other relevant stakeholders, and that it takes into consideration public input. It is critical that any rule the DOI promulgates properly considers the unique challenges of CCW disposal or reuse, and puts in place measures that will ensure protection of public health and the environment.

The unique geological characteristics of mines means that the toxic constituents of CCW can readily infiltrate layers of earth to pollute streams and the water table, resulting in contamination of drinking water supplies. Furthermore, the use of CCW, composed of fine particles of coal ash, to refill mines also poses an inhalation hazard for nearby communities. Many of these concerns have been voiced by communities throughout Appalachia, where the coal-mine craters and mine shafts have become one of the preferred disposal locations of CCW. In many states, the use of CCW is exempt from all regulations or restrictions, necessitating federal rules and guidelines that will ensure public health and the environment are protected.

In the wake of the Tennessee Valley Authority (TVA) impoundment failure in Kingston, Tennessee that occurred in December 2008 and resulted in hundreds of acres of land and nearby rivers being covered in coal waste sludge, the Environmental Protection Agency (EPA) proposed, for the first time ever, national management criteria for the safe disposal of CCW in landfills and impoundments. The EPA has put forward two

proposals<sup>1</sup> under the nation's primary law for regulating solid waste, known as the Resource Conservation and Recovery Act (RCRA). Both of the EPA's proposals will require disposal units to meet specific engineering standards and protect human health and the environment. However, neither of these proposals addresses disposing or reusing CCW in mine shafts or mine reclamation. In developing its own rules for the disposal of CCW, the EPA has stated that it "will work with the DOI to develop federal regulations to ensure that the placement of CCW in minefill operations is adequately controlled" and that they thoroughly study the "health, safety and environmental risks associated with the placement of coal ash in active and abandoned mines."

In 2003, Congress directed the EPA to commission an independent study of the health, safety, and environmental risks associated with the use and disposal of CCW. As a result, in 2006, the National Research Council (NRC) of the National Academies of Sciences published a report entitled "Managing Coal Combustion Residues in Mines." In this report the NRC recommended that the EPA and the DOI coordinate rulemaking efforts to define jurisdiction over placement of CCW in mines, stating the EPA has

"developed significant technical and regulatory expertise in monitoring and oversight of waste disposal operations (e.g., landfills) that involve groundwater and toxic substances. Regardless of the regulatory mechanism selected, coordination between OSM and EPA efforts is needed and would foster regulatory consistency with EPA's intended rulemaking proposals for CCW disposal in landfills and impoundments."<sup>2</sup>

The NRC committee cautioned that an integrated process of characterization of CCW, site characterization, management and engineering design of placement activities, and design and implementation of monitoring is required to reduce the risk of contamination moving from a mine site to the ambient environment. It stated further that comparatively little is known about the potential for mine-filling (placing CCW into coal mine) to degrade the quality of groundwater and/or surface waters, particularly over longer time periods.

In response to the March 2006 NRC report on managing CCW in coal mines, the DOI released an advanced notice of proposed rulemaking (ANPR) in 2007 regarding "Placement of Coal Combustion Byproducts in Active and Abandoned Coal Mines." The ANPR<sup>3</sup> cited various findings and recommendations in the NRC report as the basis for the initiation of the rulemaking process. In 2008, the DOI issued a proposed rule for public comment under the Surface Mining Control and Reclamation Act (SMCRA), which among other things specifies requirements applicable to mine reclamation, but then

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<sup>1</sup> "Hazardous and Solid Waste Management System: Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities" Federal Register 75:118 (June 21, 2010)

<sup>2</sup> National Research Council. *Managing Coal Combustion Residues in Mines*. Washington, DC: The National Academies Press, 2006.

<sup>3</sup> "Placement of Coal Combustion Byproducts in Active and Abandoned Coal Mines (Advanced Notice of Proposed Rulemaking)" Federal Register. 72:49 (March 14, 2007)

subsequently withdrew this rule. Recently, the DOI has taken steps<sup>4</sup> to revisit this rule and has stated plans to issue a draft rule that will provide regulatory guidelines and requirements for the use of CCW for reclamation activities on active and abandoned coal mine sites.

As Ranking Member of the Natural Resources Committee, which under the Rules of the House has jurisdiction over mineral land laws, mineral resources of public lands, and mining interests generally, I request additional information about how the DOI is addressing these public health and environmental concerns as it develops its rule for CCW use in mine reclamation. Accordingly, I request that you respond to the following questions and provide supporting documents including any reports, meeting minutes, memos, emails and other relevant information by close of business on Tuesday, July 31, 2011.

1. What steps is the DOI taking to get input and coordinate this rulemaking with the EPA? Please provide all relevant documents (including meeting minutes, emails, memos, etc.) that detail the interaction that the DOI has had with the EPA in the development of this rule. Is formal EPA concurrence being sought in the development of this rule? If not, why not?
2. How will DOI seek stakeholder input prior to issuing a proposed rule for CCW in mine reclamation? Does the agency plan on holding field meetings or public forums to gather additional information for development of this rule? Is the agency planning on addressing the non-reclamation uses (disposal with no site-specific benefits) of CCW at coal mine sites?
3. The American Coal Ash Association says almost 13 million short tons of CCW was used in mining applications in 2010, and more than 9 million short tons was used as fill material. While some of this material may be used for site specific beneficial purposes, such as to combat acid mine drainage, other times the material is simply disposed of in mine voids. Has the DOI identified the mines using CCW for reuse or disposal is occurring or has occurred? If yes, please explain what information the agency has gathered from these mines? If not, why not? In your response, please provide documentation that indicates the location of the project, the operator of the project, the reason CCW was used in each project (ie. disposal, contouring, mitigating acid drainage, reclamation etc.), the amount of CCW used in each project, the distance of each project to the nearest population center, drinking water source and surface body of water. Please also include any permits or notices that were issued for each project.

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<sup>4</sup> Communication with Natural Resources Committee Staff on May 18, 2012 and Coal Ash: Obama admin preparing rule on use of power-plant waste in mine fills. June 12, 2012, Manuel Quinones, E&E reporter.

4. Of the states where the practice of mine reclamation with CCW is occurring, (a) Has the DOI evaluated the current monitoring programs the states have in place to detect any contamination of ground or surface water from this practice? If not, why not? (b) Did the DOI find these programs to be adequate? (c) Did the DOI evaluate the data produced from this water monitoring to determine if contamination posed an environmental or public health concern? If so, please provide all relevant documents, including memos, reports, papers, emails, etc. If not, why not? (d) Has the DOI collected data on water contamination or any other adverse environmental or public health impacts from the use of CCW in mines? Please provide all relevant documents, including memos, reports, papers, emails, etc.
5. In 2010, the EPA issued a proposed rule on how to dispose of CCW under RCRA. In the preamble of this proposal, the EPA indicated that it received and gathered information about 6 alleged damage cases involving minefills where groundwater standards were exceeded.. Has the DOI investigated these damage cases? If so, what was found? If not, why not? Has the DOI received information about any other cases where alleged harm or proven harm from placement of CCW at mine sites has occurred? Has the DOI ever requested public input requesting such information? If so, what was received? If not, why not? For each response, please provide documentation that indicates the location of the CCW projects, the operator or responsible party of the project, the purpose of CCW use, and the distance from such project to the nearest population center, drinking water source and surface water body. Please also include any permits, notices, warnings, exceedences, or violations that were issued for such projects as well as information about the remedy of each damage case.
6. Which and how many coal mining companies currently have leases to mine on federal public lands? Out of these companies, which, if any, have been cited for safety or environmental violations on federal lands? Have any of these violations involved the placement of CCW? Please provide a list that contains information about each leaseholder that has been cited by the Department for any such violations (and if so, the nature of the violation and the remedy made or fine imposed) in the past 10 years.
7. In the EPA's 2010 proposed CCW rulemaking, the agency identified an array of environmental issues associated with "unencapsulated" uses of CCW, where the material is used as general fill and not bound into products. Given the potential impacts to ground water from the reclamation of mines using CCW (a) How does the agency plan on addressing ground water impacts from mine-filling? (b) Does the DOI

plan on updating water monitoring rules to collect appropriate baseline measurements prior to reclamation? If so, please explain DOI's approach. If not, why not? (c) What steps is DOI proposing to take to reduce infiltration of rainfall and groundwater into disturbed areas, in order to minimize leaching of heavy metals and other toxic components of coal ash?

8. Has the DOI considered developing a full Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for development of this rule? Why or Why not?
9. The 2006 NRC report highlighted the need for CCW to be appropriately characterized before being used in mine operations. The report also acknowledged the inaccuracy of the commonly used Toxicity Characteristic Leaching Procedure (TCLP) to determine if CCW leaches harmful concentrations of its constituents. What method does the DOI intend to use to characterize CCW and determine if it is suitable for use in a mine? What standards will the DOI employ to determine if a particular CCW application is suitable for mines?
10. In EPA's 2010 proposed rule it put forth two proposals for the disposal of CCW. One of these proposals involves regulating CCW under subtitle C (special waste) of RCRA which has stringent permitting requirements, engineering and design standards, retrofit and other requirements for disposal of CCW. If EPA adopts this proposal as its final rule, how does the DOI envision this will impact the management of CCW in mine applications? Would the DOI have to promulgate more stringent requirements that are in line with EPA's management of this waste? Why or why not?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions, please have your staff contact Dr. Avenel Joseph of the Natural Resources Committee's Democratic Staff at 202-225-2836.

Sincerely,



Edward J. Markey  
Ranking Member  
Committee on Natural Resources