
RCRA Box 485

Prepped by Ryan Dugan

Document Number:

412) FF2P-L0262

Docket Number:

F-99-FF2P-FFFFF

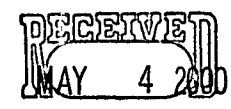
STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
NASHVILLE, TENNESSEE 37243-0435

DON SUNDQUIST
GOVERNOR

MILTON H. HAMILTON, JR.
COMMISSIONER

March 22, 2000

Mr. Jacob Lew
Director, Office of Management & Budget
Old Executive Office Building
17th Street and Pennsylvania Avenue
Washington, D.C. 20503



Re: Bevill Regulatory Determination on Fossil Fuel Combustion Wastes

Dear Mr. Lew:

Last year the U. S. Environmental Protection Agency recommended in its *Report to Congress on Wastes from the Combustion of Fossil Fuels* that the regulation of these wastes should remain the responsibility of the states. I understand that Administrator Carol Browner is now considering the reversal of this recommendation. I am aware of no justification for federal regulation of these materials under RCRA Subtitle C and urge that inter-agency review will produce a final determination consistent with the well-documented findings in the Report to Congress. A contrary conclusion to this process would be seen as a vote of no confidence in the ability of my state and others to regulate these materials adequately to protect our citizens and the environment. We know of no justification for federalizing the regulation of these wastes after decades of satisfactory state regulation, nor are we aware of any environmental damage from these wastes here in Tennessee.

RCRA carefully preserves the authority of the states to regulate non-hazardous industrial waste. As was concluded in the Report to Congress, fossil fuel combustion wastes rarely exhibit any of the characteristics of hazardous waste. Neither would these materials qualify for listing as hazardous wastes under EPA's listing criteria. And in compliance with the Bevill Amendment to RCRA, the EPA conducted an extensive technical study of these "high volume/low toxicity" materials and concluded "[c]urrent management practices and trends and existing state and federal authorities appear adequate for protection of human health and the environment." Report to Congress, 3-73. We were comfortable with that conclusion and were quite surprised when we recently learned that Administrator Browner is considering a last minute reversal of that position.

Please recognize the significance of such action. It was correctly noted in the 1999 Report to Congress that "[i]f these wastes were listed as hazardous, and therefore regulated under Subtitle C, coal combustion units would be required to obtain a Subtitle C permit, which would unnecessarily duplicate existing State requirements...." Report to Congress, 3-73. This reversal would impose regulatory burdens on the implementing states, not to mention the

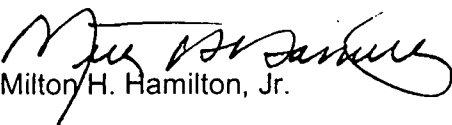
Mr. Jacob Lew
March 22, 2000
Page 2

regulated industries, which are clearly not warranted and would impose a confusing special set of hybrid regulations that the states would have to implement.

EPA's change in position and the regulation of these materials under RCRA Subtitle C would also undermine the extensive efforts we have made to increase the beneficial reuse of these materials. Even the hint of federal subtitle C regulation would stigmatize these materials and undo years of research and hard work with the goal of reducing dependence on land disposal. We fear that any suggestion that these wastes require some form of Subtitle C regulation will simply increase the volume of these wastes requiring disposal because the public will be unwilling to purchase products containing materials that EPA believes warrant regulation under some, if not all, parts of RCRA Subtitle C.

EPA told us in its first Bevil Report to Congress in 1988 that the "high volume" coal combustion wastes do not pose a threat to human health and the environment and confirmed that conclusion in its 1993 regulatory determination. Again let me urge you to not reverse last year's decision and not create a problem where one does not exist.

Very truly yours,


Milton H. Hamilton, Jr.

MHH:cpc

- cc: Mr. John D. Podesta, Chief of Staff to the President
- Ms. Carol Browner, Administrator, U. S. Environmental Protection Agency
- Mr. John Spotila, Administrator, Office of Information and Regulatory Affairs
- Mr. W. Michael McCabe, Acting Deputy Administrator, U.S. EPA
- Mr. Don Arbuckle, Deputy Administrator, Office of Information and Regulatory Affairs
- Mr. George T. Frampton, Jr., Acting Chair, Council on Environmental Quality
- Mr. Wesley P. Warren, Chief of Staff, Council on Environmental Quality
- Mr. Tim Fields, EPA Office of Solid Waste and Emergency Response