

Wednesday, September 15, 2010

Investors Urge EPA to Adopt Coal Waste Rule

A group of investors representing more than \$240 billion in assets urged the U.S. Environmental Protection Agency on Wednesday (Sept. 15) to adopt federally enforceable regulations governing coal ash disposal.

In a letter submitted in anticipation of a public hearing Thursday (Sept. 16) in Chicago, the group of 22 institutional investors urged EPA to adopt "Subtitle C" regulations for coal ash "to prevent costly environmental and public health impacts."

The investors note that the Tennessee Valley Authority (TVA) is facing more than \$1 billion in costs from a billion-gallon coal ash spill at the TVA pond in December 2008. The incident "demonstrated that current regulations are not enough to mitigate environmental and financial risk for utilities and their shareholders," the investors write.

The letter was organized by Green Century Capital Management and **As You Sow**, a nonprofit that promotes corporate responsibility through shareholder advocacy. The full list of signatories is below.

Coatings Industry Impact

Thursday's public hearing in Chicago is the fifth of seven planned on EPA's proposal to regulate coal combustion residuals (CCRs) under the Resource Conservation and Recovery Act (RCRA).

The *Proposed Rule for Disposal of Coal Combustion Residuals [CCRs] from Electric Utilities*, published June 21 in the *Federal Register*, addresses regulation of fly ash, bottom ash, boiler (coal) slag, and flue gas desulfurization sludge from coal-burning power plants.

At issue for the protective and marine coatings industry is beneficial use of coal slag as an abrasive. For a full account of how the proposal could affect coal slag use, see Alison Kaelin's article, "Why EPA's Proposed Rule on Coal Wastes Could Affect Industrial Painting Work," in the August 2010 issue of *JPCL: Journal of Protective Coatings & Linings*. Kaelin is the Corporate Quality Assurance Manager of KTA-Tator Inc. She is a Certified Quality Auditor (CQA) and a NACE-certified Coatings Inspector.

CCR: Two Approaches

"The proposed rule calls for public comment on two approaches available under RCRA for addressing the perceived risks of CCRs," Kaelin writes.

"One option is to regulate CCRs destined for disposal as special waste under Subtitle C and to create a comprehensive program of federally enforceable requirements for waste management and disposal.

"The other option would continue to manage CCRs as a non-hazardous waste under Subtitle D, but establish specific performance standards for waste management facilities receiving CCRs."

Manufacturers Respond

The American Coal Ash Association has been seeking member and public support in fighting the "hazardous" option. "Tell the EPA their 'hazardous' rule proposal will destroy recycling, threatens green jobs and small businesses, opposes sound science, and will cost taxpayers," the association urges on its web site.

Jason Vukas, of U.S. Minerals, says his company would be exempt from either option because it has always practiced

beneficial reuse. “We’re already doing what they want to see,” says Vukas, who will speak at the public hearing Thursday.

On the other hand, Vukas adds: “For EPA to say that coal combustion byproducts in general should be handled as hazardous waste is overkill. The issue becomes the stigma attached to having coal combustion products incorrectly lumped in with hazardous waste.”

Executives from a “loose consortium” of abrasives manufacturers have been attending the public hearings around the country, Vukas said.

“We want to be part of the process,” he said. “We want to be sure nothing crazy happens.”

Shareholder Concerns

The investors' letter “follows shareholder resolutions, filed for the first time in the 2010 proxy season, requesting improved disclosure on how companies are reducing environmental and health risks associated with coal ash,” the group says.

“Resolutions were filed at Southern Company, FirstEnergy, Xcel Energy, CMS Energy and MDU Resources by Green Century and **As You Sow.**” A “substantial number of shareholders view the issue of coal ash as materially relevant to their investments.”

The letter was signed by **As You Sow**, Boston Common Asset Management, Calvert Asset Management Company Inc., Catholic Healthcare Partners, Catholic Healthcare West, Christopher Reynolds Foundation, the Connecticut State Treasurer's Office, Domini Social Investments LLC, Dominican Sisters of Hope, First Affirmative Financial Network LLC, Green Century Capital Management, the Midwest Coalition for Responsible Investment, New York State Comptroller Thomas P. DiNapoli, Newground Social Investment, the Northwest Coalition for Responsible Investment, Oregon Treasurer Ted Wheeler, PaxWorld Management LLC, Robert Brooke Zevin Associates, Sisters of St. Francis of Philadelphia, Sisters of St. Joseph of Carondelet and Associates, The Sustainability Group at Loring, Wolcott & Coolidge, Trillium Asset Management Corporation, and the Ursuline Sisters of Tildonk.

Public Hearing Schedule

Public hearings on the proposal began Aug. 30. The rest of the schedule is as follows:

- Sept. 16: Hilton Chicago, 720 South Michigan Ave., Chicago, IL
- Sept. 21: Omni Hotel, 530 William Penn Pl., Pittsburgh, PA
- Sept. 28: Seelbach Hilton, 500 Fourth St., Louisville, KY

The hearings run from 10 a.m. to 9 p.m., with breaks at noon and 5 p.m. Individuals who want a guaranteed slot for speaking must register at least three days in advance. Additionally, walk-ins and written comments will be accepted at each hearing. EPA says it will consider the public's comments in its final decision.