



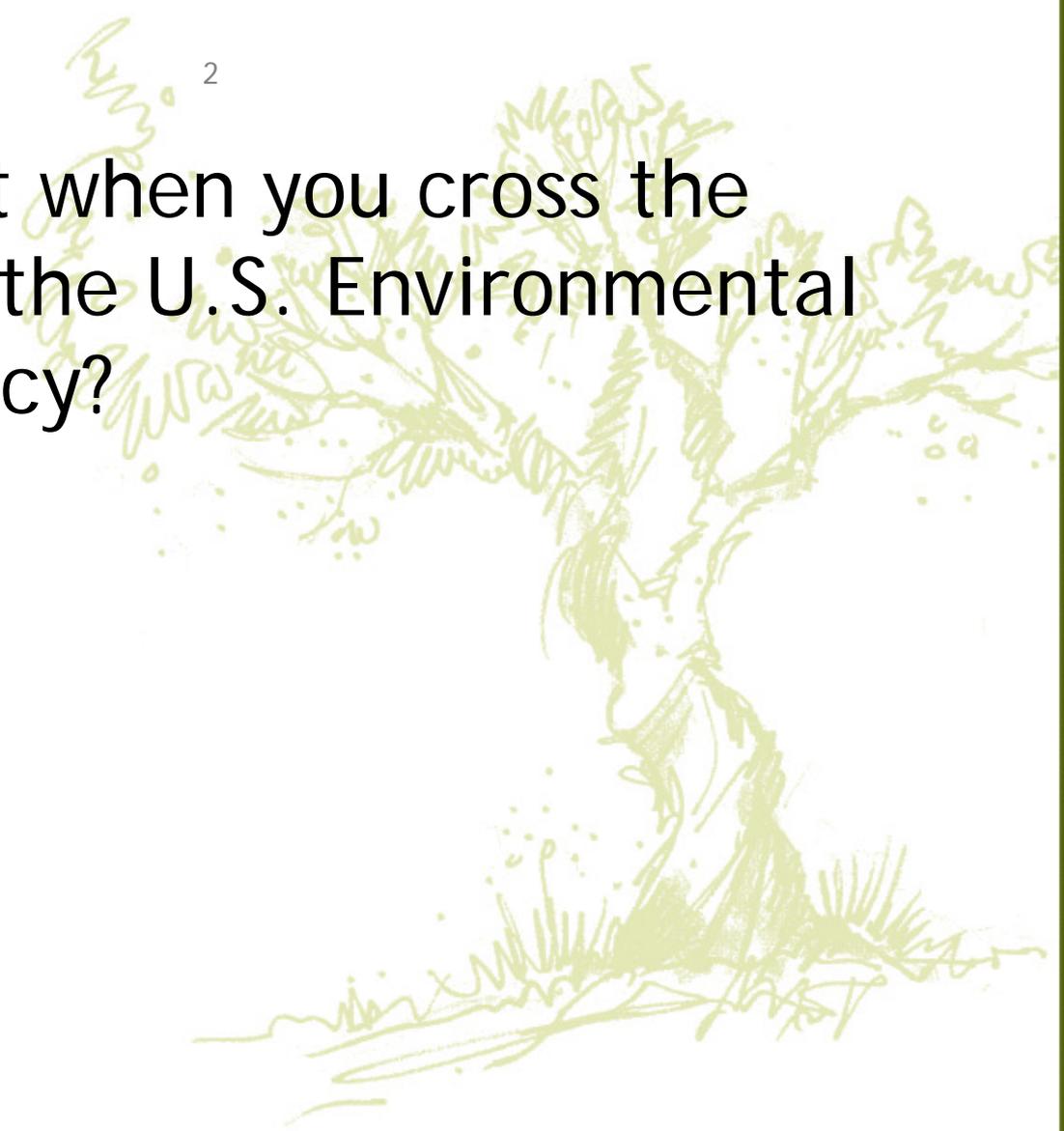
National Concrete Consortium
Rapid City SD.
August

Regulatory Policy Update

Bad Joke

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- What do you get when you cross the Godfather with the U.S. Environmental Protection Agency?



Different Punch Lines

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🔥 According to EPA

- An offer based on transparency, scientific integrity and environmental justice that will create millions of green jobs and trillions of dollars in savings linked to healthier people everywhere.

🔥 According to "Industry"

- An offer that will kill the coal industry and America's economy with little or no real measurable benefit.

EPA's Current Proposal

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- The Environmental Protection Agency has proposed two options for future regulation:
 - Subtitle C when disposed
 - Subtitle D
- *Proposed landfill construction standards are essentially the same under both proposals*
 - Primary justification for Subtitle C proposal is to enable federal enforcement authority
- Beneficial use of coal ash exempt from regulation under both scenarios
 - However, EPA is seeking comments on beneficial uses that imply further rulemaking activity may be forthcoming
 - Uses such as structural fills and embankments more likely to see increased regulatory scrutiny

The Trouble with "C"

- 🔥 Truck turns left to go to landfill it's hazardous waste; Truck turns right to go to your home, school or road project it's not
 - Will utilities still supply it?
 - Will specifiers still allow it?
 - Will it require special handling, transportation placarding, employee training, etc.?
 - What happens if you spill some?
 - What happens at the end of the concrete's service life?
 - Will end users object to having it in the r

Political Science

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Favor Subtitle C

- Anti-Coal Environmental Groups/Wingnuts
 - EarthJustice
 - Environmental Integrity Project
 - Sierra Club
 - Public Employees for Environmental Responsibility
 - Others
- Companies manufacturing products that compete with coal ash

Oppose Subtitle C

- Everybody Else
 - Over Half of Congress
 - Federal Agencies
 - State Elected Officials
 - State Agencies
 - Utilities
 - Ash Marketers and Users
 - Materials Specifiers and Standards Writers
 - Labor Unions

Elements of the EPA “Train Wreck”

- 🔥 Greenhouse Gas Tailoring Rule
- 🔥 Clean Air Transport Rule (*now renamed “Cross State Air Pollution Rule”*)
- 🔥 Utility MACT Rule (*now renamed “Mercury and Air Toxics Standards for Power Plants”*) *Maximum available control technology.*
- 🔥 Industrial Boiler MACT Rule
- 🔥 Coal Combustion Residuals Rule (*Suddenly no longer known as Coal Combustion Products*)
- 🔥 Steam generating plant effluent guidelines
- 🔥 Cooling water intake structure regulations
- 🔥 Definition of Solid Waste revisions
- 🔥 Toxicological Review of Inorganic Arsenic
- 🔥 EPA mining permit revocations

Edison Electric Institute estimates 32 new requirements to be implemented within five years

Some People are a Little Upset⁸

- ♠ HR 910 - The Energy Tax Prevention Act of 2011
 - Prohibits EPA from regulating greenhouse gases related to climate change
- ♠ HR 2584 - Interior Appropriations Bill
 - Removes funding from various EPA regulatory activities
- ♠ HR 2401 - The Transparency in Regulatory Analysis of Impacts on the Nation Act
 - TRAIN Act - approved by House Energy and Commerce Committee
 - Requires cumulative analyses of economic impacts of regulations
- ♠ Many, many more...

What EPA Says About All of This...

🔥 “E.P.A. does not have a problem with coal, or any other industry. E.P.A. is committed to doing its job, which is to minimize the pollution that might come from these industries... E.P.A.’s actions are firmly grounded in both the best available science and the law — in fact, in many cases E.P.A. is operating under legal deadlines after rules from the previous administration were thrown out by the courts.” Brendan Gilfallin (new york times)

The Gilfillan Test Applied to Coal Ash

🔥 “Best Available Science”

- Coal ash does not qualify as hazardous waste based on toxicity, but EPA is proposing a hazardous designation anyway

🔥 “The Law”

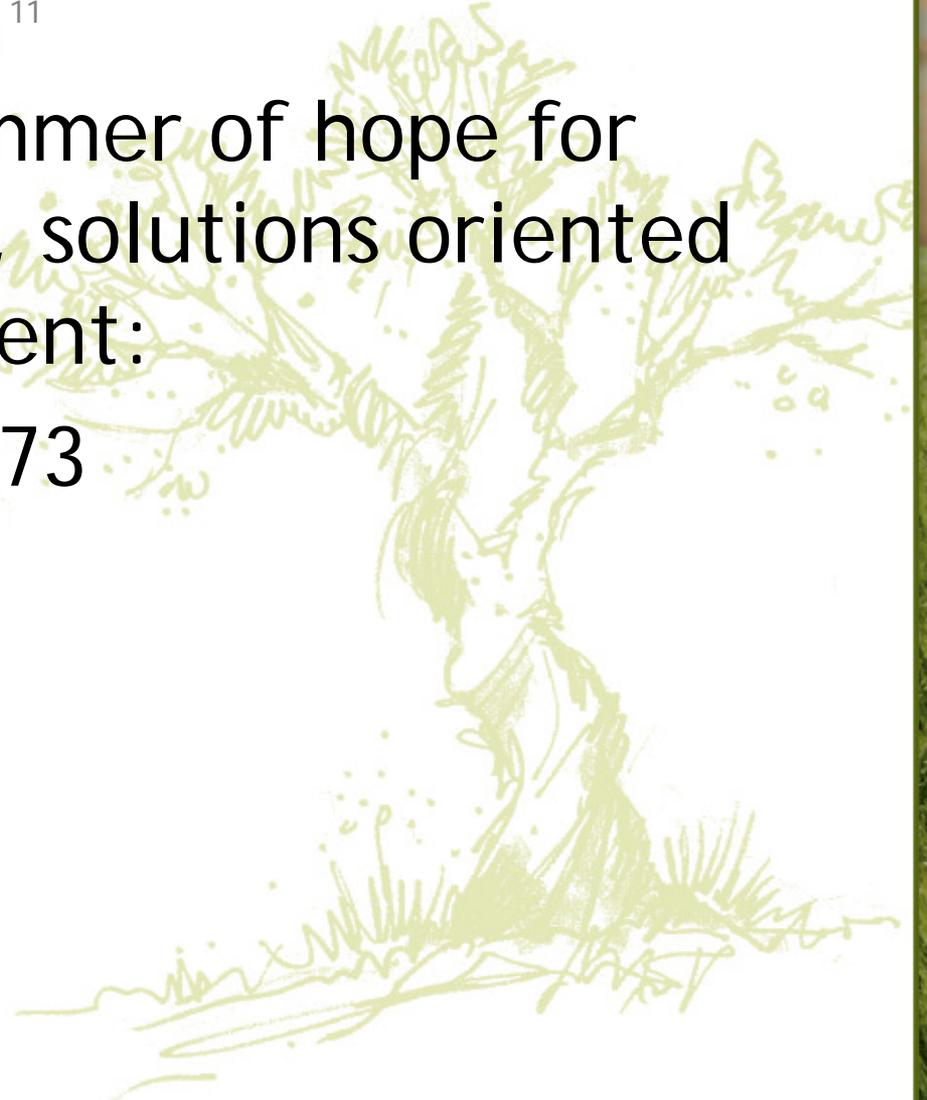
- Congress and two previous EPA Regulatory Determinations concluded a hazardous designation is not warranted

🔥 “Legal Deadline from the Courts”

- There is no Congressional or judicial action prompting this rulemaking

Which Brings Us To...¹¹

- 🔥 The only current glimmer of hope for bipartisan, practical, solutions oriented regulation development:
- 🔥 Coal Ash - and HR 2273



Congressional Activity - House (cont'd)

- June 21, 2011: Subcommittee on Environment and the Economy¹² passes a substitute bill - HR 2273, the "Coal Residuals Reuse and Management Act"
 - Would establish a non-hazardous coal ash disposal regulatory program led by states
 - Minimum federal standards would be enacted and federal EPA would be allowed to step in if states do not comply
- July 13, 2011: Energy and Commerce Committee passes HR 2273 by 35-12 bipartisan vote after making additional changes based on Democratic member suggestions
- HR 2273 expected to be considered by full House of Representatives sometime after Labor Day

Congressional Activity - Senate

- ♣ May 26, 2011 Letter to White House¹³ calling for quick resolution and elimination of Subtitle C option
 - Sponsored by Sens. Kent Conrad (D-ND) and Mike Enzi (R-WY)
 - 32 Republicans and 12 Democrats signed
 - More Senators sending individual letters
- ♣ Potential legislative approaches under consideration
 - Senate legislative approaches would likely bypass committee process controlled by Chairman Barbara Boxer (D-CA)

ARTBA Economic Study¹⁴

- 🔥 Headwaters Resources has sponsored American Road and Transportation Builders Association economic study
- 🔥 Study will quantify cost to American roads and bridges infrastructure if coal ash were not available as an ingredient in concrete
 - Direct Costs
 - Life Cycle Costs

Roads, Runways and Bridges

- 🔥 According to the reports author and senior economist; Alison premo Black: 104.6 billion more to build without ash.
- 🔥 Includes 2.5 billion increase in material cost.
- 🔥 2.3 Billion in pavement and bridge repair.
- 🔥 Almost 2 billion more a year than the Federal government invests in airport improvement program.
- 🔥 13% of governments annual total annual aid to states for highway and bridge work!

Increased savings: HVFA/Hi performance mixes

- \$25 billion over 20 years (\$1.2 billion per year average) if all concrete roadways were designed with fly ash concrete materials to last 35 years, compared to the current national average of 20 to 25 years.
- \$33.5 billion over 20 years (\$1.7 billion per year) if all concrete roadway repair and reconstruction work used fly ash concrete with a 40-year life span.
- \$51.5 billion over 20 years (\$2.6 billion per year) if all concrete roadway repair and reconstruction work used fly ash concrete with a 50-year life span.
- \$65.4 billion over 20 years (\$3.2 billion per year) if all concrete roadway repair and reconstruction work used fly ash concrete with a 60-year life span.

Rulemaking timeline

- ⚡ Do not expect a speedy resolution
- ⚡ Public comment deadline on proposed rule ended November 19, 2010.
- ⚡ EPA's schedule may be 2013?
Lisa Jackson public admissions (not in 2011)

NO Judicial or Legislative deadline!

Rulemaking Schedule

- ♠ Do not expect a speedy resolution!
- ♠ Public comment deadline on Proposed Rule ended November 19, 2010
 - More than 450,000 comments received
 - EPA's schedule for publishing a Proposed Final Rule may be 2013
 - Lisa Jackson public admission "not during 2011"
 - Mathy Stanislaus public prediction of forthcoming Notice of Data Availability
 - Sam Napolitano comment regarding 2013
 - Additional inter-agency review and possibly another public comment period needed after Proposed Final Rule developed
 - Judicial review likely to follow
 - **No legislative or judicial deadline**