



Division of US Natural Resources, Inc.
P.O. Box 256, Belle Vernon, PA 15012

FAX (724) 929-7688
Telephone (724) 929-8405
Email: bobc393@comcast.net
b_carter@usnr-energy.com

Office of Management and Budget Executive Order 12866 January 21, 2010

Dear members of the Office of Management and Budget:

I want to thank you for taking the time and allowing me the opportunity to present to you the negative consequences our small business, as well as many other small businesses, will encounter in the event Coal Combustion Products become classified and regulated as a hazardous waste under Executive Order 12866.

My name is Bob Carter. I am the Vice President of USNR Energy Services, a small business located in Southwestern Pennsylvania near Pittsburgh.

Almost 40 years ago USNR began its business as a single coal mining entity having received Pennsylvania's first surface coal mine operator's license to mine coal in Pennsylvania under pre-approved surface mining methods overseen by Pennsylvania State Agencies.

In 1988 the company faced extinction due to the severe economic downturn and catastrophic loss of heavy industry from the Pittsburgh metropolitan area as a result of the mid 80's recession.

In 1995 I joined the company and since that time have spent the past 15 years repositioning the company as an Energy Services Company servicing coal fired power plants in the East, South and Midwest U.S. Markets. The company's services now include coal sales, alternative solid fuel sales and support, along with the sales, disposal and utilization of various Coal Combustion Products. Our customers include some of the largest coal fired Electric Utilities in the country; AEP, Southern Company, First Energy, and Duke-Cinergy to name a few. Our company has a AAA rating with each one.

As a result of our changing business model, the bulk of the company's business is now focused on a little known product within the ash industry, called a **Cenosphere**. A **Cenosphere** is a lightweight hollow ceramic spherical particle formed during the coal combustion process in pulverized coal fired power plants. It is utilized within many industries not only across the country but also around the world in broad applications where economical alternatives to inert manmade fillers are required. The product was once considered as having little to no value (less than 15 years ago) but is now recognized as a major supply chain commodity for many industries and draws a respectable price.



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Although closely related to Coal Combustion Products in terms of how it is produced and where it is found, **Cenospheres** are unique in both their physical and chemical makeup, so too with regard to Coal Combustion Products in terms of markets, products and utilization.

Where Coal Combustion Products deliver millions of tons to specific local market applications, Cenospheres deliver millions of pounds throughout a broad spectrum of applications across the globe. Although selling prices generally yield 10-15 times those of other basic Coal Combustion Products, extensive engineering, labor intensive material handling, and sophisticated material processing to benefit the Cenosphere product are prerequisites for furthering the value of Cenospheres up the supply chain. End use applications tend to be very high end whereby specific additives are formulated with the Cenospheres to yield yet another higher value end product. For example, specially designed coatings, when applied to cenospheres, have developed a specific niche for aerospace and military applications.

The negative impact of improper classification of these inert, environmentally safe Coal Combustion Products has very far reaching implications beyond the scope of this meeting. Nevertheless, it should be pointed out that what has already been brought to our attention is that in the event of improper classification of Coal Combustion Products, ash marketing operations within Electric Utilities will likely be curtailed. In this case, the damage to our small business alone would be in the tens of millions of dollars. The very nature of the TVA ash spill, highlights the importance of focusing attention to proper engineering, design, and construction of ash storage facilities rather than applying inappropriate jurisdiction or improper classification of the entire high value product line which contributes to so many beneficial applications and to a sustainable green economy.

Looking at the broader market, no other country has identified coal combustion products as a hazardous waste. As a result, Germany utilizes almost 90% of its coal combustion products. Europe averages overall, approximately 60%. The Burj Khalifa in Dubai, the world's tallest building, utilized 40% coal combustion products in the concrete mix because of the beneficial properties they exhibit along with the beneficial economics associated with it. Right here in the U.S., Wisconsin boasts 90% reuse.



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As a regulatory financial authority, it is important for all those involved in this decision making process to recognize the financial impact not only to USNR's small business but to all the small businesses that constitute the infrastructure and support network within this industry. Specifically labor unions, trucking companies, equipment manufacturers, laboratories, light duty manufacturers, paper and bag manufacturers and replacement part companies all stand to lose not only millions of dollars of business but also thousands of good paying jobs. Even the local "mom and pop" restaurants aren't immune from this decision. This negative impact will undoubtedly be passed on to the end user of the product who ultimately will pass it on to the consumer in terms of higher prices or quite possibly, product extinction altogether. Notwithstanding all the scientific proof and historical evidence that Coal Combustion Products are not hazardous, Cenospheres in particular have similar proof and justification that they too should be exempt from any form of hazardous material classification, regulation, and most importantly **stigmatization**.

Have no doubt, many millions of dollars worth of business contracts are already being delayed, suspended or simply cancelled just because of the **threat** that Coal Combustion Products may be defined as a hazardous waste. Supply chains are in disarray. Planning, inventory, and business forecasts are all unpredictable and unreliable at this time just because of the mere "threat" of reclassification or rather the **stigmatization** that it is even being considered to be hazardous.

So what happens to the Cenosphere market and what happens to USNR Microspheres?

Well, that depends at what point does the material become non hazardous, or "exempt", if that is the route the EPA intends to pursue. Does the product become hazardous...:

- At the pond?
- In the truck?
- Along the highway?
- At the processing facility?
- In the bag enroute to the end use application?
- At application?
- In the final Product?
- What if the final product is not the final product?
- Is everything that is formulated with the cenospheres now Hazardous as well?
- Does my company now become a Hazardous Waste company?
- Do my workers now become hazardous material workers?
- What about the impacts on insurance?
- What about the Clean Up costs?*****



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Simply answered: The Company exits the business:

Jobs are lost
Income is lost
Reinvestment , economic activity is curtailed.

What about Cleanup?

Since its inception, approximately 10 years, my company has operated under a PADEP air quality permit with no violations of any kind. There is no, nor has there been any environmental contamination in any way. Yet, our site lease requires that the facility be returned back to its original state. How does a newly defined, newly created Hazardous Waste site, one that was created out of thin air, ever return to non hazardous status? How do you dispose of the processing equipment? At what cost is this done? Who can afford this? The cost alone could be in the millions of dollars, for just one company.

Looking internationally, will **imported** cenospheres be regulated as Hazardous Waste as well? Will the U.S. import other countries' **hazardous waste**, in order to fulfill the gap in domestic production of cenospheres? Will the trade gap be widened as we import more offshore material? Will end use and end product applications be offshore dependent? Will more jobs be lost? Will the country's strategic advantage be given away?

This is real. This is very serious. This is **collateral damage** beyond any scope of the imagination. And we are just one small business negatively affected by the improper, unfounded, unscientific misclassification of Coal Combustion Products as a Hazardous Waste.

In an effort to minimize the burden to the public, one must look at the positive contributions Cenospheres make to supporting positive sustainable growth of the country.

Cenospheres are a **recycled** product.

Cenospheres are a refractory product. A refractory product exhibits thermal insulating characteristics and **energy conservation**.

Cenospheres are **renewable**. They are constantly being generated

Cenospheres are **lightweight**, thereby reducing freight weights, and end product weights.

Cenosphere production **reduces CO2 generation** on an order of approximately 1:1



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Cenosphere production **reduces energy consumption** of almost 20:1 versus a similar man made product using virgin materials.

Some Cenospheres markets include:

- Lightweight Drilling Cretes
- Refractory Bricks
- Counter Tops
- Roofing Tiles
- Backer Board
- Reflective Paint
- Sound Damping Boards
- Insulating Paints and Composites
- Brake Pads
- Bowling Balls
- Body Filler Putty
- Plaster/Spackle
- Synthetic Wood Products
- Decking Composites
- Radar Absorbing Polymers
- EMP Shielding Formulations



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In closing, I would like the Office of Management and Budget to fully understand the breadth and scope of the negative consequences facing small business similar to mine as well as entire industries that contribute so much to the viability of a sustainable economy.

In making the correct decision please recognize the following five facts:

- The decree lacks scientific evidence to support the decision for a hazardous waste determination.
- Small businesses **will** be substantially negatively impacted rather than "**not going to be impacted**" as an EPA spokesperson has gone on record to say.
- Lost and displaced jobs from this industry are not going to be made up elsewhere, in other industries, with similar full pay and benefits (as my company provides.)
- It may cost millions in order for my company to be able to exit this potentially extinct industry.
- Economic models cannot explain where hundreds of millions of dollars in foregone marketing revenue, and lost tax revenues to Federal, State and Local governments are going to come from other than from the rate payer.

All that said, one of the OMB's missions is to "**reduce any unnecessary burdens on the public**" It is to this end I trust the correct decision will be made that Coal Combustion Products are not classified and regulated as hazardous waste.

With kind regards,

A handwritten signature in black ink, appearing to read 'Robert D. Carter', is written over a faint circular stamp.

Robert D Carter
Vice President
USNR Energy Services