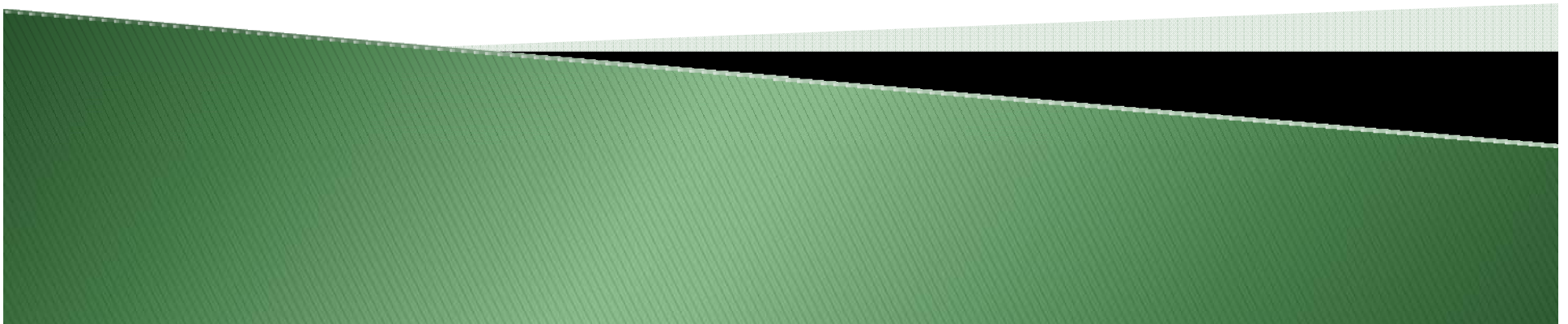


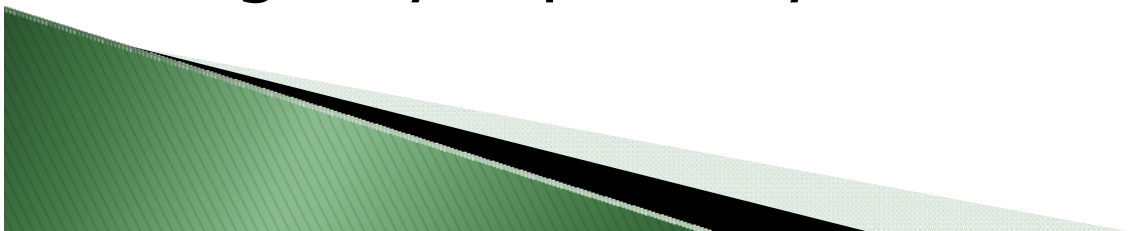
Status of EPA's CCB Regulatory Effort

Presented
CIBO E/E Meeting
March 8-10, 2010
Arlington, VA



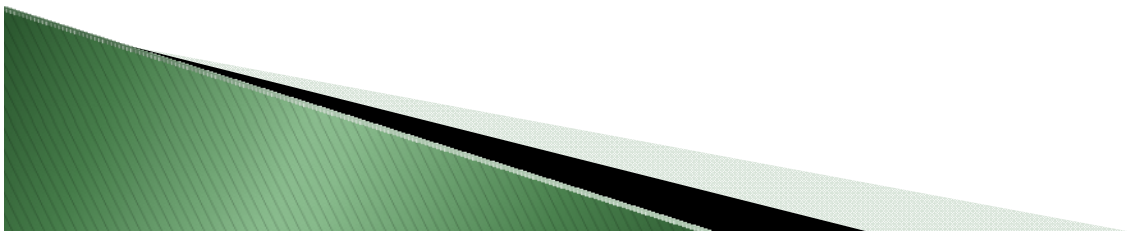
EPA

- ▶ Submitted its draft proposal for regulating CCBs to OMB on October 16, 2009
- ▶ OMB has requested comment from several Federal Agencies (Interior, Transportation, Energy, and the Army Corp)
- ▶ During this period, OMB has met with various groups on the proposed rule
- ▶ OMB has asked EPA to respond to concerns from the Federal Agencies
- ▶ EPA reportedly decided to meet with each agency separately and has begun the process



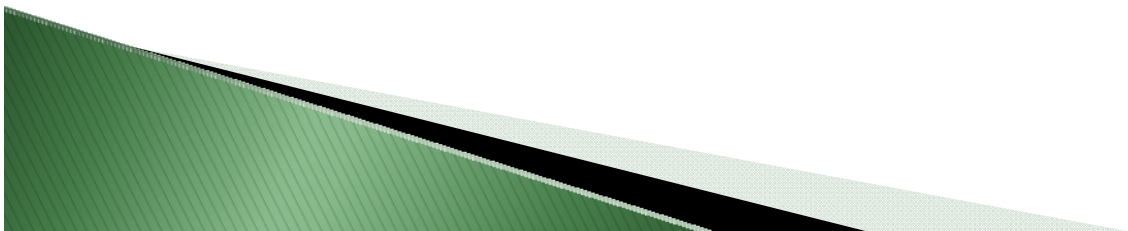
OMB

- ▶ Has expressed concerns regarding the continued reuse of CCBs in cement and concrete as well as some specialized uses for Nano-Technologies.



EPA

- ▶ Has initiated a series of meeting with select groups
- ▶ Reportedly, EPA is trying to convince these Groups that a “hybrid regulation” that treat CCBs as a hazardous waste under one scenario and allows for the beneficial use (as prescribed in the regulation) would not impact their ongoing reuse of CCBs
- ▶ EPA is hoping to divide and conquer industry on this issue

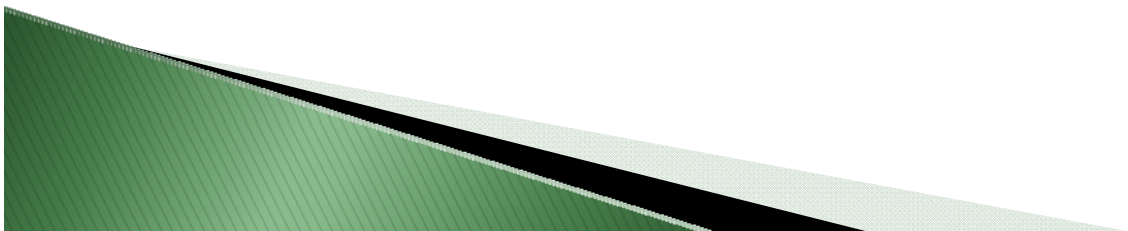


EPA

- ▶ EPA announced that is now planning to issue its “long-stalled” proposed regulation of CCBs in April.
- ▶ EPA announced this on their new website:

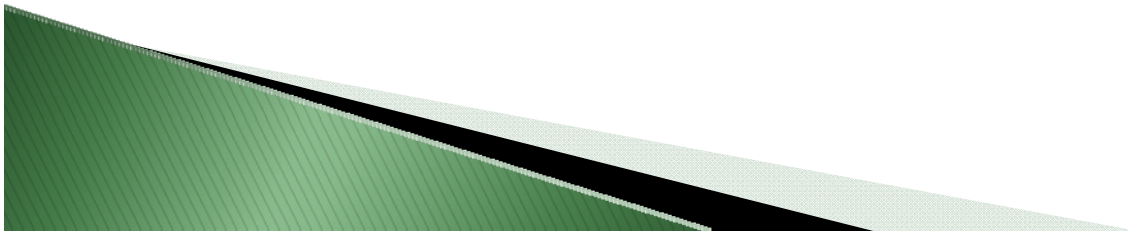
<http://yosemite.epa.gov/opei/RuleGate.nsf/>

- ▶ The website is designed to increases transparency of its rulemaking



Delay Attributed to

- ▶ Opposition from states, industry and other federal agencies have caused delay



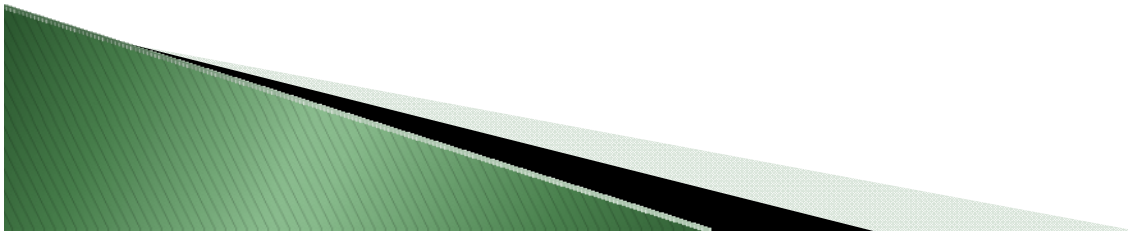
Positions

- ▶ Opposition's seeks to convince EPA to drop its preferred "hybrid" approach to regulate most wet forms of coal ash as hazardous under RCRA, while designating certain beneficial resuses as non-hazardous under the law.
- ▶ Proponent's seek to have a long sought hazardous RCRA designation for the material and are unlikely to support delaying the proposal even longer, with activists harshly criticizing the intense lobbying efforts at OMB before EPA issues the proposal.
- ▶ Note – The Proponent's (Environmental Groups) have also publicly called for EPA to be able to release the hybrid plan so debate over it can be transparent.



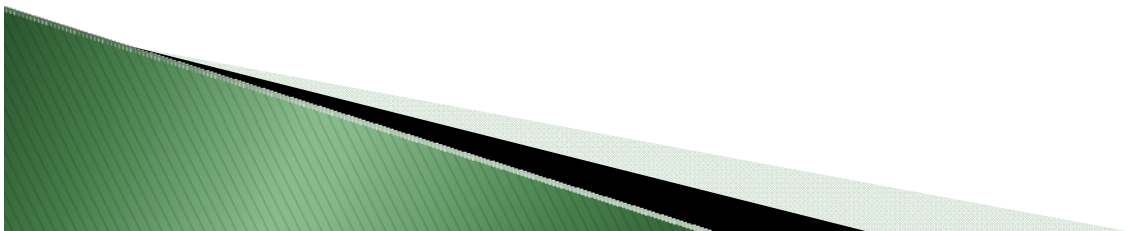
Intense Lobbying

- ▶ NGA has called on EPA not regulating CCBs under Subtitle C of RCRA
- ▶ The Southern Governors Association has made a similar recommendation
- ▶ The Western Governor's Association has made a similar recommendation



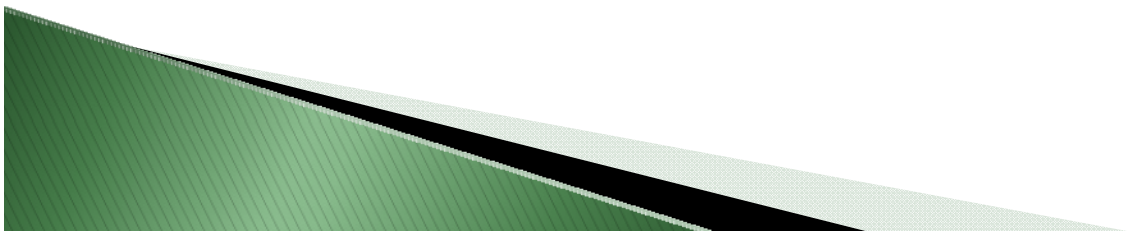
OSM – DOI

- ▶ OSM was preparing to propose rules on the use of CCBs in mine land reclamation
- ▶ OSM is delaying their initiative until EPA has issued their proposed rule and most likely until after the EPA rule is finalized
 - Section 705 limits OSM authority in promulgating regulations regarding the disposal of CCBs
 - OSM could promulgate regulations regarding the use of CCBs in mine land reclamation



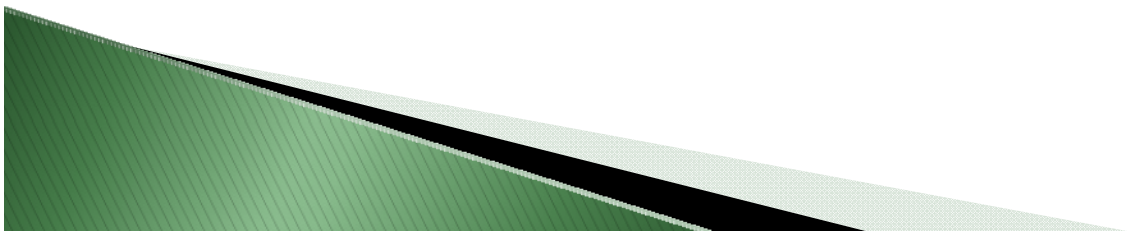
OSM Concern

- ▶ EPA's concept of beneficial use is tied to uses in the cement and concrete industries as well as in Nano-Technologies
- ▶ It would appear that EPA regards placement of CCBs in direct contact with the land is not beneficial use and is *disposal*.
- ▶ Defining what is “disposal” and what is “reclamation” to insure a distinction exists (If EPA indicates that the use of CCBs in mine land reclamation. (This is essential if EPA classifies CCBs as a hazardous waste under Subtitle C of RCRA).



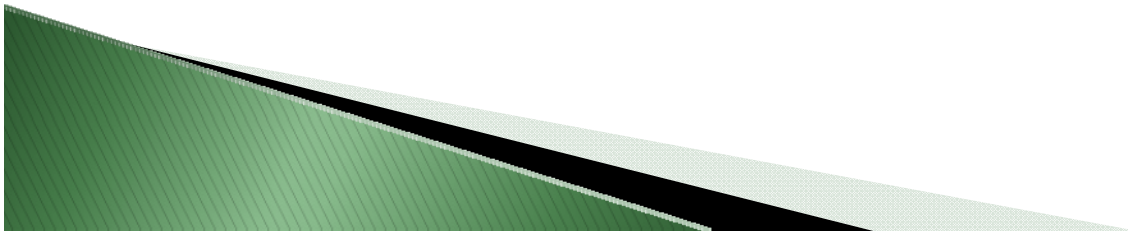
CIBO's Position?

- ▶ Not to regulate CCBs under Subtitle C of RCRA
- ▶ To what extent is CIBO prepared to recognize that if CCBs are regulated under Subtitle D of RCRA (recognizing that the States do not have to has similar regulations) that in order to address “federally enforceable permit” may result in regulations under Clean Water Act, Safe Drinking Water Act, Pollution Prevention Act, Emergency Planning and Community Right to know, and the Surface Mining Control Reclamation and Enforcement Act?



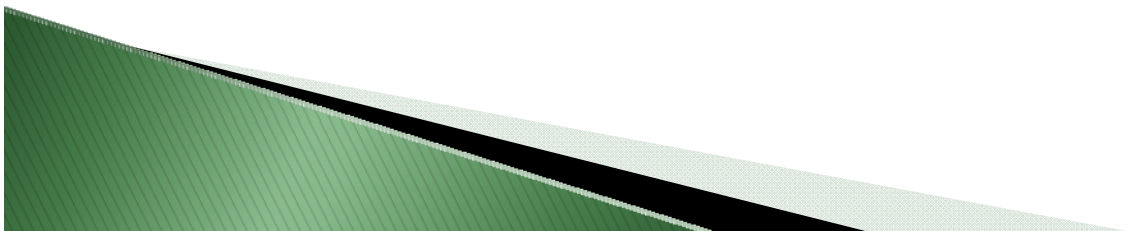
Outline of a concept

- ▶ Leachate testing would determine if a CCB is hazardous or a residual waste. If “residual waste” would establish two separate classes
 - Classification that would require liners
 - A Beneficial Use Classification that would allow for placement of the CCB in a structural fill or in a mine fill.
- ▶ Activities that would require permitting not only as a residual waste, but under other laws



Examples of Activities

- ▶ The placement of ash using a slurry that results in dewatering of the ash or discharges to ground or surface water would require a permit under
 - Federal Clean Water Act
 - Federal Safe Drinking Water Act
- ▶ The placement of ash in an impoundment or dam would require
 - Federal Clean Water Act
 - Federal Safe Drinking Water Act
 - And Meet FEMA Dam Safety Requirements



Examples of Activities

- ▶ Use of CCBs in reclamation of active and/or abandoned coal mines would be regulated under SMCRA
- ▶ Use of CCBs as a structural fill, but where the area of ash placement will be receiving high volumes of water (golf courses) or in areas where ground water mounding into the fill may occur the placement of CCBs would be classified as a disposal operation.

