

June 19, 2014

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Via E-Mail

Michelle Braun
Rules Coordinator
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049
michelle.braun@epa.ohio.gov

Re: Comments on Draft Conceptual Beneficial Use Program and Co-Product Concept

Dear Ms. Braun,

Agmet, LLC appreciates the opportunity to comment on Ohio EPA's May 8, 2014 Co-Product Conceptual Fact Sheet.

As Agmet stated in its previous comment letter dated June 20, 2013, Agmet is a leading recycler of metal-bearing industrial products in North America. Agmet has two plants in the Midwest in Oakwood Village and Maple Heights, Ohio. We acquire, repurpose and sell industrial by-products as valuable metals (nickel, cobalt, copper and tin) to other companies. All metals that we acquire are recycled, sold and reused as part of our unique Recycle 100© philosophy that results in virtually no by-product or waste.

Agmet is focused on developing innovative, custom solutions to keep metal by-products out of landfills by recycling, reducing, re-using, reclaiming and reselling them as valuable raw materials used in various industries. In addition to the beneficial aspect of keeping by-products out of landfills, Agmet's business reduces the need for raw material demands to be met with virgin ores, the mining of which requires vast amounts of energy, water and chemicals. These goals are environmentally significant.

In 2013, Agmet adopted our Recycle 100© philosophy which ensures virtually no by-product wastes from the products we receive. Utilizing a proprietary process, we purchase and repurpose thousands of tons of metal-bearing materials from industrial processes each year including:

- Metal Hydroxide Filtercakes and Sludges, including qualified F006 hazardous wastes allowable under the terms and conditions of Agmet's 2005 Variance from Ohio EPA
- Spent Plating Solutions
- Spent Catalysts
- Metallic Grindings and Dusts
- Lithium Ion Batteries

Agmet recovers and resells these metal units into concentrated product that has value to refiners. This prevents metal waste from being deposited in landfills where it can negatively impact the earth.

Agmet remains generally supportive of an administrative rule structure that recognizes that evolving technological advances are changing the way we think about materials management. Indeed, technology is changing the way we define waste – meaning those end materials that have no purpose, value or destination other than a landfill. An innovation shift has occurred and it is not appropriate to label as wastes those materials that are by-products of one industrial process, useful inputs for another, and bought and sold at fair prices.

Agmet encourages Ohio EPA to compose a program that meets Ohio EPA’s objective to ensure reuse is legitimate, without regulating materials that are not in fact wastes. To that end, Agmet offers the following comments for consideration:

1. Co-Product and By-Product Designations

Ohio EPA’s May 8, 2014 Co-Product Conceptual Fact Sheet states that “[t]he Agency is now turning attention to the stakeholders’ suggestion that nonhazardous secondary materials sold in a commercially reasonable manner in commerce are not waste; in essence, these secondary materials should be viewed as products.” Agmet could not agree more.

Agmet supports a demonstration process set forth by rule that is clear and self-implementing, at the most requires simple notification to Ohio EPA, and does not require Ohio EPA approval before beneficial reuse. This approach is reasonable given that these materials are not wastes and Ohio EPA’s jurisdiction over them is limited.

Agmet is not, however, convinced that separate co-product and by-product designations are necessary. It is not clear from existing Early Stakeholder Outreach documents that a meaningful or necessary distinction has developed between the co-product and by-product concepts. In either case, the materials are not being disposed of as wastes.

If a product meets a defined reuse standard, why does it matter if the product is “historically undesirable and commonly disposed; it has limited potential for use; it is generated in amounts that exceed amounts that can be used or it requires significant processing in order to be used[?]” See, definition of by-product from *Concept Paper: Co-product under ORC Chapter 3734*, p. 8. Materials that are not disposed of are not wastes, regardless of these factors. One concise definition and one concise self-implementing demonstration standard would accomplish the Agency’s multiple objectives.

If the Agency continues down this two-path by-product-co-product approach, it must create clear distinctions, clear definitions and clear pathways for the regulated community. A manufacturer must be able to determine whether it is dealing with a by-product or a co-product, especially if the level of regulation and the pathway for approval hinges on this distinction.

2. Hazardous Waste Program Distinction

Agmet is pleased that the Agency’s recent conceptual document states that “[t]he co-product demonstration would only apply to nonhazardous secondary materials. This is because Ohio’s hazardous waste rules have a long established recycling program, including an informal co-product approach, for classifying a hazardous secondary material as not being a waste.” *Id.* at 7.

As OEPA rounds out its conceptual plan with rule and permit language, it must continue to make clear that any changes being proposed to the nonhazardous waste program are completely separate from and have no relation to the hazardous waste program and any exclusions from the definition of waste therein. This must be the case for co-products, by-products, products, or feedstock. Items exempted from the definition of waste by the hazardous waste program must not be further regulated by the solid waste program.

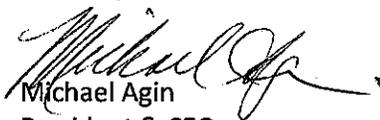
Agmet suggests that Ohio EPA revise Draft 3745-599-05(E) to insert the underlined text to clarify that the chapter is not applicable to “[h]azardous waste regulated or materials excluded from the definition of waste under use/reuse provisions pursuant to Chapter 3734 of the Revised Code and the rules adopted thereunder.”

Agmet asks the Agency to continue to diligently distinguish between the solid and hazardous waste programs so that materials are not double-regulated, wastes or materials exempted from the definition of waste by the hazardous waste program are not swept into this beneficial reuse program, and the application of the two programs remain separate and distinct.

Agmet reserves its ability to comment further as new issues are identified and the program continues to evolve.

We appreciate the opportunity to be involved in this early stakeholder process. If you have any questions, please feel free to contact me.

Sincerely,


Michael Agin
President & CEO

June 9, 2014

VIA ELECTRONIC MAIL

Michelle Braun
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michelle.braun@epa.ohio.gov

Re: Comments of ArcelorMittal Cleveland LLC and Stein, Inc. Regarding Ohio EPA's Concept Paper: Co-Product Under R.C. Chapter 3734

Dear Ms. Braun:

Thank you for the opportunity to comment on the *Concept Paper: Co-Product Under R.C. Chapter 3734* ("*Concept Paper*") recently released by Ohio EPA's Division of Materials and Waste Management as part of its Early Stakeholder Outreach with regarding to its rulemaking initiative to regulate the beneficial use of industrial by-products. ArcelorMittal Cleveland LLC ("ArcelorMittal") and Stein, Inc. ("Stein") (collectively "the Companies") appreciate the Agency's efforts to involve affected parties in this process.

ArcelorMittal is the world's largest steel company, and the Cleveland plant was recently touted as the most efficient steel manufacturing facility in the world. ArcelorMittal's core values include sustainability and efficiency. These values are carried out, in part, by the efficient management of products and by-products in each aspect of the manufacturing and distribution cycles, including slag management. Stein provides slag processing and steel mill services, including steel and blast furnace slag removal, reclamation of metallic content, and slag sales and marketing. Stein is headquartered in Broadview Heights, Ohio.

The *Concept Paper* outlines the circumstances under which co-products are not wastes and therefore excluded from regulation under R.C. Chapter 3734, including any requirement for the approval by Ohio EPA of the beneficial use of these industrial by-products that may be added as a part of this rulemaking initiative. The comments submitted by the Ohio Steel Group and ArcelorMittal and Stein with respect to prior phases of this rulemaking are part of the record with respect to Ohio EPA's beneficial use rulemaking initiative process. They are incorporated by reference and the comments will not be repeated here. This comment letter supplements the comments of the Ohio Steel Group on the *Concept Paper* (which are being filed

concurrently) to further underscore the significance of the Companies' concerns with respect to the inclusion of slag within the scope of the beneficial use program generally and any co-product exemption specifically.

First and foremost, Ohio EPA lacks the statutory authority to proceed with the program it is desirous of developing. Ohio EPA's jurisdiction under R.C. Chapter 3734 is limited to the transfer and disposal of "solid wastes" within the meaning of R.C. §3734.01(E) which defines that term as:

...[s]uch unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, **and slag and other substances that are not harmful or inimical to public health**, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste.

(Emphasis added). Thus, slag and other substances not harmful or inimical to public health are **specifically exempt** from regulation under R.C. Chapter 3734. Moreover, there is nothing in R.C. Chapter 3734 (or elsewhere for that matter) that suggests Ohio EPA can regulate the beneficial use of solid wastes, let alone slag. Without such statutory authority in place, ArcelorMittal and Stein will not support any attempt to regulate slag.

In addition, the Companies question Ohio EPA's basic premises for the extension of regulation to slag:

- That there is "increasing interest in the beneficial use of industrial by-products *currently disposed of in landfills.*" *Concept Paper* at p. 1 (emphasis added).
- That the Division of Materials and Waste Management is considering this program in order to "avoid regulating [non-hazardous secondary materials that have commercial value] as *wastes requiring appropriate disposal.*" *Concept Paper* at p.3.

In fact, virtually all slag generated in the state of Ohio is sold for a variety of uses as products, including aggregate in bituminous mixes, concrete aggregate or an ingredient in cement, as an agricultural soil amendment, landfill daily cover and as environmental remediation material. In other words, slag is not disposed of, a fact that the Agency itself recognizes in the *Concept Paper*. Moreover, slag is one choice among other commercially-available products, which products would not be likewise regulated. Implementation of the Agency's *Concept Paper* will create an unfair burden in the marketplace for the Companies and other slag generators and processors.

ArcelorMittal and Stein also question Ohio EPA's statement that stakeholders earlier suggested that there be recognition "*within the regulatory system*" that certain industrial by-products are not wastes. The quote that follows that statement (on pages 3 and 4) goes on to

say that the by-products are therefore “exempt or excluded from further regulation,” not that they should be placed into any type of regulatory scheme. In fact, the Companies **specifically** asked that **slag not be included** in the scope of the rulemaking, in light of the exemption of R.C. §3734.01(E) and its longstanding management as a co-product of the iron and steelmaking process. The Companies have not suggested that not that any new regulatory scheme be created. See June 28, 2013 Letter to Michelle Braun from Squire Sanders on behalf of the Companies, at page 4, CONCLUSION. We do not support a separate regulatory framework for by-products or co-products, let alone slag; in fact, we support the statement that they are exempt or excluded from further regulation and should remain that way.

Ohio EPA’s *Concept Paper* then goes on to define the term “product” and the factors should be considered in a co-product demonstration. Ohio EPA suggests that criteria for the demonstration should be outlined by rule (along with programmatic elements) and controlled by a general permit. The conceptual programmatic elements are problematic for the following reasons:

- the distinction between a co-product and a by-product is fictitious in that neither are wastes that are subject to regulation under R.C. Chapter 3734, including their beneficial use;
- the placement of any material into a body of water is already regulated under either Sections 404 and 401 of the Clean Water Act or Ohio Revised Code Chapter 6111 and its attendant regulations, or both;
- the justification that the goal is to prevent the unlawful placement of solid wastes onto the ground ignores the fact that by definition slag is not a solid waste and has never been managed by the industry as a waste;
- the regulations and accompanying general permits place a burden on the Companies (as well as other similarly situated parties) without resultant environmental benefits;
- the management and handling of a co-product remains subject to all applicable federal, state and local laws and regulations, including the requirements of R.C. Chapter 6111, leaving open the question of the benefit to be gained by designating material as a “co-product.”

Thank you for the opportunity to comment on the *Concept Paper*. Given the significance of these issues to ArcelorMittal and Stein, ArcelorMittal and Stein would be happy to meet with you regarding these comments at your convenience.

Very truly yours,



Karen A. Winters

KAW/jaw



Discovering what's possible with calcium

Kimberly S. L. Bauman, PhD - Director, Environmental Affairs
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(573) 883-4046 Fax (573) 883-4363

June 4, 2014

Ms. Michelle Braun
P.O. Box 1049
Columbus, OH 43216-1049

Subject: Comments Regarding OEPA's Beneficial Use Co-Product Concept and
Conceptual Draft Beneficial Use General Permit Information

Dear Ms. Braun,

Mississippi Lime Company (hereinafter, Mississippi Lime) offers the following comments concerning Ohio EPA's Beneficial Use Co-Product Concept and Conceptual Draft Beneficial Use General Permit Information.

Beneficial Use: The Co-Product Concept

During Ohio EPA's May 21st stakeholder meeting/webinar, it was requested that interested parties provide comment concerning the need/want for a co-product rule and/or designation process. Mississippi Lime whole-heartedly believes that a co-product rule and/or designation process to formally acknowledge that a material is "not a waste" would be beneficial to the regulated community.

As outlined in the May 2013 beneficial use conceptual draft rule, many significant, so-called "waste materials" are excluded from draft beneficial use concepts because they are subject to existing program regulations. That said, the remainder of materials that are not the primary products of a business – but are needed, useful "products" nonetheless – would greatly benefit from a system that formally recognizes such materials as "co-products."

Co-product designations would enable industries to more effectively market their safe, beneficial "co-products" on the open market to customers reluctant to utilize materials that are not the primary products of a business and/or are considered to be a solid waste.

Conceptual Draft: Beneficial Use General Permit Information

During Ohio EPA's May 21st stakeholder meeting/webinar, it was noted that products not qualifying for co-product designation could, upon meeting certain criteria, qualify for beneficial use under the proposed beneficial use by-product (BUB) general permit scenario. Mississippi Lime supports the proposed BUB general permit idea, in that such a structure would provide

clarity and certainty to the regulated community regarding the beneficial use of by-products not qualifying for other beneficial use regulations/designations.

The proposed format of the BUB general permits is simple and direct, and leaves minimal room for question about which materials from which industries may be used in specific applications, provided noted criteria are met. However, the two example BUB general permits provided for review present some concerns for Mississippi Lime.

The proposed on-going sampling and analysis of materials (beyond initial qualification) potentially covered under a general permit is burdensome and costly. Industries have in-place quality control systems for production of their primary products and, as such, the quality of by-products from stable processes is consistent; thereby negating the need for on-going sampling and analysis following submittal of a general permit Notice of Intent (NOI).

Although both of the example BUB general permits note that the subject material “shall not be a hazardous waste as defined in Ohio Administrative Code 3745-51-03,” the tables of analyses in the examples contain different constituents as well as different types of analyses (e.g., total analysis vs. total analysis and TCLP analysis). For consistency, all materials potentially qualifying for coverage under a general permit would be expected to have the same applicable analytical requirements for proving the materials are not hazardous waste and do not present a hazard to the environment.

Also, the example BUB general permits limit eligibility to recently (within the past 2 years) generated material, as historic stockpiles of material may have become contaminated. This condition limits the amount of material potentially qualifying for coverage under a general permit even if historic material can/does meet all of the qualifying criteria. Historic material is of economic significance to industry and will likely become more marketable once formally qualified under a general permit.

Summary

In summary, Mississippi Lime greatly thanks the Ohio EPA Division of Materials and Waste Management for working with and listening to industry regarding installation and implementation of beneficial use mechanisms. Mississippi Lime supports the co-product concept, and suggests the following regarding the proposed general permit structure:

- Minimize the burden and cost of sampling and analysis of materials for coverage under general permits by removing such requirements beyond initial qualification and NOI submittal;
- Provide a consistent methodology for qualifying materials under general permits; and
- Expand coverage of general permits to qualifying historic material.

Ms. Michelle Braun
June 4, 2014
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Thank you so much for your time and attention to our comments; we appreciate Ohio EPA's stakeholder outreach.

Sincerely,



Kimberly S. L. Bauman, Ph.D.
Director, Environmental Affairs

E-CC: T. Zerr, Mississippi Lime
J. Dahl, Mississippi Lime
R. Witte, Mississippi Lime
S. Castleberry, Mississippi Lime
T. Endlish, Endlish Environmental & Energy LLC



June 9, 2014

VIA EMAIL: (michelle.braun@epa.ohio.gov)

Michelle Braun
Post Office Box 1049
Columbus, Ohio 43216-1049

Re: Comments of Nucor Steel Marion, Inc.
Early Stakeholder Outreach — Beneficial Use: The “Co-Product” Concept

Dear Ms. Braun:

Nucor Steel Marion Inc. appreciates this opportunity to provide comments regarding Ohio EPA’s May 8, 2014 “Early Stakeholder Outreach – Beneficial Use: The ‘Co-Product’ Concept.”

Nucor applauds Ohio EPA’s recognition of the fact that certain products such as steelmaking slag have commercial value and should not be regulated as “wastes” requiring controlled disposal. However, Nucor believes that if a product is excluded from Ohio’s solid waste definition based on its status of having been sold in a commercially reasonable manner in the stream of commerce, as demonstrated in our letter to Ohio EPA dated October 16th, 2013, its further use should not be regulated by Ohio EPA’s Division of Materials and Waste Management (“DMWM”) or subject to further regulation under O.R.C. Chapter 3734 or O.R.C. Chapter 6111.

Nucor is America’s largest manufacturer of steel and steel products. Our Ohio steel production facility, Nucor Steel Marion, Inc., manufactures specialty steel products for the highway, construction and agricultural industries. Nucor and its affiliates employ approximately 730 teammates in the state of Ohio who earn an annual average wage of more than \$75,000. *Our steel mill in Marion uses recycled scrap steel for 99.9% of its feedstock, and our Ohio operations recycle up to 656,000 tons of steel each year.*

However, scrap steel is not the only material we recycle. Slag is among the hundreds of recycled products made and marketed by our Ohio teammates.

Nucor’s steel mills produce steel by using an Electric Arc Furnace, which heats and melts the scrap metal. During the steelmaking process, lime is injected into the Electric Arc Furnace, which forms an insulating slag layer. Slag is subsequently cooled and sent off site to be sized. The resulting product looks like crushed limestone and possesses many of the same physical and

chemical properties as limestone. Nucor Steel Marion, Inc. produces approximately 35,000 tons of slag per year.

Not unlike Nucor Steel Marion's hundreds of other specialty steel products produced for highway and other infrastructure projects, our slag is sold and primarily used as an aggregate in construction projects, most commonly as a sub-base for roads. The Federal Highway Administration and state departments of transportation encourage its use in infrastructure projects because slag has been found to provide excellent adhesion in asphaltic concrete, and the shape improves skid resistance in road materials. Steelmaking slag is highly stable when wet, prevents the formation of ice, does not have problematic surface irregularities, and is easily compacted.

These same properties also make steelmaking slag a superior material for use as a construction aggregate, where slag is used as a replacement for Portland cement in concrete and has been used in the construction of concrete buildings. It is also used as a replacement for agricultural lime, septic tank drain field material, and has many other construction, industrial, agricultural, and residential applications.

Given slag's consistent qualities and well-established status as a commercially-viable product in the marketplace, we believe that Ohio should follow the lead of other states which have already recognized that steelmaking slag is a product that should not be subject to further regulation **when it's managed as an item of commercial value in a controlled manner and not as a discarded material.**

In the past 14 months, Nebraska and Tennessee have both enacted legislation recognizing slag's status as a product when it is treated as such.¹ In light of the numerous uses for slag and its long

¹ In Nebraska, LB203 was signed into law on April 24, 2013. Nebraska Rev. State 81-1502 (26)

Solid waste shall mean any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities. **Solid waste shall not include slag, a product that is a result of the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material;** solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.; or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;

In Tennessee, SB1467 was signed into law on April 1, 2014. Tenn. Code Ann. § 68-211-103(8):

(A) "Solid waste" means garbage, trash, refuse, abandoned material, spent material, byproducts, scrap, ash, sludge, and all discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and agricultural operations, and from community activities. Solid waste includes, without limitation, recyclable material when it is discarded or when it is used in a manner constituting disposal.

(B) "Solid waste" does not include:

(continued on next page)

history and consistency as a product, we believe that slag's status as a product should be codified under Ohio law when it is treated as such, and subsequently, there should be no need for Nucor or any other generator of steelmaking slag to be further regulated or generate the scope of documentation set forth in Ohio EPA's concept paper.

Further recognition and clarification of slag's status as a product and outside the application of DMWM regulatory beneficial use program would bring certainty to our business, while also removing unnecessary and burdensome administrative requirements that may constrain our slag's marketability. Furthermore, it will allow us to increase our competitiveness and the marketability of one of Nucor's many hundred 'Made in Ohio' products. It is this desire-to-compete mentality that has allowed us to compete against heavily subsidized foreign steel industries, and has resulted in our *never* having laid off a single teammate from one of our steel mills due to a lack of work.

We look forward to continuing to work with Ohio EPA on this issue.

Sincerely,



Trevor Beers
Environmental Manager
Nucor Steel Marion, Inc.

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- (i) Solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or industrial discharges that are point sources subject to permits under § 402 of the Federal Water Pollution Control Act codified in 33 U.S.C. § 1342; or
- (ii) Steel slag or mill scale that is an intended output or intended result of the use of an electric arc furnace to make steel; provided, that such steel slag or mill scale is sold and distributed in the stream of commerce for consumption, use, or further processing into another desired commodity and is managed as an item of commercial value in a controlled manner and not as a discarded material or in a manner constituting disposal.

June 10, 2014

VIA ELECTRONIC MAIL

Michelle Braun
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michelle.braun@epa.ohio.gov

Re: **Comments of The Ohio Steel Group With Respect to Ohio EPA's
Concept Paper: Co-Product Under R.C. Chapter 3734**

Dear Ms. Braun:

The following are the comments of AK Steel Corporation, ArcelorMittal Cleveland LLC, The Timken Company, Thomas Steel Strip Corporation, and U.S. Steel Corporation, Lorain Tubular Operations (collectively, the "Ohio Steel Group") with respect to the *Concept Paper: Co-Product Under R.C. Chapter 3734* ("*Concept Paper*") recently released by Ohio EPA's Division of Materials and Waste Management as part of its Early Stakeholder Outreach with regarding to its rulemaking initiative to regulate the beneficial use of industrial by-products. Steel is the most recycled material on the planet and the steel industry, as part of its environmental stewardship, has long been a leader in the use of co-products and byproducts generated by the production of steel. The objective of the Ohio Steel Group's comments is to assure a continued favorable environment for the continued use, reuse and recycling of these materials.

The *Concept Paper* outlines the circumstances under which co-products are not wastes and therefore excluded from regulation under R.C. Chapter 3734, including any requirement for the approval by Ohio EPA of the beneficial use of these industrial by-products that may be added as a part of this rulemaking initiative. The comments submitted by the Ohio Steel Group with respect to prior phases of this rulemaking are part of the record with respect to Ohio EPA's beneficial use rulemaking initiative generally. They are incorporated by reference and the comments will not be repeated here. First and foremost, Ohio EPA lacks the statutory authority to proceed with the program it is desirous of developing. Ohio EPA's jurisdiction under R.C. Chapter 3734 is limited to the transfer and disposal of "solid wastes" within the meaning of R.C. §3734.01(E). Moreover, slag and other substances that are not harmful or inimical to public health are exempt from the Chapter generally by virtue of R.C. §3734.01(E), which provides:

...[s]uch unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, **and slag and other substances that are not harmful or inimical to public health**, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste.

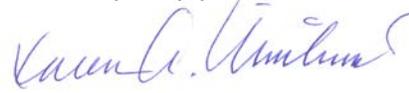
(Emphasis added). There is nothing in R.C. Chapter 3734 (or elsewhere for that matter) that suggests Ohio EPA can regulate the beneficial use of solid wastes. Moreover, slag and other substances not harmful or inimical to public health are **specifically exempt** from regulation under R.C. Chapter 3734. Without the statutory authority in place to create a beneficial use program and to include slag or other substances that are not harmful or inimical to public health in that program, the Ohio Steel Group cannot support Ohio EPA's rulemaking effort generally.

Ohio EPA's *Concept Paper* attempts to define the circumstances under which a material may be considered a "co-product" and exempt from regulation under the Chapter. Ohio EPA suggests that the criteria for the co-product demonstration should be outlined by rule. Ohio EPA further suggests that the provider of the co-product notify Ohio EPA of the co-product determination and provide documentation as to how the criteria outlined in the rule are met. While Ohio EPA would not approve the determination, it could object or request additional information from the provider. The concept outlined by Ohio EPA is problematic for the following reasons:

- As noted above, co-products are not wastes subject to regulation under R.C. Chapter 3734, including their beneficial use. Slag, in particular, is specifically exempt from the definition of "solid waste" under R.C. §3734.01(E), recognizing slag's value as a useful product;
- The need for regulation of co-products, including slag, is anecdotal at best and any improper placement of a co-product in a location where it causes pollution to "waters of the state" is already regulated under R.C. Chapter 6111 and regulations promulgated pursuant thereto; and
- The management and handling of a co-product would remain subject to all applicable federal, state and local laws and regulations, including the requirements of R.C. Chapter 6111, leaving open the question of the benefit to be gained by designating material a "co-product."

Thank you for the opportunity to comment on the *Concept Paper*. Given the significance of these issues to the Ohio Steel Group, we would appreciate the opportunity to meet with you to discuss this rulemaking initiative in further detail.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Karen A. Winters". The signature is fluid and cursive, with a large initial "K" and a distinct "W".

Karen A. Winters

KAW/jaw

Chairman of the Board
RICK SCHOSTEK
Senior Vice President, Honda of America Manufacturing



President
ERIC L. BURKLAND

June 9, 2014

VIA EMAIL: (michelle.braun@epa.ohio.gov)

Michelle Braun
Post Office Box 1049
Columbus, Ohio 43216-1049

Re: **Comments from the Ohio Manufacturers' Association**
Beneficial Use: The "Co-Product" Concept

Dear Ms. Braun:

The Ohio Manufacturers' Association (OMA) is hereby providing its written input to Ohio EPA's May 8, 2014 "Early Stakeholder Outreach – Beneficial Use: The 'Co-Product' Concept." OMA is dedicated to protecting and growing manufacturing in Ohio, and for more than 100 years, has supported reasonable, necessary, and transparent environmental regulations promoting the health and well-being of Ohio's citizens.

The OMA, as a trade organization representing over 1,400 manufacturers throughout Ohio, appreciates Ohio EPA's efforts in tackling the issue of regulating and authorizing the beneficial use of high volume, low toxicity waste materials. Certain members of the OMA and certain industries within the general manufacturing sector may have unique concerns with the "Co-Product" concept, and as a result, these comments, on behalf of the OMA in general, are being provided in a broader context allowing others to weigh in with specific concerns unique to their respective manufacturing processes.

As noted previously by OMA, only "wastes" should be regulated under this program. Ohio Rev. Code § 3734.01(E) defines "solid waste" as "unwanted" residual solid or semisolid material resulting from industrial, commercial, agricultural and community operations with specific exclusions, including nontoxic fly ash and bottom ash, spent nontoxic foundry sand, and slag. If a co-product is not "unwanted," it is not a waste. While Ohio EPA has previously indicated that the term "unwanted" is viewed from the perspective of the generator, even this limited interpretation means that if a generator "wants" the co-product, it is not a waste.

Therefore, if a co-product is sold in a commercially reasonable manner for value (e.g., slag), it is not "unwanted" by the generator, and should not be subject to further regulation under O.R.C. Chapter 3734 or O.R.C. Chapter 6111. There is no need to regulate the further disposition or use of such valuable material or co-product.

In our previous comments, we suggested that a new category be incorporated into any beneficial use rule package to clarify that certain industrial by-products are not "wastes" and are therefore exempt or excluded from further regulation. These materials include those that are not "unwanted" by the generator and are sold in a commercially reasonable manner in the stream of commerce.

It appears that Ohio EPA agrees with our previous comment, and the "co-product" concept is Ohio EPA's initial proposal in this regard. While we applaud Ohio EPA's efforts in this regard, the proposed Ohio EPA "Co-Product" concept goes beyond our intentions.

Our position is that some "co-products" are not "wastes" because they are specifically excluded from the statutory definition of "solid wastes" (e.g., spent nontoxic foundry sand and slag). For those co-products, any beneficial use rule should clarify and reference that such co-product or material does not constitute a "solid waste" for purposes of Ohio's solid waste program or beneficial use program. Documentation from the generator and recordkeeping requirements contemplated in Ohio EPA's "Co-Product" concept paper are not necessary for these co-products with established beneficial uses. There should be no need for the generators of these co-products to provide and generate the scope of documentation set forth in Ohio EPA's concept paper, when such material or "co-product" has an established end use that Ohio EPA has already approved on an individual basis through different programs (e.g., IAWMP or LAMP) and the material or "co-product" is of a homogenous nature that is fairly consistent throughout the particular generating industry. For example, generators of these materials should not be required to document the projected annual co-production rejection rate or the degree to which the market for the co-product is guaranteed.

In summary, OMA applauds Ohio EPA's efforts to propose and consider a beneficial use program, but the "co-product" concept, as initially proposed, goes beyond what is necessary, especially from a documentation standpoint. If a material or "co-product" is excluded from the definition of a "solid waste", its further use should not be regulated by Ohio EPA's Division of Materials and Waste Management, and that exclusion should be simply set forth in the regulations so as to clarify Ohio EPA's position.

If you have any questions regarding the foregoing or attached, please feel free to contact me or OMA's environmental counsel, Frank L. Merrill with Bricker & Eckler LLP (614-227-8871).

Sincerely,



Rob Brundrett
Director, Public Policy Services

cc: Frank L. Merrill

June 9, 2014

Michelle Braun
Division of Materials and Waste Management
Ohio EPA
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Comments on May 8, 2014 Early Stakeholder Outreach - Beneficial Use:
The “Co-Product” Concept

Dear Ms. Braun:

On May 8, 2014, Ohio EPA issued an Early Stakeholder Outreach for Beneficial Use: The “Co-Product” Concept. The following comments are submitted on behalf of the Ohio Utility Group and its member companies (“OUG” or “the Utilities”),¹ which is an association of individual electric utilities in the State of Ohio. The electric utilities own and operate power plants and other facilities that generate and transmit electricity for residential, commercial, industrial, and institutional customers. These power plants and other facilities are subject to solid waste regulations. OUG’s purpose, in part, is to participate collectively on behalf of its members in the administrative proceedings under various environmental laws and in litigation arising from those proceedings that affect electric generators. Thus, the notice affects the members of OUG.

The Utilities object to Ohio EPA’s proposed concept for multiple reasons, as are outlined below. The Utilities encourage Ohio EPA to devote its resources to more useful activities and drop this concept for a rulemaking altogether.

First, no rulemaking is necessary for “co-products” or byproducts to be appropriately used, as any byproduct is already beneficially used by the Utilities. The definition of “solid waste” in RC 3734.01(E) begins with the premise that in order to be defined as solid waste, the material must first be “unwanted”. Obviously, any material produced as a co-product or a by-product which someone wants to use as they would any similar material is “wanted”. For example, gypsum created in a scrubber typically has fewer impurities than mined gypsum. Consequently, this “co-product” of electricity generation is highly sought for wall board

¹ The member companies include: AEP Generation Resources, Inc., Buckeye Power, Inc., The Dayton Power and Light Company, Duke Energy Ohio, FirstEnergy Solutions, and Ohio Valley Electric Corporation.

production and farm applications. It is “wanted”. No rule is necessary to define the material any further than current law and common sense already do.

The Utilities recognize that some staff at Ohio EPA adhere to an interpretation of “unwanted” that ignores the obvious meaning of the word and perversely leads to a circumstance in which materials, such as gypsum, which are clearly “wanted” by a third party are still considered “unwanted” by Ohio EPA since the producer’s original intent was not to produce the gypsum. This interpretation is irrational and unsupported by law. Ohio EPA does not need to conduct a rulemaking to develop a convoluted process for determining a material’s status as a “co-product”. The Agency need only adopt a natural and obvious interpretation of “unwanted”, as any dictionary would have, to address the perceived problem.

The second problem with Ohio EPA’s concept paper is that it is wholly inapplicable to any material not included in the definition of solid waste. Ash, foundry sand, mining wastes, and slag are all exempted from the definition of solid waste by statute. Ohio EPA has no jurisdiction to regulate or define these materials as co-products. However, these materials also represent some of the most beneficially used materials (by volume) within Ohio. Even if Ohio EPA were to develop a rule around this concept, it would not apply to some of the largest sources of beneficially used materials.

In short, no rule is necessary for the beneficial use of “wanted” materials created as co-products or byproducts. The only real obstacle is the Agency’s unsupportable view of what it is for a material to be “unwanted”. Reassessing what it means for something to be “wanted” does not take a rulemaking. However, this proposal illustrates one of the biggest obstacles to widespread beneficial uses in Ohio, which is Ohio EPA’s penchant for regulating activities based on the origin of materials used regardless of the relative impacts on the environment.

Almost all anthropogenic activities have some impact on the environment, no matter the source of the materials used in a project. However, Ohio EPA appears to be focused on from where those materials may have come, without consideration of the relative impacts of those materials compared to “virgin” materials. For example, gypsum is a very beneficial soil additive for agricultural sites. The application of gypsum, like any farm process, has some potential to impact the environment (such as runoff). The gypsum created by a scrubber has most of the same qualities of mined gypsum, and often fewer impurities. Yet, Ohio EPA states that it requires a permit for the application of manufactured gypsum even though the manufactured gypsum is nearly identical to mined gypsum (the application of which would not require a permit). This is one of the many examples which illustrates that Ohio EPA seems to be determined to regulate materials because of their definition, not because of their use or environmental impacts.

There are multiple examples of materials that Ohio EPA regulates (and effectively restricts the use of) because the Agency claims jurisdiction over the material despite the ongoing use of similar materials with similar physical qualities (and environmental impacts) over which Ohio EPA has no jurisdiction. There is no technical or scientific reason to regulate the use of a

Michelle Braun
Ohio EPA
June 9, 2014

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co- or byproduct material, such as gypsum, when it is used as a substitute for a like or similar material. Yet, Ohio EPA continues to do so without a technical basis but solely on what it defines as a waste. And as long as the Agency continues to do so, no beneficial use program implemented by Ohio EPA will ever be successful. At this point, after years of failed attempts to develop a program, Ohio EPA should reconsider this effort altogether and look for alternatives to any rulemaking.

Ohio EPA should abandon its efforts to develop a beneficial use program oriented around regulating the materials and defer to other state agencies within Ohio to develop programs oriented towards beneficially using the materials. Many other branches of the state, Agriculture, DNR, and ODOT, all have jurisdiction to develop and implement beneficial use programs that could utilize co- and byproducts. If a material has a beneficial agricultural application, the Department of Agriculture has the expertise as to the USE itself to adequately determine how, when, and under what circumstances a material should be land applied to farms. Certainly the Department can be relied upon to act in the farmers' best interest, which would promote agriculture in Ohio while safeguarding the environment. A program based on the positive benefits of the use, not the jurisdictional definition of the material, would benefit everyone.

The Utilities appreciate the opportunity to provide these comments on the ESO Concept Paper. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Michael E. Born

MEB/md
O23415-042895
cc: Ohio Utility Group