A RESOLUTION URGING COMPLIANCE WITH PROTECTIVE STANDARDS FOR BENEFICIAL USE OF INDUSTRIAL SOLID WASTE MANAGEMENT

WHEREAS, in 2015, the US Environmental Protection Agency (EPA) took major steps forward in encouraging the beneficial use of industrial wastes that otherwise would be disposed;

WHEREAS, in its final rule, Disposal of Coal Combustion Residuals from Electric Utilities the EPA articulated a framework to ensure that safe recycling of coal ash will continue and that other forms of beneficial use will be subject to "legitimacy criteria";

WHEREAS, these criteria balance the goal of reusing wastes with a commitment to ensure that reuse will not adversely impact the environment or the health of affected communities;

WHEREAS, the beneficial use criteria in the Coal Combustion Residuals rule are consistent with EPA's long-standing "Sham Recycling" policy as most recently employed in the Agency's Non-Hazardous Secondary Materials Rule;

WHEREAS, the National Black Caucus of State Legislators (NBCSL) has a long history of supporting programs designed to protect the environment and health of communities affected sham recycling policies;

WHEREAS, NBCSL supports the beneficial use of industrial wastes, including the reuse of Coal Combustion Residuals (CCRs) in applications like cement and road aggregate; and

WHEREAS, state legislatures and regulatory bodies, possess the authority necessary to implement policies, programs, and incentives to protect the environment and encourage industry compliance with the Final Rule.

THEREFORE, BE IT RESOLVED, that the National Black Caucus of State Legislators (NBCSL) supports the EPA's final rule, Disposal of Coal Combustion Residuals from Electric Utilities, and the framework articulated to ensure that safe recycling of coal ash will continue and that other forms of beneficial use will be subject to "legitimacy criteria";

BE IT FURTHER RESOLVED, that NBCSL respectfully urges state regulators, state legislatures, and other relevant state-level policymakers to review the U.S. EPA's beneficial use standard and its "legitimacy criteria" for applicability in state and local programs authorizing reuse of non-hazardous
solid waste, including the following criteria elements:

1. The wastes provide a functional benefit (e.g., gypsum in wallboard or ash in cement, or Coal Combustion Residuals (CCRs) used as a soil amendment to adjust the pH of soil);

2. The wastes substitute for use of a virgin material (e.g., FGD gypsum in wallboard, fly ash in Portland cement, CCR in road bed to replace quarried aggregate)

3. The beneficial use complies with relevant product specifications or regulatory standards (e.g. Fly ash in highway construction pursuant to ASTM C 593, ASTM D 560 freezing and thawing test, and a 7-day compressive strength above 2750 (400 psi)). In agricultural settings, the beneficial use would follow EPA’s standards governing agricultural application of bio solids. Use of CCRs as structural fill would follow ASTM Standard E2277-03.

4. For un-encapsulated uses involving placement on land of 12,400 tons or more in non-roadway applications, the residuals generator must document that environmental releases to groundwater, surface water, soil or air will be at or below those of analogous products made without CCR (the "comparability" criteria) or that environmental releases will be at or below relevant regulatory and health-based benchmarks. CCR uses subject to this criterion include flowable fill, structural fill, soil modification/stabilization, waste stabilization, use in agriculture as a soil amendment, and aggregate. This demonstration might include a conceptual model evaluating potential exposure pathways (groundwater, surface water, air, soils, dust, leaching mercury inhalation and plant uptake), and a screening comparison of the characteristics of the CCR with its non-CCR substitute in terms of human soil ingestion, ecological soil, water and fish ingestion, surface water, sediment and inhalation.

BE IT FINALLY RESOLVED, that a copy of this resolution be transmitted to the President of the United States, the Vice President of the United States, members of the United States House of Representatives and the United States Senate, and other federal and state government officials as appropriate.

SPONSOR: Representative Billy Mitchell (GA)
Committee of Jurisdiction: Energy, Transportation, and Environment Policy Committee
Certified by Committee Co-Chair: Representative Billy Mitchell (GA)
Ratified in Plenary Session: Ratification Date is December 3, 2016
Ratification is certified by: Senator Catherine Pugh (MD), President