

Congressional Hearing
Mesa Arts Center, Mesa, AZ – August 22, 2013

1. **EPA's efforts to classify coal ash** from power plants as a Hazardous Waste. (Resource Conservation and Recovery Act or (RCRA) Subtitle) This would effectively eliminate the beneficial reuse of coal ash which includes both fly ash, which is used as an admixture in ready mixed concrete and bottom ash, which is used as a lightweight aggregate, ultimately resulting in significant environmental impacts due to the increased need of virgin materials. This of course counters EPA's very own recycle/reuse policy. Do we really want this material going back into a landfill? – According to the American Coal Ash Association (ACAA), approximately 29,000,000 tons of fly ash and bottom ash were beneficially reused (2011). This is approximately one third of what was actually produced. This proposal is both a conflict with EPA's own policy and detrimental to the building materials industry.

2. **Regulatory Overreach as it pertains to EPA's ongoing Plans to Expand Clean Water Act Jurisdiction**

EPA is working on a rule based on "Guidance Identifying Waters Protected by the Clean Water Act," and will greatly increase the scope of what is considered "waters of the US," including generally dry areas. It begs the question of how this will impact Arizona. This goes far beyond sensible limits established by Congress and the US Supreme Court and usurps congressional authority by effectively removing "navigable" from the Clean Water Act, in essence administratively implementing the *Clean Water Restoration Act*, which failed in the last Congress. We ask that Congress deny EPA the funding to broaden the jurisdictional determination beyond the 2008 Guidance.

- This will complicate and slow the permitting process.
- place businesses at risk of fines of up to \$37,500 per day if a permit is required and not obtained,
- increase the risk of citizen suits.

- EPA refuses to fully evaluate the widespread economic impacts, insisting this broad expansion of powers is merely a change in “definition.”
- Determination of jurisdiction is critical to the aggregates industry, impacting the costs of planning, financing, constructing and operating aggregates facilities.
- This will make it even more difficult for aggregates operators to ensure a timely supply of aggregates for public works and other vital projects essential to recovery from the recession.

This simply can't move forward.

3. EPA's Sue and Settle Practice. EPA has allowed environmentalists to negotiate settlements for deadlines on new or pending rulemakings, preventing industry from intervening in the suits and having a seat at the table for the settlement negotiations. EPA chose at some point not to defend itself in lawsuits brought by special interest advocacy groups at least 60 times between 2009 and 2012. These settlements directly resulted in EPA agreeing to publish over 100 new regulations, which impose compliance costs in the tens of millions of dollars.

There is a significant lack of agency transparency and EPA does not disclose the notice of the lawsuit or its filing until a settlement agreement had been worked out with the private parties and filed with the court. It also severely undercuts agency compliance with the Administrative Procedure Act. The Act was designed to promote transparency and public participation in the rulemaking process. EPA is avoiding the normal protections built into the rulemaking process. The principles of federalism are also flagrantly ignored when EPA uses the conditions in sue and settle agreements to set aside state-administered programs, such as the Regional Haze program.

The practice is adverse to the public interest, especially in the areas of project development and job creation. At its heart, the sue and settle issue is a situation in which the executive branch expands the authority of agencies at the expense of congressional oversight.