2808

HEADWATERS INCORPORATED

Adding Value to Energy™

October 18, 2010

Delivered by Fax and Electronic Mail

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17101

Re: To the Independent Regulatory Review Commission (IRRC)
No. 2808 EQB #7-442: Beneficial Use of Coal Ash - 10/21/10 Meeting
25 Pa Code, Chapters 287 and 290 (especially 290.201)
Deletion of Exception to Certification Standards Based on Secondary MCL's

To the IRRC,

Headwaters Resources, Inc (Headwaters) appreciates the efforts of the Pennsylvania Department of Environmental Protection (PADEP) to improve the coal ash beneficial use regulations and to specifically improve the rules related to mine reclamation. While Headwaters considers the rules and certification program a general improvement to the existing program, there is one marked exception which we wish to bring to the IRRC's attention and request that they consider taking measures to correct what is perceived as an unnecessary restriction on coal ash that is suitable for mine reclamation, specifically those coal ashes not meeting the certification limit for chloride.

The section(s) of the proposed regulations of concern, which were subsequently deleted in the final regulations without thorough explanation, are those dealing with exceptions to certification limits for standards based on secondary MCL's, including chloride. The proposed language that allowed for exceptions to exceed standards was found in section(s) 290.201 (b) (1) through (3) of the proposed rule. These exceptions were removed in the final rule.

Chloride is classified as a secondary drinking water contaminant; as such, its worst effects are only cosmetic or aesthetic and therefore it presents no significant threat to human health. Chloride itself hardly deserves such relatively a low certification concentration limit (previously 2500 ppm lowered to 250 ppm) when compared to other monitored constituents tested under the program which have limits many times the waste classification limit and may be considered more toxic (e.g. arsenic, selenium, mercury, etc.).

The coal ash certification limits for the different constituents monitored compared to drinking water standards and water quality criteria do not seem equitable. It may be argued that chloride is more mobile and less attenuated that other constituents monitored in coal ash. This is true for some constituents monitored, but there are others tested for that are also very mobile and not well attenuated and relatively more toxic than chloride (e.g. boron, nitrate, etc.). One can also argue that the attenuation of seriously toxic constituents cannot be generically assumed since it is highly

1160 Millstone Run
Bogart, GA 30622
P: 706.549.7903
F: 706.543.9772

variable and dependent on subsurface conditions. At best, understanding the relationship between laboratory data and how a constituent acts in nature is very site specific, complicated and uncertain. But the relative toxicity of chloride and other secondary MCL's is well understood and deserves exception for use because of their markedly lower potential environmental impact profile.

The ash source of particular concern to us has been used for the better part of two decades with no evidence of problem chloride levels in monitored groundwater at the mine site where it is used. In relative terms, the tonnages from this single source of concern are relatively small compared to the total tonnages of the Mod 25 program. The ash source of concern is 50,000 to 100,000 tons a year. Although this amount is small in relative terms and may be seen as insignificant by some, over a 15 year period this source has been used in Pennsylvania mine reclamation, helping the program achieve its goals, providing jobs for Pennsylvanians and providing improvements to Pennsylvania's environment.

There are currently approximately fifty sources approved in the Module 25 program. PADEP's staff is familiar with these sources, the laboratory data for these sources and the relationship between the data and potential human health and environmental impacts these sources can have, as much as one can be. With that understanding, ultimately, we think it is a fair question to ask: If this source was allowed to continue for use in mine reclamation, would it be considered the least suitable material in the program? If not, perhaps there is something wrong with the structure of the certification process. Perhaps the flexibility allowed in the proposed rules will allow for better quality coal ash to be used in mine reclamation.

We have all experienced instances where rules don't seem to follow their original intent or have unintended consequences. Headwaters believes this may be an instance where one or both of these outcomes may result from the regulation discussed. Headwaters requests that IRRC and PADEP reconsider these certain secondary MCL based constituent limits and/or their exception.

Once again, Headwaters appreciates the efforts of the PADEP to improve the coal ash beneficial use program and we appreciate the opportunity comment to the IRRC. If there are any questions concerning this matter, please do not hesitate to contact this office.

Sincerely,
Headwaters Incorporated

Thomas C. Schmaltz

Thomas C. Schmaltz, PhD
Corporate Environmental Director