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INDEPENDENT REGULATORY
REVIEW COMMISSION

Evergreen Environmental, Inc.

December 2, 2009

Environmental Quality Board
P.O. box 8477
Harrisburg, PA 17105-8477

**Re: Comments on Proposed Rulemaking for Beneficial use of Coal Ash
Chapter 287 and Chapter 290**

The following are comments concerning the proposed rulemaking modifying Chapter 287 of the Departments regulations and creating a new Chapter 290 Beneficial Use of Coal Ash as proposed in the PA. Bulletin on November 7, 2009:

Chapter 287

1. 287.1 Definitions – Coal Ash

Comment: The proposed modification of the definition of “Coal Ash” is in direct conflict with the statutory definition of Coal Ash as contained in Section 103 of the Solid Waste Management Act of 1980, Act 97, as amended. In addition it presents a conflict with the explicit exclusion of coal ash from the definition of “solid waste” in Act 97 which was modified specifically to address the beneficial use of coal ash in the amendments to Act 97 in 1996. It was the intent of the General Assembly that coal ash that is beneficially used be exempt from the definition of solid waste and as a result not subject to any related regulations under Act 97.

It is essential that the definition of coal ash for purposes of Chapter @87 and 290 be consistent with the statutory definition of coal ash under Act 97 and as it is defined for purposes of the exclusion from the statutory definition of solid waste. The proposed regulations should be revised to maintain the existing definition of coal ash.

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Chapter 290

1. Absence of Transition Period

Comment: Under the proposed Chapter 290, no transition period is provided for current active and abandoned mining sites that are approved for the beneficial use of coal ash to achieve compliance with the new regulatory requirements. Unless the intent is to grandfather these sites, all existing approved or permitted coal ash beneficial use sites would be required to cease operation immediately upon the publication of the final regulations unless a transition period is provided for. This would cause an unnecessary crisis for all electric generating facilities that currently rely on these sites for the management of their coal ash.

Similar to the transition period offered to landfills upon the promulgation of the municipal and residual waste regulations in 1988 and 1992, a two (2) year period should be provided to existing approved or permitted active or abandoned beneficial use sites to achieve compliance with the new regulations. Two years is a minimum period to receive approval of a water quality monitoring plan, drilling of new monitoring points and completion of the newly required 12 months of background monitoring.

DEP has no authority to apply these new standards to existing approved sites until the new regulations are promulgated and published as final regulations in the Pa. Bulletin.

2. §290.105 Abandoned Coal Surface Mining Sites

Comment: Subsection (b) (5) needs to be modified to clarify the criteria which will determine when the beneficial use of coal ash at an abandoned mine site will require approval of a water quality monitoring plan. Currently, (b) (5) states that a water quality monitoring plan is required "if applicable". However, no explanation is provided to explain under what circumstances a water quality monitoring plan will not be required. In addition, this is made more confusing by the fact that the list of sites required to submit a water quality monitoring plan as contained in the proposed §290.301 (a), does not include abandoned mine sites under §290.105.

3. Down-gradient monitoring points under §290.302 (a) (2)

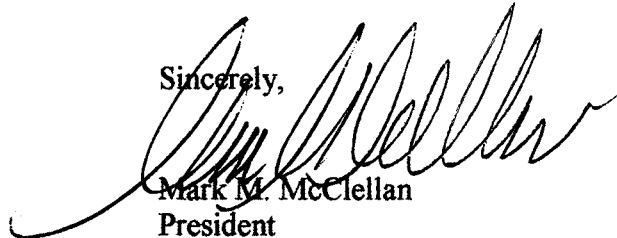
Comment: While the preamble to the proposed regulations infers that on a case-by-case basis a beneficial use site may have less than three (3) down-gradient monitoring points, §290.302 (a) (2) clearly states that "at least" three (3) down-gradient monitoring points will always be required. This section also does not provide any exception to this rule. Secondly, §290.302 (b) (3) requires these down-gradient wells to be "within 200 feet of the coal ash placement area" without exception.

This is neither essential to insure protection of groundwater and surface water, it in many cases will be impossible to achieve particularly within 200 feet of the placement area and will unnecessarily prevents the beneficial use of coal ash to reclaim abandoned mine lands which other wise will never be reclaimed. In many cases due to previous mining the hydro-geological structure beneath abandoned sites has been completely affected by the mine pool and a single monitoring point is adequate to monitor the placement of coal ash. Further there is no statue or regulation that established that a minimum of 3 down-gradient monitoring points are "required". DEP has acknowledge that over 17 years of evidence has shown that the beneficial use of coal ash for mine reclamation has not posed any threat to the environment or public heath including groundwater.

The proposed §290.302 should be revised to allow a case-by-case determination of the required number of down-gradient monitoring points at coal ash beneficial use sites and should eliminate or provide an exception to the 200 foot limit contained in §290.302 (b) (3)

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark M. McClellan', written in a cursive style.

Mark M. McClellan
President