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DEC 23 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached, for your review, are comments submitted on behalf of AES Beaver Valley, AES Thames, and AES Westover regarding proposed Chapter 287 and 290 rulemaking. Thank you for the opportunity to submit these comments.

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Tuesday, December 22, 2009

The following comments are submitted on behalf of AES Beaver Valley LLC, AES Thames LLC, and AES Westover LLC ("AES") regarding the proposed rulemaking that includes amendments to Chapter 287 and the addition of Chapter 290 for the establishment of standards, procedures and requirements applicable to the beneficial use of coal ash. AES also participated in the December 7, 2009 and December 8, 2009 public hearings held in Pittsburgh, and Ebensburg, respectively.

We appreciate the openness of the process and the Environmental Quality Board's desire to create a reasoned, well-balanced outcome. AES fully supports the continued beneficial utilization of coal ash. Over the past several decades, coal ash in the Commonwealth has been beneficially used in many applications, including:

- Mine reclamation projects
- Manufacture of cement and concrete
- Development of grouts and flowable fill
- Anti-skid materials
- Other infrastructure applications including block, pavers, etc.

We believe it is critical that the final regulations fully recognize this diversity of application and ensure each application is dealt with on its own merits vs. a "one size fits all" approach. Recycling of material in environmentally responsible ways is good for all stakeholders. Finally, we believe the regulation should include all technologies (pulverized coal, circulating fluidized bed, and stoker technology) and include an automatic exemption of any administration requirements for reclassification of ash composition for any substitute with biomass for all or part of coal consumption at a facility.

General Comments

Utilization of coal ash for mine reclamation is the dominant beneficial use in Pennsylvania. The proposed regulations mirror this fact and considerable attention is dedicated to portions of Chapter 290 that pertain to this practice.

Clearly, the proposed regulations reflect the findings and recommendations contained in the March 1, 2006, National Academy of Sciences ("NAS") report on *Managing Coal Combustion Residues in Mines*. This report concludes that the main advantages of beneficially using coal ash in mine reclamation are:

"(1) [I]t can assist in meeting reclamation goals (such as remediation of abandoned mine lands), and

(2) [I]t avoids the need, relative to landfills and impoundments, to disrupt undisturbed sites."

Further, in the case of Pennsylvania, the by-product (coal ash) can be safely used to address the most widespread water pollution problem in the state (acid mine drainage). There are also safety benefits derived from using coal ash to address the dangerous conditions that can exist at abandoned mine sites – both surface and underground. It is clearly sound public policy to encourage the beneficial use of these materials wherever and whenever possible in environmentally safe applications.

The NAS report (note that in the report coal combustion products are referred to as “CCRs”, Coal Combustion Residues) includes several recommendations:

- CCRs should be characterized prior to significant mine placement and with each new source of CCRs. [*Id.* At 5.]
- [C]omprehensive site characterization specific to CCR placement is conducted at all mine sites prior to substantial placement of CCRs. [*Id.* At 6.]
- CCR placement in mines is designed to minimize reactions with water and the flow of water through CCRs. [*Id.* At 7.]
- [T]he number and location of monitoring wells, the frequency and duration of sampling, and the water quality parameters selected for analysis be carefully determined for each site, in order to accurately assess the present and potential movement of CCR-associated contaminants. [*Ibid.*]

AES supports these recommendations except where biomass is being utilized as a direct substitute for coal. In those isolated cases, the requirement for new characterization should be exempted because biomass ash improves the overall ash composition. Further, it will allow Pennsylvania and other northeast states to develop more quickly biomass co-firing applications and advance their renewable energy goals while also addressing many of the Green House Gas (GHG) issues being promulgated.

We also support those regulations proposed in Chapter 290 that are designed to address the above recommendations and, where necessary, strengthen the existing beneficial use regulations. However, this must be done in a manner that recognizes the specific characteristics of the ash to be beneficially used; how the ash is intended to be used; and the specific characteristics of the site where the material is to be placed. Discrete changes in the chemical characteristics of the coal ash or in water quality cannot serve as the basis for making operational or regulatory decisions. Such decisions must be based on statistically significant changes that are supported by clear trends.

Throughout the proposed regulations there are no provisions for transitioning many of these requirements to those sites that have been previously approved to store or use coal ash and are actively in the process of doing so – prior to the adoption of these regulations. There is also no indication as to the effective date on which all of the new requirements of the proposed regulations are applicable (i.e. “within x of the regulations becoming final”).

Lastly, since this chapter of the residual waste regulations is being modified on a separate track from the other solid waste regulations we are concerned that there could be references in the proposed regulations to other chapters or requirements of the solid waste regulations that could be modified or developed at a future date (such as the anticipated merging of the residual and municipal waste regulations).

Specific Comments

AES has worked closely with the Pennsylvania Electric Power Generation Association (EPGA) and fully support their specific submitted comments.

Conclusion

AES' appreciates the efforts of the Department in developing beneficial use regulations – this is a management option that makes sense and can be done in a manner that is protective of human health and the environment. We appreciate the opportunity to provide these comments and hope they will be beneficial as you create the final details of the regulation.

Sincerely,

Christopher Wentlent
Director, Regulatory – AES North America East