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From: raina@coalfieldjustice.org
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DEC 23 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

Please see the attached comments for submission.

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Proposed Chapter 290 Regulations, Beneficial Use of Coal Ash

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INDEPENDENT REGULATOR
REVIEW COMMISSION

I am writing on behalf of the Center for Coalfield Justice (CCJ), to weigh in on proposed Chapter 290 Regulations. As a coalfield justice organization, we are already well aware that coalfield citizens bear the brunt of many of our most unjust regulations when it comes to resource extraction, energy use and waste disposal. Mine sites should not be allowed to become dumps for toxic wastes – entire coalfield communities have been damaged or destroyed as a result of the entire cycle of coal.

The PA DEP's proposed regulations in Chapter 290 would replace existing Chapter 287 with some improved safeguards and would incorporate other provisions that are now only administrative guidance. DEP deserves thanks for that.

However, the PA DEP proposed regulations lack basic safeguards such as liners, corrective action standards and requirements for mine operators to post bonds or other funds to clean up the pollution their ash causes. Furthermore the improvements that the regulations do make in testing and monitoring of ash are riddled with loopholes that allow PA DEP to waive them.

Given that SMCRA requires that damage be contained within the mining activity site, and the leaching from the CCW ash has been found to be outside the permitted boundaries, this represents a fundamental violation of SMCRA. Therefore, full site characterization and hydrogeological characterization before ash placement must be required.

Along with many other concerned citizens and allied organizations, CCJ seeks enforceable standards via the following improvements to the proposed Chapter 290 regulations:

1. Remove all waivers, loopholes and Department discretion – all regulations should be strictly enforced, without exceptions.

2. Isolation Requirements:

At no time, should coal ash be placed within the water table in an active or abandoned coal mine – absolutely no exceptions.

3. Monitoring Requirements:

- a. Up gradient and down gradient monitoring wells should be required at all coal ash placement sites – absolutely no exceptions.
- b. Monitoring should be required of all mine placements, structural fills or soil amendments involving more than 10,000 tons of ash.
- c. Monitoring of surface water drainages and plant uptake of metals should also be required for projects using coal ash as soil amendments or soil additives.
- d. Baseline monitoring of ash sites and monitoring plans should be completed and subjected to Department scrutiny *and* public input prior to project approvals or the issuance of mining permits involving ash placement.
- e. At least a year of monthly sampling should be required to collect enough baseline data to characterize water quality at ash sites before permits are issued. Discretion to allow less than a year of monthly sampling prior to permit approval should be eliminated.
- f. A frequency of no less than quarterly monitoring should be required during ash placement. Discretion to allow less than quarterly monitoring should be eliminated.
- g. At least thirty years of quarterly monitoring after ash placement is finished should be required without exception.

4. Corrective Action Requirements:

A groundwater assessment plan should be submitted within 60 days after a concentration of a toxic metal or other ash constituent exceeds the highest baseline concentration (pre-permit concentration) at a down-gradient monitoring point.

The objective should be to investigate and address increases in contaminants onsite before offsite public or private water supplies are contaminated.

5. Financial Assurance

A new section requiring financial assurance in the form of bonds or similar instruments should be included in these regulations. This section should require such financial assurance to be posted by operators before permit issuance and maintained throughout required monitoring at a site in amounts sufficient to monitor and abate pollution from the ash. Such assurance should not be released until monitoring has verified that ground waters and surface waters have not been contaminated by ash placement and are not likely to be contaminated by that placement.

We believe these important changes to the proposed Chapter 290 regulations for the Beneficial Use of Coal Ash should be required in order to ensure that adequate

protections will be put in place and taxpayers will not be saddled with cleanup costs nor residents victimized by contamination while those who profited from the placement are shielded by premature release of bonds, corporate dissolution or bankruptcy.

Taxpayers are still paying the costs left to us by the wealthy coal robber barons, and the last thing we need is another deadly and costly cleanup. We urge the Department to remove all loopholes from the proposed Chapter 290 regulations and provide the Commonwealth with fully enforceable regulations to protect us all.

Thank you.