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From: Lisa Graves-Marcucci [lisagmarcucci@gmail.com]
Sent: Tuesday, December 22, 2009 12:55 PM
To: EP, RegComments
Cc: Hanger, John
Subject: Written Comments: Chapter 290 Beneficial Use of Coal Ash Proposed Regulations
Attachments: LGM Written Comments, CCW Chapter 290 Proposed Regulations.doc

INDEPENDENT REGULATORY
REVIEW COMMISSION

Ladies and Gentlemen,

I have attached my written comments regarding the proposed Chapter 290 Beneficial Use of Coal Ash regulations. Please accept this as part of the official public comment record on this issue.

Thank you,

Lisa Graves Marcucci

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CCW Chapter 290 Proposed Regulations – Written Comments for the official record,
submitted by Lisa Graves Marcucci.

Pennsylvania Administrative Law Judges and the US Department of the Interior Board of Land Appeals (IBLA) have found the PA DEP coal combustion waste mine filling programs deficient.

The PA Environmental Hearing Board invalidated PA DEP CCW monitoring plan saying, “The system is simply not capable of detecting contaminants that leave the site. If the Project results in groundwater pollution, no one will know it. The monitoring plan merely creates the illusion of protection, which is arguably worse than no monitoring at all. This is truly unacceptable, and the Department acted unreasonably and in violation of the law in concluding otherwise.”

CAUSE v. PA DEP, EHB Docket No. 2006-995-L (November 2, 2007)

Similarly, the US Interior Board of Land Appeals ruled that PA DEP’s failure to properly monitor ash contamination threatened the public water supply wells in the Borough of Tremont, PA.

Robert Gadinski, 177 I.B.L.A.373, 2009

Coal combustion waste (CCW) is contaminating water sources across America including sites in Pennsylvania. However, in an effort to preserve the so-called “beneficial use” status of these wastes, citizens believe the PA DEP is ignoring its own data – refusing to even consider the possibility that CCW dumped at mine sites has already degraded water sources and will continue to do the same.

The PA DEP has proposed regulations in Chapter 290 that would replace existing Chapter 287 with some improved safeguards and would incorporate other provisions that are now only administrative guidance. And, we thank the Department for that.

Unfortunately, the PA DEP steadfastly continues to protect the short-term, economic interests of the waste coal industry under the guise of “beneficial use” of toxic wastes. PA DEP and coal mine operators, along with their networks of supporting industries, believe coal combustion wastes are “beneficial,” PA citizens remain concerned that the so-called “benefits” address only the economics of the operations and do little or nothing to protect public health or the environment, especially water sources.

The 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.

The fundamental deficiencies that allow the power industry to pollute groundwater while escaping responsibility for it through deficient permits issued by PA DEP will continue in these regulations unless the loopholes are closed and less discretion is granted to the Department to waive key safeguards.

We seek enforceable standards via the following improvements to the proposed Chapter 290 regulations:

Isolation Requirements:

1) Coal ash should not be placed within 8 feet of the uppermost water table in a mine without use of a cover, leachate collection and detection systems and a composite liner (using synthetic material and clay) to minimize leachate generation and prevent leachate from reaching groundwater. At no time, should coal ash be placed within the water table in an active or abandoned coal mine.

The proposed regulations tighten up the separation of ash from groundwater for soil amendments and structural fills but is similar to the current PA regulations for groundwater separation from ash in mines and abandoned mines, which give the Department discretion to allow unlimited quantities of CCW to be dumped into the water table at mine sites, a practice that is commonly sanctioned in current mine permits. The “demonstration” in these permits is not substantiated by any site-specific data. We believe this discretion is being abused and should not be allowed.

We are proposing language that allows the PA DEP to continue “beneficial use” of ash in mines without giving a green light to contaminate groundwater. It will allow alkaline ash to be mixed with acidic spoils for alkaline addition. It would also allow “impermeable barriers” of ash to be constructed well above the water table to divert surface waters from contacting acidic spoils, coal refuse or acid-producing earth layers thus preventing the creation of acid mine drainage. This is in keeping with the recommendation in the 2006 National Research Council findings.

Monitoring Requirements:

1) Monitoring should be required of mine placements, structural fills or soil amendments involving more than 10,000 tons of ash. 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. Currently Chapter 290 waives monitoring for projects involving less than 100,000 tons of coal ash or 10,000 tons/acre of coal ash. We ask that this waiver be removed.

2) 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.

Without monitoring that characterizes the location, quality, rates and directions of water flow at the site or a monitoring plan before the permit is issued that ensures that harm to site water will be detected, the Department cannot meet its obligation under mining law to issue permits that demonstrate that water supplies will be protected from the ash placement.

3) 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.

4) A frequency of no less than quarterly monitoring should be required during ash placement.

Discretion to allow less than quarterly monitoring should be eliminated.

5) Up-gradient monitoring that measures the effects of mining without ash placement should always be required.

The proposed wording will allow the Department to continue to issue permits without up-gradient monitoring as it has done at the Ernest, McDermott, BD Mining, Ellengowan, Hartley and other mine sites. Thus regulators will continue to lack the ability to readily differentiate contamination by ash from the temporary impacts often caused by mining. Permits should never allow ash to be placed in locations that hamper the effectiveness of monitoring systems.

6) At least thirty years of quarterly monitoring after ash placement is finished should be required. Currently the proposed regulations require only 10 years of monitoring after ash placement is finished at mine sites, with the latter five years of it being only annual monitoring.

Thirty years of monitoring after ash placement ensures monitoring will continue for a period long enough to differentiate contamination by ash from impacts of mining. Thirty years is the duration of monitoring after closure at more hydrologically stable and less fractured municipal solid waste landfills. Groundwater in mined areas can require considerable time to recharge due to major disruption of aquifers from the mining, which supports longer monitoring than occurs at landfills, not shorter.

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.

Leaving the judgment up to Department staff to decide when a “significant change in the quality of groundwater or surface water from background levels” occurs will not ensure that increasing concentrations of pollution are investigated before major contamination to offsite groundwater occurs. The rules should require that confirmed measurements of pollutant levels at a down-gradient ash monitoring point that are higher than levels prior to ash placement will trigger the requirement to investigate the causes of those increases in an “assessment plan.”

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

2) The submission of the assessment plan should not be waived by re-sampling or demonstrations asserting seasonal variations or sources other than ash are responsible, if a third such exceedance occurs above the highest baseline concentration for a parameter at the same down-gradient monitoring point.

Contaminant levels can fluctuate from one sampling to the next depending upon the movement of contaminant plumes, the nature of flow at the monitoring point, precipitation events and other factors. Therefore the regulations should error on the side of caution and not allow repeated exceedances of baseline concentrations to be explained away without investigation.

3) Regulations should require that the monitoring plan to be submitted will include criteria that define “material damage to the offsite hydrologic balance” will be prevented when coal ash is used at a coal mine. Any violation of applicable surface water quality standards or groundwater standards in waters draining beyond the mine property boundary should be considered prohibited material damage to the offsite hydrologic balance.

Requiring permits to specify up front the material damage that will be avoided will ensure that monitoring systems capable of detecting that damage will be functioning before ash placement starts. Ensuring this imperative requirement is met should not wait until contamination has been documented and lengthy deliberations over assessment and abatement plans are necessary.

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.

This ensures that adequate monitoring systems 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.

Residents of the Commonwealth of Pennsylvania fully understand the impacts of acid mine drainage to our streams and other waterways. However, we strongly disagree that using toxic coal ash in a cavalier manner will do nothing but create further degradation to our water, health and overall environment.

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,
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