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INDEPENDENT REGULATORY
REVIEW COMMISSION



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December 18, 2009

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Environmental Quality Board
Rachel Carson State Office Building - 16th floor
400 Market Street
Harrisburg, PA 17101-2301

DEC 21 2009

ENVIRONMENTAL QUALITY BOARD

Re: Comments to Proposed Rules - Beneficial Use of Coal Ash
(25 Pa. Code Chapters 287 and 290)

To the Environmental Quality Board:

Headwaters Resources Inc. (Headwaters) appreciates the opportunity to comment to the Environmental Quality Board (Board) on the referenced proposed rules. For almost two decades Headwaters has participated in Pennsylvania's coal ash beneficial use program and worked with the Pennsylvania Department of Environmental Quality (Department) in what we consider are many successful surface mine reclamation and other coal ash utilization projects.

The proposed regulations represent an opportunity to strengthen the coal ash beneficial use program in the Commonwealth and Headwaters believes their intent is to improve an already competent framework for the beneficial use of coal ash in the state. The comments submitted below are offered with the same intent:

Coal Ash Definition – The definition of coal ash found in Section 287.1 should be expanded to include coal ashes generated from blended fuels that include minor amounts of other fuel sources. This would be similar to federal and other state definitions of the same material. Allowing limited amounts of other fuels blended with coal would potentially eliminate some of the general permitting required currently for such blended fuel and reduce overall permitting effort required from the Department. Modifications to definitions in other environmental laws may be required to accomplish this completely.

Certifications for Other Coal Ash Uses – Proposed Section 290.101 (b) provides that sampling, analysis and chemical limit requirements for coal ash certification (Subchapter C) should apply to coal ash beneficial uses found in Section 290.106 (b). This requirement does not take into account the relative risks associated with different coal ash utilizations. While some flexibility is provided for certain uses (Section 290.106 (b) 1-3 uses may have a waived or modified requirement), it is not clear how waivers or modifications would be provided, whether on a use basis, job basis, source basis, or other. As those certification requirements of Section 290.201 (a) and (c) were developed for coal ash used in mine reclamation, structural fill and the like, it is recommended that specific certification requirements also be developed (or waived as appropriate, as may be the case with use in concrete) for all uses of Section 290.106 (b) to eliminate related uncertainties.

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Water Quality Monitoring Plan for Large Projects – Section 290.101 (d) should be qualified with specific tonnages by use. Changes to the minimum tonnages triggering a plan may further complicate application of this rule as proposed. While some flexibility is provided for certain uses (Section 290.106 (b) 1-6 uses may have a waived or modified requirement) it is not clear how waivers or modifications would be provided, whether on a use basis, job basis, source basis, or other. It is suggested that specific trigger tonnages be developed (or waived as appropriate, as may be the case with use in concrete) for all uses of Section 290.106 (b) to eliminate related uncertainties.

Coal Ash Uses Not Applicable to Section 290.106 – Coal ash uses listed in Section 290.106 (a) may be incomplete. Other uses that may be required in the list are use as backfill at active mines and use as backfill at abandoned mines. Regardless, the list in Section 290.106 (a) is unnecessary as specific applicable uses for the section are individually enumerated in Sections 290.106 (b) 1-6.

Redundant Sampling and Testing Requirement(s) – Additional sampling and testing of coal ash after placement at the mine site on a quarterly basis, as required in Section 290.104 (i), may be considered redundant; or, such sampling and testing at the mine site may prove that the quarterly testing required by generators is redundant and/or invalid. An argument can be made that placed coal ash is the most valid and representative sample available. Certainly, any number of physical and chemical changes may occur between ash generation and placement (consider moisture conditioning, weathering, placement activities, etc.). And, while it seems reasonable that the coal ash as generated should be monitored in some fashion, there seems to be at least some redundancy in the current scheme. Further, the referencing of Section 290.201 (c) (5) within 290.104 (i) may not be appropriate as that section requires a number of samples and sampling periods that do not appear adaptable to a quarterly interval at all mine site locations.

Potentially Unnecessary Certification Testing – Certification testing required under Section 290.201 (c) (7) and (8), for permeability and neutralization potential respectively, may be considered essential for utilization of coal ash as a low permeable material or for alkaline addition; however, those tests may not be applicable to coal ash used as ordinary placement as backfill. Also, certification testing required under Section 290.201 (c) (6), Proctor, may not be necessary so much for certification as use at placement sites for compaction effort verification. It is suggested that certification testing requirements be refined to reflect individual utilizations.

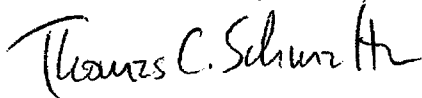
Annual Reporting of Cubic Yards – Reporting requirements under Section 290.201(e) (3) for coal ash dry tons on an annual basis are clearly needed and may be considered a reliable number. Requiring cubic yards would seem unreliable unless more specific reporting requirements are given. Coal ash loosely packed into a delivery truck or rail car has quite a different volume from the same mass placed at a mine site. To determine cubic yards based on tonnages, proctors, and density testing could be done, but is just a mathematical exercise. Whatever purpose the cubic yardage information is intended for, should be the basis for the determination method(s).

Establishment of Maximum Leachate Concentrations – Section 290.201(a) (1) should be absolute numbers, not dependant on a basis number. While current multipliers of basis numbers produce rational targets for maximum concentrations, they may not always do so (e.g. fluoride). Using an absolute number will provide the Department with an evaluation period to examine changes prior to establishment in rule.

Delay of Promulgation and Effective Date – These proposed rules changes are significant. It is strongly suggested that the final promulgation and effective date of these rules be established to allow for an adequate transition period for these significant changes. If more time is needed to allow for the proposed rules, current policies, and guidance to evolve, we trust that such a time period will be provided. Also, consideration should be given to time required to install capital improvements required by the rules.

Headwaters looks forward to the enhanced coal ash utilization program that these rules should produce when finalized. Should the Board or the Department have any questions concerning these comments, please do not hesitate to contact this office.

Sincerely,
Headwaters Incorporated



Thomas C. Schmaltz, Ph.D.
Corporate Environmental Manager

Cc: Corp. File