

---

**From:** Randy Lindenmuth [rlindenm@ptd.net]  
**Sent:** Tuesday, December 22, 2009 9:46 AM  
**To:** EP, RegComments  
**Subject:** Comments on 25 PA code Chapters 287 and 290  
**Attachments:** 287-290 Comments-RLL.doc

DEC 23 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSION

EQB,

Thank you for your consideration of the attached comments and suggestions on the proposed Chapters 287 and 290.

Randy Lindenmuth, P.E.  
Managing Director  
Lehigh Engineering, LLC  
P.O. Box 1200  
200 Mahantongo Street  
Pottsville, PA 17901  
Phone: (570) 628-2300  
Cell: (570) 573-3241  
Fax: (570) 622-2612  
[www.lehighengineer.com](http://www.lehighengineer.com)

DEC 23 REC'D

To: Environmental Quality Board  
Via email at: RegComments@state.pa.us

INDEPENDENT REGULATORY  
REVIEW COMMISSION

December 21, 2009

RE: 25 PA CODE CHS 287 and 290

**Comments and suggestions in *Italics* re Proposed Rulemaking Regulation  
Chapters 287 and 290 Beneficial Use of Coal Ash**

**Unaddressed issues in 290:**

1. *The proposed rules do not address a **transition time** for the new regulations to be implemented. Some of the existing beneficial use sites may have to have new wells installed or existing ones revamped to meet the new guidelines. We suggest that there be a maximum implementation time of one year allowed so as not to interrupt the use of the facility while the new requirements are being put into place.*
2. *Grandfathering of sites should be addressed. As long as an existing facility has complied with the previous guidelines, there would be no **retroactive** requirement to meet the new regulations at those sites during the proposed implementation period as suggested above. These provisions would provide **grandfathering** of the old regulations and allow for transition to the new for all existing permitted sites prior to their ability to completely implement the new requirements.*
3. *We will learn a lot as we put the new regulations into place. We should plan to review the pitfalls and varying interpretations of the regulations and take corrective or clarifying action to revise them as needed after 2 years experience. We must work together to quickly fix the hopefully few problems with this program so that it works well for the **overall good of Pennsylvania**.*
4. *The use of the '**de minimus**' or 'insignificant' concept is missing from the regulations. This regulation should only be effective for projects where more than '???' thousand tons are involved. As written, they would be effective for the first pound, or ounce, etc. Projects utilizing less than this established amount would not be regulated under this chapter.*
5. *The spirit of Chapter 290 is outlined by DEP Chairman, John Hanger, in the EQB Proposed Rule Making introduction of the new chapter. That spirit should not be lost when interpreting the intent of the new regulations after approval. Beneficial use of Coal Ash is a proven concept. We should not let the new 290 be an opening to create further new interpretations and rules. If an existing method, rule, or practice is in use today at existing sites and 290 does not address a need to change it, then the release of 290 should not be used as a cause for new interpretations.*

**Additional comments:**

§ 290.101. General requirements for the beneficial use of coal ash.

(d) A water quality monitoring plan in accordance with § 290.301 (relating to water quality monitoring) and, if applicable, Chapters 86—90 must be developed and implemented if either more than 10,000 tons of coal ash per acre is to be used on a project or more than 100,000 tons of coal ash in total will be used at a project. Contiguous projects will be considered a single project for purposes of this section. The Department may require a water quality monitoring plan for projects involving lesser quantities of coal ash where site conditions warrant. The Department may waive or modify this requirement for uses under § 290.106(b)(1)—(6).

*With regard to 290.101 (d), it is suggested to strike the 10,000 ton per acre limit, and raise the 100,000 ton limit to 500,000 tons. The 10,000 ton per acre threshold amounts to a thickness of less than 6.2 feet of ash per acre, which is not likely to be of beneficial use in reclaiming many small sites. Furthermore, the 100,000 ton threshold is also relatively small for considering a small site for reclamation. The thresholds of 10,000 and 100,000 tons are likely to discourage beneficial use for small sites.*

*Comprehensive chemical analysis should only be required in certain circumstances (i.e., placed in direct contact with the ground). The use of coal ash in products (i.e., cement) should not be subject to the comprehensive chemical analysis. Also, coal ash used in products should not be subject to quantity criteria defined in 290.101 (d).*

**§ 290.104. Beneficial use of coal ash at coal mining activity sites.**

**(c) Permit filing fee.**

**(1)** A nonrefundable permit filing fee payable to the "Commonwealth of Pennsylvania" for the beneficial use of coal ash at a coal mining activity site is to be paid annually in the amount of \$2,000. This annual filing fee is to be paid until final bond release for the coal mining activity site.

*The permit filing fee should be waived if the beneficial use reclaims abandoned mine sites, even if the abandoned sites are associated with an active surface mining permit. The fee is a deterrent for beneficial utilizing of ash for reclaiming abandoned mine lands. The use of ash to reclaim abandoned mine lands actually saves the Commonwealth money that it might otherwise need to spend to reclaim abandoned mine lands.*

*The 24 hour limit defined in 290.104 (f)(3) is too restrictive and does not consider operational situations that may occur.*

**§ 290.104. Beneficial use of coal ash at coal mining activity sites.**

**(h)** Additional operating requirements for the beneficial use of coal ash at coal refuse disposal sites. The following apply to the beneficial use of coal ash at coal refuse disposal sites:

**(1)** Placement of coal ash as part of coal refuse disposal operations permitted under Chapters 86—90 must meet the following:

**(i)** The cubic yards of coal ash does not exceed the total cubic yards of coal refuse to be disposed based on uncompacted volumes of materials received at the site.

*Add the phrase "unless approved by the Department." To 104.h.1.i*

**§ 290.104. Beneficial use of coal ash at coal mining activity sites.**

**(i)** Additional coal ash sampling. A person using coal ash at a coal mining activity site shall, each quarter that coal ash is being used at the site, sample the ash after it has been placed at the site and such sample shall be analyzed in accordance with **§ 290.201(c)(5)**. The results of the analysis shall be submitted quarterly to and in the format required by the Department.

*If the ash generator source and the ash placement are located at the same site, and the designated ash placement area utilizes only that source of ash, then it is not necessary to sample at both the source and the ash placement area. This will eliminate redundant sampling at the same site.*

**§ 290.105(e)(1).** *Typically, the pH of the coal ash used at these sites is alkaline in nature and environmentally benefits the typical acidic condition of mine sites. The same limit required for active coal mining site should apply (>7.0).*

**§ 290.105(e)(3).** *The 24 hour limit defined in 290.105 (e)(3) is too restrictive and does not consider operational situations that may occur.*

**§ 290.201.** *The following language be added to 290.201(a)(1)(ii) –  
“For contaminants other than metals and cations, DEP may approve up to 10 times the waste classification standard for a contaminant.”*

*We recommends that the regulation be revised to explicitly allow DEP to certify coal ash that exceeds certification standards based on secondary MCLs for beneficial use at mine sites where applicants can demonstrate that any potential increase in concentrations of those constituents in groundwater would be inconsequential, regardless of baseline levels.*

*We suggest the following language be added to 290.201(c) – “This section shall apply only to non-cementitious application of coal ash applied to the land.”*

*We suggests the following language be removed from to 290.201(c)(5)(i) – “nitrite.”*

*Permeability should be calculated only when the coal ash is to be used as a low permeability material. A representative sample should be taken when a significant change in operation occurs.*

**§ 290.302.** Number, location and depth of monitoring points.

**(b)** The upgradient and downgradient monitoring wells must be:

**(3)** Located within 200 feet of the coal ash placement area, except as necessary to comply with subsection (c), and located at the points of compliance.

*The restriction of “within 200 feet” may be pose a problem due to geologic and/or topographically conditions unique to a specific site. Discretion should be provided to the department “unless otherwise approved by the Department.”*

*The regulation should make reference to the acceptability (grandfathering) of approved existing in-use wells that, while different than the proposed regulation, still are acceptable monitoring points.*

*Also, as a general comment, the term ‘well’ is used in many cases rather than ‘monitoring point’. Some monitoring points are not wells. Are we to assume the terms are interchangeable?*

**§ 290.303.** Standards for wells and casing of wells.

**(a)** A monitoring well shall be cased as follows:

**(4)** The well must be filter-packed with chemically inert clean quartz sand, silica or glass beads. The material must be well-rounded and dimensionally stable.

*The requirement for filter-packed wells penetrating strata containing abandoned mine workings in geologically complex strata of the anthracite fields may be difficult in underground cavities. Furthermore, 'yellow boy' and other fine material may clog the filter-pack, making the well useless. An alternate would be to use well screening, which could be pulled and replaced if it became clogged. There should be discretion provided to the department for alternatives to filter-packing.*

*The regulation should make reference to the acceptability (grandfathering) of approved existing in-use wells that, while different than the proposed regulation, still are acceptable monitoring points.*

**§ 290.303.** Standards for wells and casing of wells.

**(b)** Monitoring well casings must be enclosed in a protective casing that must:

**(4)** Be numbered for identification with a label capable of withstanding field conditions and painted in a highly visible color.

*Strike the requirement for high visibility. High visibility is an advertisement for vandalism at remote sites. If the wells are required to be accurately surveyed for location by GPS, and are adequately protected from machinery, it should not be necessary for the wells to be highly visible.*

**§ 290.304.** Language concerning when an assessment plan is necessary should be revised as follows: (a)(1) ...**statistically significant degradation** in the quality ...Also, under 290.304(b), we recommends the following language be inserted as (3) – “The person has demonstrated that the degradation is inconsequential based on a previously approved demonstration under 290.201(b)(3).”

**§ 290.305.** Language concerning when an abatement plan is necessary should be revised as follows: (a)(1) ...**statistically significant degradation** in the quality ...

*Under section (d) add, “or the person has demonstrated that the degradation is inconsequential based on a previously approved demonstration under 290.201(b)(3).”*

**§ 290.404(a)(2).** Language should be revised to reflect the groundwater source is a drinking water source.

Please Note: Some of the comments above are taken from or are similar to submittals from other associates. By including them, we are supporting their issue. Hopefully this will relay to the EQB that these items are of concern to more than just one commentor.

Submitted by:

Lehigh Engineering, LLC  
Randy Lindenmuth, PE Managing Director  
200 Mahantongo St  
Pottsville, PA 17901