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Sent: Monday, December 21, 2009 3:21 PM
To: EP, RegComments
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Subject: PROPOSED RULEMAKING ENVIRONMENTAL QUALITY BOARD [?25 PA.?CODE CHS. 287 AND 290?] Beneficial Use of Coal Ash [39 Pa.B. 6429] [Saturday, November 7, 2009]

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

RECEIVED
DEC 23 REC'D
INDEPENDENT REGULATORY
REVIEW COMMISSION

Subject: Comments on Proposed Rulemaking

Reference: PROPOSED RULEMAKING ENVIRONMENTAL QUALITY BOARD [25 PA. CODE CHS. 287 AND 290]Beneficial Use of Coal Ash
[39 Pa.B. 6429] [Saturday, November 7, 2009]

Northampton Generating Company, L.P. is submitting the following comments on the referenced proposed rulemaking. Please accept the specific comments as highlighted in red below. We would appreciate a response confirming that our comments were received and are acceptable for your review.

Sincerely,
Dan Traynor
Environmental Manager

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Specific Comments
CHAPTER 287. RESIDUAL WASTE MANAGEMENT-GENERAL PROVISIONS
* * * * *
§ 287.1. Definitions.
The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *
Coal ash—Fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is or has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. The term includes

such materials that are stored, processed, transported or sold for beneficial use, reuse or reclamation. **[For purposes of this article, the term also includes fly ash, bottom ash or boiler slag resulting from the combustion of coal, that is not and has not been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose.]**
Comment: include language in the definition of "Coal ash" to include ash from the combustion of coal and alternative fuels; suggested language is to add "and mixtures of coal and alternative fuels" after "... from the combustion of coal"

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Structural fill—The engineered use of **[coal ash] material** as a base or foundation for a construction activity that is completed promptly after the placement of the **[coal ash] material**, including the use **[of coal ash]** as **[a]** backfill **[material]** for retaining walls, foundations, ramps or other structures. The term does not include valley fills or the use of **coal ash or** solid waste to fill open pits from coal or noncoal mining.
Comment: delete the suggested wording in the last sentence "coal ash or"; there is no need to include this in the definition and is contradictory to Chapter 290 which encourages coal ash use to fill open pits from coal mining activities.

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CHAPTER 290. BENEFICIAL USE OF COAL ASH

Subchapter B. BENEFICIAL USE OF COAL ASH

§ 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) (relating to other beneficial uses of coal ash).
Comment: The water quality monitoring plan should not be based on the amount of coal ash that is proposed to be beneficially used at a site. Either some form of monitoring should be required at all sites (consistent with the mining activity regulations), or monitoring requirements should be imposed on a site-specific basis.

§ 290.102. Use of coal ash as structural fill.
(a)(7) This statement by the landowner in (6) shall be a recordable document for any project, or set of contiguous projects involving placement of more than 10,000 tons of coal ash per acre. Prior to beneficial use of more than 10,000 tons of coal ash per acre under this section, the statement by the landowner shall be recorded at the office of the recorder of deeds in the county in which the proposed coal ash beneficial use will take place.
Comment: The thresholds seem appropriate for the use of structural fill.
(d) (1) The pH of the coal ash as placed must be in the range of 6.0 to 9.0, unless otherwise approved by the Department. Lime may be added to raise pH.
Comment: The pH limitation does not seem appropriate especially for CFB ash. This requirement should be modified for CFB ash without the necessity of seeking a variance. Suggest language; delete "in the range of 6.0 to 9.0, unless otherwise approved by the Department." and replace with "greater than 7.0."

§ 290.103. Use of coal ash as a soil substitute or soil additive.
(d)(1) The pH of the coal ash and the pH of the soil must be in the range of 6.5 to 8.0 when mixed together in the manner required by the project, as shown by field and laboratory testing. Lime may be added to raise pH.
Comment: The pH range seems appropriate since applied to the mixture of coal ash and soil.

(d)(6) Coal ash may not be applied to soil being used for agriculture where the soil pH is less than 5.5.
Comment: This requirement seems inappropriate since the ash will be used to neutralize the soil pH if it is low. Suggested language: delete (d)(6)
(d)(7) Coal ash may not be applied if resultant chemicals or physical soil conditions would be detrimental to biota.
Comment: This requirement is over burdensome to industry and the costs of proof would far out way the potential benefits of coal ash as a soil additive and/or soil substitute. The loading rates in section (f) of this section already address the potential impact to biota. Suggested language: delete (d)(7)

§ 290.104. Beneficial use of coal ash at coal mining activity sites.
(c)(1) A non-refundable 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.
Comment: The cost for this is extremely burdensome to industry and doesn't seem reasonable funding because most of the work is performed at permit filing. It should be reduced to a onetime fee at the time of filing. Suggested language: delete the word "annually" and delete the last sentence "This annual ... activity site."
(f)(1) The volume of coal ash placed at the site may not exceed the volume of coal, coal refuse, culm or silt removed from the site by the active mining operation on a cubic yard basis unless approved by the Department.
Comment: This requirement seems inappropriate and contradictory to section (e)(2) which allows backfilling of historical pits located in a SMP. Suggested language: add "or used in the reclamation of historical pits from coal mining activities" after "... by the Department"
(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 section 290.201(c)(5). The results of the analysis shall be submitted quarterly to and in the format required by the Department.
Comment: This requirement is totally unjustified and differs from the current coal ash policy document. If only certified coal ash generators can be used at mine site, there should be no reason for the "person using coal ash" to be required to also conduct quarterly sampling. This must have been a typo. Suggested language: delete this section.

§ 290.105. Coal ash beneficial use at abandoned coal surface mine sites.
(e)(1) The pH of the coal ash as placed must be in the range of 6.0 to 9.0, unless otherwise approved by the Department. Lime may be added to raise pH.
Comment: The pH limitation does not seem appropriate especially for CFB ash. This requirement should be modified for CFB ash without the necessity of seeking a variance. Suggest language; delete "in the range of 6.0 to 9.0, unless otherwise approved by the Department." and replace with "greater than 7.0."

Subchapter C. COAL ASH CERTIFICATION

§ 290.201. Coal ash certification.
(a) Certification standards are as follows:
(1) Maximum acceptable leachate levels for certification:
(i) For metals and other cations, 25 times the waste classification standard for a contaminant.
(ii) For contaminants other than metals and cations, the waste classification standard for a contaminant.
Comment: The term "waste classification standard" seems vague. It will give the Department flexibility in adjusting the limits but can lead up to legal challenges. The Department should consider defining the term, "waste classification standard."
(b)(2) Only standards based on secondary MCLs (aluminum, chloride, iron, manganese, sulfate, silver and zinc) are exceeded. All other limits shall be met.
Comment: Fluoride should also be included as one of parameters. Suggested language: add ", fluoride" after "...silver"

(c)(5) A detailed chemical analysis on at least four (4) representative samples spaced throughout a 2- 6-month sampling period within the last year that fully characterizes the composition of the coal ash. This analysis must include:

Comment: There aren't provisions for the outlet of new coal ash sources from new coal ash generators. This would hinder the construction of new coal projects in the Commonwealth. Suggest the Department include provisions to allow for the temporary placement of coal ash from new generators for a year to allow for the obtaining of certification.

Subchapter D. WATER QUALITY MONITORING

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

(a) (2) At least three groundwater monitoring points hydraulically downgradient in the direction of decreasing static head from the area in which coal ash has been or will be placed. The Department at its discretion may accept two downgradient monitoring points on small sites that can be well represented by two points. The Department may allow one or more springs, seeps and mine discharges to substitute for wells if these points are hydraulically downgradient from the area in which coal ash has been or will be placed and if these points will be as effective or more effective at monitoring the ash placement area than wells. Downgradient monitoring points must be hydrologically connected to the area of ash placement, and must be located and constructed so as to detect any chemical influence of the ash placement area. The downgradient points must be proximate enough to detect contaminants within the life of the placement operation. All monitoring points must be developed and protected in a manner approved by the Department. In addition to groundwater monitoring points the Department may require downstream monitoring where downstream monitoring is likely to show any chemical influence that the ash placement area may have on the hydrologic regime.

Comment: The requirement for 3 downgradient wells is too stringent and prescriptive. The number of downgradient wells required should be based on the ability to correctly capture the characteristics of the downgradient water. Suggest the Department rewrite this section to mandate one and allow for the discretion of more if needed.

(b) (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.

Comment: The requirement of 200 feet is also to stringent and prescriptive. Based on the hydrogeological characteristics of the site, wells may be better suited farther from the coal ash placement area. Suggested language: Replace "within 200 feet" with "in close proximity"

§ 290.304. Assessment plan.

(a) (1) Data obtained from monitoring by the Department or the person indicates a significant change in the quality of groundwater or surface water from background levels determined under § 290.301(a)(2) (relating to water quality monitoring) at any downgradient monitoring point.

Comment: The wording "significant change" is left up to interpretation. The groundwater below most of the coal ash sites is already detrimentally been effected. The placement of coal ash along with the reclamation of these sites will significantly change the quality of the groundwater and surface water to the benefit of environment. Suggested language: Insert "detrimental" after "... indicates a significant".

(b) (1) Within 10 working days after receipt of sample results indicating groundwater or surface water degradation, the person resamples the affected monitoring points and analysis from resampling shows, to the Department's satisfaction, that groundwater or surface water degradation has not occurred.

Comment: The "10 working days" timeframe is too short. Resampling of the well or surface water can take up to 10 working days. Suggested language: Change "10" to "20"

(b) (2) Within 20 working days after receipt of sample results indicating groundwater or surface water degradation, the person demonstrates that the degradation was caused entirely by seasonal variations or activities unrelated to coal ash placement.

Comment: The "20 working days" timeframe is too short. Analysis and demonstration could require more time than 20 working days. Suggested language: Change "20" to "40"

(c) The assessment plan shall specify the manner in which the person will determine the existence, quality, quantity, areal extent and depth of groundwater or surface water degradation and the rate and direction of migration of contaminants. An assessment plan shall be prepared and sealed by an expert in the field of hydrogeology who is a licensed professional geologist in the Commonwealth. The plan must contain the following information:

Comment: The requirement for a "licensed professional geologist" may be excessive. Suggest that the Department determine if the need for a "licensed professional geologist" is really needed for the assessment plan.

(d) The assessment plan shall be implemented upon approval by the Department in accordance with the approved implementation schedule, and shall be completed in a reasonable time not to exceed 6 months, unless otherwise approved by the Department. If the Department determines that the proposed plan is inadequate, it may modify the plan and approve the plan as modified. If the groundwater or surface water assessment indicates that contamination is leaving the coal ash placement site, the person shall notify, in writing, each owner of a private or public water supply that is located within 1/2-mile downgradient of the coal ash placement area that an assessment has been initiated.

Comment: The "6 months" timeframe is too short. In order to conduct a proper assessment more time is needed. Suggested language: Change "6" to "12"

§ 290.305. Abatement plan.

(a) (2) Monitoring by the Department or person shows the presence of an abatement standard exceedance from one or more compliance points as indicated in subsection (c) even if a assessment plan has not been completed. The person is not required to implement an abatement plan under this paragraph if the following apply:

Comment: This section allows the entire Assessment Plan phase under Section 290.304 to be bypassed. This should not be allowed. A detailed assessment is needed to correctly determine if abatement is needed. Suggested language: delete the entire subsection, (a)(2)

(b) An abatement plan shall be prepared and sealed by an expert in the field of hydrogeology who is a licensed professional geologist in the Commonwealth. The plan shall contain the following information:

Comment: The requirement for a "licensed professional geologist" may be excessive. Suggest that the Department determine if the need for a "licensed professional geologist" is really needed for the abatement plan.

(c) (1) For constituents for which statewide health standards exist, the statewide health standard for that constituent at and beyond 500 feet of the perimeter of the permitted coal ash placement area or at and beyond the property boundary, whichever is closer.

Comment: Not sure how the requirement of "at and beyond 500 feet" was derived. The use of "property boundary" should be sufficient in and of itself. Suggested language: replace "at and beyond 500 feet ... whichever is closer." with "at the property boundary."

(c)(2) The background standard for constituents at and beyond 500 feet of the perimeter of the permitted coal ash placement area or at and beyond the property boundary, whichever is closer. Load-based standards at groundwater discharge points are acceptable if the permit was issued under Chapter 87, Subchapter F or Chapter 88, Subchapter G (relating to surface coal mines: minimum requirements for remining areas with pollutional discharges; and anthracite surface mining activities and anthracite bank removal and reclamation activities: minimum requirements for remining areas with pollutional discharges).

Comment: Not sure how the requirement of "at and beyond 500 feet" was derived. The use of "property boundary" should be sufficient in and of itself. Suggested language: replace "at and beyond 500 feet ... whichever is closer." with "at the property boundary."

(c)(3) For constituents for which no primary MCLs under the Federal and State Safe Drinking Water Acts (42 U.S.C.A. §§ 300f—300j-18; and 35 P. S. §§ 721.1—721.17) exist, the risk-based standard at and beyond 500 feet of the perimeter of the permitted coal ash placement area or at and beyond the property boundary, whichever is closer, if the following conditions are met:

Comment: Not sure how the requirement of "at and beyond 500 feet" was derived. The use of "property boundary" should be sufficient in and of itself. Suggested language: replace "at and beyond 500 feet ... whichever is closer." with "at the property boundary."

(d) For measuring compliance with secondary contaminants under subsections (c)(1) or (c)(3), the Department may approve a compliance point beyond 500 feet on land owned by the owner of the coal ash placement area.

Comment: If the wording is revised to just include "property boundary" as indicated above, this subsection should be deleted. Suggested language: delete this subsection.

Subchapter E. COAL ASH STORAGE

§ 290.402. Duration of storage.

(d) The Department will presume that a person storing coal ash contrary to subsections (a)-(c) is operating a waste disposal facility and is subject to the applicable requirements of the act and regulations thereunder for waste disposal.

Comment: Not sure how coal ash stored in violation to the requirements under subsections can be reclassified as a regulated waste and therefore the person storing it would be classified as a waste disposal facility. Suggested language: Replace the entire paragraph with "The Department will require that a person storing coal ash contrary to subsections (a)-(c) conduct an abatement plan under Section 290.305."

§ 290.404. Areas where coal ash storage is prohibited.

(a) (2) Within 300 feet of a groundwater water source.

Comment: Not sure what the meaning of this is meant to accomplish. Since rainwater recharges groundwater would all areas that receive rainwater be a groundwater source. Suggested the Department reevaluate the meaning of this subsection and clarify.

(b) Coal ash storage impoundments may not be operated as follows:

Comment: The definition of "impoundment" needs to be clarified or referenced to avoid confusion in the application of these regulations. I believe the word "impoundment" refers to "ash dams" and not the areas where there is ash placement as fill material. Suggested the Department define and/or clarify the definition of "impoundment".