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From: Josie Gaskey [josie.a.gaskey@comcast.net]
Sent: Tuesday, December 22, 2009 9:31 AM
To: EP, RegComments
Subject: Beneficial Use of Coal Ash comments
Attachments: PCA final beneficial use of coal ash comments.doc

DEC 23 REC'D
INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached is a copy of the Pennsylvania Coal Association's comments on the proposed rulemaking on Beneficial Use of Coal Ash [25 PA Code Chs. 287 and 290].

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George L. Ellis
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December 21, 2009

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DEC 23 REC'D

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

INDEPENDENT REGULATORY
REVIEW COMMISSION

**RE: Comments on Proposed Rulemaking for Beneficial Use of Coal Ash
25 PA Code Chapters 287 and 290**

The following are the Pennsylvania Coal Association (PCA) comments concerning the proposed rulemaking modifying Chapter 287 and creating a new Chapter 290 Beneficial Use of Coal Ash as proposed in the PA Bulletin on November 7, 2009.

PCA is the principal trade organization representing bituminous coal operators - underground and surface, large and small - as well as other associated companies whose businesses rely on a thriving coal economy. PCA member companies produce over 85 percent of the bituminous coal annually mined in Pennsylvania. We are the fourth leading coal producing state, mining 68 million tons last year. Our members produce bituminous coal by surface methods and by underground mining methods. They also operate coal preparation plants and engage in other coal mining activities, including performing environmentally beneficial reclamation work.

As important, the Pennsylvania mining industry is a major source of employment and tax revenue. Last year, it created 49,100 direct and indirect jobs with a total payroll in excess of \$2.2 billion. Taxes on these wages netted over \$700 million to the coffers of federal, state and local governments.

PCA appreciates the opportunity to comment and supports the continued use of beneficial ash as it is currently addressed in the regulations. We see no need to change requirements and processes of a program that is successful in every way. We respectfully suggest that DEP spend its limited budget dollars on areas where there are significant problems. We have the following specific comments on the proposed rulemaking:

General

Among the many beneficial uses of coal ash is its use in reclamation activities. The National Academy of Sciences' (NAS) March 1, 2006 report on mine placement of coal ash concludes that placing coal combustion byproducts in coal mines as part of the reclamation process is a viable management option when conducted in a manner that (a) avoids significant adverse environmental and health impacts and (b) includes public involvement in the regulatory permit process.

In addition, NAS's conclusions are strongly supported by findings of the Office of Surface Mining (OSM) that the agency is "unaware of any scientific data where coal combustion byproducts fills at any SMCRA mine site has resulted in the generation of leachate that would threaten public health or degrade the environment."

Groundwater monitoring is specifically required by OSM (30 CFR §16.41(c)). In addition, SMCRA regulations require all surface mining activity to be conducted to minimize disturbance of the hydrologic balance in the permit and adjacent area(s) and to prevent material damage to the hydrologic balance outside the permit area (30 CFR §816.41(a)).

In addition, PCA believes that for remining sites, DEP should utilize the Bureau of Mining and Reclamation Technical Guidance Document 563-2112-611 to establish triggers and to define baseline water quality conditions associated with the mining, abatement plan and reclamation of the site.

PCA references the book entitled, "*Coal Ash Beneficial Use in Mine Reclamation and Mine Drainage Remediation in Pennsylvania*" that was published by the PA DEP and Penn State University in 2004¹. This peer-reviewed book provides many examples of various projects that are clearly successful and concludes that none of the sites discussed show groundwater pollution attributable to the coal ash quality.

Chapter 287

The proposed regulations change the definition of *coal ash*. Section 103 of the Solid Waste Management Act 97 was specifically amended to address the beneficial use of coal ash such that, coal ash that is beneficially used is exempt from the definition of solid waste and not subject to Act 97 regulations. PCA believes the existing definition of coal ash be consistent and used in this proposed rulemaking.

Chapter 290, Subchapter D. Water Quality Monitoring

PCA believes the basic language and concepts for this Subchapter are taken directly from §288.251-257 regarding water quality monitoring for lined Residual Waste Landfills. Under Subchapter F of Chapter 87 and Subchapter G of Chapter 88, PA DEP recognizes that an integrated mining and beneficial placement of ash in a mine site as part of a reclamation and abatement program will result in changes to water quality,

¹ R. J. Hornberger, A. D. Dalberto, M. J. Menghini, T. C. Kania, B. E. Sheetz, D. J. Koury, and T. D. Owen, *Coal Ash Beneficial Use at Mine Sites in Pennsylvania* (Harrisburg: Pennsylvania Department of Environmental Protections, 2004)

and has already established criteria to address variations in water quality without triggering assessment and remediation analysis. PCA requests that the existing Chapter 87, Subchapter F and Chapter 88, Subchapter G continue to be used as the regulatory basis for water quality monitoring for beneficial placement of ash as part of a reclamation and abatement program.

Chapter 290.104(c) Permit filing fee

DEP is proposing a nonrefundable annual permit filing fee in the amount of \$2,000. PCA believes the annual fee is excessive and unnecessary. Chapters 87 and 88 address mining permits and activities, have significant and strict requirements, and work in conjunction with SMCRA and OSM requirements and review.

The Environmental Council of States, an association of state regulators, in a September 2008 resolution on the regulation of coal combustion byproducts agrees with EPA's finding that regulatory infrastructure is in place at the state level to ensure adequate management of coal combustion byproducts.

In addition, each permit application is required to be prepared by, or under the supervision of, a Pennsylvania registered professional engineer and bears the seal of a Pennsylvania registered professional engineer. Should there be challenges within the professional engineer process, there currently exists a process to address those issues. PCA believes additional DEP review is redundant and unnecessary and negates the need for an annual fee.

Chapter 290.301. Water Quality Monitoring

DEP is proposing to increase the minimum number of monthly background samples at each monitoring point prior to the placement of coal ash from the current requirement of 6 months to 12 months. DEP currently requires 6 months of baseline sampling for coal mining and remining permits. This number was derived based on a statistically valid approach developed by EPA. PCA believes this approach is still valid and requests the minimum monitoring be 6 months not 12 months. Further, PCA believes that all monitoring data obtained prior to the placement of coal ash at a mine site, should be used to define pre-ash placement water quality.

Chapter 290.301(g)

This section indicates "water quality monitoring shall continue quarterly for a minimum of 5 years after final placement or storage of coal ash at the site, and annually thereafter from the end of year 5 through 10 years after final placement or storage of coal ash at the site. The Department may require more frequent or longer water quality monitoring if the results of water quality monitoring indicate that contamination may be occurring." Under Chapters 86 - 90 of the Surface Mining Program, DEP is already required to ensure the site meets all reclamation requirements prior to a final bond release. The Phase II bonding period requires the bond be in place for 5 years prior to release of the bond. PCA recommends that the time frame for monitoring be tied to the Phase III bond release and suggests the following wording:

Water quality monitoring shall continue quarterly for a minimum of 5 years after final placement or storage of coal ash at the site until there is a final Phase III release of the coal mine bonds for the site. The Department may require....

Chapter 290.302(a)(2) Number, location and depth of monitoring points

DEP is proposing to increase the number of downgradient monitoring points from 2 to 3. DEP has not provided sufficient scientific justification for the random increase in monitoring points. We believe the number of downgradient monitoring points should be 1 for each downgradient direction of groundwater flow and see no need for a random increase.

Chapter 290.302(b)(1)-(3) Number, location and depth of monitoring points

The proposed regulations indicate that the monitoring wells must be "located so as not to interfere with routine operations at the site" and "located within 200 feet of the coal ash placement area." PCA believes the requirement to locate monitoring wells within 200 feet of the coal ash placement may result in a monitoring well(s) being drilled within the active mining area and would, therefore, be disturbed by the mining operations. PCA suggests the 200-foot limit be tied to the disturbed area from mining and coal ash placement operations and requests a wording change as follows:

(3) Located within 200 feet of the disturbed area from mining and coal ash placement operations.

Chapter 290.304(a)(1); (b)(2); (c)(1); (d)-(f) Assessment Plan

PCA believes the overall intent of this section is to define the impact from the placement of coal ash on water quality. Therefore, we suggest clarifying these six sections to read as follows:

(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 as a result of coal ash placement determined under....

(b)(2) Within 20 working days after receipt of sample results indicating groundwater or surface water degradation as a result of coal ash placement, the person demonstrates...

(c)(1) The assessment plan must 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 related to the placement of coal ash. An assessment plan...

(d) The assessment plan related to the placement of coal ash shall be implemented upon approval...

(e) Within 45 days after the completion of the assessment plan related to the placement of coal ash, the person shall submit...

(f) If the Department determines after review of the assessment report related to the placement of coal ash that implementation of an...

Chapter 290.305(a) Abatement Plan

Again, PCA believes the overall intent of this section is to define the impact from the placement of coal ash on water quality. Therefore, we suggest clarifying this section to read as follows:

(a) The person that is required to conduct water quality monitoring as part of coal ash beneficial use or storage shall prepare and submit to the Department an abatement plan whenever one of the following occurs as a result of the placement of coal ash:...

PCA appreciates the opportunity to comment on this proposed rulemaking.

Sincerely,

Josie Gaskey
Dir., Regulatory and Technical Affairs

Cc: George Ellis - PCA