

**From:** Steve Weyandt [SCW15@nw.opp.psu.edu]  
**Sent:** Tuesday, December 22, 2009 2:34 PM  
**To:** EP, RegComments  
**Cc:** Ian Salada; Paul Moser; Rhett McLaren; R.E. Cooper  
**Subject:** Comments: Proposed Rulemaking  
**Attachments:** Coal ash comments 12 22 09.pdf

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DEC 23 REC'D

INDEPENDENT REGULATORY  
REVIEW COMMISSION

Environmental Quality Board:

We have reviewed the Proposed Rulemaking for 25 PA. Code Chapters 287 and 290 Beneficial Use of Coal Ash, that appeared in the *Pennsylvania Bulletin* on November 7, 2009. The Pennsylvania State University offers the attached comments for your consideration. An original copy of this document is being sent to the Board in today's mail. Should you have any questions concerning these comments, please do not hesitate to contact me. Thank you for the opportunity to comment on this proposed regulation.

Steve Weyandt

Stephen Weyandt, P. E.  
Environmental Engineer, Engineering Services  
The Pennsylvania State University  
Room 113, Physical Plant Building  
Tel: 814-867-1308  
Cell: 814-441-4846  
FAX: 814-865-3737

PENNSTATE



Manager, Engineering Services

(814) 863-5362  
FAX: (814) 865-3737The Pennsylvania State University  
101P Office of Physical Plant  
University Park, PA 16802-1118

December 22, 2009

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DEC 23 REC'D

Environmental Quality Board  
P.O. Box 8477  
Harrisburg, PA 17105-8477INDEPENDENT REGULATOR  
REVIEW COMMISSION**Re: Proposed Rulemaking 25 PA. Code Chs. 287 and 290  
Beneficial Use of Coal Ash**

Environmental Quality Board:

We have reviewed the Proposed Rulemaking for 25 PA. Code Chapters 287 and 290, Beneficial Use of Coal Ash that appeared in the *Pennsylvania Bulletin* on November 7, 2009. The Pennsylvania State University offers the following comments for your considerations:

Comment 1. §290.101(e)

The requirement that coal ash not be placed within 8' of the water table appears to be arbitrary. The use of coal ash for drainage material as per §290.106(6) implies that when ash is placed in this manner it will experience exposure to groundwater. Our suggestion is to remove Condition (e) and replace it with the proposed Condition (f).

Comment 2. §290.101(f) requires that "coal ash may not be used in a way that causes water pollution". This statement is broad and vague and will result in continuous compliance disputes. This statement needs to be more clearly defined.

Comment 3. Subchapter B. Beneficial Use of Coal Ash

This is a general comment on all of the beneficial uses shown in this section. These uses require a short time period (either 24 or 48 hours) to place the ash or store it in accordance with Subchapter E. For smaller construction projects, involving the placement of relatively small quantities of ash over a short duration the requirements to store ash in accordance with Subchapter E are overly burdensome and will prevent the beneficial use smaller quantities of coal ash. Subchapter E requirements appear to have been written to prevent pollution from large storage piles and we support those intentions.

Penn State suggests that Subchapter E §290.402 (C)(2) be revised to allow for the temporary storage of ash on **stabilized surfaces** (not impermeable floor or pad) with the piles being covered with water resistant tarps to prevent the infiltration of precipitation through the pile. This revision would encourage the use coal ash on smaller scale construction & reclamation projects.

Comment 4. §§290.102(e)(2), 103(e)(3) and 105(e)(9)(ii) prohibit the placement of ash within 300' of a water supply unless a written waiver from the owner of the water supply is obtained. This requirement appears arbitrary, if the coal ash presents such a threat to the environment, this regulation should follow the Department's guidance "Recommended Wellhead Protection Area Zone I Delineation Methodology." The Department goes to great efforts to protect the environment and prevent pollution. However, this portion of the regulation provides the individual water supply owner very little protection by allowing placement of ash closer than 300' with submission of a mere waiver. Does the water supply owner have an

understanding of the science of ash placement? Who has responsibility to inform the owner of the possible consequences of this waiver? What if the ash placement is downgradient of the water supply?

Comment 5. §290.104(f)(1). States: *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.*

What guidelines will the Department use to allow for another measurement basis? This regulation as written will present future compliance disputes. Coal mining and sales are accounted on a tonnage basis. Should the volume of coal removed be measured as it is present in the rock strata or after it has been mined and swells? In addition, coal refuse, culm or silt removed can be measured either on a volume or by weight basis. PSU suggests this portion of the regulation be modified to allow measurements to be determined either on a weight or volume basis. The regulation should further clarify that upon acceptance of either measurement basis for a site, these units must follow through for that site until project completion.

Comment 5. §290.106. Other beneficial uses of coal ash.

Again, as a general comment, the storage requirements of Subchapter E will discourage the beneficial use of coal ash for small short duration or seasonal uses because of the need to provide impermeable surfaces and in an enclosed facility. Short term storage of relatively small quantities of coal ash should be allowed on stabilized areas provided the pile is covered to prevent infiltration of precipitation.

Comment 6. §290.201(a)(1)(i and ii). Coal ash certification.

The maximum acceptable leachate levels for certification should clearly be posted in this section. Without reading the guidance documents, which the Department is now proposing as regulation, the reader has no idea what standards apply.

Comment 7. §290.201(c). Are all of the tests specified in this section required to obtain coal certification? If a designated use is proposed, for example coal ash as structural fill, is it necessary to determine the permeability and neutralization potential of the ash even if those parameters will not have an effect on the intended use?

Comment 8. §290.201(e). A similar comment applies to §290.201(e) as from Comment 7, are unnecessary tests needed every three months? In addition, §290.201(e)(1) should be changed to have sample analysis submitted on a quarterly basis with the submission deadline to be 30 days following the end of the quarter.

Comment 8. §290.202(a)(2) & (3) Revocation of certification. The requirement indicates that certification will be revoked if coal ash "consistently" exceeds the criteria. Consistently needs to be more clearly defined. The use of this word is unclear and it will result in compliance disputes. Does consistently mean two parameter exceedances on one sampling event -or- one parameter exceedance on two sampling events? What physical or chemical characteristics would make the coal ash unsuitable for beneficial use? This needs to be more clearly defined in §290.202(a)(3).

Comment 9. §290.202(c)(1) This requirement would prevent the beneficial reuse of a particular generator's ash for at least three months. This is an excessive period of time to prevent reuse of the ash.

Comment 10. Subchapter E. Coal Ash Storage. It is obvious this Subchapter was written to regulate the large scale producers and handlers of coal ash. This Subchapter needs to be modified to allow for the small scale and temporary storage and handling of coal ash. Examples of small scale users of coal ash would be

pipeline contractors at various locations, school districts, county homes, hospital complexes, farm operations, concrete and aggregate producers. We are not aware of any environmental problems with the operation of small scale coal ash piles. This modification would allow for the continued use of coal ash without forcing these users into construction of storage piles as specified in the Subchapter. Should small scale users be forced to install and monitor storage piles, they would simply switch to products that would not be so intrusive to their operations.

Thank you for the opportunity to present these comments. Should you have any questions on these comments, please contact Steve Weyandt of my staff at (814) 867-1308.

Sincerely,

*Stephen C. Weyandt, For*

Ian M. Salada, P.E.  
Manager, Engineering Services

cc: Rob Cooper  
Dave Burns  
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