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To: EP, RegComments
Cc: LaBuz, Lawrence L; Shamory, Craig S
Subject: Proposed rulemaking PA Code 25, Chapters 287 & 290
Attachments: PPL Comments on Proposed Chapter 287 and 290 Regulation.doc

DEC 23 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached are PPL's comments regarding the referenced proposed amendments. PPL appreciates the opportunity to comment on this proposal.

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PPL Comments on Proposed Chapter 287 and 290 Regulations

General Comments

PPL 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.

PPL also recommends that when secondary MCLs and other non-health-based standards in groundwater are exceeded, abatement requirements should not be triggered automatically, but should be considered in relation to the overall environmental and public safety improvements resulting from the use of coal ash.

The proposed regulations need to consider the “grandfathering” of previously approved projects and ongoing projects. PPL recommends that the proposed regulations should apply to new projects or active projects that will extend beyond two years of the effective date of publication.

Specific Comments

Chapter 290

Proposed Regulation

Suggested Language to be added to 290.1

Coal ash that has been stored or impounded and meets the applicable ash qualifications or certification requirements is authorized for beneficial use without a permit.

290.101 – General requirements for the beneficial use of coal ash

Comment – 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).

290.102 – Use of coal ash as structural fill

Comment – PPL recommends that the following language be added to 290.102(a) – This section is applicable to new projects or active projects that will extend beyond two years of the effective date of publication.

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290.104 – Beneficial use of coal ash at coal mining activity sites

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

Also, in 290.104(h)(2)(i) PPL recommends the following language: Additional monitoring under this section will not be required if the person can demonstrate that there is no significant difference in the quality of coal ash placed at the site and the quality of coal ash submitted for certification under 290.201.

290.105 – Coal ash beneficial use at abandoned coal surface mine sites

Comment – 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).

290.201 – Coal Ash qualification

Comment – PPL suggest 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.” This is similar to the language used in Chapter 288.623(a)(2) *Minimum requirements for acceptable waste*, “...The Department may approve the disposal of waste at a monofill that contains contaminants other than metals or cations with a maximum concentration that is less than 10 times the waste classification standard for the contaminants, based on a chemical analysis of its leachate submitted under 287.132, if the following are met:

(a)(2)(i) Disposal of the waste will improve preexisting groundwater degradation.

(a)(2)(ii) Preexisting degradation did not result from activities of the person or municipality that proposes to dispose of residual waste, or a related party to the person or municipality.”

Comment – PPL strongly 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.

Comment – PPL 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.”

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

Comment - 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.

290.301 – Water quality monitoring

Comment – PPL recommends that the following language be added to 290.301(a) – This section is applicable to new projects or active projects that will extend beyond two years of the effective date of publication.

Comment – The regulations need to recognize sites where ash has been previously placed and groundwater quality data has been collected. Thus, the operator may have historical data that can be utilized in a monitoring plan.

290.302 – Number, location and depth of monitoring points

Comment - In 290.302 (a) (1) and 302 (3)(b), the term monitoring “well” should be revised to monitoring “point”. Number of monitoring points should be determined on a site-by-site basis.

290.304 – Groundwater assessment plan

Comment – 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), PPL 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 – Abatement plan

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

Comment – 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 – Areas where coal ash storage is prohibited

Comment – Language should be revised to reflect the groundwater source is a drinking water source.