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Benjamin H. Grumbles
Director

June 29, 2009

Mr. Matt Hale, Director
Office of Resource Conservation and Recovery
US Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: EPA Regulation of Coal Combustion Residue

Dear *Matt* Mr. Hale:

I understand that the U.S. Environmental Protection Agency (EPA) is considering changes to the current regulation of coal combustion residue (CCR), including potential regulation under RCRA Subtitle C. Reportedly, EPA intends to propose rules by the end of this year. I would like to take this opportunity to provide comments on Arizona's preferred federal approach to CCR regulation. The Arizona Department of Environmental Quality (ADEQ) believes that CCRs should not become a listed hazardous waste.

ADEQ believes Arizona has the appropriate regulatory framework in place to be protective of human health and the environment concerning CCR management units that do not receive hazardous waste. ADEQ's Aquifer Protection Permit Program addresses potential discharges to the groundwater from these units; in addition, the Arizona Department of Water Resources (ADWR) Dam Safety Program regulates dam integrity and safety.

Aquifer Protection Permit Program

Under Arizona law, CCR surface impoundments, pits, ponds, lagoons, and landfills are considered "discharging" facilities which require an Aquifer Protection Permit (APP). APP applicants are subject to a very rigorous permitting process. Some of the most critical requirements provide the applicant must demonstrate that the best available demonstrated control technology will be used to ensure the greatest degree of discharge reduction from the facility and that aquifer water quality standards (AWQS) will not be violated in the aquifer as a result of discharges from the facility (if the level of a pollutant in the aquifer already exceeds the AWQS at the time of permit issuance, the applicant must demonstrate that the aquifer will not be further degraded by the facility). In addition, the applicant must demonstrate that it has the necessary financial and technical capability to operate and close the facility in accordance with APP requirements.

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Dam Safety Program

The ADWR, Dam Safety and Flood Mitigation Division regularly conducts safety inspections of CCR “dams.” Arizona statutes and rules define a dam as an artificial barrier over 25 feet in height or capable of storing more than 50 acre-feet of water. The objective of Arizona’s Dam Safety Program is to maximize the protection of the public against loss of life and property by reducing the likelihood of catastrophic failure of dams within its jurisdiction. Rules were developed to facilitate and provide guidelines for the safe design, construction, operation, maintenance and removal of dams in jurisdiction. Detailed rules for dam safety procedures are found in Arizona Administrative Code, R12-15-1201 et seq. Furthermore, dams designated as having “high hazard potential” are inspected annually by a professional engineer.

We believe that ADEQ’s Aquifer Protection Permit Program and ADWR’s Dam Safety Program provide the appropriate regulatory framework to safeguard human health and the environment from the potential impacts of CCR management units that do not receive hazardous waste. As such, ADEQ agrees with the ECOS Waste Committee when it concluded in the June 5, 2008 letter that the “principal authority for regulating coal combustion wastes should remain at the state level.”

ADEQ looks forward to continued discussions with EPA on CCR regulation prior to publication of proposed rules. Should you have any questions specific to our comments, please feel free to contact Amanda Stone, ADEQ’s Waste Programs Division Director, at 602-771-4567.

Sincerely,



Benjamin H. Grumbles
Director

Cc: Herb Guenther, Director, Arizona Department of Water Resources