

March 26, 2009

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Constitution Avenue, N.W.  
Mail Code 1101A  
Washington, DC 20460

Dear Administrator Jackson:

Recently, the U.S. Environmental Protection Agency (EPA) announced that it would be undertaking the development of a regulatory proposal for the disposal of coal combustion waste (coal ash) by the end of the year. This announcement follows on the heels of several Congressional actions to address the matter, including Senate Resolution No. 64 and a bill introduced by House Natural Resources Committee Chairman Nick Rahall II (H.R. 493). As state agencies responsible for regulating the placement of coal ash at both coal and noncoal mines nationwide, we have a vested interest in EPA's future proposal and request the opportunity to work closely with EPA as co-regulators in the development of the proposal, whatever form it may take.

As you know, in May of 2000, the U.S. Environmental Protection Agency (EPA) published a Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels. Among other things, and of particular concern to the states, EPA found that, although coal combustion wastes (CCWs) did not warrant regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) as "hazardous waste", the agency had determined that national regulations under subtitle D of RCRA and/or possible modifications to existing regulations established under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) are warranted when these materials are used as fill in surface or underground mines. IMCC was especially concerned about the "mine placement" aspects of the determination given the significant interplay between approved state regulatory programs under SMCRA and any potential adjustments to the SMCRA federal regulations (which serve as a template for state regulatory programs).

Following publication of EPA's notice, IMCC took the lead on behalf of the states to address the matter and initiated a series of discussions between states, the Office of Surface Mining (OSM) and EPA concerning next steps pursuant to the regulatory determination. The first of the state/federal dialogues occurred in May of 2001 and over the course of the next three years, the parties shared and discussed information and analyses of their respective regulatory programs under SMCRA and

RCRA. The states also provided data and information from state approved permits where mine placement was predominant to demonstrate the types of environmental controls applicable in these situations and the environmental protection afforded by existing regulatory standards. Copies of the various documents and notes generated at the four state/federal dialogues are available at [www.epa.gov/epaoswer/other/fossil/index.htm](http://www.epa.gov/epaoswer/other/fossil/index.htm).

On March 1, 2006, the National Research Council (NRC) within the National Academy of Sciences released a report entitled *Managing Coal Combustion Residues in Mines*. The study was in response to a request from Congress and was initiated in June of 2004. The NRC conducted the study to examine the health, safety, and environmental risks associated with using coal combustion residues (also referred to as coal combustion wastes or coal ash) in reclamation at active and abandoned coal mines. The study was to determine whether CCWs were placed and disposed of in coal mines with adequate safeguards and whether this activity is degrading water supplies in coal mines in contravention of SMCRA. IMCC, on behalf of the states, once again provided data and information to the NRC regarding the nature and status of state regulatory program requirements for the placement of CCWs in mines.

Most recently, IMCC submitted statements to the House Energy and Mineral Resources Subcommittee for inclusion in the record of two hearings held by the Subcommittee: one on June 10, 2008 regarding "How Should the Federal Government Address the Health and Environmental Risks of Coal Combustion Wastes?" and another on February 12 concerning H.R. 493, the "Coal Ash Reclamation, Environment and Safety Act of 2009". Copies of those statements are attached. In both statements IMCC articulates the perspective of the states as primary regulators in the area of mine placement concerning the development of any new federal regulatory program by OSM or EPA. In this regard, we would note that OSM has already developed a draft proposed rule on mine placement which we believe serves as a reasonable starting point for further discussions about developing a new federal regulatory framework.

The states, through the IMCC, have been active participants in the regulatory development arena with OSM and EPA over the past ten years. As noted in the attached resolution adopted by IMCC, we trust that we will continue our close working relationship on this important matter. In this regard, we would request an opportunity to meet with you or members of your staff to discuss the specifics of your regulatory proposal and provide early input from the states.

Sincerely,

Gregory E. Conrad  
Executive Director

Attachment

cc. All Commissioners  
Matthew Hale  
Richard Kinch  
Glenda Owens, OSM