



Louisiana Public Service Commission

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August 17, 2009

EVE KAHAO GONZALEZ
Secretary
and
Executive Counsel

(MRS.) VON M. MEADOR
Deputy Undersecretary

The Honorable Lisa Jackson, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
Washington, DC 20460

Re: Federal Rulemaking for Coal Combustion By-Products

Dear Administrator Jackson:

On behalf of the Louisiana Public Service Commission ("LPSC" or "Commission"), I write to urge you to consider the possible consequences of the EPA's evaluation of whether or not to regulate coal combustion byproducts ("CCBs") as hazardous wastes under Subtitle C of RCRA, or as non-hazardous wastes under Subtitle D of the Resource Conservation and Recovery Act ("RCRA"), and whether to require the early retirement of active surface impoundments used by power plants to manage CCBs. The outcome of these evaluations could significantly affect future electricity prices and, in some cases, the ability of utilities and generators to provide reliable and uninterrupted power services. Although the LPSC does not generally involve itself in environmental issues, EPA's plan to develop federal regulations for has the potential to compromise the ability of utility companies in Louisiana to provide reliable electric services at consistent and affordable rates. Because of the far-reaching effects that this issue could have on electric services in our state, I write this letter on behalf of the Commission.

It is my understanding that every state environmental agency that has weighed in on the issue thus far (approximately twenty state agencies) has opposed regulating CCBs as hazardous waste because CCBs exhibit no hazardous characteristics and regulation of the CCBs as hazardous would prevent the beneficial uses of the material due to the stigma that would attach. Instead, every state, including Louisiana, has taken the position that the best management option for regulating CCBs is as non-hazardous waste under RCRA Subtitle D. The states take this position because it would preserve and expand the beneficial use of CCBs (which uses preserve natural resources and reduce the amount of wastes disposed) and because the states have the

regulatory infrastructure in place to ensure the safe management of these materials, which is definitely the case in Louisiana.

As noted in the letter to you from Secretary Harold Leggett of the Louisiana Department of Environmental Quality, ("LDEQ") dated May 29, 2009:

The LDEQ has successfully regulated CCW by regulation since 1983. Current EPA regulations do not provide standards for managing and disposal of industrial solid waste such as CCW. However, the LDEQ has developed an industrial solid waste program and has promulgated regulations based upon LDEQ's EPA-approved municipal landfill regulations.

The data we have seen indicates that CCW would not qualify as characteristic hazardous waste under RCRA Subtitle C. Levels of toxic constituents and permeability are both very low. Nevertheless, Louisiana's regulations require that landfills that accept CCW must have liners and groundwater monitoring, and meet all national standards for location, design, operation, closure, post-closure, corrective action, and monitoring. All available soil, groundwater and surface water monitoring data show that our current regulatory scheme is fully protective of those media.

Regulating CCW under RCRA Subtitle C would provide no clear advantages to Louisiana's solid waste or hazardous waste programs that cannot be accomplished under a RCRA Subtitle D regulatory approach. On the contrary, regulation of CCW under RCRA Subtitle C would needlessly complicate Louisiana's existing programs and increase costs to the regulated community. Under Louisiana law, hazardous waste and nonhazardous solid waste are distinct types of wastes. A federal hybrid approach that would designate CCW a hazardous waste, but allow it to be managed at a solid waste disposal facility, would conflict with Louisiana law.

Furthermore, a large portion of the fly ash CCW generated in Louisiana is sold as a by-product, replacing Portland cement. This use avoids the emission of carbon dioxide that would result from the production of Portland cement.

If the EPA concludes that federal regulations are necessary, the LDEQ encourages the EPA to consider using the regulatory framework developed by the LDEQ. The LDEQ is available to provide assistance in this regard.

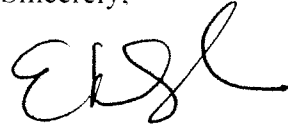
The Commission is concerned that, notwithstanding the views of the states, EPA could nonetheless regulate CCBs as hazardous waste and that power plants in this state will be confronted with sharply higher operating costs which will eventually be passed on to Louisiana ratepayers. Some smaller plants may actually have to cease operations because the costs of retrofitting their CCB management units to meet the hazardous waste standards and/or losing the capacity to manage CCBs in surface impoundments will be too high to allow these plants to

recover the conversion costs given the limited capacity of these units. The loss of generating capacity is a significant concern to this Commission as it would directly threaten the utilities' ability to provide reliable and cost-effective power. Since the states have already made clear that their programs will ensure the safe management of CCBs, we see no reason for EPA to pursue the hazardous waste option. Such an approach could threaten cost-effective and reliable provision of electric services in most if not all states, including Louisiana.

While we understand that federal rules are needed for states that have lax or no regulatory oversight of coal combustion waste, there are states, like Louisiana, that have established and implemented effective programs, including beneficial waste programs. In the federal rulemaking, EPA should be careful not to preempt states that have programs that work well.

For these reasons, it is respectfully suggested that EPA to regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

Sincerely,

A handwritten signature in black ink, appearing to read 'EKG', with a long horizontal flourish extending to the right.

Eve Kahao Gonzalez
Executive Secretary and Counsel

cc: Commissioners
Brandon Frey