



Minnesota Pollution Control Agency

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April 27, 2009

Mr. Matt Hale, Director
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue Northwest
Mail Code 5301P
Washington, DC 20460

RE: Coal Ash Management

Dear Mr. Hale:

The U.S. Environmental Protection Agency (EPA) has recently indicated that it is reconsidering how coal combustion wastes are regulated. The Minnesota Pollution Control Agency (MPCA) would like to take this opportunity to offer a few comments on the regulation of coal combustion wastes.

Currently, the MPCA regulates coal combustion wastes in both our wastewater and solid waste programs. Minnesota has slurry pond disposal facilities, which are regulated by the MPCA's wastewater program. Minnesota also has dry disposal facilities that are regulated by the MPCA's solid waste program. In addition to disposal facilities, Minnesota has developed a beneficial use of solid waste program. Included in this program are standing approvals for the use of several types of coal combustion wastes. In addition, the MPCA has issued several case-by-case approvals for the use of coal combustion fly ash.

If the EPA were to regulate coal combustion wastes as hazardous waste under Subtitle C of Resource Conservation and Recovery Act (RCRA), this would effectively end the beneficial use of coal combustion wastes in Minnesota. The prerequisite for beneficial use is that the material cannot be hazardous waste, as defined in federal regulations or state rules. A determination that coal combustion wastes are hazardous waste would seem to counter all the recent EPA publications in the Resource Conservation Challenge and Coal Combustion Products Partnership. A hazardous waste determination would have a negative impact on future beneficial use of coal combustion wastes; especially when it comes to public perception and reaching the EPA's goal of 50% recycling of coal combustion wastes by 2011.

As indicated on the EPA's website: "In two separate regulatory determinations, EPA determined that neither large-volume wastes, nor the remaining FFC wastes, warrant regulation as a hazardous waste under Subtitle C of RCRA and therefore remain excluded under 40 CFR §261.4(b)(4). EPA did determine, however, that coal combustion wastes (CCWs) that are disposed in landfills and surface impoundments should be regulated under Subtitle D of RCRA (i.e., the solid waste regulations), whereas CCW used to fill surface or underground mines (minefill) should be regulated under authority of Subtitle D of RCRA, the Surface Mining Control and Reclamation Act (SMCRA), or a combination of these authorities."

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The MPCA has required coal ash landfills and surface impoundments for coal combustion wastes to have requirements similar to those currently found in Subtitle D of RCRA. At the portions of the facilities constructed and operated to those standards, the MPCA has not identified environmental impacts. Therefore, the MPCA urges the EPA to continue to exempt coal combustion wastes from Subtitle C of RCRA, as indicated in EPA's report to Congress. The MPCA supports the EPA in the development of regulations for landfills and surface impoundments under its authorities in Subtitle D of RCRA, as indicated in the above statement on the EPA's website.

Sincerely,

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

Jeff J. Smith
Division Director
Industrial Division

JJS/GDS:kk