STATE OF MISSOURI
DEPARTMENT OF NATURAL RESOURCES

Jeremiah W. (Jay) Nixon, Governor • Mark N. Templeton, Director

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

Re: Federal Rulemaking for Coal Combustion Byproducts

Dear Administrator Jackson:

On behalf of Missouri, I appreciate the opportunity to provide comments to the Environmental Protection Agency (EPA) on EPA's potential development of new regulations on the disposal and beneficial reuse of coal combustion byproducts (CCBs) also referred to as coal combustion wastes. In March, EPA formally announced its intention to propose regulations pertaining to CCBs by the end of 2009. We understand that EPA is considering the option to regulate CCBs as a hazardous waste under RCRA Subtitle C. Missouri adds its voice to the numerous states expressing strong concerns about this option.

The state of Missouri would like to urge the EPA to refrain from regulating CCBs as a hazardous waste under Subtitle C regulations. Missouri has comprehensive regulations in place for the design and permitting of utility waste landfills (UWLFs) used to manage CCBs as a solid waste. Missouri promulgated regulations in 1997 specifically for UWLFs. Utility waste landfills permitted pursuant to these regulations are subject to numerous requirements designed to protect public health and the environment, including: 1.) a geologic and hydrologic evaluation to determine if the site is suitable for construction of a landfill; 2.) a liner with quality assurance/quality control procedures to ensure proper construction; and, 3.) a leachate collection system and a groundwater monitoring system. The Missouri Department of Natural Resources (MDNR) inspects all permitted solid waste disposal areas, including UWLFs, at least one time per year to ensure compliance with applicable regulations.

Missouri has a number of coal burning power plants. Most of the facilities do manage their fly ash short term in surface impoundments prior to beneficial reuse or final disposal in a UWLF. However, these surface impoundments are bowl shaped depressions in the ground (in contrast to the raised structures used at the Tennessee Valley Authority facility). The outfalls from these ponds and from landfills are routinely monitored under the Missouri State Operating Permit process (i.e., the state equivalent to the National Pollution Discharge Elimination System permitting process).

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Missouri regulations also allow for the beneficial reuse of CCBs; however, regulation of CCBs under RCRA Subtitle C has the potential to put an end to this practice. Regulation of CCBs under the "hybrid" approach being considered by EPA is also likely to dissuade beneficial reuse due to the hazardous waste "stigma" associated with this approach (i.e., hazardous waste liability implications associated with a dual management approach). We have a number of state-wide general beneficial use approvals that allow the holder to use the ash as structural fill, as road base, as a soil amendment or for soil stabilization provided they meet certain criteria. For example, the Missouri Department of Transportation (MDOT) uses fly ash in many of their highway projects. One project alone in southwestern Missouri is expected to use between 1 and 1.5 million cubic yards of fly ash.

Recycling CCBs into new products, rather than having to mine additional virgin material, is part of Missouri's vision for sustainable development and sustainable infrastructure. To disallow the beneficial reuse of CCBs would cause an increase in the use of valuable mineral resources rather than reusing a byproduct with similar characteristics. Regulation of CCBs under RCRA Subtitle C would increase disposal costs for utilities, costs which would presumably be passed on to consumers in the form of higher utility prices. Counties and municipalities who currently use bottom ash for snow and ice control would have to purchase other materials, likely at a higher cost to treat roads in the winter. The Missouri Department of Transportation and other entities using CCBs would have to purchase soil to use in place of fly ash for structural fill, road base, as a soil amendment or for soil stabilization leading to increased costs. Further, substituting fly ash for Portland cement clinker eliminates the CO_2 that would otherwise be released to the atmosphere during the cement production process.

In Missouri, to ensure that human health and the environment are protected, testing is required for beneficially reused materials. The testing required includes initial analysis of the material and additional testing when sources of fuel change or when there is a change in plant processes, if such changes cause a change in the constituents generated. The waste to be beneficially reused must also be kept above the seasonal high groundwater table, unless a variance is obtained from the Department. This requires an interpretation by a geologist registered in the State of Missouri. A 3-foot cap of clean soil is also required unless the material is placed under a structure or a paved/concreted area.

Given the current state of CCBs management activities in Missouri there does not appear to be a compelling reason, from a human health or environmental protection standpoint, to manage these materials as hazardous waste under RCRA Subtitle C. To do so would be an undue disruption to current state CCBs and UWLFs management practices and would likely result in a significant increase in the cost of CCBs management without a corresponding increase in human health or environmental improvement/protection.

It is not clear how EPA's proposal to regulate CCBs under RCRA C would affect existing, permitted UWLFs. Retrofitting of existing UWLFs to meet Subtitle C standards is likely to be technically impracticable. Even if technically feasible, the cost of retrofitting UWLFs to meet

current RCRA Subtitle C standards would likely be prohibitively expensive. Any additional compliance costs borne by the utility companies in retrofitting existing UWLFs or permitting new ones would undoubtedly be passed along to consumers.

In summary, Missouri has adequate regulatory controls in place to ensure the proper management of CCBs. EPA should avoid a "one size fits all" approach that will unnecessarily divert limited technical resources away from existing permitting or compliance and enforcement work. Instead, we ask EPA to recognize that many states have adequate controls in place to protect the environment and public health.

Please feel free to contact me if you have any questions or comments. I can be reached at 573-751-0763 or P.O. Box 176, Jefferson City, Missouri 65102-0176.

Sincerely,

DIVISION OF ENVIRONMENTAL QUALITY

Leanne Tippett Mosby

Leanne Tippett Mosby
Acting Director

LTM/cfl

c: David D. Ahlvers, P.E., Missouri Department of Transportation