



Commissioners

ROBERT M. CLAYTON III
Chairman

JEFF DAVIS

TERRY M. JARRETT

KEVIN GUNN

ROBERT S. KENNEY

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

WESS A. HENDERSON
Executive Director

DANA K. JOYCE
Director, Administration and
Regulatory Policy

ROBERT SCHALLENBERG
Director, Utility Services

NATELLE DIETRICH
Director, Utility Operations

STEVEN C. REED
Secretary/Chief Regulatory Law Judge

KEVIN A. THOMPSON
Chief Staff Counsel

December 9, 2009

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

RE: Federal Rulemaking For Coal Combustion Byproducts

Dear Administrator Jackson:

As members of the Missouri Public Service Commission ("MoPSC"), we write because Missouri jurisdictional electric utilities have recently brought to the MoPSC's attention a decision to be made shortly by the U.S. Environmental Protection Agency ("EPA") regarding the regulation of coal combustion byproducts ("CCB") as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") or as non-hazardous waste under Subtitle D of RCRA. Typically, the MoPSC does not weigh in on environmental matters before the EPA, however, we are expressing our concerns because regulation of CCBs as hazardous waste under Subtitle C of RCRA, rather than as non-hazardous waste under Subtitle D of RCRA, could significantly affect future electricity service in Missouri. We also need to note that we are expressing our concerns based on statements contained in a letter to you from Leanne Tippet Mosby, Acting Director, Division of Environmental Quality of the Missouri Department of Natural Resources ("MDNR"), dated November 24, 2009, and MDNR's comments to the Association of State and Territorial Solid Waste Management Officials ("ASTSWMO") regarding the regulation of CCBs.

Although certain measures to ensure human health and environmental protection are prudent and necessary, MDNR advises EPA in its November 24, 2009 letter to you and in its prior comments to ASTSWMO that adequate regulation of CCBs is presently occurring in Missouri, and there is no need for the EPA to regulate CCBs as hazardous waste under Subtitle C of RCRA. MDNR relates in its November 24, 2009 letter to you and in its comments to ASTSWMO that:

1. Missouri has comprehensive regulations in place for the design and permitting of utility waste landfills ("UWLF") used to manage CCBs as a solid waste. MDNR inspects all permitted solid waste disposal areas, including UWLF's, at least one time per year to ensure compliance with applicable regulations.

2. Most coal burning power plants in Missouri manage fly ash short term in surface impoundments prior to beneficial use or final disposal in a UWLF. In contrast to the raised structures used at the Tennessee Valley Authority ("TVA"), in Missouri surface impoundments are bowl shaped depressions in the ground. The outfalls from these ponds and from landfills are monitored under the Missouri State Operating Permit process, which is Missouri's equivalent to the National Pollution Discharge Elimination System permitting process.
3. Missouri regulations allow the beneficial reuse of CCBs. Testing is required for beneficially reused materials. 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. Regulation of CCBs as hazardous waste under Subtitle C of the RCRA has the potential to put an end to this practice of reuse.
4. Given that Missouri has adequate regulatory controls for CCBs, 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.
5. EPA should recognize that many states have adequate controls in place and allow them to maintain their programs.

We are aware that environmental departments/agencies of other states have sent similar letters to you and have submitted similar comments to ASTSWMO. We also know other state public service commissions and commissioners have sent letters to you expressing concern on this matter. While we understand that rules appear to be needed for states that have either deficient or no regulatory oversight of CCBs, EPA should not overlook those states, like Missouri, that have established and implemented effective programs, including beneficial waste programs. In its rulemaking, the EPA should recognize, among other things, that the TVA situation is not universal because there are states that effectively regulate CCBs.

Again, while the MoPSC does not typically weigh in on environmental matters before the EPA, we are expressing our concerns because regulation of CCBs as hazardous waste under Subtitle C of RCRA, rather than as non-hazardous waste under Subtitle D of RCRA, could significantly affect future electric service in Missouri when this matter is already being effectively addressed in this state.

Thank you for your consideration of our comments.

Sincerely,



JEFF DAVIS
Commissioner
Missouri Public Service Commission



TERRY M. JARRETT
Commissioner
Missouri Public Service Commission