



**STATE OF MISSISSIPPI**  
HALEY BARBOUR  
GOVERNOR  
**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**  
TRUDY D. FISHER, EXECUTIVE DIRECTOR

September 23, 2009

Honorable Lisa P. Jackson, Administrator  
U. S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Administrator Jackson:

I am writing to advise the U.S. Environmental Protection Agency (EPA) of the Mississippi Department of Environmental Quality's (MDEQ) position that coal ash generated in the state of Mississippi should not be regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). We support the previous decisions of the U.S. EPA to not regulate coal ash as a hazardous waste under Subtitle C.

The MDEQ is concerned that regulation of coal ash under Subtitle C would add an unnecessary regulatory burden to coal-fired power generation facilities in our state and would adversely affect the recycling and beneficial use of coal ash. Furthermore, the MDEQ does not have and is not aware of data that indicates that coal ash, disposed or used in projects reviewed and approved in Mississippi, exhibits any of the characteristics of a hazardous waste. In particular, we have no data that indicates that coal ash fails the Toxicity Characteristic Leaching Procedure (TCLP) for any constituent. While the MDEQ recognizes that in the past there may have been some cases of adverse environmental effects from the management of coal ash in unlined areas or in other improper ways, declaring all coal ash to be a hazardous waste because of these cases does not appear to be supported by sound environmental data.

As a part of the solid waste management permitting process in the state of Mississippi, MDEQ has reviewed the environmental impacts associated with the siting and operation of a number of coal ash disposal units in our state for many years. Through our ongoing assessment and review of these sites, MDEQ has evaluated the siting, design, construction, operation, and monitoring conditions of these coal ash disposal units. There have not been any conditions at these sites that indicate that a coal ash disposal facility

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properly designed and operated under our state's Nonhazardous Solid Waste Management Regulations would pose any significant environmental threat. The overall regulation and monitoring of these sites has not revealed any particular condition that warrants the more stringent siting and design requirements of a hazardous waste disposal unit authorized under Subtitle C of RCRA.

Power generation companies in the state of Mississippi have invested substantial resources into the permitting, design, construction, operation and monitoring of coal combustion residual disposal units. We believe that these units have been developed and operated in an environmentally protective manner. Of the 49 coal combustion residuals units determined by EPA to have "high hazard potential" ratings, none are located in Mississippi. It is further our belief that imposing hazardous waste design and operating standards on these disposal units would add a tremendous cost to the management of coal ash without increased environmental benefit.

MDEQ also thinks that the varied beneficial uses of coal ash currently occurring in our state would be significantly reduced, if EPA determines that coal ash should be regulated as a hazardous waste under Subtitle C. Mississippi's current regulations for beneficial use prohibit the consideration of hazardous wastes in uses that involve direct application to the land. The uses of coal ash that have been approved in our state include incorporation into the manufacture of portland cement and concrete products; use in the replacement of limestone and aggregate in highway, road, and parking lot construction; and use in interior road base construction in a lignite coal mine. In addition, MDEQ has also approved the use of flue gas desulfurization (FGD) sludge as a soil amendment on certain crops in the state of Mississippi.

Under a scenario where coal ash would be declared a hazardous waste by EPA, the continued use of these materials in these applications would likely be threatened. If end users of the material ceased their use of coal ash and other coal combustion by-products, Mississippi would need additional disposal capacity for hundreds of thousands of tons of coal ash materials that are annually being used beneficially. This new disposal capacity would be added at an increased cost due to the rigorous siting, design and operating requirements of Subtitle C compliant disposal facilities.

Furthermore, if the use of coal ash is discontinued in our state, then manufacturing and construction businesses currently using the ash would likely begin to use other raw materials. Increased extraction of limestone, gravel and other similar natural materials could lead to additional discharges and emissions of pollutants to the environment. MDEQ believes that the net effect of declaring coal ash as a hazardous waste could potentially lead to increased pollutant discharges to our environment and not a reduction in such pollutants as both our agencies so desire.

As has been noted in comments from ASTSWMO and other states, Mississippi believes that the management of coal ash should continue to be regulated by the states without the

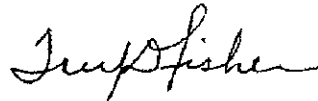
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need for additional federal oversight. We believe that the U.S. EPA's previous decisions not to regulate coal ash as a Subtitle C waste were correct. One of the stated reasons in support of EPA's previous decision to not regulate ash as a Subtitle C waste was that EPA found that State programs were regulating coal ash satisfactorily.

MDEQ understands EPA's concerns regarding the management and disposal of coal ash due to the recent failure of the coal ash slurry impoundment at the Tennessee Valley Authority's Kingston Fossil Plant in Tennessee. We agree that this is a significant problem that requires the direct attention of the U.S. EPA. However, we recommend that EPA address this problem by encouraging coal-fired power generation facilities to convert from wet to dry processes to minimize the types of risks associated with the TVA failure. We believe that such management changes combined with increased technical assistance and training in the monitoring of these facilities could offer safer coal ash management and disposal. MDEQ does not think EPA should define coal ash as a hazardous waste because we believe that such increased regulation would substantially increase the cost of management and could lead to disposal capacity issues in Mississippi, as well as other states, without offering substantive environmental benefits.

We greatly appreciate your consideration of this matter. If you have any questions or need additional information, please feel free to contact Mark Williams, P. E. on my staff at (601) 961-5304, or at [Mark\\_Williams@deq.state.ms.us](mailto:Mark_Williams@deq.state.ms.us).

Sincerely,



Trudy D. Fisher  
Executive Director

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cc: Governor Haley Barbour  
Senator Thad Cochran  
Senator Roger Wicker  
Congressman Genc Taylor  
Congressman Bennie Thompson  
Congressman Travis Childers  
Congressman Gregg Harper