



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Environmental Regulation  
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JON S. CORZINE  
*Governor*

MARK N. MAURIELLO  
*Acting Commissioner*

September 1, 2009

Mr. Matt Hale, Director  
Office of Resource Conservation and Recovery  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Mr. Hale:

The New Jersey Department of Environmental Protection (NJDEP) thanks the United States Environmental Protection Agency (USEPA) for providing the opportunity for comment regarding the USEPA's development of regulations on the management of coal combustion waste whether fly ash or bottom ash. This is an important issue for all states with coal-fueled power plants as well as those states using the coal ash for beneficial uses.

NJDEP currently regulates nonhazardous coal combustion wastes as ID27 Dry Industrial Waste and disposers of the waste must comply with all applicable solid waste regulations (N.J.A.C. 7:26-1 et. seq). NJDEP encourages beneficial use of material, which if disposed of would otherwise be treated as solid waste. As such, historically nonhazardous coal combustion wastes were encouraged to be used beneficially in an environmentally sound manner. There are categorical exemptions available for nonhazardous coal ash in the New Jersey solid waste regulations at N.J.A.C. 7:26-1.7(g) for the beneficial use of coal combustion bottom and fly ash for the specific use to make structural grade products. For other uses a beneficial use determination (BUD) application may be submitted and if approved, a certificate of authority to operate (CAO) is issued specifying the conditions to be followed for transportation and use of the material.

Based on the data available, coal ashes typically do not meet any of the criteria to be considered a hazardous waste under 40 CFR 261 subpart B. It is the responsibility of the generator of any solid waste to determine if the waste is hazardous. 40 CFR 261.24 specifies the concentrations of various toxic metals which make the waste a hazardous waste. If any of the metals exceed the maximum concentration limit, the ash would be considered a RCRA hazardous waste and must be managed as such. Available data shows that concentrations of heavy metals in coal ash are below the limits set by RCRA. However, we are concerned that USEPA may decide to list coal combustion waste under 40 CFR 261.32 as hazardous wastes from specific sources even if the concentrations of heavy metals are below the toxicity limits, in which case coal combustion waste from specific sources (such as power plants) would be considered a listed RCRA hazardous waste.

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Classifying coal ashes as hazardous waste would preclude the ash from being considered for beneficial use. NJDEP believes that such a classification would create a disposal problem because New Jersey does not have any commercial hazardous waste landfills. Therefore, if coal ash were considered hazardous waste, electric power purveyors would have to ship their coal ash out of New Jersey for disposal at much higher cost than for beneficial use.

NJDEP concurs with the Pennsylvania DEP's position, recently offered to USEPA, that the classification and regulation of nonhazardous coal ash as a hazardous waste is not supported by science. Pennsylvania has successfully been able to use coal combustion wastes for mine reclamation throughout the state, finding that the use of the waste has had no adverse groundwater impact. If coal ash were to be classified as hazardous waste it would have a significant economic impact to New Jersey, leading to higher electricity production costs for industry and increases in costs for electricity for every consumer of the State.

I appreciate your office's careful consideration of this recommendation toward maintaining the current waste classification framework for coal combustion products, which has served the both the environment and states economies well for decades.

Sincerely,



Nancy Wittenberg, Assistant Commissioner  
Environmental Regulation

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c: Robert M. Confer