



PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA

July 28, 2009

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:

As members of the Pennsylvania Public Utility Commission ("PUC"), we write because electric utilities and generators have recently brought to our attention a decision to be made shortly by EPA that could significantly affect future electricity prices and, in some cases, the ability of utilities and generators to provide reliable and uninterrupted power services. While the PUC does not generally involve itself in environmental issues, EPA's plans to develop federal regulations for coal combustion byproducts ("CCBs") has the potential to compromise the ability of utility companies in Pennsylvania to provide reliable electric services at consistent and affordable rates. Because of the far-reaching effects that this issue could have on electric services in Pennsylvania, we feel compelled to express our views on the subject.

In particular, we understand that EPA is evaluating whether to regulate some or all CCBs as hazardous wastes under Subtitle C of RCRA, or as non-hazardous wastes under Subtitle D of RCRA. EPA also reportedly is evaluating whether to require the early retirement of active surface impoundments used by power plants to manage CCBs. We understand that, to date, every state environmental agency that has weighed in on the issue (approximately twenty state agencies) has opposed regulating CCBs as hazardous waste because CCBs exhibit no hazardous characteristics and regulation of CCBs as hazardous would prevent the beneficial uses of the material due to the stigma that would attach. Instead, every state has taken the position that the best management option for regulating CCBs is as non-hazardous waste under RCRA Subtitle D. The states take this position because it would preserve and expand the beneficial use of CCBs (which uses preserve natural resources and reduce the amount of

wastes disposed) and because the states have the regulatory infrastructure in place to ensure the safe management of these materials. We believe that this is certainly the case in Pennsylvania.

As noted in the Pennsylvania Department of Environmental Protection (DEP) letter to you dated April 10, 2009, from Deputy Secretary Thomas K. Fidler, classification of coal combustion waste as hazardous would likely end its beneficial use practices without any tangible increase in environmental protection. Since 1985, DEP has provided oversight on the beneficial use of coal ash for mine reclamation and other uses. In 1992, Pennsylvania implemented regulations governing the management of coal combustion wastes covering storage, disposal, and beneficial use. Under those regulations and oversight, coal has been successfully used for mine reclamation throughout the Commonwealth. Through a groundwater monitoring program and data collected at reclamation sites, DEP has found no indication of ground water degradation attributable to the placement of coal ash. In addition to coal ash, DEP regulates other coal combustion wastes, such as flue gas desulfurization (FGD) sludge and gypsum, and requires permits prior to the beneficial use of these wastes.

We are concerned that, notwithstanding the views of the states, EPA could nonetheless regulate CCBs as hazardous waste and that power plants in our state will be confronted with sharply higher operating costs which will eventually be passed on to customers. Some smaller plants may actually have to cease operations because the costs of retrofitting their CCB management units to meet the hazardous waste standards and/or losing the capacity to manage CCBs in surface impoundments will be too high to allow these plants to recover the conversion costs given the limited capacity of these units. In Pennsylvania, this would affect our many smaller pulverized coal-fired and waste coal-fired plants which are not large enough to absorb the cost of disposing of large volumes of "hazardous" waste, which are not hazardous under any commonly accepted definition of that term.

As you can appreciate, the loss of generating capacity is a significant concern to us as it would directly threaten our utilities' ability to provide reliable and cost-effective power. Since the states have already made clear that their programs will ensure the safe management of CCBs, we see no reason for EPA to pursue the hazardous waste option. Such an approach would appear to be regulatory overkill and, more importantly, could threaten cost-effective and reliable provision of electric services in Pennsylvania.

While we understand that federal rules are needed for states that have lax or no regulatory oversight of coal combustion waste, there are states, like Pennsylvania, that have established and implemented effective programs, including beneficial waste programs. In the federal rulemaking, EPA should be careful not to preempt states that have programs that work well.

For these reasons, we respectfully urge EPA to regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

Thank you for your consideration of our views.

Sincerely,



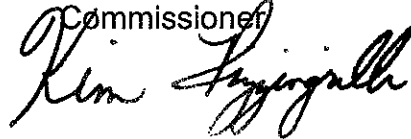
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Chairman



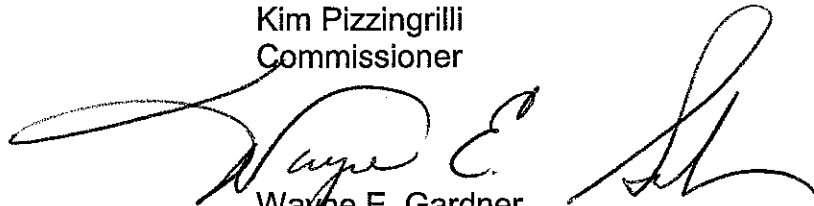
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