



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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Secretary of Natural Resources

David K. Paylor
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September 30, 2009

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

Dear Administrator Jackson:

The Virginia Department of Environmental Quality (VADEQ) would like to take this opportunity to relay our concerns regarding possible regulatory actions for coal combustion ash (coal ash) by the United States Environmental Protection Agency (EPA). There have been recent indications that EPA may be contemplating regulation of coal ash under the Resource Conservation and Recovery Act (RCRA) Subtitle C and that a predominant factor is for EPA to have enforcement authority. VADEQ believes that reason alone is inadequate for such a costly action; and, it does not adequately consider the states responsibilities and authority to manage coal ash under their own laws and regulations.

In Virginia, coal ash is regulated as a solid waste under our state authorities and is treated in a like manner to other industrial solid wastes. Our regulations provide requirements for coal ash management as a solid waste, including appropriate criteria for disposal units. These regulations also allow for its beneficial reuse in a manner that is protective of human health and the environment. Virginia, like many states, has a strong solid waste management program. Our solid waste statutes include enforcement authorities, as was demonstrated to EPA when we obtained approval for our municipal solid waste program (a RCRA Subtitle D program). Virginia has an ongoing process to evaluate its Subtitle D program including regulations that allow for the beneficial reuse of waste materials. We are committed to continuously improving this process.

VADEQ does not support the possible regulation of coal ash under RCRA Subtitle C for the following reasons:

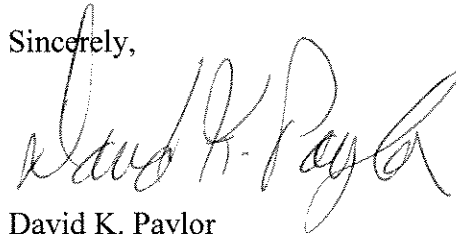
- Coal ash very rarely fails the Toxicity Characteristic Leaching Procedure or any other hazardous waste characteristic to warrant characterization as a hazardous waste.

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- Defining coal ash as hazardous waste will either eliminate or drastically reduce appropriate beneficial reuse.
- There is not an adequate amount of statewide capacity in Virginia to manage this material as a Subtitle C hazardous waste. In a recent survey conducted by ASTSWMO, 96 % of states indicated that they, like Virginia, have no disposal capacity to assimilate this new waste stream into a Subtitle C facility.
- Regulation under Subtitle C would undermine the rights and responsibilities of a state with a delegated Subtitle D program.
- Regulation as a hazardous waste presents an unnecessary burden on already strained state budgets as it will require additional budgetary and staff resources for the necessary actions regarding regulations, authorization, siting, permitting, compliance, and enforcement.

Given an uncertain environmental benefit and for the reasons stated above, regulation of coal ash under RCRA Subtitle C is unwarranted in our view. Virginia urges EPA to consider the use of RCRA Subtitle D as a mechanism to control and manage the environmental aspects associated with coal ash.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor". The signature is fluid and cursive, with the first name "David" being the most prominent.

David K. Paylor

DKP:ewf

cc: Mathy Stanislaus, EPA Assistant Administrator
for the Office of Solid Waste and Emergency Response