



west virginia department of environmental protection

Executive Office
601 57th Street SE
Charleston, WV 25304
Phone: 304-926-0440
Fax: 304-926-0446

Joe Manchin III, Governor
Randy C. Huffman, Cabinet Secretary
www.wvdep.org

April 10, 2009

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

Re: EPA Regulation of Coal Combustion Waste

Dear Mr. Hale:

On behalf of West Virginia Department of Environmental Protection (WVDEP) I thank you for the opportunity to comment on the potential federal regulation of coal combustion waste.

Of the three basic regulatory proposals recently outlined by EPA, WVDEP's position is that coal ash disposal facilities should continue to be regulated under RCRA Subtitle D. Coal is extremely important to the State of West Virginia as both a valuable natural resource and as an export commodity. Moreover, coal is burned to produce approximately 99% of our State's electricity. While our State's future energy plan calls for renewable sources such as wind energy to become an increased percentage of our State's energy portfolio, the burning of coal shall continue to play a large role both for West Virginia and for our nation well into the middle of the century.

Coal combustion disposal facilities have been successfully regulated in West Virginia as solid waste facilities under RCRA Subtitle D for many years. In light of the serious nature of the coal ash release in Tennessee last December, it is inarguable that enhanced scrutiny and evaluation of coal combustion disposal practices, as well as a more aggressive oversight of those disposal facilities, must be undertaken. However, a decision to designate coal combustion wastes as hazardous waste under RCRA Subtitle C may turn out to be counter-productive in at least two areas. First, the work of EPA's Resource Conservation Challenge program to promote and encourage the recycling of coal combustion products as material to be beneficially used in roads, bricks and in other building materials would be made much more challenging should coal combustion waste become designated as a hazardous waste (especially from a perception standpoint). The other major problem arising from the regulation of coal combustion waste under RCRA Subtitle C would be the additional resource burden imposed on both coal ash disposal facilities and on the regulating agency. This significant additional burden is in regards

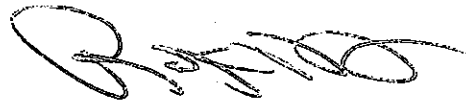
Matt Hale, Director
April 10, 2009
Page 2 of 2

to the workload and procedures necessary to secure timely permitting, closure and possible remedial activities as hazardous waste facilities.

We believe that the track that EPA and the States are now following is a good one. As you know, we are currently evaluating all coal combustion waste facilities as they exist today. As we evaluate, we will provide aggressive oversight of these facilities to ensure that releases, both catastrophic and minor, do not occur. We believe that the continued regulation of coal combustion waste under Subtitle D, and the strengthening of Subtitle D coverage where warranted is the best approach.

Thank you very much for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy C. Huffman". The signature is stylized and somewhat cursive, with a large initial "R" and "H".

Randy C. Huffman
Cabinet Secretary