



Mark Parkinson, Governor  
Roderick L. Bremby, Secretary

DEPARTMENT OF HEALTH  
AND ENVIRONMENT

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September 21, 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:

On behalf of Kansas, I appreciate the opportunity to provide comments to the Environmental Protection Agency (EPA) on EPA's potential development of new regulations on the disposal and beneficial reuse of coal combustion waste (CCW). Kansas has a full system of water and waste permits to ensure that these wastes are properly managed to prevent accidents such as occurred in Tennessee last year. Kansas recognizes that all states may not have a regulatory program in-place that provides the safeguards that our state program provides; however, EPA should not promulgate any CCW regulations that would impact state regulatory programs such as in Kansas. Any federal regulations should allow some flexibility in how state programs are administered rather than establish prescriptive management standards. EPA's rule should also not set complex equivalency demonstration criteria to prove that the existing state program is acceptable.

We understand that EPA is considering options to regulate CCW as a hazardous waste under RCRA Subtitle C. The State of Kansas is opposed to this approach for multiple reasons. Regulation under RCRA Subtitle C has the potential to impact the beneficial use of CCW. Probably of greater significance to Kansas is that state law prohibits the land disposal of any RCRA hazardous waste. If CCW is declared "hazardous" all current permitted disposal activities would become prohibited and these wastes would need to be transported out of state for disposal. The costs and environmental impacts of such a change would be huge.

Kansas has eight major coal-burning power plants. Some of these facilities manage fly-ash and bottom ash as a "dry" waste and some slurry the waste into some type of containment system. If the waste is initially managed "wet," the containment system may be a constructed berm or dam, or an excavated lagoon. In some cases, wet waste is later removed from storage for either beneficial use or transfer to a dry waste landfill. In all cases, the CCW storage areas are covered by a landfill permit and in some cases by a wastewater permit as well. To obtain a permit for CCW management, the power company must provide the Bureau of Waste Management with comprehensive engineering plans, site geological information, a groundwater

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monitoring plan, a demonstration of financial assurance for closure and post-closure care, and an operating plan (among other required permit application documents). When the waste storage units are constructed, the company must provide third party construction quality assurance to document that the units have been constructed in accordance with approved engineering plans. The permitting process also includes public participation consisting of a comment period and a public hearing.

In addition to this high degree of regulatory oversight by the Kansas Department of Health and Environment related to permitting, Kansas has another level of regulatory control over these facilities - - an inspection program. KDHE inspects all permitted solid waste storage or disposal areas at least one time per year. During our inspections, the integrity of the containment systems is visually examined. On a less frequent basis, KDHE permit engineers also visit these sites and make observations of system integrity. Additional inspections are also carried out by the Kansas Division of Water Resources (DWR). Every three years, DWR inspects dams that meet certain criteria: (1) the dam or berm must be greater than or equal to 25 feet in height or (2) the dam or berm must be at least 6 feet high and retain 50 acre-feet of liquid. None of the Kansas CCW storage and disposal facilities have the potential to cause a disaster such as occurred in Tennessee. A couple of the facilities are located adjacent to rivers or large lakes which does present some risk to the environment, but there are no downstream cities or neighborhoods that could be impacted by a release from any facility. This combined with the present comprehensive permitting program makes an additional level of federal regulation a concern during this time of reduced resources to administer all solid and hazardous waste programs. EPA should avoid making regulatory changes that cause states to divert limited technical resources from existing permitting or compliance and enforcement work to address a non-problem in states that have existing permitting programs.

I would be happy to provide more details about Kansas' regulated universe or our regulatory program. The Kansas program could well serve as a model for Federal regulation under Subtitle D with provisions for a state to exercise some flexibility to adapt the program to their own unique geology and climate. Please contact me at (785) 296-1612 or [wbider@kdheks.gov](mailto:wbider@kdheks.gov) if you have any questions.

Sincerely,



William L. Bider  
Director  
Bureau of Waste Management

C John Mitchell, Director, KDHE Division of Environment  
Dennis Degner, Chief, Solid Waste Permits Section