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GOVERNOR



HAROLD LEGGETT, PH.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL SERVICES

May 29, 2009

Certified Mail No.: 7004 2510 0005 5766 5661
Return Receipt Requested

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

Re: Regulation of coal combustion waste

Dear Mr. Hale:

I write today to express my opinion regarding federal regulation of coal combustion waste (CCW). I am told that EPA is considering its options and intends to propose rules by the end of this year. My staff and I encourage an approach that regulates CCW as nonhazardous solid waste under Subtitle D of the Resource Conservation and Recovery Act, rather than as hazardous waste under Subtitle C of that act.

The LDEQ has successfully regulated CCW by regulation since 1983. Current EPA regulations do not provide standards for managing and disposal of industrial solid waste such as CCW. However, the LDEQ has developed an industrial solid waste program and has promulgated regulations based upon LDEQ's EPA-approved municipal landfill regulations.

The data we have seen indicates that CCW would not qualify as characteristic hazardous waste under RCRA Subtitle C. Levels of toxic constituents and permeability are both very low. Nevertheless, Louisiana's regulations require that landfills that accept CCW must have liners and groundwater monitoring, and meet all national standards for location, design, operation, closure, post-closure, corrective action, and monitoring. All available soil, groundwater and surface water monitoring data show that our current regulatory scheme is fully protective of those media.

Regulating CCW under RCRA Subtitle C would provide no clear advantages to Louisiana's solid waste or hazardous waste programs that cannot be accomplished under a RCRA Subtitle D regulatory approach. On the contrary, regulation of CCW under RCRA Subtitle C would needlessly complicate Louisiana's existing programs and increase costs to the regulated community. Under Louisiana law, hazardous waste and nonhazardous solid waste are distinct types of wastes. A federal hybrid approach that would designate CCW a hazardous waste, but allow it to be managed at a solid waste disposal facility, would conflict with Louisiana law.

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Furthermore, a large portion of the fly ash CCW generated in Louisiana is sold as a by-product, replacing Portland cement. This use avoids the emission of carbon dioxide that would result from the production of Portland cement.

If the EPA concludes that federal regulations are necessary, the LDEQ encourages the EPA to consider using the regulatory framework developed by the LDEQ. The LDEQ is available to provide assistance in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cheryl', with a long horizontal flourish extending to the right.

Cheryl Sonnier Nolan
Assistant Secretary