



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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SOLID WASTE PROGRAM

Mr. Matt Hale, Director
Office of Resource Conservation and Recovery
United States Environmental Protection Agency
Ariel Rios Building, mail Code 5301P
1200 Pennsylvania Avenue, N.W.
Washington DC 20460

Dear Mr. Hale:

The following responds to EPA's request to states regarding their opinions concerning the regulation of coal combustion byproducts (CCBs) by the Federal government. In a recent meeting with the Association of State and Territorial Solid Waste Management Officials' (ASTSWMO) Ad-hoc Coal Ash Workgroup on February 27, 2009, you requested that States express their preference concerning three possible options that USEPA is considering with respect to the development of CCB regulations. The three options discussed may be summarized as:

- 1) Regulation under Resource Conservation and Recovery Act (RCRA) Subtitle D, as a non-hazardous industrial waste, with enforcement largely by the States and through citizen lawsuits, as USEPA had originally decided to do in 2000;
- 2) Regulation under RCRA Subtitle C as hazardous waste, with flexible management requirements afforded under the authority of RCRA Section 3004(x); or
- 3) Regulation under an approach that establishes basic management standards and criteria under RCRA C, but "delists" those waste which are being handled in accordance with those criteria, but treating as hazardous waste those materials that are not handled appropriately. This has been described in discussions with other States as the "kiln dust" approach, due to its similarity to the manner in which EPA has proposed to address cement kiln dust in a proposal from 1999.

If Federal regulations are enacted, regulation of the material through industrial waste regulations promulgated under RCRA Subtitle D is Maryland's preferred supportable option. Maryland recognizes that CCBs have the potential to cause pollution of surface and groundwater and recently adopted protective regulations requiring liners, leachate collection, groundwater monitoring, capping, and closure caps. We believe that USEPA could implement similar rules under Subtitle D and afford States the opportunity to demonstrate that they can implement those standards much more quickly than regulation under Subtitle C. Please also note that, based on its experience with municipal and industrial wastes including CCBs, the Maryland Department of the Environment (MDE) considers municipal solid waste to produce potential risks to the environment that are more diverse and more difficult to control than CCBs. Municipal waste leachates tend to contain organic chemicals as well as inorganic chemicals, the wastes are less structurally predictable from a stability standpoint due to their inhomogeneity, and they release gaseous products of decomposition that must be addressed which CCBs generally do not. The Department can provide information concerning sites that support this view should you request. Protective mechanisms such as liners, leachate collection systems, caps, and monitoring already required under the existing Subtitle D regulations are sufficient to address the risks posed by CCBs to the environment. This approach also affords citizens the ability to participate through citizen suits authorized under RCRA Subtitle D.

CCBs rarely fail the criteria by which materials are determined to be hazardous waste. To classify them as hazardous, regardless of their chemical content, would needlessly limit the management options for both the CCBs, and other wastes legitimately classified as hazardous which will be competing with CCBs for limited hazardous waste disposal capacity. The Department also considers the more stringent requirements of RCRA Subtitle C to be unnecessary given the risks associated with CCBs. The regulatory approaches required in Maryland's recently adopted CCB regulations, which are similar to the engineering controls required for municipal solid waste landfills, but tailored to the specific characteristics of CCBs, are adequate to manage the material in a manner that protects groundwater, public health and the environment.

It is also important to note that Maryland has an active coal mining regulatory program that allows for the utilization of alkaline ash, only, in the reclamation process. Ash used in the reclamation of non-coal mine sites follows requirements similar to those found in RCRA Subtitle D standards for CCBs. Maryland's recently enacted regulations will require an applicant to develop and implement a sampling plan for the initial characterization of the CCBs. The plan shall include a comprehensive list of parameters to be analyzed and the methods used in the analytical characterization. Ongoing ash characterization will be required as will site monitoring through post closure until MDE is satisfied that the site is stable and not contributing to adverse surface or groundwater impacts. The Department also plans to amend the existing regulations to clarify those deep mining operations will be subject to the same requirements as surface mines.

The Department also supports closer regulation of liquid slurry storage lagoons. Although Maryland does not have any liquid storage lagoons, there are storage lagoons directly across the Maryland line from two facilities that are linked to the lagoons by pipelines. One of these pipelines recently was found to be leaking, which caused a discharge of several thousand gallons of coal ash slurry directly into the Potomac River, a Maryland waterway.

Finally, Maryland plans to, in 2009, develop regulations governing the recycling and beneficial use of CCBs. As the anticipated volume of CCBs produced in Maryland (currently 2 million tons) is expected to double by 2013 as the requirements for Maryland's Health Air Act and flue-gas desulfurization for coal fired power plants are implemented, it is vital that the recycling of materials that can be safely used in products or as raw materials be encourage to the maximum extent possible. Regulating these materials as a hazardous waste would discourage recycling.

Last, paying for these enhanced regulatory efforts is of great concern to the States. The Maryland legislature, at the Department's request, just recently enacted legislation imposing a per ton fee on CCB material generated. Material that is used for coal mine reclamation or beneficial reuse is exempt from the fee. The revenues will pay for the additional costs to MDE of implementing these new requirements for disposal and recycling. While this is Maryland's approach, many states may not have this option and EPA should also consider in its development of its approach, how State's will be able to implement new requirements.

We look forward to learning more about other state's opinions and experiences with this material and working with EPA, ASTSWMO, and ECOS to develop an appropriate approach to the national management of coal combustion byproducts. If I may be of further assistance, please contact me at 410-537-3304, toll-free at 1-800-633-6101, or via e-mail at htablada@mde.state.md.us.

Sincerely,



Horacio Tablada, Director
Waste Management Administration

cc: Mary Zadanowicz, Executive Director, ASTSWMO
Nancy Marker, ASTSWMO Region III Board Member and Manager, Solid and Hazardous Waste
Management Branch, DNREC
Shari T. Wilson, Secretary