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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 24, 2009

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

Re: Regulation of Coal Combustion By-Products

Dear Ms. Jackson:

The Texas Commission on Environmental Quality (TCEQ) understands that the U.S. Environmental Protection Agency (EPA) is considering several options relating to the regulation of coal combustion by-products (CCBs). A change in the federal regulation of CCBs could have a substantial impact on the management of CCBs in the State of Texas. We appreciate the opportunity to submit our comments and concerns which are similar in nature to those we submitted to EPA in June 2008.

We understand that EPA is considering regulating CCBs under Subtitle C of the Resource Conservation Recovery Act (RCRA) or under Subtitle D of RCRA and is also evaluating whether to require closure of all active surface impoundments managing CCBs. Of the two options, the TCEQ believes that the best management alternative for regulating CCBs would be under Subtitle D of RCRA.

Most states, including Texas, have developed programs that regulate the management and disposal of CCBs. On May 22, 2000, EPA issued a determination that state regulatory programs were adequate to ensure proper management and disposal of CCBs. In addition, in 2005, the EPA and the U.S. Department of Energy determined that such state regulatory programs have become even more stringent. The TCEQ believes that the regulatory program in Texas will ensure that CCBs are managed and disposed in a manner protective of human health and the environment.

Should EPA determine that federal regulation of CCBs is necessary and appropriate: the TCEQ believes that CCBs should be regulated under Subtitle D of RCRA, rather than under Subtitle C of RCRA. Coal combustion waste in Texas does not exhibit any of the characteristics of a hazardous waste based on extensive analytical testing required by TCEQ Industrial Waste

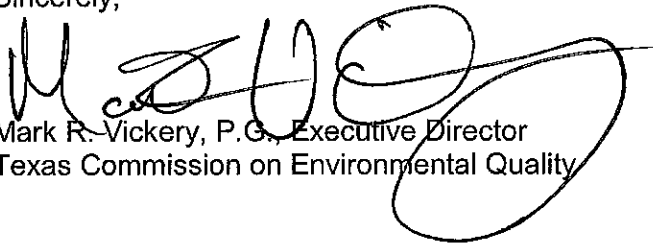
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Regulations. Regulation of CCBs under Subtitle C could potentially cause negative impacts, such as deterring beneficial use.

A significant amount of the CCBs generated in the State of Texas is used in beneficial ways that do not pose a threat to human health or the environment. The beneficial use of CCBs conserves the resources for which CCBs are substituted. In addition, the beneficial use of CCBs reduces the total amount of waste destined for land disposal and preserves landfill space. Using coal ash as a substitute for cement in highway construction and other beneficial applications would reduce the amount of waste. EPA has acknowledged in its own publication that typically a ton of coal ash compacted to 70 pounds per cubic foot takes up approximately 28 cubic feet of landfill space and that for every million tons of coal combustion products beneficially used reduces the need for 656 acre-feet of landfill space. Regulation of CCBs under RCRA Subtitle C would discourage its beneficial use and instead cause the disposal of a valuable resource in landfills and surface impoundments.

The TCEQ appreciates the EPA's consideration of these comments.

Sincerely,



Mark R. Vickery, P.G., Executive Director
Texas Commission on Environmental Quality

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bcc: Mr. Minor Hibbs, Chief Engineers Office – MC 168
Mr. Earl Lott, Director, Waste Permits Division – MC 126
Mr. Richard A. Hyde, Deputy Director, OPR – MC 122