

J Robert L.



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Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

BRAD HENRY  
Governor

May 1, 2009

Mr. Matthew Hale  
USEPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 5301P  
Washington, DC 20460

Re: EPA's Approach to Regulation of Coal Combustion Waste (CCW)

Dear Mr. Hale:

In response to the December 2008 spill of an estimated one billion gallons of CCW from a retention lagoon managed by the Tennessee Valley Authority (TVA), the Oklahoma Department of Environmental Quality (DEQ) understands that EPA is considering regulations that may result in CCW being regulated as a hazardous waste under Subtitle C or through a hybrid scheme under both Subtitles C and D. While we certainly do not want to diminish the loss of property or the environmental harm caused by the TVA incident, we believe implementing extensive regulations too quickly and without careful thought may lead to unintended consequences while not addressing the root cause of the release. The purpose of this letter is to explain Oklahoma's perspective on this issue because we believe CCW is adequately managed under existing state statutes and regulations.

First, I believe it is important for EPA to consider that the TVA incident appears to have been an engineering failure completely unrelated to any potential hazardous nature of the CCW. Therefore, a knee-jerk reaction to impose Subtitle C regulations on CCW will do nothing to address the cause of the incident. Oklahoma already has regulations in place that we believe adequately address CCW disposal so that additional federal regulations will provide little additional environmental protection while increasing disposal costs to utilities (and ultimately to consumers who are already bearing significant energy costs), and diminish many beneficial reuses of CCW.

When disposed, CCW is considered a non-hazardous industrial waste (NHIW) in Oklahoma. Land disposal of CCW is subject to our solid waste management regulations. Under those regulations, land disposal sites that accept NHIW (which includes those that accept CCW) are subject to nearly identical construction, operational, groundwater monitoring, closure, post-closure, financial assurance, and corrective action requirements as the Subtitle D requirements for municipal solid waste landfills. Arguably, one could say that Oklahoma's regulations go further than the federal regulations because our regulations include specific construction requirements for liners and leachate collection systems, slope stability considerations, and third-party quality assurance/quality control reviews of construction—requirements not included in the



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federal regulations. Therefore, we believe disposal of CCW is adequately addressed in Oklahoma.

With respect to beneficial reuses, Oklahoma strongly supports recycling and reuse of materials that would otherwise be a waste. As such, we have also considered many beneficial reuses for CCW. Several years ago, DEQ staff and CCW generators completed an extensive review of chemical constituents associated with CCW, and potential uses of the material, to develop guidance for its beneficial reuse in several applications such as manufacture of cement, solidification/chemical fixation, soil stabilization per ASTM D5239, use as road base material, and others. We believe these uses are protective of human health and the environment and provide a viable, cost-effective alternative to landfill disposal. Imposing additional regulations on CCW may drastically reduce these alternative uses due to the fear of potential liability arising from the reuse of a material to which the "hazardous waste" stigma is attached. The result will be more waste disposal, an outcome completely contrary to EPA's goal of waste reduction and recycling.

Oklahoma statutes also recognize a reuse for CCW in active or inactive mine reclamation projects under the jurisdiction of the Oklahoma Department of Mines (ODOM), a use that can greatly reduce subsidence concerns for underground mines. ODOM has developed regulations to provide oversight of this activity, so that any EPA regulations bringing CCW under specific Subtitle C or Subtitle D authorities are likely to impact this beneficial use of CCW, resulting in more landfill disposal and reduced landfill capacity for Oklahoma's municipal waste.

In summary, Oklahoma strongly supports environmental regulations when they are based on legitimate hazards to human health and the environment, but we cannot support imposing greater regulations on an already-properly-managed material because of an environmental disaster that seems to be completely unrelated to the material. Oklahoma has a robust regulatory scheme to handle CCW, whether disposed or recycled, and we do not feel further federal regulation is prudent or necessary. We look forward to working with EPA to address this issue. If you have any questions or would like additional information, please contact me at (405) 702-5100.

Sincerely,



Scott Thompson, Director  
Land Protection Division  
Oklahoma Department of Environmental Quality

cc: Carl Edlund, EPA Region 6