



October 15, 2019

Mr. Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Office of Land and Emergency Management Docket
1200 Pennsylvania Avenue NW
N.W. Washington, DC 20460

Attn: Docket No. EPA-HQ-OLEM-2018-0524; FRL-9997-74-OLEM

RE: Comments on the Proposed Rulemaking: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles. 84 Fed. Reg. 157 (August 14, 2019)

Dear Administrator Wheeler:

The Pennsylvania Department of Environmental Protection (DEP) submits this comment letter in response to the notice of proposed rulemaking entitled *Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Enhancing Public Access to Information; Reconsideration of Beneficial Use Criteria and Piles* published by the U.S. Environmental Protection Agency (EPA) on August 14, 2019 (84 Fed. Reg. 157) (Proposed Rule).

I. Comments on EPA's Revised Definition of "beneficial use"

EPA's proposed revision to the definition of "beneficial use" in the Proposed Rule eliminates the mass-based numerical threshold used to trigger an environmental demonstration, referenced in criterion four of the 2015 definition, and replaces it with specific location-based criteria, which were derived from the criteria provided for coal combustion residuals (CCR) disposal units. EPA solicited comments and information on specific state criteria that would represent an appropriate trigger for an environmental demonstration, such as numerical limits; setbacks to wetlands, private residences, bodies of water, and water supplies; specific criteria for CCR use; and any other requirements that state beneficial use programs have in place (e.g., specific areas prohibited from CCR use) to supplement the information on the group of 12 states reviewed by the Agency. Pennsylvania was one of the 12 states reviewed by EPA in the development of the revisions proposed to EPA's final rule, *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*, 80 Fed. Reg. 21301 (April 17, 2015) (2015 CCR Rule) on August 14, 2019.

However, some of the tenets that are central to the Pennsylvania program were not identified in the preamble for this proposed revision, and therefore, have been clarified in DEP's comments provided below.

Secretary

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The 2015 CCR Rule defines the term “coal combustion residual,” as “fly ash, bottom ash, boiler slag and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers.” See 40 CFR §257.53. DEP’s residual waste regulations, which govern the transportation, storage, disposal and beneficial use of residual waste, provide a definition of “coal ash” that includes fly ash, bottom ash and boiler slag that has been beneficially used, reused or reclaimed for a commercial, industrial or governmental purpose. See 25 Pa. Code § 287.1 (relating to definitions). DEP’s residual waste regulations also provide a definition of “residual waste” that includes flue gas desulfurization materials. *Id.* Therefore, the transportation, storage, disposal and beneficial use of all four materials identified in EPA’s definition of CCR are already regulated under DEP’s existing regulations.

In 2010, DEP finalized regulations pertaining specifically to the beneficial use of coal ash, which are found in 25 Pa. Code, Chapter 290 (relating to beneficial use of coal ash). The beneficial use of all other residual wastes, including flue gas desulfurization materials; coal ash that has been disposed of by being placed in an impoundment or other waste disposal unit; or coal ash that has been mixed with flue gas desulfurization materials, is regulated under DEP’s residual waste regulations found in 25 Pa. Code, Chapter 287, Subchapter H. DEP’s beneficial use program, applicable to both the beneficial use of residual waste and the beneficial use of coal ash, is not based on a mass-based numerical value. Rather, both beneficial use programs are based on a combination of criteria that establish a legitimate beneficial use opportunity for the waste, coupled with location-based criteria that place specific limitations on areas where beneficial use can occur, and chemical and physical characterization requirements for the waste materials to ensure that the beneficial use does not harm or present a threat of harm to the public health and safety or the environment. With few exceptions, the beneficial use of residual waste, including the unencapsulated beneficial use of CCR, is performed pursuant to the terms and conditions of a permit or other authorization issued by DEP.

DEP’s regulations relating to coal ash require that persons intending to beneficially use coal ash in an unencapsulated manner first demonstrate that the coal ash does not exceed the maximum acceptable leachate levels identified in 25 Pa. Code § 290.201 (relating to coal ash certification). In addition, in 25 Pa. Code Chapter 290, persons intending to beneficially use coal ash in an unencapsulated use must ensure that the following provisions are satisfied:

- a. Demonstrate that the coal ash satisfies the physical characteristics for the intended use;
- b. Develop and implement a water quality monitoring plan, in accordance with 25 Pa. Code § 290.301 (relating to water quality monitoring) and, if applicable, 25 Pa. Code, Chapters 86 – 90, if either more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total, will be used as structural fill at a coal mining activity site or at an abandoned mine land site, or for lesser volumes of coal ash where site conditions warrant; and

- c. Coal ash may not be placed within 8 feet of the water table, except where coal ash is used for mine subsidence control, mine fire control or mine sealing under 25 Pa. Code § 290.106(a)(7) (relating to other beneficial uses).

DEP's existing beneficial use program pertaining to both coal ash and residual waste is as protective as the provisions provided in EPA's 2015 CCR Rule and the revisions proposed by EPA to its definition of beneficial use on August 14, 2019. Generally, DEP supports the ability of states with robust beneficial use programs, like the Pennsylvania program, to continue to use those existing programs to regulate the beneficial use of CCR. DEP supports EPA's proposed revision to eliminate the mass-based numerical value and replace it with location-based criteria or to include a combined approach that combines a mass-based numerical value with location-based criteria.

While DEP's residual waste regulations generally satisfy the criteria proposed by EPA, the evaluation of a beneficial use site should not require the same level of review as a disposal site. It is appropriate to impose location-based criteria on the beneficial use of CCR, but PA does not support the blanket inclusion of all criteria that are imposed on disposal sites to also apply to all beneficial use sites. DEP's comments on each location-based criterion proposed are further provided below.

II. Comments on EPA's Proposed Beneficial Use Criteria

The EPA solicited comments on (i) revising the fourth criterion's trigger for an environmental demonstration from a mass-based threshold amount to any or all of the proposed location-based criteria; (ii) information on other state beneficial use programs with location-based provisions; (iii) the potential impacts to state beneficial use programs in setting location criteria based on the location criteria for CCR disposal units in the 2015 CCR Rule; and (iv) whether prohibiting the placement of CCR for beneficial use within wetlands, seismic impacts zones, unstable areas, and flood plains is more consistent with the CCR disposal regulations. In response to concerns from commenters that there may be some situations where the location-based criteria prevent placement of CCR in appropriate uses, EPA also solicited comment and information on these specific situations where EPA should consider exemptions for any of the proposed location-based criteria.

- A. Distance from the Uppermost Aquifer:** The current CCR regulations restrict placement of CCR units within 1.52 meters (five feet) of the upper limit of the uppermost aquifer or to demonstrate that there will not be an intermittent, recurring, or sustained direct hydraulic connection between any portion of the base of the CCR unit and the uppermost aquifer due to normal fluctuations in groundwater elevations, including groundwater elevations during the wet season. In the preamble to its proposed revisions, EPA solicited comments on (i) adopting a location criterion based on the distance to the uppermost aquifer and whether North Carolina's 4 feet of the seasonal groundwater table, the 8-foot value in DEP's requirements or Wisconsin's criterion of 5-feet from the groundwater table is more appropriate; and (ii) whether there are other existing state restrictions that are appropriate for EPA to consider in

establishing a criterion for distance to the groundwater table to trigger an environmental demonstration.

DEP's regulations governing the beneficial use of coal ash prohibit the placement of coal ash within 8 feet of the water table, except where coal ash is used for mine subsidence control, mine fire control or mine sealing under 25 Pa. Code § 290.106(a)(7) (relating to other beneficial uses). DEP's regulations define the term "water table" as, "the top of the saturated zone. The term includes the regional groundwater table, perched water tables, seasonal high-water table and mine pools." See 25 Pa. Code § 290.1 (relating to definitions). Since the 2015 CCR Rule does not apply to CCR placement at active or abandoned underground or surface coal mines, and DEP's requirement to maintain 8-feet between CCR placement and the water table, the adoption of a less stringent criterion does not have an effect on DEP's beneficial use program. However, in addition to the required distance from the water table, DEP's regulations also impose rather strict chemical concentration limits found in 25 Pa. Code § 290.201. Therefore, DEP recommends maintaining the proposed distance of 1.52 meters (five feet) of the upper limit of the uppermost aquifer coupled with the inclusion of chemical constituent limits.

B. Placement in a Wetland: The current regulations restrict placement of CCR units in wetlands unless the owner or operator makes specific demonstrations that the CCR unit will not degrade sensitive wetland ecosystems. See 40 C.F.R. § 257.61. The current regulations define a wetland by reference to the definition in § 232.2. EPA is proposing to adopt a provision that when unencapsulated CCR is placed at a site for beneficial use in a wetland that the environmental demonstration would be triggered to assess potential environmental releases from the proposed CCR use. EPA requested comment on whether a different definition of a wetland is more appropriate in this context. EPA also solicited comments on (i) adopting a location criterion based on a distance to wetlands; (ii) whether the 50-foot value in North Carolina, the 100-foot value in DEP's requirements or the criterion of 300 feet from an exceptional value wetland is a more appropriate distance; (iii) whether prohibiting the placement of CCR for beneficial use in wetlands is more consistent with the CCR disposal regulations; and (iv) whether other state restrictions exist that are appropriate for EPA to consider in establishing a criterion for distance to a wetland in triggering an environmental demonstration.

DEP's regulations governing the unencapsulated beneficial use of coal ash prohibit the placement of coal ash within 100 feet of a wetland, or within 300 feet of an exceptional value wetland, which is defined at 25 Pa. Code § 105.17. See 25 Pa. Code § 290.102(g)(6) and (7) (relating to use as structural fill). EPA's proposed criterion restricts placement of CCR "in a wetland." Therefore, the proposed revision does not have an effect on DEP's beneficial use program. However, in addition to the required distance from a wetland, DEP's regulations also impose rather strict chemical

concentration limits found in 25 Pa. Code § 290.201. Therefore, DEP recommends maintaining the proposed restriction for placement of CCR in a wetland, coupled with the inclusion of chemical constituent limits.

C. Placement in an Unstable Area: The current CCR disposal regulations restrict the placement of CCR in sites classified as unstable areas, unless the owner or operator demonstrates that engineering measures have been incorporated into the unit's design to ensure the structural components will not be disrupted. See 40 C.F.R. § 257.64. EPA is proposing to adopt a provision triggering an environmental demonstration when unencapsulated CCR is placed for beneficial use in an unstable area. This means that an environmental demonstration is required before the placement of any amount of unencapsulated CCR can occur for a proposed use in an unstable area. EPA solicited comments on (i) adopting a location criterion based on placement in an unstable area; (ii) whether prohibiting the placement of CCR for beneficial use in unstable areas is more consistent with the CCR disposal regulations and the DEP requirement; and (iii) whether other state provisions are appropriate for EPA to consider in establishing a criterion for placement of unencapsulated CCR for beneficial use in sites classified as unstable areas.

DEP's regulations governing the unencapsulated beneficial use of coal ash prohibit the placement of coal ash within 100 feet of a sinkhole or area draining into a sinkhole. See 25 Pa. Code § 290.102(g)(4). EPA's proposed criterion prohibits placement of CCR "in an unstable area," unless an environmental demonstration is performed showing that releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use. The 2015 CCR Rule defines "unstable area" as, "a location that is susceptible to natural or human-induced events of forces capable of impairing the integrity, including structural components of some or all of the CCR unit that are responsible for preventing releases from such unit. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains." See 40 CFR § 257.53. EPA's definition of unstable area is more restrictive than DEP's requirement to maintain a distance of 100 feet or more from a sinkhole or area draining into a sinkhole. An evaluation of the stability of the placement area is not required under DEP's beneficial use program.

However, under DEP's regulations pertaining to the beneficial use of coal ash, the unencapsulated use of CCR is limited to use as structural fill, a soil substitute or soil additive, and, in addition to other requirements associated with the beneficial use, including setbacks, DEP's regulations also impose rather strict chemical concentration limits found in 25 Pa. Code § 290.201. CCR must be evaluated and demonstrated to be in compliance with the requirements of § 290.201 prior to

receiving an authorization for beneficial use. Although a specific regulatory prohibition for the placement of coal ash in unstable areas is not provided in DEP's existing regulations, an analysis of site conditions is typically done for the beneficial use of coal ash as a structural fill to demonstrate that the beneficial use will not harm or present a threat to harm public health, safety or the environment. The site-specific evaluation is performed in addition to an evaluation of the project's ability to comply with the applicable terms and conditions of a beneficial use permit.

DEP recommends the inclusion of minimum chemical constituent limits that mitigate the concerns associated with placement of CCR in an unstable area. Inclusion of minimum concentration limits will lessen the burden of demonstrating that placement in an unstable area will not have an adverse effect on groundwater, surface water, soil or air for beneficial use that falls below the mass-based threshold, should a mass-based threshold be included in the final rulemaking. An environmental demonstration based on a site-specific evaluation of the proposed beneficial use location is acceptable for larger projects.

D. Placement in a Flood Plain: In the 2015 CCR Rule, as well as the requirements of 40 C.F.R. Part 258, relating to municipal solid waste landfills, EPA restricts siting of disposal units in the 100-year flood plain. See 40 C.F.R §§ 257.3-1 and 258.11. In the Proposed Rule EPA's suggests incorporating similar provision when unencapsulated CCR is placed at a site for beneficial use in the 100-year flood plain that the environmental demonstration would be triggered due to the potential environmental releases posed by flooding in these areas. EPA solicited comments on (i) adopting a location criterion based on placement of CCR in a flood plain; and (ii) whether prohibiting the placement of unencapsulated CCR for beneficial use within a 100-year flood plain is more consistent the current 2015 CCR Rule, as well as the part 258 requirements for municipal solid waste landfills, and with some state restrictions.

DEP's regulations governing the unencapsulated beneficial use of coal ash prohibit the placement of coal ash "within a 100-year floodplain of a water of this Commonwealth, unless a properly engineered dike, levee or other structure that can protect the structural fill from a 100-year flood is permitted by the Department in a manner that is consistent with the Flood Plain Management Act (32 P. S. § § 679.101—679.601), the Storm Water Management Act (32 P. S. § § 680.1—680.17) and the Dam Safety and Encroachments Act." See 25 Pa. Code § 290.102(g)(5). Therefore, the proposed revision does not have an effect on DEP's beneficial use program. However, in addition to the required distance from a floodplain, DEP's regulations also impose rather strict chemical concentration limits located in 25 Pa. Code § 290.201. Therefore, DEP recommends maintaining the proposed restriction for placement of CCR in a floodplain, coupled with the inclusion of minimum chemical constituent limits.

E. Distance from a Fault Area: Current regulations prohibit the location of CCR units within 60 meters (200 feet) of a fault that has had displacement in Holocene time, unless the owner or operator demonstrates that an alternate setback distance of less than 200 feet will prevent damage to the structural integrity of the unit. See 40 C.F.R. § 257.62. EPA is proposing to adopt a provision that when unencapsulated CCR is placed for beneficial use within 200 feet of a fault and within a seismic impact zone that the environmental demonstration would be triggered. EPA solicited comments on (i) adopting a location criterion based on a distance of within 200 feet from a fault area to trigger an environmental demonstration; and (ii) whether prohibiting the placement of CCR for beneficial use within fault areas is more consistent with the CCR disposal regulations.

DEP's regulations governing the beneficial use of coal ash do not contain restrictions for placement in a fault area. Again, under DEP's regulations pertaining to the beneficial use of coal ash, the unencapsulated use of CCR is limited to use as structural fill, a soil substitute or soil additive, and, in addition to other requirements associated with the beneficial use, DEP's regulations also impose rather strict chemical concentration limits in 25 Pa. Code § 290.201, CCR must be evaluated and demonstrated to be in compliance with these limits prior to receiving an authorization for beneficial use. DEP recommends the inclusion of minimum chemical constituent limits that mitigate the concerns associated with placement of CCR in a fault area. Inclusion of minimum concentration limits will lessen the burden of demonstrating that placement in a fault area will not have an adverse effect on groundwater, surface water, soil or air for beneficial use that falls below the mass-based threshold, should a mass-based threshold be included in the final rulemaking. An environmental demonstration based on a site-specific evaluation of the proposed beneficial use location is acceptable for larger projects.

F. Placement in a Seismic Zone: The current CCR disposal rule also prohibits the location of CCR units within seismic impact zones, unless the owner or operator makes a demonstration that all containment structures are designed to resist the maximum horizontal acceleration in lithified earth materials from a probable earthquake. See 40 C.F.R. § 257.63. EPA is proposing to adopt a provision that when unencapsulated CCR is placed for beneficial use within a seismic impact zone that the environmental demonstration would be triggered and solicited comments on (i) adopting a location criterion based on placement of CCR in a seismic zone to trigger an environmental demonstration; and (ii) whether prohibiting the placement of CCR for beneficial use within seismic impacts zones is more consistent with the CCR disposal regulations.

While DEP's regulations pertaining to CCR disposal units contain an evaluation of seismic impacts, the regulations governing the beneficial use of coal ash do not contain a similar requirement. Again, under DEP's regulations pertaining to the

beneficial use of coal ash, the unencapsulated use of CCR is limited to use as structural fill, a soil substitute or soil additive, and, in addition to other requirements associated with the beneficial use, DEP's regulations also impose rather strict chemical concentration limits found in 25 Pa. Code § 290.201. DEP recommends the inclusion of chemical constituent limits that mitigate the concerns associated with placement of CCR in a seismic impact zone. Inclusion of minimum concentration limits will lessen the burden of demonstrating that placement in a seismic impact zone will not have an adverse effect on groundwater, surface water, soil or air for beneficial use that falls below the mass-based threshold, should a mass-based threshold be included in the final rulemaking. An environmental demonstration based on a site-specific evaluation of the proposed beneficial use location is acceptable for larger projects.

G. Distance from a Water Body: The EPA also considered adopting this additional location criteria, largely-based on state beneficial use program provisions. EPA intends the term "water body" to mean perennial and intermittent streams and rivers so as to be generally consistent with the approach taken by North Carolina and Pennsylvania. EPA solicited comments on (i) adopting a location criterion based on a distance from a water body; (ii) whether the 50-foot criterion in North Carolina, the 100-foot criterion in DEP's requirements or the criterion prohibiting placement within 300 feet of an exceptional value or high-quality water body (also in DEP's requirements) is more appropriate; and (iii) whether other state restrictions exist that are appropriate for EPA to consider in establishing a criterion for distance to water bodies to trigger an environmental demonstration. The EPA is considering such a provision and could finalize it without a subsequent proposal.

DEP's regulations governing the unencapsulated beneficial use of coal ash prohibit the placement of coal ash within a 100-foot of an intermittent or perennial stream or within 300-feet of exceptional value or high quality waters as defined in 25 Pa. Code § 93.1, unless the placed material is otherwise protected by a properly engineered diversion or structure that is permitted by the Department in a manner that is consistent with the Dam Safety and Encroachments Act found in 32 P.S. §§ 693.1 – 693.27. See 25 Pa. Code § 290.102. Therefore, the proposed revision does not have an effect on DEP's beneficial use program. However, in addition to the required distance from a floodplain, DEP's regulations also impose rather strict chemical concentration limits located in 25 Pa. Code § 290.201. Therefore, DEP recommends maintaining the proposed restriction for placement of CCR, coupled with the inclusion of chemical constituent limits.

H. Distance from a Water Supply Well: For placement of CCR in fill applications, three states (Wisconsin, North Carolina and Pennsylvania) require a minimum setback of 200 and 300 feet from water supply wells. Modeled risks in EPA's 2014 Risk Assessment show that distance to receptor is a sensitive variable. EPA solicited

comments on adopting a provision that when unencapsulated CCR is placed at a site for beneficial use within 200 feet from a water supply well the environmental demonstration would be triggered to assess the risks to potential receptors. EPA solicited comments on (i) adopting a location standard based on a distance from a water supply well; (ii) whether either the 200-foot distance in North Carolina or 300-foot distance in both North Carolina's and Pennsylvania's requirements is more appropriate; and (iii) whether other state restrictions exist that are appropriate for EPA to consider in establishing a criterion for distance to water supply well to trigger an environmental demonstration.

DEP's regulations governing the unencapsulated beneficial use of coal ash prohibit the placement of coal ash within a 300-feet of a water supply, unless a written waiver is obtained from the owner of the water supply allowing for another distance. See 25 Pa. Code § 290.102(g)(2). In addition to the required distance from a water supply, DEP's regulations also impose rather strict chemical concentration limits in 25 Pa. Code § 290.201. EPA's proposed location-based criterion, in conjunction with the environmental demonstration requirement, is stricter than DEP's current criterion of 300-feet, but EPA's proposal does not include chemical concentrations standards. DEP generally agrees with EPA's proposed approach but suggests that in states where the location-based criterion is coupled with chemical constituent limits, such as the in the Pennsylvania program, that an alternate criterion be allowed.

III. Comments on Selecting a new Mass-Based Numerical Value

EPA also considered selecting a new value to replace the existing 12,400-ton numerical threshold based on the numerical values that state beneficial use programs have in place and the available risk information. Because EPA anticipates that there will likely be little practical difference between the current threshold of 12,400 tons and the lower end of the state limits in terms of the number of fill applications that would be affected, EPA considered retaining the existing value in the interest of minimizing disruption to the states and industry.

EPA solicited comments on whether (i) the state beneficial use programs' tonnage thresholds discussed above are appropriate for revising the numerical criterion to trigger an environmental demonstration; (ii) the existing 12,400 ton-numerical threshold is appropriate and reasonable; (iii) the Agency's preliminary conclusion that retaining the existing numerical value minimizes disruption; and (iv) whether there are potential impacts to state beneficial use. EPA is also requesting (i) information on other numerical criterion that states use to trigger other requirements, either those listed in this proposal or other state beneficial use programs that EPA did not review, that would also represent an appropriate trigger for further analysis of unencapsulated uses; and (ii) other state criteria, either those listed in this proposal or incorporated in other state beneficial use programs, that would also form an appropriate basis for national criteria to trigger an environmental demonstration.

DEP's regulations governing the beneficial use of coal ash apply to the use of coal ash in any amount. As described above, persons proposing to beneficially coal ash in any amount must first demonstrate that the coal ash does not exceed the maximum acceptable leachate levels identified in 25 Pa. Code § 290.201. In addition, coal ash may not be placed within 8-feet of the water table and must satisfy the physical characteristics of the intended use. Aside from the beneficial use of CCR at active or abandoned mines which is not covered by the 2015 CCR Rule, DEP's regulations limit unencapsulated beneficial use of coal ash to use as structural fill, a soil substitute or soil additive.

When more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total will be used as structural fill, at a coal mining activity site, or at an abandoned mine land site, a water quality monitoring plan that complies with 25 Pa. Code § 290.301, and if applicable, 25 Pa. Code, Chapters 86 – 90, must also be developed and implemented. See 25 Pa. Code § 290.101(d). When more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total will be used as structural fill, a soil amendment or soil additive, a signed statement by the owner of the land on which the structural fill, a soil amendment or soil additive is to be placed must be obtained that acknowledges and consents to the beneficial use of coal ash as structural fill, a soil amendment or soil additive. See 25 Pa. Code § 290.102(a)(6).

For uses of coal ash as structural fill, the statement by the landowner referenced in the paragraph above must also be a recordable document for any project, or set of contiguous projects, involving placement of more than 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total per project and be recorded at the office of the recorder of deeds in the county in which the proposed coal ash beneficial use will take place. See 25 Pa. Code § 290.102(a)(7). In addition, at the time of filing the written proposal with the Department for the beneficial use of coal ash as structural fill in the above referenced amounts, a public notice in a local newspaper of general circulation in the locality of the proposed coal ash beneficial use activities at least once a week for 3 consecutive weeks. See 25 Pa. Code § 290.102(b). Contiguous projects are considered a single project for purposes of this section. A copy of the public notice shall be provided to the local municipality and proof of public notice shall be submitted to the Department. Such projects must also submit an annual report that includes contact information, the location of the site where the coal ash was utilized, the identity of each source of coal ash, and the volume in cubic yards and the weight in dry tons for each source. See 25 Pa. Code § 290.102(h).

Therefore, DEP does not object to maintaining the current mass-based threshold in the 2015 CCR Rule provided that the threshold is included as a trigger for further environmental demonstration rather than a strict prohibition for beneficial uses exceeding the threshold. DEP does consider appropriate extra criteria for amounts above 10,000 tons of coal ash per acre or more than 100,000 tons of coal ash in total at any project or contiguous projects. As stated above, the 10,000/100,000-ton thresholds referenced above are not a trigger for regulation. Coal ash that is beneficially used in any amount is subject to regulation in

Pennsylvania. Rather the mass-based thresholds referenced in DEP's regulations trigger additional criteria.

IV. Comments on the Use of Both Mass- and Location-Based Criteria

The EPA also requests comment on whether to adopt a combination of the mass-based threshold and location-based criteria to trigger an environmental demonstration for unencapsulated uses. EPA requests comment on whether the thresholds from the state beneficial use programs listed above or other states not listed above would represent an appropriate basis on which to trigger the environmental demonstration. EPA also solicited comment on any alternative approaches to combining the mass- and location-based criteria to ensure that both the largest uses and those with the greatest potential for risk would conduct an environmental demonstration.

Please see DEP's comments on the revised definition of "beneficial use" above. Adoption of a combination of the mass-based threshold and location-based criteria to trigger an environmental demonstration for unencapsulated uses is most like the program that is currently in place in Pennsylvania, where all unencapsulated uses are required to meet chemical limitations and certain location-based criteria, while larger uses of CCR require additional criteria.

V. Comments on the Applicability of the Revised BU Definition

EPA proposes that all beneficial use applications or projects not completed before the effective date of a final rule would be subject to the revised beneficial use criteria. EPA solicited comment on whether this approach is reasonable and whether there are other factors, such as a project's completion timeframe, that should also be considered into the Agency's applicability approach.

DEP suggests providing flexibility to projects not completed before the effective date of a final rule by incorporating language that grants a three-year transition period to projects that have received prior approval.

VI. Comments on Proposed Requirements Applicable to Piles

Under the current regulation, CCR piles are defined as any "non-containerized accumulation of solid, non-flowing CCR that is placed on the land." See 40 CFR § 257.53. In contrast, activities that meet the definition of a beneficial use are not considered disposal, even if they involve the direct placement on the land of "non-containerized" CCR. The current regulation distinguishes piles of CCR on-site at an electric utility or independent power producer site from temporary piles of CCR off-site at a beneficial use site, based on whether CCR from the pile could fairly be considered to be in the process of being beneficially used. In this Proposed Rule, EPA has reconsidered its current approach of distinguishing between on-site and off-site piles; and is proposing to replace it with a single regulatory mechanism

applicable to all temporary placement of CCR on the land, whether the CCR is on-site or off-site, and whether the CCR is subsequently destined for disposal or beneficial use. EPA is not proposing to revise the general standard that already applies to both on-site and off-site piles to control releases from the pile. EPA is proposing to define a CCR storage pile as a temporary accumulation of unencapsulated CCR on the land, whether on-site or off-site. As a second element, EPA is proposing to include in the definition a requirement to control releases of CCR (e.g., from windblown dust, or from stormwater or run-on and run-off) to the environment.

EPA solicited comment on the following:

- A. Whether the criterion requiring possession of a record to show that the CCR will be removed can be feasibly implemented. Namely, EPA requests comment about (i) specific cases where piles are temporary, but records are not available; and (ii) an alternative criterion inclusive of such cases.
- B. Whether purchase orders for construction materials are sufficiently forward-looking to allow the piles of CCR that are set up early in a construction season to be matched up with construction projects beginning late in the construction season, or if a grace period should be allowed for cement kilns and concrete batch plants supplying construction materials with CCR, to put applicable agreements in place (e.g., 90-120 days after the start of the construction season).
- C. Additional or alternative criteria crucial for demonstrating that a pile is temporary and/or effectuating the timely removal of CCR.
- D. Whether this proposal will appropriately address the risks associated with the potential releases from piles of CCR in all circumstances. The EPA asks if in some cases, it is acceptable to manage releases retroactively.
- E. Key characteristics of such piles that would make them readily identifiable in practice.
- F. Whether requiring that a pile must be temporary is a key element of controlling risks associated with the potential releases from piles of CCR; for example, do commenters have information to show that the size of a pile is sufficiently controlled by the ability to use pollution control measures to control releases of CCR and that the temporary element is not needed.
- G. The existence of any data documenting instances in which releases from temporary placement of CCR on the land caused adverse effects even though releases had been managed consistently with current regulatory standards.
- H. Whether specific state criteria for storage, or any other criteria, would form a more appropriate basis for a national storage standard.

DEP's residual waste regulations found at 25 Pa. Code, Chapter 299, provide requirements and criteria for storage of residual wastes, including CCR. The regulations provide requirements for storage on impermeable surfaces and the control of releases. Therefore, EPA's proposal does not impact DEP's existing program. DEP's storage requirements apply to generators of waste, as well as processors, disposal facilities, and beneficial use sites.

Generally, under DEP regulations, if a material being prior to beneficial use is stored for a period longer than one year, it is presumed that the material has been disposed. Thereby limiting the length of time that a pile of waste can be stored and claimed to still be “temporary” or in preparation for beneficial use. DEP also prohibits the speculative accumulation of materials by requiring a demonstration that the material is potentially recyclable and has a feasible means of being recycled; and that during a calendar year, at least 75% of the amount of material accumulated be recycled or transferred to a different site for recycling.

VII. Conclusion

DEP appreciates the opportunity to comment on EPA’s Proposed Rule. Thank you for your time and consideration of DEP’s comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Patrick McDonnell". The signature is stylized and cursive.

Patrick McDonnell
Secretary