

County Executive John R. Leopold
P.O. Box 2700, Annapolis, MD 21404

February 19, 2008

Statement of County Executive John R. Leopold

I am pleased that the Maryland Department of the Environment has agreed to my request to hold a public meeting in the Gambrills area of Anne Arundel County regarding the Department's proposed regulations pertaining to coal combustion waste or fly ash.

My statement this evening is offered on behalf of Anne Arundel County residents and local government. Both entities have experienced serious adverse consequences arising from the complete lack of federal or State regulation of this harmful industrial by-product.

It is a welcome development that the Maryland Department of the Environment has determined that current unregulated disposal of fly ash must stop. Fly ash has contaminated the groundwater of the State of Maryland and rendered many residential drinking wells unsafe. I urge the Department to immediately adopt the most protective regulation of this public health and environmental threat. This is a matter of great urgency, since an estimated two

million tons of fly ash are produced annually in Maryland, and at least another two million tons of flue gas desulphurization sludge will also enter the waste stream in the near future.

While the decision to regulate this harmful substance is commendable, the proposed regulations have numerous deficiencies which must be corrected in order to assure public and environmental protection. These deficiencies include:

- There is no requirement for on-going air quality testing
- There are inadequate requirements for public and County notification
- There is no requirement that all lab testing be done by a State-certified laboratory (not by Constellation's lab, for example, as was allowed in the past).
- The set-back requirement to property line should be 1000 (not 200) feet
- The operators should be required to test for possible radioactive contaminants, as these have been found in fly ash elsewhere
- Post-closure regulations should be followed for much longer than five years. I suggest 30 year monitoring, as has been recommended by national experts.

The proposed regulations do not address oversight of so-called "beneficial use" of fly ash. We understand a later round of regulations will pertain to "beneficial use." It is essential that the MDE closely regulate this activity, which has the potential to pose new hazards. As the industry faces new costs for fly ash disposal due to overdue regulatory protections, it will doubtless seek alternatives

to disposal and will attempt to name them "beneficial use." It is imperative that this loophole be closed.

At least one aspect of fly ash disposal protection requires legislative action. The statutory limit of \$1250 per acre for mining performance bonds is entirely inadequate. I have had legislation introduced in the current General Assembly session to remove this cap.

I have also had legislation introduced to reimburse the County Health Department for testing and monitoring of wells. The County incurred approximately \$100,000 in costs for testing and monitoring wells in the Waugh Chapel area as a result of fly ash contamination at the BBSS site. The legislation will include a provision for retroactive reimbursement of this \$100,000.

Finally, and perhaps most important, is the imperative for the Department to commit to assertively monitor and enforce new fly ash regulations as well as all other existing regulation pertaining to mining and fly ash generation transport and disposal. Without vigorous oversight, human health and environmental threats will continue regardless of what rules are in place.

I appreciate the inclusion of my statement in the official Departmental record.

AA Co,

DATE

Honorable Shari T. Wilson
Secretary
Maryland Department of Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Secretary Wilson:

The attached comment is submitted regarding the Maryland Department of Environment's (MDE) proposed regulations pertaining to coal combustion waste (CCW) (07-320-P). This comment is offered on behalf of Anne Arundel County residents and local government. Both entities experienced serious adverse consequences arising from the complete lack of federal or State regulation of this harmful industrial by-product.

It is a welcome development, therefore, that the MDE has determined that current unregulated disposal of CCW must stop. CCW has contaminated the groundwater of the State of Maryland and rendered many residential drinking wells unsafe. I urge the MDE to immediately adopt the most protective regulation of this public health and environmental threat. This is a matter of great urgency, since an estimated 2 million tons of CCW are produced annually in Maryland, and at least another 2 million tons of flue gas desulphurization sludge will also enter the waste stream in the near future.

While the decision to regulate this harmful substance is commendable, there are several points which must be recognized:

- 1) The proposed regulations have numerous deficiencies which must be corrected in order to assure public and environmental protection. Those deficiencies are itemized in the attachment.
- 2) The proposed regulations do not address oversight of so-called "beneficial use" of CCW. We understand a later round of regulation will pertain to "beneficial use." It is essential that the MDE closely regulate this activity, which has potential to pose new hazards. As the industry faces new costs for CCW disposal due to overdue regulatory protections, it will doubtless seek alternatives to disposal and will attempt to name them "beneficial use." This loophole must be closed. Dopz.
- 3) At least one aspect of CCW disposal protection requires legislative action. The statutory limit of \$1250 per acre for mining performance bonds is entirely inadequate. I have had legislation introduced to the General Assembly to remove this cap.

- 4) Finally, and perhaps most importantly, is the imperative for the MDE to commit to assertively monitor and enforce new CCW regulations as well as all other existing regulation pertaining to mining and CCW generation, transport and disposal. Without vigorous oversight, human health and environmental threats will continue regardless of what rules are in place.

Thank you for the efforts begun by MDE at your direction to restore environmental quality and public health in Gambrills and to prevent similar occurrences elsewhere. I appreciate your consideration of these comments.

Sincerely,

John R. Leopold
County Executive

Attachment

Comment: Title 26 – Subtitles 04, 20, 21

26.04.07.04 (F): "...The Department SHALL ~~may~~ impose additional controls or requirements on the expansion of the facility..."

26.04.07.05 (H) (1): There should be language here regarding notification, remediation and sanctions should there be a release of coal combustion byproducts during storage operations due to spilling or overflowing.

26.04.07.07 (A): Public notification should be required for any application for variance of any provision of this chapter.


26.04.07.07 (D): Public notification should be made by the Department as to its determination regarding any application for variance of any provision of this chapter.

26.04.10.04 Disposal (C) (5): "...or to prevent nuisance OR AIR POLLUTION conditions. THE DEPARTMENT SHALL REQUIRE AN ATTACHMENT TO THE PERMIT APPLICATION THAT DETAILS THE FREQUENCY AND TYPE OF PRACTICES THAT WILL BE EMPLOYED TO COMPLY WITH 26.11.06.03 AND TO PREVENT A CONDITION OF AIR POLLUTION DURING OPERATION AND CLOSURE OF THE FACILITY. FOR FACILITIES BORDERED OR ADJACENT TO RESIDENTIAL AREAS, THE DEPARTMENT SHALL ALSO REQUIRE THAT THE PERMIT APPLICATION INCLUDE A PLAN TO MONITOR PARTICULATE CONCENTRATIONS IN AMBIENT AIR AT A LOCATION OR LOCATIONS ALONG THE FACILITY'S PERIMETER.

26.04.10.04 Disposal (E): "...or to prevent nuisance OR AIR POLLUTION conditions, INCLUDING POSSIBLY THE REQUIREMENT FOR SUBMITTAL OF A PLAN THAT DETAILS THE FREQUENCY AND TYPE OF PRACTICES THAT WILL BE EMPLOYED TO COMPLY WITH 26.11.06.03 AND TO PREVENT A CONDITION OF AIR POLLUTION DURING OPERATION AND CLOSURE OF THE FACILITY. FOR FACILITIES BORDERED OR ADJACENT TO RESIDENTIAL AREAS, THE DEPARTMENT SHALL ALSO REQUIRE THAT THE PERMIT APPLICATION INCLUDE A PLAN TO MONITOR PARTICULATE CONCENTRATIONS IN AMBIENT AIR AT A LOCATION OR LOCATIONS ALONG THE FACILITY'S PERIMETER."

26.04.10.04 Disposal (F): "...or to prevent nuisance OR AIR POLLUTION conditions..."

26.20.24.08 (D) (4) (k): "A copy of a solids analysis of the coal combustion byproducts performed within the last 60 days BY A STATE CERTIFIED LAB, ..."

26.20.24.08 (D) (4) (l): "A copy of a ~~Toxicology Leaching~~ Procedures (TCLP) leachate analysis of the coal combustion byproducts performed within the last 60 days BY A STATE CERTIFIED LAB,..." 

26.20.24.08 (D) (4) (n): "A copy of water quality analyses for the mine permit drainage control system performed within the last 60 days BY A STATE CERTIFIED LAB,..."

26.21.04.03 (B) (6): "Coal combustion byproducts may not be placed in ground or surface waters and may not be placed within 3 4 feet of the regional groundwater table..."

26.21.04.03 (B) General Requirements (10) (d): ~~“A water truck shall be available to add water at a site as needed for fugitive dust control.~~ WATER OR A CONDITIONING AGENT SHALL BE AVAILABLE AND APPLIED AS FREQUENTLY AS NECESSARY TO CONTROL FUGITIVE DUST, TO COMPLY WITH THE REQUIREMENTS OF 26.11.06.03, AND TO PREVENT A CONDITION OF AIR POLLUTION.”

26.21.04.03 (B) (12): “Coal combustion byproducts may not be placed within ~~200~~ 1000 feet of any lands not owned by the permittee.”

26.21.04.04 Application for Use (C) (3): Add: “(K) LOCATIONS OF RESIDENCES ABUTTING THE SITE AND NAMES OF PROPERTY OWNERS.”

26.21.04.05 (D): “CERTIFIED ~~L~~ laboratory results...”

26.21.04.07 (B) (2): “A schedule for the frequency of the analyses TO BE PERFORMED BY A CERTIFIED STATE LAB;”

26.21.04.07 (C) (10): “...Thereafter, if there is ~~a significant~~ ANY increase above a state or federal drinking water or groundwater quality standard, a permittee shall notify the Department...”

26.21.04.07 (C) (12): “If the exceedance continues beyond the 30 day resampling period, a permittee shall submit a noncompliance report to the Department within 5 days AND SHALL ISSUE A PUBLIC NOTICE AND NOTIFY THE LOCAL HEALTH DEPARTMENT.”

26.21.04.07 (C) (19) Table 1: Add RADIONUCLIDES

26.21.04.08 Closure (A) (3) Soil Cover: Add at the end of the paragraph: "COVER SHALL BE ESTABLISHED AND MAINTAINED TO COMPLY WITH THE REQUIREMENTS OF 26.11.06.03 AND TO PREVENT A CONDITION OF AIR POLLUTION."

26.21.04.08 Closure (A) (4) Vegetative Stabilization: Add at the end of the paragraph: "BETWEEN THE TIME THAT THE FINAL EARTHEN COVER AND THE TIME WHEN THE AREA IS VEGATATIVELY STABILIZED, STEPS MUST BE TAKEN TO MAINTAIN COMPLIANCE WITH THE REQUIREMENTS OF 26.11.06.03 AND TO PREVENT A CONDITION OF AIR POLLUTION."

26.21.04.09 (F) (1): "A permittee shall conduct groundwater and surface water monitoring in accordance with the monitoring plan under Regulation .07 of this chapter for a period of at least ~~5~~ **30** years following closure of a site."

26.21.04.09 (G): "If post-reclamation land use includes development of a site, the ~~permittee~~ PROPERTY OWNER shall submit..."

26.21.04.10 (A) (1): "Notify the Department within 24 hours of the NOTICE OF THE impact to the water supply..."

26.21.04.10 (A) (4): ISSUE A PUBLIC NOTICE AND NOTIFY THE LOCAL HEALTH DEPARTMENT.

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