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May 13, 2013

The Honorable John Shimkus, Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

RE: "The Coal Ash Recycling and Oversight Act of 2013"
Questions for the record from: The Honorable John Shimkus and The Honorable Henry A. Waxman

Dear Mr. Shimkus:

Thank you for the opportunity to participate in this hearing. I have received your questions for the record request, and you will find my responses attached. These have been coordinated with the appropriate Departmental program staff and management.

If you have any questions concerning this matter, please contact me at 334-271-7739.

Sincerely,

Stephen A. Cobb, Chief
Governmental Hazardous Waste Branch
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enclosure

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The Honorable John Shimkus

1. **States have demonstrated the ability to implement similar permit programs.**

   a. **Wouldn't it just delay implementation of coal ash permit programs for States to have to go through the approval process twice?**

   Response: Yes, imposing another pre-implementation approval process will likely result in significant delays in the implementation of the coal ash permit program. It should be recognized that States like Alabama have repeatedly demonstrated our ability to implement both hazardous and non-hazardous waste programs to meet national standards. In fact, states are the primary implementers of such laws and regulations.

   At this point in waste regulation, a pre-implementation review is not an effective or efficient use of resources. Years can be spent talking about how best to implement a program and debating the nuances of various specific details before actually implementing the programs to protect human health and the environment; or we can proceed quickly with implementation, get the programs and protections in place, and hold those programs accountable for achieving the results and goals that are the primary purpose of the law in the beginning. The issue of how to best regulate CCRs nationally has been debated for many years – it's time to finally implement a program to do so.

   In the past, before States had any experience and track record in implementing programs such as these, a pre-implementation review made more sense. However, our past regulatory experience has also shown that the pre-implementation process is far too vulnerable to extended review and processing delays, as well as to workload priority and resource challenges These delays have been experienced due not only to technical discussions, but also to lengthy administrative and resource delays even when there are no technical disputes. It is better to implement the programs and get the environmental protection started earlier, and then review the results of that protection and make adjustments in real time as needed, which is the approach laid out in this bill.

   b. **In your opinion, is EPA prior approval necessary for State permit programs?**

   Response: No. See response to Question 1.a. for further details.

c. What has been your experience regarding the timing of the approval process and the process in general?

Response: First, I wish to note that EPA Regional Program staff and management routinely work closely with our program to ensure that delays in program authorizations do not impede the expedient implementation of regulatory requirements. This is largely accomplished by implementation of new program requirements based on the fact that they are routinely incorporated into the Department's regulations and implemented pursuant to applicable State law, regardless of whether they have completed the authorization process to enable them to be implemented in lieu of the federal requirement. This implementation partnership has worked well to ensure that gaps and delays in the processing of authorization packages do not result in undesirable consequences pertaining to the implementation of new or updated federal program requirements.

That said, it must be acknowledged that the pre-implementation process is replete with delays in processing authorization applications. To the best of my knowledge, ADEM's authorization application packages have historically and routinely been submitted in a timely manner. However, the review/approval process has consistently taken considerable time. ADEM's initial base program authorization for its Subtitle C program was received in December 1987, but initial authorization for the RCRA Subtitle C corrective action program was not received until April 1996, after several years of review and discussion back and forth between the State and EPA. ADEM's Subtitle C authorization history is provided in the attached Authorization Status Summary Table. Please note that the records regarding authorization submittal and approval dates are more complete for the period since 1999.

There are such significant delays in EPA's processing of authorization applications that the actual process is being rendered meaningless. In many instances, portions of the regulations upon which a given authorization application was based have been significantly changed or even been deleted by subsequent annual updates before the previous authorization application review/approval is completed. The delays have been attributed to the overall priority of authorization reviews in the agency's workload, frequent changes in personnel assigned to perform the reviews, technical or procedural questions, lack of training, etc. Through our interactions with other States, we have learned that the delays and experiences we have had are quite similar to those of other States, and in some cases we have apparently fared better than some of our sister States. As shown in the attached table, we are currently awaiting finalization of seven

authorization applications initially submitted to EPA on January 18, 2008, April 11, 2008, November 4,2008, May 29, 2009, June 1, 2010, June 1, 2011, and May 25, 2012.

Regarding ADEM's Subtitle D MSW program, it is my understanding that when the application for this program approval was submitted in the early-to-mid 1990's that it was processed and partial program authorization (minus the financial assurance component for which additional State legislative authority was required) was approved by EPA in a timely manner.

2. As an experienced State regulator, do you think states are able to interpret the minimum program requirements in the bill to develop a permit program that is protective of human health and the environment?

Response: Absolutely. We have considerable experience writing and implementing permit regulations based on both MSW and RCRA Subtitle C requirements, as well as other state and federal programs. We are environmental regulators, and a central part of our job as environmental regulators is to interpret the requirements of laws, both state and federal, and to write and implement regulations based on those laws that protect human health and that preserve and protect the environment. I believe this legislation will give us the needed policy directive and requirements that we need to build these programs. The similarity of the bills requirements to the MSW program will also help to ensure efficiency, effectiveness, and consistency of the regulatory programs, as this similarity gives us established and proven regulations and processes to build from, as opposed to having to start wholly from scratch.

3. As a regulatory official, how do you define backstop authority? Does the discussion draft have a federal backstop?

Response: To me, backstop authority is a safety net that is available in case the primary authority does not succeed. And yes, the bill does provide a backstop to the anticipated State permitting programs for CCRs. The EPA review of State programs <u>as they are implemented</u>, and the ability for EPA to take over implementation of the program in a State if the State does not address identified issues is a powerful incentive for States, and thus protection of the public interest in this issue, to ensure that their programs do indeed meet the objectives and requirements of the law.

4. Opponents of the legislation claim that because the legislation does not include a specific "level of protection standard," States would be free to implement the bill's requirements in a manner meeting any standard of protection. They imply that States' latitude in implementing the requirements would result in programs that are not protective of human health and the environment – what's your response?

Response: The central theme in all of our programs is to protect human health and the environment. This central theme may be expressed by slightly different words and phrases, but the message is the same – all of our jobs as regulators are designed and implemented to protect human health and the environment to ensure that ALL of our citizens are able to enjoy a safe, healthy, and productive environment.

In addition, the very fabric of the Solid Waste Disposal Act, including Subtitle D where this new law would reside, is about protecting human health and the environment, and that is true for our State laws and regulations as well. All of our jobs as regulators are to protect human health and the environment, and that's what we work to do every day. While it may be true that there can be some variations in how this concept is described and implemented, it is my anticipation and expectation as a State regulator that all of our programs will be designed to be protective.

We must not lose sight of the fact that as State regulators, in addition to the fact that we are protecting human health and the environment simply because that is what we are charged to do, we and our families, friends and acquaintances live, work, and play in the areas where the facilities we regulate are located, so we also have a vested personal interest in ensuring that our rules and regulations are protective of both human health and the environment we live in.

As an experienced State regulator who has helped set up regulatory programs, it is my expectation we will accomplish this by first identifying any specific requirements identified in the statute, such as the minimum standards included in this bill, and make sure those are included and addressed. In addition and as a part of that process, we would identify: 1) what systems/protections are needed to prevent releases to the environment; 2) what systems/protections are needed to prevent harmful exposures to people or the environment; 3) what provisions are needed to ensure adequate and appropriate monitoring and early warning systems are in place; and 4) what provisions are needed to ensure reporting and accountability measures are not only installed, but also operated and maintained.

This process would be accomplished while keeping a constant eye on the fact that the goal of all of these steps is to ensure that the end result is the protection of human health and the environment, or in the words of Alabama law, that all of our citizens are able to enjoy a safe, healthy and productive environment.

The Honorable Henry A. Waxman

At the Tennessee Valley Authority (TVA) Colbert Fossil Plant, in Tuscumbia, Alabama, TVA burns enough coal to produce almost 400,000 tons of ash each year. The ash is stored onsite in a dry landfill, an active wet impoundment, and an inactive wet impoundment. Groundwater monitoring data from the site, obtained from TVA through Freedom of Information Act request, shows groundwater contamination with contaminants from coal ash including lead and arsenic. Arsenic levels have been documented as high as seven times the maximum contaminant level under the Safe Drinking Water Act.

Additionally, residents living around the active impoundment have documented seepages from the impoundment into a nearby creek. Testing of those seepages has shown high concentrations of toxic metals. Citizens have sued TVA to try to put a stop to this ongoing contamination.

It seems that some actions have been taken to address contamination from a metal cleaning pond at the site, but not to address the contamination from onsite ash disposal or the seepages at the creek's edge.

1. **What action is your Department taking or will your Department commit to take to containing this contamination, and what is your timeline for doing so?**

   Response: The Alabama Department of Environmental Management filed a complaint against the Tennessee Valley Authority on April 12, 2013 for the discharge of pollutants associated with ash pond wastewater and/or other storage pond wastewater at the Colbert Fossil Plant to waters of the state. The complaint requests an Order that TVA take such actions as deemed necessary by the Department to address the unauthorized discharges. Any such actions and timeframes associated with those actions will be determined in the context of the litigation as approved by the court.

2. What action is your Department taking or will your Department commit to take to assess and clean up this contamination, and what is your timeline for doing so?

Response: See response to Question 1.

3. What action will your Department take to ensure that monitoring of these wells in the future is adequate so that any future contamination is detected and addressed?

Response: See response to Question 1.

At the TVA Widows Creek Fossil Plant, in Stevenson, Alabama, monitoring has shown contamination with boron, cobalt, manganese, and sulfate. Manganese levels were documented at levels as high as 100 times the EPA lifetime health advisory level.

4. What action is your Department taking or will your Department commit to take to containing this contamination, and what is your timeline for doing so?

Response: My response to this question is based upon my inquiry and discussions with Department management and staff with current regulatory authority over this facility. It is not wholly clear from the information provided whether the question is referencing surface water concerns, or groundwater concerns. Therefore, our response is divided to address both possibilities

The Alabama Department of Environmental Management is not aware of any surface water data for boron, cobalt, manganese, or sulfate in exceedance of established water quality criteria as a result of the operations at the Widows Creek Fossil Plant. The Department will continue to monitor the compliance status of the facility and the surface water quality in the surrounding area and if any issues are noted the appropriate actions will be taken to protect human health and the environment.

Regarding groundwater, unlike the TVA Colbert facility, there is no current groundwater monitoring requirement under any ADEM program at the TVA Widows Creek facility. Thus the Department is not in possession of any current groundwater information such as what appears to be referenced in the question. If such information is provided, the Department will expeditiously evaluate the information provided, conduct appropriate investigations, and take appropriate

actions to ensure that any contamination is addressed in a timely, appropriate and protective manner.

Nevertheless, the Department is initiating its own fact-finding process to determine the appropriate response under current State and federal law and regulations. If the data referenced in this question can be provided to the Department, it will greatly aid in our evaluation of this matter.

In addition, if this information points to a coal combustion residuals related source, the Department will be better able to respond to this and similar situations using the increased authorities and requirements provided by "The Coal Ash Recycling and Oversight Act of 2013" as discussed in the April 11, 2013 hearing. Therefore, the Department encourages the expeditious enactment of this important legislation to provide Alabama and other States with better and more robust tools with which to effectively and expeditiously prevent, respond to and address these situations.

5. What action is your Department taking or will your Department commit to take to assess and clean up this contamination, and what is your timeline for doing so?

Response: See response to Question 4. Based upon the results of the investigation of the matter referenced in the question and the results of the Department's pending inquiry regarding the facts, the Department plans to initiate an appropriate response using the authorities at its disposal. At this time, it is not possible to identify a specific timeline until the Department is able to determine the facts, but this process has been started as a result of this inquiry and complaint. As with the response to Question 4, prompt enactment of "The Coal Ash Recycling and Oversight Act of 2013" as discussed in the April 11, 2013 hearing will provide the Department with better and more robust tools with which to effectively address this matter.

6. What action will your Department take to ensure that monitoring of these wells in the future is adequate so that any future contamination is detected and addressed?

Response: See response to Question 4. Based upon the results of the investigation of the matter referenced in the question and the results of the Department's pending inquiry regarding the facts, the Department plans to initiate an appropriate response using the authorities at its disposal. At this time, it is not

possible to identify a specific timeline until the Department is able to determine the facts, but this process has been started as a result of this inquiry and complaint. As with the response to Question 4, prompt enactment of "The Coal Ash Recycling and Oversight Act of 2013" as discussed in the April 11, 2013 hearing will provide the Department with better and more robust tools with which to effectively address this matter.

Cluster	Checklists	Changes to Federal RCRA Program	Effective Date in Alabama Regulation	Date mailed to EPA	Date these changes were published or authorized for Alabama in Federal Register	Notes
XXII	228	07/01/11-06/30/12	3/26/13	application under development		
XXI	226-227	07/01/10-06/30/11	4/3/12	5/25/12		
XX	223-225	07/01/09-06/30/10	3/31/11	6/1/11		
XIX	219-221	07/01/08-06/30/09	3/30/10	6/1/10		
XVIII	216-218	07/01/07-06/30/08	3/31/09	5/29/09		EPA Sent Comments 2/1/12 We responded 2/16/12
XVII	214-215	07/01/06-06/30/07	5/27/08	11/4/2008 *		EPA Sent Comments 1/24/12 We responded 2/6/12
XVI	209-213	07/01/05-06/30/06	4/3/07	4/11/0/8		
XV (revised)	205-208	7/1/04-6/30/05	4/4/06	1/18/08	Checklist 206 only Published 04/02/08 Effective 6/2/08	Checklists 207 & 208 were not published and the StATS data shows no effective date
XV	206-207	7/1/04-6/30/05	4/4/06	7/14/06	Checklist 206 Effective 6/2/08	AG statement mailed July 18, 2007
XIV	203-205	07/01/03-06/30/04	3/31/05	7/1/05	Published and Effective 9/13/2006	
XIII	200-202	07/01/02-06/30/03	5/27/04	2/18/05	Published 06/02/05 Effective 08/01/05	
XII	194-199	07/01/01-06/30/02	4/17/03	6/23/04	Published 03/15/05 Effective 05/16/05	
XI	188-193	07/01/00-06/30/01	3/15/02	?	Published 03/15/05 Effective 05/16/05	has checklist 192A
X	181-187	07/06/99-06/30/00	4/13/01	?	Published 03/15/05 Effective 05/16/05	Public Hearing 12/14/2000

*EPA did not release the authorization checklists until well after our normal submittal time

Cluster	Checklists	Changes to Federal RCRA Program	Effective Date in Alabama Regulation	Date mailed to EPA	Date these changes were published or authorized for Alabama in Federal Register	Notes
IX	171-180	09/01/98-06/30/99	3/31/00	6/27/00	Published 03/15/05 Effective 05/16/05	
VIII	160-170	07/01/97-08/31/98	4/2/99	7/26/99	Published 03/15/05 Effective 05/16/05	
VII		7/1/96-06/30/97	3/27/98	7/1/98		
VI		7/1/95-6/30/96	3/28/97	7/1/97		
V					2/10/98	
IV					2/10/98	
Recycled Used Oil Management Standards RCRA III					2/10/98	
CAMU and Temporary Units RCRA III					6/24/96	
BIF; Admin Stary for Coke Ovens RCRA II					6/24/96	
Burning HW in BIF Corrections and Technical Amendment II - RCRA II					6/24/96	
Burning HW in BIF Corrections and Technical Amendment - RCRA II					6/24/96	
Corrective Action for Injection Wells HSWA II					6/24/96	

*EPA did not release the authorization checklists until well after our normal submittal time

Alabama HSWA RCRA Authorization History

Cluster	Checklists	Changes to Federal RCRA Program	Effective Date in Alabama Regulation	Date mailed to EPA	Date these changes were published or authorized for Alabama in Federal Register	Notes
Corrective Action Beyond Facility Boundary HSWA II					6/24/96	
Corrective Action - HSWA I					4/15/96	letter requesting interim final authorization for CA sent 7/26/94
RCRA III					10/13/95	
BIF (RCRA I)					10/13/95	
RCRA II					1/13/95	
RCRA I (w/o BIF)					4/4/94	
HSWA II & Organic Air					11/23/93	
HSWA I (w/o CA)					5/17/93	
Non-HSWA VI					5/17/93	
Radioactive Mixed Waste (Non-HSWA III)					5/17/93	
TCLP (HSWA II)					12/21/92	
Non-HSWA V					12/21/92	
Availability of Information (Non-HSWA I)	3006(f)			8/6/91	7/12/92	
Non-HSWA IV					7/12/92	
Non-HSWA III					1/28/92	
Non-HSWA II					1/28/92	
Non-HSWA I					1/28/92	
Pre-HSWA					12/22/87	

*EPA did not release the authorization checklists until well after our normal submittal time