



**NORTH CAROLINA
PUBLIC STAFF
UTILITIES COMMISSION**

August 5, 2009

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

Re: Federal Rulemaking for Coal Combustion Byproducts

Dear Administrator Jackson:

I am writing on behalf of the Public Staff of the North Carolina Utilities Commission ("Public Staff"), a state agency under North Carolina law that functions as a consumer advocate before the North Carolina Utilities Commission on all utility-related matters in the state. The electric utilities in North Carolina have recently brought to our attention a pending decision by the EPA that could significantly affect future electric utility rates and, in some cases, the ability of utilities to provide reliable and uninterrupted power delivery services. While the Public Staff does not generally involve itself in environmental regulatory issues, the EPA's plans to develop federal regulations for coal combustion byproducts ("CCBs") has the potential to compromise the ability of North Carolina's electric utility companies to fulfill their responsibility to provide reliable electrical service at affordable rates. Because of the far-reaching impacts that this issue could have on electric service in North Carolina, I feel compelled to express our views on the subject.

In particular, our understanding is that the EPA is evaluating whether to regulate CCBs as hazardous wastes under Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), or as non-hazardous wastes under Subtitle D of RCRA. As we understand it, the EPA is also evaluating a requirement for the early retirement of active surface impoundments used by electric utilities to manage CCBs. We understand that, to date, every State environmental agency that has weighed in on the issue (approximately twenty State agencies) has opposed regulating CCBs as hazardous waste. The agencies have instead taken the position that the best management option for regulating CCBs is as non-hazardous waste under RCRA Subtitle D in order to both preserve and expand the beneficial use of CCBs and because the States

Robert P. Gruber, Executive Director

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have the regulatory infrastructure in place to ensure the safe management of these materials. We believe that this is certainly the case in North Carolina.

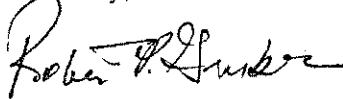
Notwithstanding the views of the States, we are concerned that the EPA will nonetheless regulate CCBs as hazardous waste and that, as a result, the utilities in our State will be confronted with sharply higher operating costs which will be passed on to rate payers in the form of higher electric rates. Even more troubling is the impact this will have on the beneficial reuse programs here in North Carolina. As you may know, North Carolina's Clean Smokestacks Act required several coal-fired generating plants in the State to significantly reduce emissions of SO₂ and NO_x through the installation of scrubbers, even before the promulgation of the Clean Air Interstate Rule. The utilities have also spent large amounts of money to construct the facilities necessary to partner with the gypsum industry and to develop a beneficial reuse program for the waste from these scrubbers. If the EPA decides to regulate CCBs under Title C, then these facilities will be negatively impacted.

Under mandate from the North Carolina Utilities Commission, utilities in North Carolina are required to provide reliable and uninterrupted electrical service to their customers. We are deeply concerned that a decision by EPA to regulate CCBs as hazardous waste threatens the ability of utilities to meet this obligation in a cost effective manner. Given that the States have already made clear that their programs will ensure the safe management of CCBs, the Public Staff sees no reason for the EPA to pursue the hazardous waste option.

Again, while the Public Staff does not typically involve itself with EPA regulatory matters, a decision by the EPA to regulate CCBs as hazardous waste could threaten cost-effective and reliable provision of electrical service in our State. For this reason, the Public Staff respectfully recommends that EPA regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

Thank you for your attention to this matter.

Sincerely,



Robert P. Gruber, Executive Director
Public Staff – North Carolina Utilities Commission

cc: Edward S. Finley, Jr., Chairman
North Carolina Utilities Commission

Dee A. Freeman, Secretary
North Carolina Department of Environment & Natural Resources