



State of North Carolina

Utilities Commission

4325 Mail Service Center
Raleigh, NC 27699-4325

August 10, 2009

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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:

Because of a matter the electric utilities of North Carolina recently brought to our attention, I write on behalf of the North Carolina Utilities Commission (NCUC) regarding the regulation of coal combustion byproducts ("CCBs"). The NCUC does not often involve itself in federal environmental regulatory matters, but the regulation of CCBs could potentially interfere with the ability of the utilities to provide affordable, reliable and uninterrupted power delivery services in North Carolina.

We are informed that EPA is re-evaluating whether to regulate CCBs as hazardous wastes under Subtitle C of RCRA, or as non-hazardous wastes under Subtitle D of RCRA. EPA also reportedly is evaluating requiring the early retirement of active surface impoundments used by electric utilities to manage CCBs. North Carolina already has in place a regulatory framework that ensures effective management of CCBs. That framework was reinforced just last week by enactment of a law strengthening coal ash pond safety oversight. However, if regardless of existing and adequate state regulation, EPA feels compelled to impose heightened federal regulatory standards in this area, the NCUC believes it would be best if CCBs are regulated as "non-hazardous wastes" under RCRA.

If CCBs are designated as hazardous wastes that must be disposed of at a limited number of hazardous waste facilities across the country, North Carolina electric consumers and ratepayers would unavoidably be confronted with higher costs for electricity as the electric utilities' costs of handling, transporting and disposing of CCBs will be significantly increased. The major electric generators in North Carolina generate, and therefore would have to dispose of, in excess of 3.5 million tons of coal ash per year.

430 North Salisbury Street • Raleigh, North Carolina 27603

Telephone No: (919) 733-4249

Facsimile No: (919) 733-7300

www.ncuc.net

Ms. Jackson
Page 2
August 10, 2009

Moreover, present agreements allowing for disposal through beneficial use would likely be adversely affected by a hazardous waste designation for CCBs. To elaborate, even before the Clean Air Interstate Rule was adopted, North Carolina's Clean Smokestacks legislation required emissions of SO₂ and NO_x from several coal-fired generating plants in the State to be significantly reduced through the installation of scrubbers. Our utilities have developed beneficial use programs for the waste from these scrubbers, spending large sums of money to construct facilities to use the waste in the manufacture of synthetic gypsum. We genuinely fear the gypsum industry will not be interested in continuing the partnership to receive and recycle CCBs if they are labeled and regulated as hazardous wastes. Also, the utilities provide coal ash used as a lower cost alternative to cement in the manufacture of State roads. If CCBs are to be treated as hazardous wastes, another means of disposal of the ash would be lost, significantly increasing the costs of State road building contracts.

For the foregoing reasons, among others, the NCUC respectfully asks that you proceed with caution before entertaining any recommendations or proposals to label CCBs as hazardous waste, particularly in light of existing sound and effective State programs for the safe management of CCBs as non-hazardous waste. The NCUC is most concerned that a hazardous waste designation for CCBs could threaten cost-effective provision of affordable and reliable electric service in North Carolina.

Again, the NCUC respectfully recommends that EPA regulate CCBs as non-hazardous wastes under RCRA Subtitle D as this would be consistent with EPA's earlier determination that coal ash need not be regulated as hazardous wastes.

Thank you for your attention to this matter.

Sincerely,


Edward S. Finley, Jr. Chair

Cc Dee A. Freeman, Secretary
NC Department of Environment &
Natural Resources