

United States Senate

WASHINGTON, DC 20510

July 27, 2010

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

Dear Administrator Jackson:

With the publication in the Federal Register of the Environmental Protection Agency's (EPA) proposal for regulating coal combustion residues (CCR), I write to express my continued concerns about the potential economic and environmental impacts on Pennsylvania resulting from the regulation of CCR as hazardous materials under Subtitle C of the Resource Conservation and Recovery Act (RCRA).

As I indicated in a January 25, 2010 letter to you and to the Office of Management and Budget, this is an extremely critical issue for Pennsylvania – a state that depends heavily on the environmentally acceptable mining and use of coal to generate reasonably priced electricity to power our homes, our schools, our farms, and our industry. Moreover, the significance of EPA's decision on this matter is magnified by the uncertainty that currently surrounds the future of coal as the Nation moves towards a low-carbon, clean-energy economy.

More than half of Pennsylvania's electricity comes from coal with over seventy percent of that coal mined in Pennsylvania. Our electric utilities are equipped with state-of-the-art pollution control equipment such as electrostatic precipitators and flue gas desulfurization units, or scrubbers, to remove particulate matter and sulfur dioxide emissions. The solid materials captured in these air pollution control devices, along with bottom ash and boiler slag, make up the majority of CCR generated in the state.

Pennsylvania electric utilities produce approximately 11 million tons of CCR each year with nearly sixty-five percent used for a myriad of beneficial applications, meaning this material does not have to be placed in a landfill or surface impoundment. PPL Corporation, for example, beneficially uses one hundred percent of the two million tons of fly ash, bottom ash, and scrubber solids it generates for abandoned mine reclamation, as a substitute Portland cement¹, and for manufacturing wallboard. FirstEnergy, in partnership with National Gypsum Company, produces wallboard using more than 440,000 tons a year of synthetic gypsum from the Bruce Mansfield power plant in Shippingport, Pennsylvania. This is the single largest recycling operation in the United States. Allegheny Energy, another large coal-fired utility in Pennsylvania, produces nearly 885,000 tons of fly ash, bottom ash, and scrubber materials, of

¹ It is important to note that for every ton of fly ash used to replace Portland cement the emission of one ton of carbon dioxide is avoided.

which fifty-one percent was put to beneficial use.

CCR reuse also contributes directly to Pennsylvania jobs and the economy, particularly in more rural communities and small towns where other employment opportunities are not readily available. For example, Harsco Corporation, headquartered in Camp Hill, Pennsylvania, utilizes a million tons of boiler slag each year to make abrasive and roofing shingles. The company's plant in Mechanicsburg, Pennsylvania employs about a hundred people and contributes \$4 million annually to the local economy. Additionally, Harsco's plants in West Virginia and Ohio supply CCR abrasives to customers in central and western Pennsylvania. The National Gypsum wallboard plant in Shippingport provides nearly a hundred and eighty direct and indirect jobs, has a payroll of more than \$3.7 million, and generates \$1 million in local and state tax revenues. And a Cogentrix Energy coal waste-to-energy plant in Kennerdell, Pennsylvania employs over 140 people and contributes more than \$6.5 million each year to the local economy.

But the employment and economic benefits of reusing CCR face serious challenges under EPA's proposed rulemaking. A major concern I have with the proposed rule is the Agency's suggestion that regulating the disposal of CCR as hazardous would not have a negative impact on current recycling of these materials, but rather would increase their beneficial use. I believe that those who argue that Subtitle C hazard designation will not create a "stigma" around CCR reuse do not fully understand the realities of the market place. This stigma is real. I have heard from numerous constituents and businesses who are already feeling the chilling effect of a potential hazardous ruling on their ability to sell CCR-based products. For example, Revolutionary Plastics, a cutting-edge company that makes additives for the plastics industry from CCR and other recycled materials, was told by a large, publically traded chemical company that concerns about a hazardous labeling on CCR disposal would prevent them from buying their product. In another case, a Pittsburgh company, PMET, Inc., which is applying advanced, state-of-the-art technology to beneficially reuse fly ash from coal-fired power plants, has had an investment group postpone financing for a new project because of its apprehension about designating CCR as hazardous. These negative reactions to EPA's proposed rulemaking have stifled innovation, decreased manufacturing efficiencies, and cost jobs.

From an environmental standpoint the Agency's rather narrow definition of what constitutes beneficial use is problematic for Pennsylvania. The proposed rule does not include mine filling as a beneficial use. Pennsylvania has successfully used CCR for mine filling and reclamation for decades under the purview of the Pennsylvania Department of Environmental Protection. These materials provide a way to buffer the acid drainage associated with the mining of eastern bituminous and anthracite coals. The PADEP has regulated and monitored the use of CCR for reclaiming surface and deep mines in Pennsylvania since 1992 and has found no indication of any ground water degradation. Therefore, it is vital to Pennsylvania's environment that mine filling continues to be defined as a CCR beneficial use.

Another unintended environmental consequence of EPA's proposed rule is that the potential regulation of CCR as hazardous would result in the need to dispose of millions of additional tons of CCR and require the conversion of hundreds, if not thousands, of acres of land in Pennsylvania into hazardous waste landfills. This is land that would otherwise be available for recreational, industrial, or other beneficial uses. In addition, the designation of CCR as

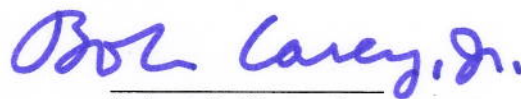
hazardous would essentially shut down the state's thirteen power plants that burn waste coal and that generate nearly ten percent of Pennsylvania's electricity. The projected costs of managing the CCR from these plants as hazardous would dramatically increase operating cost, which cannot be passed on to their customers due to long-term, fixed-price contracts, and would likely result in these plants shutting down. As such, the invaluable role that these facilities have played in cleaning up the thousands of acres of waste coal piles spread across Pennsylvania would be lost.

EPA has evaluated CCR numerous times under RCRA and made regulatory determinations in 1993 and 2000 that these materials have no hazardous waste characteristics. In recent years, the Agency has actively pushed the increased beneficial use of CCR. In 2003, EPA launched its Coal Combustion Products Partnership program in collaboration with the Departments of Transportation and Energy to increase the beneficial use of CCR, with the goal of 50 percent utilization by 2010. More recently, EPA has teamed with the U.S. Department of Agriculture to promote the beneficial use of CCR as a soil amendment and fertilizer. All of these past and present actions by EPA and the other Federal agencies would seem to demonstrate a consensus that CCR are not hazardous.

In light of the fact that CCR do not exhibit hazardous waste characteristics as determined by the Agency, I recommend that the appropriate course of action for EPA is to continue to regulate CCR as nonhazardous under RCRA, regardless of whether the materials are beneficially used or placed in a landfill or impoundment. However, as stated in my January 25th letter, I do support the need for the Agency to put in place federal requirements for CCR disposal under RCRA's nonhazardous waste program that ensures protection of human health and the environment. But it is critical that such regulation allows Pennsylvania to continue to accrue the employment, economic, and environmental benefits associated with the reuse and disposal of CCR as a nonhazardous material.

Thank you for your attention to this important matter. Please do not hesitate to contact my staff if you have any questions. I look forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey, Jr." in a cursive style.

Robert P. Casey, Jr.
United States Senator