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July 28, 2010

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

RE: Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities; Docket ID No. EPA-HQ-RCRA-2009-0640

Dear Administrator Jackson:

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) June 21, 2010 proposed rule regarding federal regulation of Coal Combustion Residues (CCR). I would like to express my continued concern with regulation of this material under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Instead, I believe the reasonable and common sense approach is regulation of the material through enforceable guidelines under Subtitle D of the RCRA.

My first concern with regulation under Subtitle C is its effect on the ability of companies to recycle the material. In the 8th District of Indiana, we have several beneficial use projects in place that would likely be terminated if CCR is designated under Subtitle C. For example, Vectren Corporation, located in Evansville, Indiana, is a utility company involved in a sustainability project where it sends large amounts of CCR by barge to a concrete plant for the manufacturing of cement. This project serves several important functions as it avoids the disposal of a significant amount of CCR in landfills in southwestern Indiana, provides a key and inexpensive component of concrete (thus keeping construction costs low), and reduces energy use and greenhouse gas emissions in concrete manufacturing. This type of sustainability project is one that should be incentivized, not penalized.

Additionally, I am concerned about the effects of regulation under Subtitle C on utility rates and jobs, especially in my state of Indiana. Hoosier consumers and businesses receive 96 percent of their energy from coal, and have long benefited from its affordability. One of the key reasons manufacturing is so strong in our state is due to Indiana's lower energy prices. However, due to recent and increasing environmental controls, many utility companies are raising rates to

recover the costs of capital improvements. As a result, many Hoosiers are already experiencing economic hardship from these increases, especially by living in a state with a 10 percent unemployment rate. Regulation under Subtitle C would result in Hoosiers seeing even more significant increases to their monthly utility bills. To me, this is problematic, especially because the EPA has found regulation under Subtitle D would provide adequate safety and environmental controls, at the same time would be significantly less costly to companies and their customers.

It is my understanding the EPA has analyzed regulatory options regarding CCR several times throughout the years, and has consistently affirmed designation under Subtitle C is not warranted. Instead, the agency has called for regulation of the material in the form of the solid waste management guidelines through Subtitle D of RCRA.

It is also my understanding the EPA may lack enforcement authority under the Subtitle D approach. However, concern over enforcement authority should not be the reason for the EPA to proceed with over burdensome regulations under Subtitle C. Many Members of Congress, including myself, are aware of the enforcement problem and are willing to work with EPA to ensure they have adequate authority to develop and enforce reasonable regulation of CCR through Subtitle D.

I would like to make clear I support enforceable federal regulation of CCR. I believe Americans deserve absolute assurances their drinking water is safe and free from contaminants such as heavy metals, arsenic, selenium and lead that can leach into groundwater and exceed safe drinking water thresholds when CCRs are not properly managed. I believe guidelines under Subtitle D that include enforceable federal regulations, such as a requirement for appropriate liners, will protect human health and the environment as confirmed in an April 2010 EPA revised study, *Human and Ecological Risk Assessment of Coal Combustion Wastes*.

Thank you again for accepting my comments on this important matter. Please do not hesitate to contact me or my staff if you have any questions. I look forward to your response.

Sincerely,



Brad Ellsworth
Member of Congress