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JOINT ECONOMIC

United States Senate

WASHINGTON, DC 20510

January 25, 2010

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

Dear Administrator Jackson:

I understand that the EPA is evaluating its regulatory options for the management of coal combustion byproducts (CCB), including the designation of CCB as hazardous, and plans to propose Federal management standards early in 2010. 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 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 70 percent of that coal mined in Pennsylvania. Pennsylvania has some of the strictest coal mining regulations in the country. Further, 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 CCB generated in the state.

Electric utility boilers in the United States generated over 137 million tons of CCB in 2008, and about 45 percent were recycled for beneficial use, meaning this material did not have to go to a landfill. Pennsylvania electric utilities produce approximately 20 million tons of CCB each year, with nearly 65 percent used for a number of beneficial applications. For example, 100 percent of the two million tons of fly ash, bottom ash, and scrubber solids generated by PPL is used for abandoned mine reclamation, as a substitute for Portland cement¹, and for manufacturing wallboard. FirstEnergy has partnered with National Gypsum Company to produce wallboard using more than 440,000 tons a year of synthetic gypsum from the Bruce Mansfield power plant's scrubber, material that would otherwise have to go to a landfill. Allegheny Energy, another large coal-fired utility in Pennsylvania, produced nearly 885,000 tons of fly ash, bottom ash, and scrubber materials in 2008, of which 51 percent was put to beneficial use.

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

As noted above, EPA is considering regulating CCB as hazardous whether or not they are beneficially utilized, or hazardous only if they are placed in landfills or impoundments, the so-called "hybrid approach." I feel that either one of these options would be the wrong decision for the Agency to make for a number of reasons that would have a drastic negative impact on Pennsylvania. First, EPA has evaluated CCB numerous times under the Resource Conservation and Recovery Act (RCRA) and made regulatory determinations in 1993 and 2000 that these materials have no hazardous waste characteristics. Further, in recent years, the Agency has actively pushed the increased beneficial use of CCB. 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 CCB, 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 CCB as a soil amendment and fertilizer.

Second, regulating or labeling CCB as hazardous in any way could, for all intents and purposes, eliminate their beneficial use due to concerns over legal exposure, product liability, and public perception. This would have the dual impact of eliminating both the revenue stream for those Pennsylvania utilities that sell their CCB and the hundreds of good-paying jobs associated with the sale and reuse of these materials. It could preclude the further use of CCB to help remediate acid drainage associated with Pennsylvania's abandoned coal mines and coal waste piles. Further, the millions of tons byproducts that are currently being beneficially used each year in Pennsylvania would have to be placed in landfills.

Third, Pennsylvania has no hazardous waste landfills that could accept the large volumes of CCB generated each year. Regulating CCB as hazardous would require either the permitting and construction of hazardous waste facilities in Pennsylvania or the transport of CCB to out-of-state hazardous waste disposal sites. Either way this will add significantly to the cost of operating coal-fired power plants in Pennsylvania at a time when rate caps in my state are being lifted and electricity rates are expected to rise by 30 percent or more.

Fourth, the designation of CCB as hazardous would essentially shut down the thirteen electricity generating plants in Pennsylvania that recover and reuse waste coal. These power plants generate nearly 10 percent of our state's electricity and have played a critical role in helping to clean up the thousands of acres of waste coal piles spread across the Pennsylvania landscape. The projected costs associated with managing CCB as a hazardous waste would dramatically increase the cost of electricity from these plants such that they would no longer be economically viable to operate.

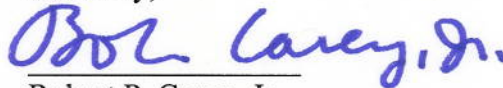
In light of the fact that CCB do not exhibit hazardous waste characteristics as has been determined by the Agency, I recommend that the appropriate course of action for EPA is to continue to regulate CCB as non-hazardous under RCRA, regardless of whether the materials are beneficially used or placed in a landfill or impoundment. However, I do understand the need to have in place an enforceable regulatory scheme that ensures that minimum standards are followed in how CCB are disposed of and monitored, or used in applications such as abandoned mine reclamation or as soil amendments were they could come in direct contact with surface or ground water. The Pennsylvania Department of Environmental Protection has regulated the

disposal and beneficial use of CCB since 1992. Through monitoring at sites where CCBs have been used for mine reclamation, the PADEP has found no indication of ground water degradation. In addition, all new or proposed expansions of CCB disposal sites are required to be lined and have groundwater monitoring to assure that no degradation will occur. I recommend that EPA consider using Pennsylvania as a model for developing a Federal CCB regulatory program, the success of which has been specifically called out in a 2006 National Academy of Science report on CCB.

The continued use of coal in Pennsylvania and elsewhere faces significant challenges; most notable among those is climate change. The addition of unnecessary and potentially costly regulatory requirements such as being considered by EPA will only serve to exacerbate the challenge of keeping coal, our most abundant fossil fuel, in the Nation's energy future. I hope that you give consideration to the request that CCB continue to be managed as non-hazardous and that Pennsylvania's coal byproducts regulatory program be used as model for developing Federal standards for the disposal and beneficial reuse of CCB.

Thank you for your attention to this important matter.

Sincerely,



Robert P. Casey, Jr.
United States Senator