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COMMITTEE ON ENERGY AND COMMERCE

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COMMUNICATIONS, TECHNOLOGY,
AND THE INTERNET

Congress of the United States
House of Representatives

November 18, 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: EPA Proposed Rule for Coal Combustion Residuals
75 Fed. Reg. 35128 (June 21, 2010)
Docket ID No. EPA-HQ-RCRA-2009-0640

Dear Administrator Jackson:

I write in opposition to EPA's proposed rule to regulate coal combustion residuals ("CCRs") as a "special" listed waste under RCRA's Subtitle C program. EPA has already concluded in its final 2000 regulatory determination that CCRs do not warrant regulation under RCRA's hazardous waste program and there is not technical or legal basis for reversing that final decision.

As the testimony and comments on the proposed CCR rule from hundreds of small businesses engaged in the marketing and beneficial use of CCRs have made clear, the stigma from regulating CCRs as a Subtitle C listed waste will cripple the beneficial use market. In fact, these effects already are being felt simply because EPA has proposed to regulate CCRs under RCRA Subtitle C. The collapse of the CCR beneficial use market – which would occur as the sole result of EPA's action – will result in the loss of thousands of small business jobs and needlessly forfeit the significant environmental and economic benefits associated with the beneficial use of CCRs. This cannot be allowed to occur, especially when there is no technical basis for regulating CCRs under RCRA's hazardous waste regulations and the economy is struggling to rebound from the worst recession in a generation with millions of Americans out of work.

I am additionally concerned with the enormous costs which would be imposed on electric utilities, and ultimately by electricity consumers, as result of Subtitle C regulation. I understand that Subtitle C compliance costs for the utility industry would, at the minimum, be in the range of approximately \$55.3 to \$74.5 billion, and likely much higher. There is absolutely no basis for imposing these costs on our power sector when the Agency has concluded in two previous Reports to Congress and two final regulatory determinations that CCRs do not warrant hazardous waste regulation and that CCRs can be safely managed at much lower costs under RCRA's Subtitle D non-hazardous waste program.

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I am not alone in my adamant opposition to the Subtitle C option for CCRs. A majority of my colleagues on the House Energy and Commerce Committee joined me earlier this summer in expressing similar opposition to the Subtitle C approach. Others also oppose this option, including virtually all the states, other federal agencies, municipal and local governments, unions, and state public utility commissions.

Finally, I am particularly troubled by EPA's assumption that it has the authority to independently reverse its previous final regulatory determinations for CCRs that were completed under the well defined procedures of the Bevill Amendment. Congress did not provide EPA with this type of unilateral authority. The Bevill Amendment to RCRA established a step-wise decision making process for EPA to follow in determining whether or not to regulate CCRs under RCRA Subtitle C. EPA was required to study CCRs, submit a comprehensive Report to Congress setting forth its recommendation on the issue and then, following public hearings and comment on that Report to Congress, issue a final regulatory determination. EPA completed that process more than ten years ago by concluding that CCRs do not warrant regulation under RCRA Subtitle C. EPA cannot simply reverse course on that final decision; to do so, would render meaningless the statutorily prescribed procedures Congress specifically required EPA to follow in determining whether CCRs warrant regulation under RCRA Subtitle C.

For these reasons, I do not believe EPA can pursue the Subtitle C option for CCRs set forth in the recent proposal.

Sincerely,



Fred Upton
Member of Congress