

United States Senate

WASHINGTON, DC 20510

July 29, 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 recent publication of the Environmental Protection Agency's (EPA) proposal for regulating coal combustion residues (CCRs), we write to express our concerns about the serious economic and environmental consequences resulting from the regulation of CCRs as a special listed waste under subtitle C of the Resource Conservation and Recovery Act (RCRA).

Despite decades of work by the EPA confirming that the regulation of CCRs under RCRA's subtitle C hazardous waste program is not warranted, the proposed subtitle C option would reverse these prior conclusions and regulate CCRs under RCRA's hazardous waste controls, placing unworkable facility and operational requirements on our state utilities. Indeed, the subtitle C option would regulate CCRs more stringently than any *other* hazardous waste by applying the hazardous waste rules to certain inactive and previously closed CCR units. EPA has never before interpreted RCRA in this manner in its 30 years of administering the federal hazardous waste rules. The subtitle C approach simply is not supportable given its myriad adverse consequences and the availability of an alternative, less burdensome regulatory option under RCRA's non-hazardous waste rules that, by EPA's own admission, will provide an equal degree of protection to public health and the environment.

Moreover, we are concerned that the subtitle C option will result in the loss of important high-paying jobs in the CCR beneficial reuse and related "green" jobs markets, at a time when unemployment is high and the pace of economic recovery is uncertain. Federal policies should encourage greater recycling of CCRs by facilities that use coal. Despite assurances by the Administration that regulation of CCRs under subtitle C would have no negative impact on the beneficial reuse market, the mere discussion of regulating CCRs under RCRA's hazardous waste program has already produced a downturn in the market for these materials. We believe that those who argue that beneficial use of CCRs will increase under the subtitle C option do not appreciate the realities of the potential legal liabilities under today's tort system. The reality is that the market place is already reacting negatively to these concerns, and we are losing important green jobs, along with the greenhouse gas emission reduction benefits that flow from the use of CCRs in numerous products, particularly in transportation infrastructure projects.

We are also deeply concerned that the subtitle C approach will, in one fell swoop, increase by approximately *50-fold* the volume of hazardous waste disposed of annually in land disposal units (from the current volume of two million tons per year to over 100 million tons of CCRs disposed of annually). This will create an immediate and critical shortfall in hazardous waste disposal capacity, adversely impacting the pace of cleanups under Superfund and other ongoing federal

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and state remedial and Brownfield programs. In fact, state environmental protection agencies from around the Nation have repeatedly cautioned EPA that the subtitle C approach for CCRs will overwhelm existing hazardous waste disposal capacity and further strain already stretched budgets and staff resources. It makes no sense to impose these adverse consequences on the existing hazardous waste program and state resources for a material that EPA has repeatedly found does not warrant regulation under RCRA subtitle C.

Given the ash spill disaster at the Tennessee Valley Authority's Kingston facility in 2008, we understand the EPA raising concerns about the handling and storage of CCRs. All operators should take appropriate precautions and those who fail to do so should be held accountable. However, in light of the nearly unanimous opposition from the states and the opposition and concern expressed by other federal agencies that participated in the interagency review process of the CCR proposal, we urge EPA not to pursue the subtitle C option. Instead, there is little question that EPA can develop a federal program for CCR disposal practices under RCRA's subtitle D non-hazardous waste program that ensures protection of human health and the environment without the attendant adverse consequences of the Subtitle C option on jobs, CCR beneficial uses and state budgets and resources. Again, we strongly recommend the EPA pursue a subtitle D approach for CCRs.

Thank you for your consideration of this important matter. We look forward to your response and working with you to address this issue in a manner that is both environmentally and economically sound.

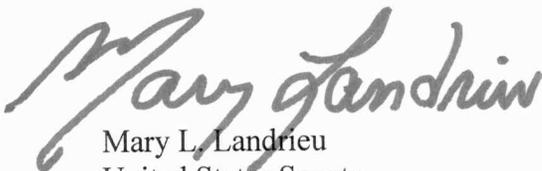
Sincerely,



Sam Brownback
United States Senate



Kent Conrad
United States Senate



Mary L. Landrieu
United States Senate



Johnny Isakson
United States Senate



Christopher S. Bond
United States Senate



Pat Roberts
United States Senate



David Vitter
United States Senate



Thad Cochran
United States Senate



Michael B. Enzi
United States Senate



Lisa Murkowski
United States Senate



Blanche L. Lincoln
United States Senate



George V. Voinovich
United States Senate



Byron L. Dorgan
United States Senate



Ben Nelson
United States Senate



James M. Inhofe
United States Senate



Jim Bunning
United States Senate



John Barrasso
United States Senate



Saxby Chambliss
United States Senate



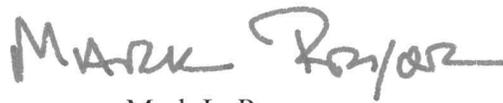
Jeff Sessions
United States Senate



Lamar Alexander
United States Senate



Evan Bayh
United States Senate



Mark L. Pryor
United States Senate



Claire McCaskill
United States Senate



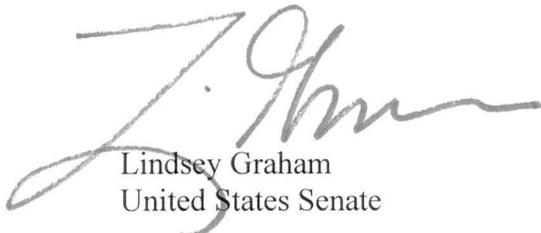
John Cornyn
United States Senate



Roger F. Wicker
United States Senate



Max Baucus
United States Senate



Lindsey Graham
United States Senate



Mark R. Warner
United States Senate



Herb Kohl
United States Senate



Richard Burr
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Jim Webb
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Bob Corker
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Orrin G. Hatch
United States Senate



Mike Johanns
United States Senate

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A handwritten signature in black ink, appearing to read "Robert F. Bennett". The signature is written in a cursive style with a large, stylized initial "R".

Robert F. Bennett
United States Senate