BOUCHER LETTER TO EPA ADMINISTRATOR EXPRESSES STRONG OPPOSITION TO EPA PROPOSAL TO REGULATE COAL ASH

Boucher Joined by a Bipartisan Majority of Members of Energy and Commerce Committee

Copy of letter

(Washington, D.C.) – U.S. Representative Rick Boucher (D-VA) today sent a letter to the U.S. Environmental Protection Agency (EPA) Administrator, Lisa Jackson, expressing his strong opposition to an EPA proposal to regulate coal combustion residuals, commonly known as coal ash, which form when coal is burned to produce electricity. Boucher was joined in his opposition to the proposal by 30 Members of the House Committee on Energy and Commerce who co-signed his letter, representing a bipartisan majority of that Committee.

The EPA has proposed subjecting coal ash to hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act, primarily to address safety concerns with coal ash disposal facilities.

“EPA regulation of coal ash as a hazardous waste could have the effect of destroying jobs by preventing the recycling of coal ash into useful construction products like cement and wall board. In addition, reducing the amount of coal ash that can be recycled for beneficial uses would have the unintended consequence of raising new rather than mitigating existing safety concerns with coal ash landfills and impoundments because the amount of coal ash that would stored in such facilities would necessarily increase,” Boucher said.

Currently, nearly half of the coal ash produced in coal combustion is recycled for uses such as road construction and to produce materials like cement and wall board. Approximately 4,000 workers are employed nationwide manufacturing these recycled materials, and the recycled products are less costly than if they had to be manufactured without the benefit of the recycled coal ash components.

“Furthermore, the imposition of new EPA regulations on coal ash and the cost of those regulations may result in the closure of some coal fired electricity generating units. The Electric Power Research Institute estimates regulation of coal ash as a hazardous waste could result in the loss of nearly 14 percent of generating capacity in some regions of the nation. As a result, the new EPA regulations could result in increased electricity rates,” Boucher said.

A signed copy of Boucher’s letter to the EPA is available here. Text of the letter follows.

July 29, 2010

The Honorable Lisa Jackson

Administrator

US Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, NW

Mail Code 1101A

Washington, DC 20460

Re: Docket No: EPA-HQ-RCRA-2009-0640

Dear Administrator Jackson:

We are writing as a majority of the Members of the House Committee on Energy and Commerce to express our strong opposition to the regulation of coal combustion residuals (CCRs) under Subtitle C of the Resource Conservation and Recovery Act (RCRA) as proposed as an alternative in the proposal published by the Environmental Protection Agency (EPA) on June 21, 2010. We continue to believe that EPA should follow its final 2000 Regulatory Determination in which the Agency determined that regulation of CCRs under Subtitle C of RCRA is not warranted. In that determination, EPA determined that rules under Subtitle D of RCRA for CCRs could be fully protective of human health and the environment. The 2000 Determination was consistent with many decades of scientific analysis including additional EPA reviews concluding that CCRs do not warrant hazardous regulation.

We have a number of serious concerns about the effects of the proposed reversal of these longstanding findings.

As our economy struggles to rebound, we have grave concerns that this proposal could destroy jobs and increase electricity rates.

Within the United States, approximately 136 million tons of CCRs are produced annually.

Currently around 44 percent of these tons are recycled into some form of beneficial use such as road construction materials or wall board.

The recycling of these materials has well established environmental and economic benefits.

The manufacture of these recycled materials employs approximately 4,000 American workers, and the products are less costly than if they had to be manufactured without the benefit of recycled components.

Additionally, use of CCRs to manufacture these products results in less aggregate emissions by reducing the amount of products such as cement that would be needed in the absence of CCRs.

Regardless of any attempted regulatory effort to carve out as permissible recycling efforts, the designation of CCRs as subject to hazardous waste regulation would inappropriately stigmatize uses of CCR that provide significant environmental or economic benefits and deal a crippling blow to the beneficial use industry, jeopardizing the associated jobs.

The primary stated reason for regulation of CCRs has been concerns with their storage in landfills or impoundments.

Subjecting these materials to RCRA's hazardous waste program and the subsequent reduction of beneficial use would actually serve to increase the amount of material that would be diverted to disposal as waste.

We are additionally concerned about the potential unnecessary costs which would be imposed on electricity consumers as a result of Subtitle C regulation. Furthermore, the imposition of these regulations and subsequent costs may result in the closure of some coal fired electricity generating units, and the inflexible nature of RCRA's hazardous waste requirements would result in regulation of virtually all aspects of power plant operations due to the de minimis emissions from the operations of the plant.

Permitted fugitive emissions, process related releases, and transportation releases would constitute improper hazardous waste disposal and subject facilities to non-compliance and RCRA Corrective Action.

The Electric Power Research Institute has suggested that regulation of CCRs as hazardous waste could result in the loss of 14 percent of generating capacity in some regions of the nation.

Closure of that amount of capacity would create reliability problems for the electric system and would cause electricity rates to increase unnecessarily.

While the Agency's hazardous designation proposed alternative would list CCRs as a "special waste" under Subtitle C, the effect is that the materials would be subject to the full requirements of hazardous waste under RCRA. In fact, the proposal would extend the regulations to previously closed, inactive CCR impoundments and would subject CCRs to more onerous disposal controls than for any hazardous waste currently regulated under Subtitle C.

Our opposition to regulation of CCRs under Subtitle C of RCRA is shared by a number of other entities. The comments of other federal agencies during the inter-agency review process of the proposed rule raised numerous concerns with this approach.

Standard setting organizations, transportation officials, public utility commissions, users of CCRs and a majority of states have also opposed Subtitle C regulation.

States have effectively been regulating CCRs; however, if EPA is determined to regulate CCRs under RCRA, we strongly urge the Agency to abandon efforts to pursue Subtitle C regulation of CCRs and to follow the recommendations of its 2000 Final Regulatory Determination for CCRs by developing federal non-hazardous waste rules under Subtitle D.

While we strongly prefer Subtitle D as compared to Subtitle C federal regulation, the Subtitle D option set forth in the Agency's proposed rule is not without flaws and requires some important adjustments for implementation.

For example, we are particularly concerned with the failure to recognize the role of states in

implementation of Subtitle D rules, the accelerated timeframes for the closure of certain CCR disposal facilities, with the siting restrictions that would be imposed on some existing facilities and with the enforcement provisions that would elevate the role of citizen suits.

We understand that the Agency may be concerned about its lack of enforcement authority under a state operated Subtitle D approach; however, that obstacle should not be cause for more burdensome regulation, and we would welcome the opportunity to work with you on approaches which facilitate reasonable non-hazardous regulation of CCRs.

We appreciate your attention to our comments, and we look forward to working with you on this matter as the Agency proceeds with its rulemaking.

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