My name is Betsy Monseu, and I am CEO of the American Coal Council (ACC). The ACC is a trade association in its 37th year representing the collective business interests of the American coal industry. Our members span the entire coal supply chain.

Thank you for the opportunity to address the Environmental Protection Agency’s (EPA) proposal to revise portions of the 2015 Coal Combustion Residuals (CCR) final rule.

To begin, I'll emphasize that every part of the coal supply chain is stringently regulated at the federal, state, and local levels – coal mining; coal use at power plants and industrial facilities; and coal transportation and handling at terminals.

Thus, regulatory decisions have widespread impacts. Regulatory uncertainty, changes to regulations, and inconsistencies in regulations affect businesses large and small. There are real consequences to people, their livelihoods, and their families.

In the economic analysis EPA conducted for its recent CERCLA Section 108(b) rulemaking for the electric power industry, EPA made a reference to 40 percent of U.S. coal power plant capacity being shut down or designated for closure since 2010. The economic analysis also stated that approximately 85 plants (or 18 percent of coal generation) open in 2014 have closed or converted to another fuel type.

In fact, many of the coal closures are the result of EPA regulations. According to the U.S. Energy Information Administration (EIA), coal plant closures reached a high in 2015 driven in part by EPA’s Mercury and Air Toxics Standards (MATS) rule.¹ That regulation had a compliance deadline of April 2015. The United States Supreme Court struck it down just a few months later. Despite the high court ruling, it was too late for many coal plants. The power sector had to choose between installing emissions controls or closing affected coal units well before the Supreme Court’s ruling. The MATS
rule demonstrates the significant impacts of regulations and the ACC urges EPA to proceed with caution now as it considers changes to CCR regulations.

With this CCR proposal, EPA appears to be expanding the scope of regulation rather than more pointedly addressing issues remanded by the court and other policy matters.

Regarding the mass-based numerical threshold previously established at 12,400 tons in EPA’s beneficial use definition, this threshold was subsequently determined to be a math error. EPA could now simply correct the math error, as it resulted from a discrepancy in reporting. Instead, EPA proposes to replace the methodology altogether with specific location-based criteria.

Regarding a single approach to evaluate issues associated with CCR piles, regardless of the pile location and whether its purpose is for disposal or beneficial use, EPA may be trying to prevent excessive material being stored on a speculative basis for “presumed” beneficial use. However, EPA’s new approach introduces confusion about storage. Storage is an essential and necessary component of the supply chain for beneficial CCR use. This is no different than inventory needed in any industry to manage production and distribution processes and meet customer needs. Buyers of CCR material for beneficial re-use must be assured of adequate supply. The closure of so many coal power plants has already negatively impacted supply. The need for material and reduced overall volume has caused buyers to look at alternatives including importing – which certainly has environmental consequences.

The ACC is concerned that what EPA has proposed may jeopardize the beneficial re-use of CCRs, resulting in far lower volumes of CCRs recycled. This is an undesirable environmental outcome and stands in contrast to EPA’s history of supporting beneficial use and what Congress set forth in the Resource Conservation and Recovery Act (RCRA). EPA’s proposal could undermine sustainability objectives and many years of progress in recycling CCRs. The American Coal Ash Association reported the year 2017 was a record-breaker for beneficial use at 64 percent of the CCRs produced. This is nearly 72 million tons of material that avoided disposal. This also underscores the market demand for CCRs, which are used to make concrete and gypsum wallboard among other applications.

The ACC will continue to evaluate the issues I have addressed today as well as others set forth in EPA’s proposal as we further consider formal written comments.

Thank you for your attention.

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