

INDIANA UTILITY REGULATORY COMMISSION  
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September 10, 2009

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

**Re: Federal Rulemaking for Coal Combustion Byproducts**

Dear Administrator Jackson:

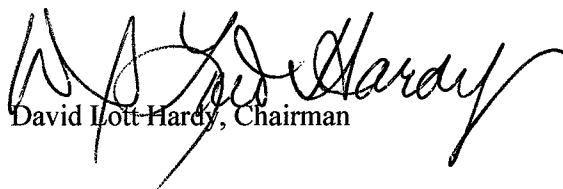
I am writing on behalf of the Indiana Utility Regulatory Commission ("IURC") in response to the U.S. Environmental Protection Agency's ("EPA") consideration of new or revised federal regulations regarding coal combustion byproducts ("CCBs"). It is my understanding that the EPA is currently evaluating whether to develop new requirements to regulate CCBs as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act ("RCRA"), or to continue to regulate the material as a non-hazardous waste under Subtitle D of RCRA. Another option under consideration by the EPA is whether to require the early retirement of active surface impoundments used by electric utilities to manage CCBs.

I understand that, to date, every State environmental agency that has provided comments to the EPA on this issue, including the Indiana Department of Environmental Management ("IDEM"), has opposed new regulations that would classify CCBs as hazardous waste. The IDEM has instead recommended that the best management option for regulating CCBs is to continue to regulate the material as non-hazardous waste under RCRA Subtitle D. The IDEM has taken this position, in part, due to its recognition that the continued regulation of the material as a non-hazardous special waste preserves the ability to beneficially reuse CCBs in a number of applications. In addition, as also pointed out by the IDEM, Indiana has an effective regulatory infrastructure in place to ensure the safe management of these materials.

As an economic regulator the IURC is concerned that, if the EPA concludes that CCBs should be regulated as a hazardous waste, utilities in our State will be confronted with sharply higher operating costs that could threaten the cost-effective and reliable provision of electric service in Indiana. Therefore, the IURC respectfully recommends that the EPA continue to regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

Thank you for your attention to this matter.

Sincerely,

  
David Lott Hardy, Chairman