



C. Dukes Scott
Executive Director

**STATE OF SOUTH CAROLINA
OFFICE OF REGULATORY STAFF**

1401 Main Street
Suite 850
Columbia, SC 29201

August 26, 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 South Carolina Office of Regulatory Staff ("ORS"), a South Carolina state agency statutorily mandated to represent the public interest in utility regulation for the major utility industries – electric, natural gas, telecommunications, water/wastewater, and transportation and railroad safety. In fulfilling our mission, we must balance the concerns of the using and consuming public, the financial integrity of public utilities, and the economic development of South Carolina. Under South Carolina law, it is the duty and responsibility of the ORS to provide legal representation of the public interest before federal regulatory agencies and federal courts in proceedings that could affect the rates or service of any public utility.

The electric utilities in South Carolina have recently brought to our attention a pending decision by the EPA that could significantly affect future electric utility rates and, in some cases, the ability of the utilities to provide reliable and uninterrupted power delivery services. It is our understanding that the EPA is evaluating whether to regulate coal combustion byproducts ("CCBs") as hazardous wastes under Subtitle C of the Resource Conservation and Recovery Act ("RCRA") or as non-hazardous wastes under Subtitle D of RCRA. Additionally, we understand that the EPA is evaluating a requirement for the early retirement of active surface impoundments used by electric utilities to manage CCBs.

ORS recommends that CCBs should be classified as non-hazardous wastes under RCRA Subtitle D in order to both preserve and expand the beneficial uses of CCBs and because the States, and in particular South Carolina, have the regulatory infrastructure in place to ensure the safe management of these materials. Annually, the electric utilities generating electricity to serve South Carolina consumers (and parts of North Carolina)¹ utilize approximately 46.4 million tons of coal and produce roughly 5.14 million tons of ash. Annual average CCB reuse percentages vary for each electric utility operating in South Carolina, but range from 30% to 60% percent or more. CCB reuse applications include wallboard manufacturing, cement and concrete block production, and highway construction projects. We are concerned that a decision to regulate CCBs as hazardous wastes will not only diminish valuable reuse applications and cause prices for ash products to increase but will also result in a significant increase in electric rates due to the increased costs to handle and dispose of CCBs. South Carolinians, according to 2007 census figures, have 18 percent less disposable income than the average American, and based on 2007 Energy Information Administration data, this state ranked eleventh highest in average residential electric expenditures. Any increase in electric rates will have a profound impact on customers who are already financially disadvantaged and further will be detrimental to our state which presently ranks as the fourth highest in unemployment in the country.

While the ORS does not typically involve itself with EPA regulatory matters, a decision by the EPA to regulate CCBs as hazardous wastes could threaten cost-effective and reliable provision of electrical service in our State. Reclassifying CCBs from nonhazardous wastes to hazardous wastes could significantly increase operating costs of electric utilities in South Carolina, a result which at a minimum could potentially compromise the ability of the electric utilities to provide reliable electric service at affordable rates and could force significant rate increases on the electric customers in South Carolina. For these reasons, ORS respectfully recommends that EPA continue to regulate CCBs as non-hazardous wastes under RCRA Subtitle D.

Thank you for your attention to this matter and for consideration of the views of the ORS.

Sincerely,



C. Dukes Scott

¹ Two of the investor-owned electric utilities serving South Carolina also serve portions of North Carolina.