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Congress of the United States
House of Representatives
Washington, DC 20515-3013

1024 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-7919

35 JOURNAL SQUARE, SUITE 906
JERSEY CITY, NJ 07306
(201) 222-2828

5500 PALISADE AVENUE, SUITE A
WEST NEW YORK, NJ 07093
(201) 558-0800

BAYONNE CITY HALL
630 AVENUE C, ROOM 9
BAYONNE, NJ 07002
(201) 823-2900

100 COOKE AVENUE, 2ND FLOOR
CARTERET, NJ 07008
(732) 969-9160

PERTH AMBOY CITY HALL
260 HIGH STREET, 1ST FLOOR
PERTH AMBOY, NJ 08861
(732) 442-0610

November 24, 2009

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson,

I write to express my concern with the agency's proposal to regulate coal combustion waste (CCW) or "coal ash" as a hazardous material under Subtitle C. Instead, I believe that the EPA should ensure that coal ash is recycled into beneficial energy-saving building products that reduce peak and total energy demand, lower carbon emissions, and create green-collar jobs. As such, I would encourage you to regulate CCW under Subtitle D of the Resource Conservation and Recovery Act (RCRA) in order to ensure the safe management of coal ash while still allowing for its continued beneficial use.

If the EPA were to classify coal ash as a hazardous material under Subtitle C, it could effectively end the beneficial use of the material. Even if the agency were to provide a carve out for some beneficial uses, the liability risks associated with using a product deemed hazardous by the EPA would be too costly. Today, coal ash is most widely used to produce concrete in order to enhance its strength and resistance to the elements; amounting to 45 percent of all concrete products last year alone. Additionally, over 13.7 million tons of coal ash is used annually in cement and concrete applications across the country, making it increasingly important for highway construction. Recycled coal ash is also used to produce bricks, roofing, structural fill, waste stabilization, wall board, and for agricultural purposes.

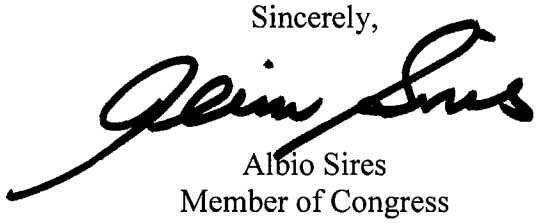
Regulating coal ash as a hazardous material could also stifle further innovation in the production of recycled coal ash. For over 50 years, Europe has been using a technique to convert coal ash into energy efficient building products through the Autoclaved Aerated Concrete (AAC) manufacturing process. Equal to a conventional concrete block in structural performance, AAC has been found as a far superior product with far-reaching benefits. Unlike conventional concrete blocks, AAC insulates and has a thermal storage capability and has the ability to be fireproof, soundproof, moisture resistant, rodent and termite, proof, as well as earthquake resistant. Classifying CCW as hazardous material

would prevent this technology from ever being developed in the U.S. and place our European allies at a competitive advantage in the production of green-building products.

Furthermore, 26 states, including New Jersey, are on the record as supporting the regulation of CCW as non-hazardous waste under RCRA Subtitle D and many of these states already have the regulatory infrastructure in place to handle CCW. Regulating coal ash under Subtitle D will sufficiently protect the environment while responsibly monitoring CCW.

Thank you for this opportunity to share my views with you on this issue.

Sincerely,



Albio Sires
Member of Congress