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**December 3, 2013**

**Response to Questions for the Record from the Oversight and Investigations hearing entitled, "EPA's Regulatory Threat to Affordable, Reliable Energy: The Perspective of Coal Communities."**

**The Honorable Tim Murphy**

**Question #1:**

As you have had time to reflect on your hearing testimony, do you have anything you wish to clarify or to elaborate relating to your testimony or in response to issues discussed at the hearing?

**Answer:**

The true path toward energy security and economic prosperity is a balanced energy policy that wisely utilizes all our indigenous resources through market driven choices to satisfy demand.

Instead of deliberately seeking to eliminate coal from the nation's generation mix, government should work collaboratively with all energy stakeholders to encourage the development of even more effective clean coal technologies. The win-win result would move us toward zero emissions, while taking advantage of coal's abundance, reliability and affordability and maintaining economic competitiveness.

Sound energy policy is about finding a way to produce cleaner, more efficient power while maintaining jobs and economic competitiveness. Our policies need to be aligned with those goals in securing our energy future.

**Question #2:**

Have you or anyone you know been able to attend one of EPA's public listening sessions this fall, during which EPA is attempting to solicit ideas and input from the public and stakeholders about 'the best Clean Air Act approaches to reducing carbon pollution from existing power plants?' If yes, please specify the date and location of that session. If you will not be able to attend one of EPA's ongoing public listening

sessions, do you have any questions or feedback on this topic that you would like to take a moment now to share with EPA?

**Answer:**

I testified before the Public Listening Session that was held in Philadelphia on November 8, 2013.

The most troubling aspect of the Sessions was the fact that none of the hearings were remotely located close to the coalfields.

For example, Philadelphia is a good six hour drive from Pennsylvania's bituminous coal communities.

It seems as if EPA deliberately selected the most inaccessible sites for the hearings to discourage participation by coalfield residents, whom would be most impacted by regulation changes, and avoid receiving input that conflicts with EPA's predetermined solutions.

As a result, I do not believe that the session achieved their goal of receiving critical and diverse input from key stakeholders.

**Question #3:**

Why do energy prices tend to be lower, on average, in large coal-producing states than in states where coal plays a smaller role?

**Answer:**

Because of transportation costs in delivering the coal to power plant sites. To minimize transportation costs, many of Pennsylvania's bigger coal-fired power plants were deliberately sited close to coal mines. These are referred to as "mine-mouth" plants.

**The Honorable Rene Ellmers**

**Question #1:**

While the ash from coal combustion is a waste by-product, I know that it provides great benefit with concrete mix designs -- supporting the development of higher strengths and better performance. My understanding is that despite the efforts of EPA to attempt to continue to permit such beneficial use of fly ash in their new ruling, the concrete industry remains concerned about liability risks associated with the handling and use of what will now be declared a hazardous material. Could you address these liability concerns and your personal perspective on the impact of this ruling on beneficial use of fly ash?

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Answer:

In June 2010, EPA proposed a rule to regulate the disposal of Coal Combustion Residuals (CCRs) from electric utilities and independent power producers under the Resource Conservation and Recovery Act (RCRA). This proposed rule contained two options for regulation of CCRs disposal:

- a hazardous waste regulatory option under Subtitle C and
- a non-hazardous waste regulatory option under Subtitle D.

The proposed rule does not address the placement of CCRs in minefills nor non-minefill uses of CCRs at coal mine sites. However, because of the actual written language and provisions in the proposed rule, the application to the mining industry is clouded and uncertain.

What is certain is that RCRA Subtitle C, establishes strict controls on the management of hazardous wastes from their point of generation, through their transportation and treatment, storage and/or disposal. Because Subtitle C requires controls on hazardous waste generators (origin), transporters, and treatment, storage and disposal facilities--the facilities that ultimately treat or recycle the hazardous waste--the liability for the material is "cradle to grave." The liability for a coal mine operator, or anyone, to ensure proper strict management of this material once it is out of their actual control, is tremendous. The program also demands stringent recordkeeping and reporting requirements on generators, transporters, and operators of treatment, storage and disposal facilities handling hazardous waste.

While EPA cites the need for national management criteria of CCRs was emphasized by the December 2008 spill of CCRs from TVA's Kingston, TN surface impoundment<sup>1</sup>, it is difficult to understand EPA's June 10, 2010 reaction given they extensively evaluated whether CCRs should be subject to Subtitle C in 1988 and 1999 Reports to Congress, indicating this material does not exhibit any of the four characteristics of a hazardous waste. And then in 1993 and 2000, EPA again found no reason to regulate under Subtitle C. Regulation under either of these Subtitles does not preclude a structural integrity accident from occurring.

Given this material does not meet any of the criteria of a hazardous waste, and given the possibility of our members' coal mining operations that use and manage CCRs being subject to onerous, costly and inappropriate RCRA Subtitle C hazardous waste regulations and subsequent liability, PCA submitted comments on this proposed rule supporting a non-hazardous waste regulatory option under Subtitle D.

It is our belief the Office of Surface Mining and Enforcement (OSM) and the Pennsylvania Department of Environmental Protection (PA DEP) are the appropriate agencies to regulate CCRs from coal mining and reclamation operations because of their

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<sup>1</sup> <http://www.epa.gov/solidwaste/nonhaz/industrial/special/fossil/ccr-rule/index.htm>

years of experience. For over 25 years, Pennsylvania has had a successful program for the beneficial use of coal ash at mine sites in an environmentally responsible manner requiring material certifications and extensive sampling, monitoring and testing. Historical mining has left many areas needing reclamation, and abandoned mine reclamation is the primary beneficial use of coal ash in Pennsylvania. Without this beneficial use, CCRs are headed to landfills and less reclamation occurs due to cost.

Although abandoned mine reclamation is the primary beneficial use of coal ash in Pennsylvania, beneficial use of coal ash plays a role in other purposes. These include: the manufacture of concrete, as an asphalt additive, in structural fills, as an anti-skid material in road and airport runway sub-base construction, and in various other highway and construction applications.

I am aware that EPA recently indicated in their June 7, 2013 Federal Register notice regarding Effluent Limit Guidelines for the Steam Electric Power Generating industry that the final risk assessment for CCRs is not complete, and that their analysis could possibly provide support for a regulation under non-hazardous RCRA Subtitle D. However, the uncertainty for our industry, and other industries like the concrete industry, still exists, and the prolonged discussion around this issue fueled by inaccuracies, is slowing down recycling.

According to the American Coal Ash Association's recently released annual 2012 Production and Use Survey, 51.9 million tons of Coal Combustion Products were beneficially used in 2012 – down from 56.6 million tons in 2011 and considerably below the 2008 peak of 60.6 million tons. In the specific category of fly ash used in concrete, utilization was at 11.8 million tons, again below the 12.6 million tons in 2008.<sup>2</sup>

According to the Pennsylvania Department of Environmental Protection, in 2012, CCRs usage in coal mines was approximately 7 million tons. In 2008, it was 11 million tons.<sup>3</sup>

PCA also agrees with The Environmental Council of the States (ECOS) Resolution 08-14 dated September 22, 2008, which concluded an energetic market for coal ash would lead to better waste management than a new regulatory scheme that is duplicative. ECOS noted that regulation of CCRs as hazardous waste is unwarranted, the existing state framework is adequate for regulating coal ash, and EPA should instead partner with the states to promote beneficial use of CCRs.

There is no better way of encouraging a successful program like beneficial use of CCRs than by providing support for a free market to grow versus putting up regulatory roadblocks that impedes its growth.

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<sup>2</sup> [http://www.acaa-usa.org/associations/8003/files/News\\_Release-Coal\\_Ash\\_Production\\_and\\_Use\\_2012.pdf](http://www.acaa-usa.org/associations/8003/files/News_Release-Coal_Ash_Production_and_Use_2012.pdf)

<sup>3</sup> Email dated October 21, 2013 from PA DEP to PCA.

## Question #2

Many believe the impact of EPA regulation of CO<sub>2</sub> through the CAA will have a more significant negative impact on rural communities. Rural consumers use more coal-fired generation (in many cases natural gas pipelines are not nearby) and coal reserves are close, readily available, thus more economical to use. Rural utilities including electric cooperatives built those plants for the right reasons. Rural communities produce coal so jobs will be impacted, a previously cheaper source of fuel will be more difficult to use and more expensive. It's a double whammy. Can you explain the residual effect this will have on agriculture, small business and the tax base (schools, local government services) of those local rural communities?

Answer:

PCA recently completed a case study on the economic impact of coal to Greene County, Pennsylvania, a patchwork of rural boroughs and townships that is the largest coal producing county in the state.

Essentially, the study found that in these rural communities any company that supplies the mining industry or whose business is dependent on money from a miner or plant worker's paycheck is affected by the fate of coal mining. This is not surprising since coal has long been the economic lifeblood of rural areas, driving growth and development and delivering huge social benefits.

Among the findings from our Greene County Study:

- Mining accounts for 25 percent of the county's total employment.
- It directly employs 3,544 workers with a payroll exceeding \$300 million per year.
- Three of the top four major employers in the county are mining companies.
- The average annual salary for a Greene County miner totals \$88,633. By contrast, the average county wage for all occupations is \$42,880, or less than half of what a Greene County miner on average annually earns.
- The direct annual capital expenditures made by coal mines located in Greene County are estimated at \$1.2 billion; the direct and indirect economic benefits are \$3.7 billion per year, creating almost 16,000 jobs.
- Taxes from coal mining operations, which dominate Greene County's industrial base, account for 40 percent of the county's budget. Coal currently constitutes 31 percent of the county's total property valuation, with the industry paying about \$3.5 million per year in property taxes alone. Any loss of coal production or shuttered mines will impact municipal and school district budgets, straining their ability to provide basic services for their residences.