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December 3, 2013

The Honorable Renee Ellmers
426 Cannon House Office Bldg.
Washington, DC, 20515

Dear Representative Ellmers:

Thank you for submitting questions to me as a follow up to the Oversight and Investigations Subcommittee hearing on Tuesday October 29, 2013. My responses to your questions are in the attached document.

Sincerely,

Daniel J. Weiss
Senior Fellow and Director of Climate Strategy

Enclosure

Cc: Chairman Fred Upton
Ranking Member Henry Waxman
Subcommittee Chair Tim Murphy
Ranking Member Diane DeGette

Response to questions by Rep. Rene Ellmers by Daniel J. Weiss

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?**

Coal ash from burning coal in power plants for electricity generation contains many toxic contaminants that harm human health and the environment. This waste has some of the most poisonous substances known to humans, including arsenic, lead, mercury, cadmium, chromium and selenium. These pollutants can cause birth defects, learning disabilities, and cancer. Coal ash is the second largest industrial waste stream in the United States, after mining waste.

North Carolina generates 5.5 million tons of coal ash annually – the ninth most in the United States. This is more than 1,100 pounds of coal ash per North Carolinian per year – a staggering amount. Typically, power plants store their coal ash in dumps or dams, which are prone to leaking their toxic contaminants into nearby surface and below ground drinking water. North Carolina has the highest concentration of high-hazard coal ash dumps in the nation. The North Carolina Department of Environment and Natural Resources rated 29 of its coal ash dams as posing a "high hazard," and two more have been rated "intermediate hazard." A high hazard rating means that pond failure will probably cause human fatalities, economic loss, environmental damage and damage to infrastructure. An intermediate hazard rating indicates that a failure at the pond can cause economic loss, environmental damage, or damage to infrastructure.

There are growing indications of the threat posed by coal ash to North Carolinians. On November 23, 2013 the *Charlotte Observer* reported that

> Links growing between coal ash and contamination.
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> Duke Energy, for the first time, has agreed to pay for a new water source to a Wilmington community threatened by groundwater contamination from its coal ash…Duke Energy is beginning to waver on its long-held assertion that coal ash stored at its North Carolina power plants doesn't threaten public health.

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> Duke agreed last month to pay up to $1.8 million for a water line to a low-income community in the path of groundwater contamination from its Wilmington plant.

The *Observer* also reported that "it was the first time in North Carolina that Duke has agreed to provide alternative water because of ash contamination." Duke was also "ordered to supply water to a home near the Asheville plant."

To address these and other health threats posed by toxic coal ash, the Environmental Protection Agency (EPA) has proposed to regulate it with federal minimum requirements under the Resources Conservation and Recovery Act. This is the most effective method to safeguard people from the contamination of air and water from toxic coal ash pollution.

Under EPA's proposed rule, the concrete industry could continue the "beneficial reuse" of coal ash, which includes the encapsulated use of fly ash and/or bottom ash in concrete, bricks, and asphalt. These uses would remain completely unregulated under both of the two options that EPA proposed for the disposal and management of "coal combustion residuals" or CCRs.

Even under the most stringent proposed option, EPA makes it clear that "encapsulated" coal ash locked in another product would continue to be allowed without further regulation.

> Coal ash destined for beneficial use would retain the current Bevill exemption, and so would not be subject to regulation under RCRA [Resource Conservation and Recovery Act] Subtitle C. Thus, coal ash used in concrete and other products would not fall within the scope of EPA's proposal to "list" coal ash, either during or after the useful life of the concrete product. When the concrete product is discarded at the end of its useful life, it would be treated the same as any other solid waste.

It appears that there will be no increase in the risk of liability for reuse of coal ash under the proposed EPA rule. Concerns regarding liability risk associated with the handling and use of coal ash as a hazardous or non-hazardous waste are unfounded since under either of the two regulatory scenarios that EPA could pursue, coal ash that meets the definition of "beneficial use" would not be affected. This includes fly ash used in concrete, FGD gypsum for wallboard, or ash used as road bed aggregate. Although the option preferred by affected citizens and the public health community is regulation under the subtitle C proposal as "hazardous waste," the Agency has signaled that it is leaning

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towards a Subtitle D, non-hazardous waste designation. In the preamble of a related proposed water rule the EPA indicated that

> EPA's current thinking is that, the revised risks, coupled with the ELG [Effluent Limitations Guidelines] requirements that the Agency may promulgate, and the increased Federal oversight such requirements could achieve, could provide strong support for a conclusion that regulation of CCR disposal under RCRA Subtitle D would be adequate.

The bottom line is that the EPA is required by law to issue standards under RCRA to govern the safer disposal of coal ash waste. On October 29, 2013, the U.S. District Court for the District of Columbia ordered the agency to give the court an update on the status of the rule by December 29, 2013 as well as a schedule for finishing the long-overdue standards. These are common sense standards that citizens across the nation have been demanding for five years to protect them from air and water contaminated by toxic chemicals in coal ash.

2. **Many believe the impact of EPA regulation of CO2 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 these local rural communities?**

Climate change poses a significant health and economic threat to rural residents and their local economy. The National Climate Assessment draft, based on the work of hundreds of scientists, warned that

> Rural Communities are highly dependent upon natural resources for their livelihoods and social structures. Climate change related impacts are currently affecting rural communities. These impacts will progressively increase over this century and will shift the locations where rural economic activities (like agriculture, forestry, and recreation) can thrive.
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> Rural communities face particular geographic and demographic obstacles in responding to and preparing for climate change risks. In particular, physical

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> isolation, limited economic diversity and higher poverty rates, combined with an aging population increases the vulnerability of rural communities. Systems of fundamental importance to rural populations are already stressed by remoteness and limited access.
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> Responding to additional challenges from climate change impacts will require significant adaptation within rural transportation and infrastructure systems, as well as health and emergency response systems. Governments in rural communities have limited institutional capacity to respond to, plan for, and anticipate climate change impacts.

For instance, the record 2012 drought had a severe impact on agriculture productivity. The U.S. Department of Agriculture reported that

> The 2012 drought destroyed or damaged portions of the major field crops in the Midwest, particularly field corn and soybeans. This led to increases in the farm prices of corn, soybeans, and other field crops and, in turn, led to price increases for other inputs in the food supply such as animal feed. Though we saw some price increases for meats and animal-based products in the fourth quarter of 2012, most of the impacts on retail food prices were expected to occur in 2013.

Inside Climate News, a Pulitzer Prize winner, warned that the recent droughts suggest a pattern of hotter, more arid weather. It reported that "The years 2011-2013 reveal worsening conditions year after year, a pattern that is similar to the devastating droughts of the 30s and 50s."

Coal-fired electricity is only inexpensive if one ignores its impacts on public health, and air and water quality. A 2011 study by The Center for Health and Global Environment at Harvard Medical School estimated that the climate change impacts of burning coal were $62 billion in 2008 alone. If this huge cost – borne by those who suffer from additional smog, heat waves, extreme weather and other climate impacts – were included in the price of electricity, it would raise it by 17 cents per kilowatt hour (kWh). This is one and a half times more than the average price of 12 cents per kWh. Thus, the total cost of coal fired electricity to all Americans is much higher than the price at the meter.

In short, climate change directly threatens rural residents and their livelihoods. Those who express concern about the people and businesses in rural areas ought to strongly support carbon pollution reductions to slow the onset of climate change. EPA's future proposal to reduce carbon pollution from power plants will *benefit* rural areas because these facilities are biggest climate polluter in the United States.

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The biggest threat to coal dependent communities is the recent increase of low cost natural gas, and not a nonexistent rule to reduce carbon pollution from coal fired power plants. The *Charleston Gazette* in West Virginia recently noted that

> Cheaper natural gas hurts West Virginia's coal industry. Low-cost gas is capturing a larger share of the power plant market. Coal production in Central Appalachia (southern West Virginia and eastern Kentucky) keeps shrinking as easy-to-reach seams are mined out and cheap Wyoming coal undercuts Appalachian prices.
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> Statistician Jeff Green of Workforce West Virginia says natural gas employment is rising and coal employment is declining as market factors take effect.

Meanwhile, EPA will not propose its carbon pollution reduction rule for seven months, and it won't be final until mid-2015. It is difficult to demonstrate that this nonexistent rule contributes to economic problems today in coal communities.

When EPA finally proposes its rule, it will be a cost-effective system that enables emitters to adequately protect people from pollution at a reasonable cost. Fortunately, there are number of cost-effective compliance options to help rural communities reduce power plant pollution. For instance, USDA has a proposed program to help rural communities save energy by working directly with their local rural electric cooperatives.

> USDA through the Rural Utilities Service (RUS) [will] establish policies and procedures to implement energy efficiency loan programs aligned with USDA's Rural Economic Development Energy Efficiency (REDEEE) effort, which is designed to create jobs in the energy efficiency industry, and builds upon the work that Rural Development has done in providing funding and support for improving the energy efficiency of single and multi-family housing, businesses, farms, and utility companies.

This program should be finalized this fall.

Rural communities would also benefit from a shift from dirty, polluting coal to cleaner electricity sources. Many rural places have significant resources for wind, solar, and other forms of clean electricity. For example, the Department of Energy estimated that if 5 percent of the nation's energy comes from wind power by 2020, rural America could see $60 billion in capital investment. Farmers and rural landowners would derive $1.2 billion in new income and see 80,000 new jobs created over the next two decades. A

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reduction in carbon pollution from power plants would increase incentives to invest in rural-based clean energy technologies.

The Department of Agriculture's support for energy efficiency efforts provided significant assistance to rural families to cut energy waste and save money. USDA

> Carried out more than 6,600 projects to help thousands of rural small businesses, farmers, and ranchers improve their bottom line by installing renewable energy systems and energy efficiency solutions that will generate/save more than 7.32 billion kWh– enough energy to power 680,000 American homes annually.

There have been proposals to assist communities facing economic decline due to the changing energy mix. The American Clean Energy and Security Act, by the House of Representatives in 2009, would have supplied $60 billion to help power plants continue to burn coal while permanently storing most of their pollution underground. Unfortunately, that measure did not pass in the Senate due to unanimous opposition by Republican senators.

As noted, there are opportunities to generate farm income via deployment of renewable energy, or save money by reducing electricity waste. Nonetheless, this could be a tough transition for coal-dependent workers and communities, and we support providing help to them. As I testified at the Subcommittee on Oversight and Investigations on October 29th, there ought to be federal assistance for workers and communities that face economic challenges due to changes in our energy mix.

> Any job loss has real impacts on families and communities. The federal government has an important role to play in working with the affected states to minimize the impacts of these changes. We would like to work with the chairman and other members of the subcommittee to develop strategies and programs to help miners and others displaced from their jobs as the result of changes in our energy use. We would respectfully suggest this subcommittee consider two specific actions to increase opportunities for coal communities.
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> First, reduce investment uncertainty created by regulatory confusion. By allowing EPA to move forward with common sense rules to protect public health and the climate, companies will have the certainty they need to make pollution control investments, strategically plan for new business opportunities in cleaner energy technologies, and develop new employment opportunities for displaced workers
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> Second, develop a comprehensive strategy to assist affected communities to help

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them identify and pursue pathways to a prosperous future. One important change would allow early vesting in retirement and pension plans for coal workers near retirement age.

For younger workers, education and job training should be offered. Title XI, Section 1101 of the Clean Air Act Amendments of 1990 amended the Job Training Partnership Act to create the "Clean Air Employment Transition Assistance Program" (CAETAP).

From 1992 -1996, the program invested $83 million to provide training and readjustment aid to 6,366 workers dislocated as a result of their employer's compliance with the Act.

As part of a broader strategy, this committee could consider providing greater resources to this program in order to help impacted coal communities

Many American industries have developed, grown and contracted, with significant consequences for individuals, communities and the economy. Examples range from steel production and auto manufacturing, to video rental stores, photofinishing, newspaper publishing, and more.

Thankfully, the ingenuity and entrepreneurial spirit of America always finds new opportunities to transform, prosper and profit. We believe coal communities should receive federal assistance that will empower them to take advantage of growth opportunities that will enable long-term job security. From our perspective, this means understanding the limitations of what the coal sector will offer in the future and providing resource to help these communities explore more attractive opportunities

As I said in my testimony to the Subcommittee, I am interested in working with you and other members of the Subcommittee to develop common sense assistance to the most economically stressed workers and communities due to America's changing energy mix.