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TIM HOLDEN
17TH DISTRICT, PENNSYLVANIA

www.holden.house.gov

2417 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3817
(202) 225-5546

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
June 18, 2009

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

Dear Administrator Jackson:

We understand that EPA is evaluating its regulatory options for the management of coal combustion byproducts (CCBs) and plans to propose federal management standards for CCBs by the end of the year. This issue involves an important component of the nation's overall energy policy as EPA's decision could affect electricity costs from coal-fired plants, the continued viability of CCB beneficial use practices (which plays a significant role in the reduction of greenhouse gases), and the ability of certain power plants to remain in service. It is important therefore that the final rule reflect a balanced approach that ensures the cost-effective management of CCBs that is protective of human health and the environment, while also continuing to promote and encourage CCB beneficial use. As explained below, we believe that the federal regulation of CCBs pursuant to RCRA's Subtitle D non-hazardous waste authority is the most appropriate option for meeting these important goals.

As part of its evaluation of this issue, EPA has wisely sought input from the States regarding their preferences with respect to the three regulatory options under consideration: (1) federal regulation of CCBs as non-hazardous solid waste under RCRA Subtitle D, (2) regulation as hazardous wastes under RCRA Subtitle C, and (3) a hybrid approach where CCBs would be regulated as hazardous wastes with an exception from hazardous waste regulation for CCBs that are managed in conformance with specified standards.

We understand that, thus far, approximately 20 states, in addition to ASTSWMO, have responded to EPA's request for input on this issue and that *every* State has taken the position that the best management option for regulating CCBs is pursuant to RCRA Subtitle D. The States effectively argue that they have the regulatory infrastructure in place to ensure the safe management of CCBs under a Subtitle D program and, equally important, make clear that regulating CCBs as hazardous waste would be environmentally counter-productive because it would effectively end the beneficial use of CCBs. For the same reasons, the Environmental Council of States (ECOS) has issued a declaration expressly arguing against the regulation of CCBs as hazardous waste under RCRA.

SRBC OFFICE BUILDING
1721 NORTH FRONT STREET, SUITE 105
HARRISBURG, PA 17102
(717) 234-5904

758 CUMBERLAND STREET
LEBANON, PA 17042
(717) 270-1395

101 NORTH CENTRE STREET, SUITE 303
POTTSVILLE, PA 17901
(570) 622-4212

4918 KUTZTOWN ROAD
TEMPLE, PA 19560
(610) 921-3502

We respectfully suggest that the unanimous position of informed State agencies and associations cannot be ignored as EPA evaluates its regulatory options for CCBs. Among other things, the Bevill Amendment to RCRA directs that, as part of its decision-making process for CCBs, EPA will consult with the States "with a view towards avoiding duplication of effort." RCRA 8002(n). The States have made clear that regulating CCBs under RCRA Subtitle C would result in regulatory overkill and effectively end CCB beneficial uses.

The States' position is not surprising since it reflects EPA's own well-reasoned conclusions on four separate occasions that CCBs do not warrant hazardous waste regulation. EPA has issued two formal reports to Congress, in 1988 and 1999, concluding that CCBs do not warrant hazardous regulation. Most recently in 2000, EPA again determined that the better approach for regulating CCBs is "to develop national [non-hazardous waste] regulations under subtitle D rather than [hazardous waste regulations under] subtitle C. 65 Fed. Reg. 32214, 32221 (May 22, 2000). In reaching this decision, EPA agreed with the States that "the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes" and that regulating CCBs as hazardous "would adversely impact [CCB] beneficial use." *Id.* at 32217, 32232.

As we know you appreciate, the impact on CCB beneficial use is another statutory consideration that EPA must consider in evaluating its regulatory options for CCBs. *See* RCRA §8002(n)(8); 65 Fed. Reg. at 32232. Given that both EPA and the States have recognized that regulating CCBs as hazardous waste would have an adverse impact on CCB beneficial use, we find it difficult to imagine a legitimate basis for EPA pursuing the hazardous waste regulatory option for CCBs, even the so-called hybrid approach. As EPA correctly reasoned in selecting the Subtitle D approach in its 2000 regulatory determination, it did not want "to place any unnecessary barriers on the beneficial uses of [CCBs], because they conserve natural resources, reduce disposal costs and reduce the total amount of wastes destined for disposal." *Id.* at 32232. As stated earlier, the beneficial use of CCBs will also play a significant role in the country's Climate Change policies.

In addition to promoting increased CCB beneficial use, a Subtitle D approach will be protective of human health and the environment, as EPA has already concluded that State programs are in place to effectively regulate CCBs. *Id.* at 32217. A 2006 EPA/DOE report reinforces this conclusion by confirming the recent development of even more robust state controls for CCBs.

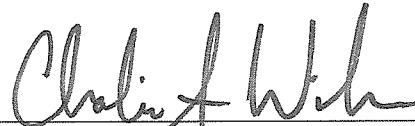
In view of the above, we respectfully urge EPA to work closely with the States in developing a performance-based federal program for CCBs under RCRA's Subtitle D non-hazardous waste authority. Such an approach would meet the Bevill Amendment's goals of ensuring the safe management of CCBs while continuing to promote and expand their beneficial use.

Thank you for your consideration.

Sincerely,



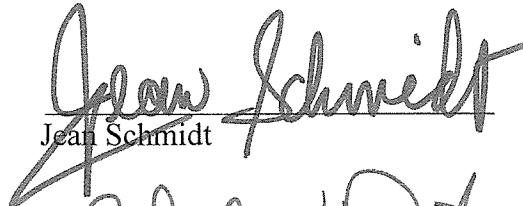
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Charles A. Wilson



Tim Ryan



Jean Schmidt



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Charles W. Dent



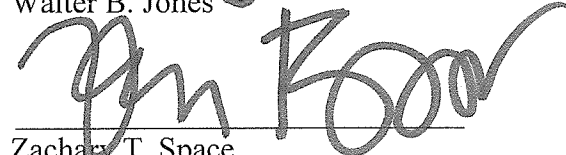
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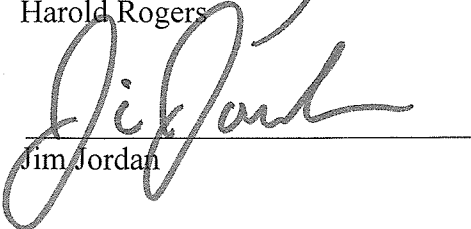
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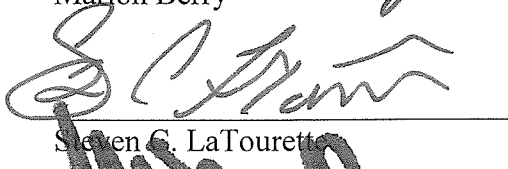
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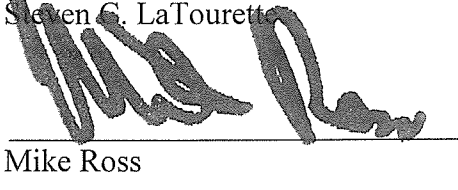
John Fleming

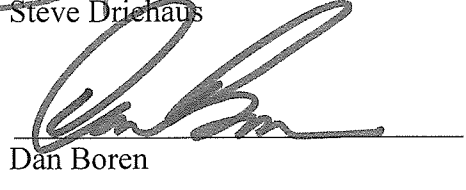

Marion Berry

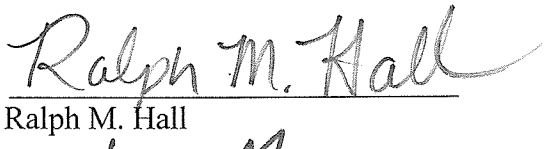

Brad Ellsworth

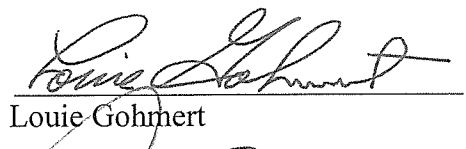

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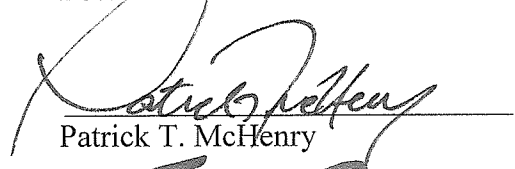

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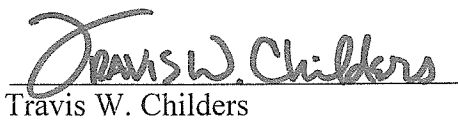

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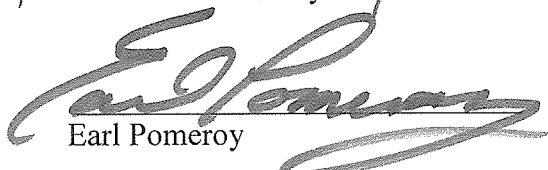

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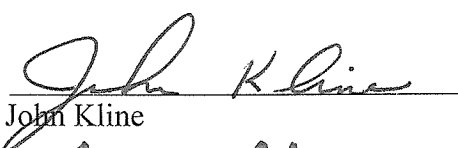

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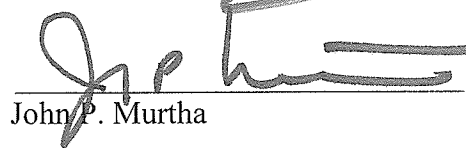

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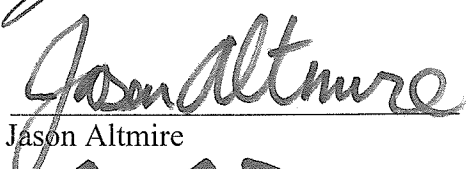

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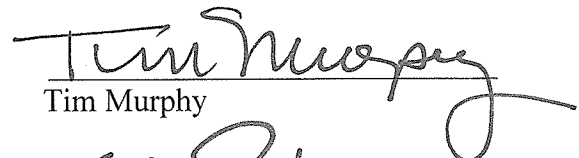

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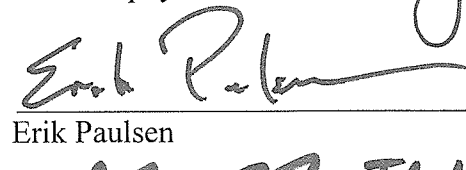

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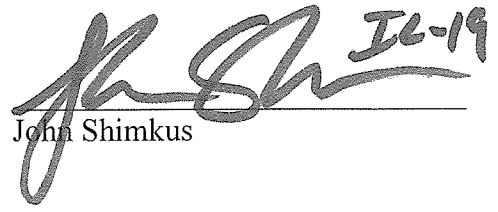

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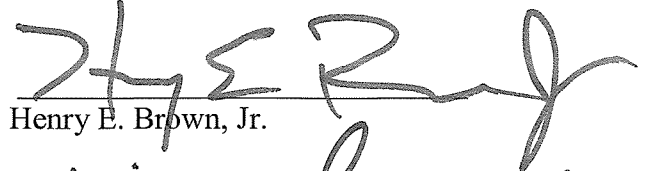
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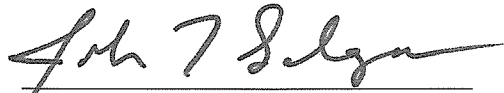
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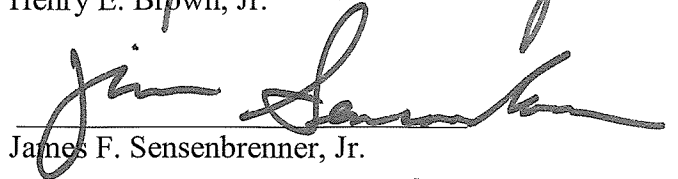
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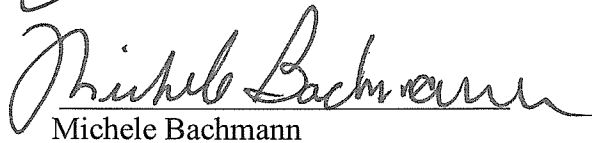
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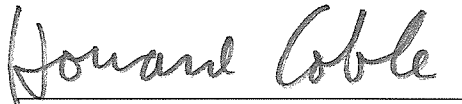
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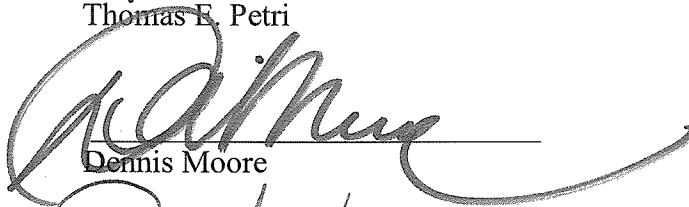
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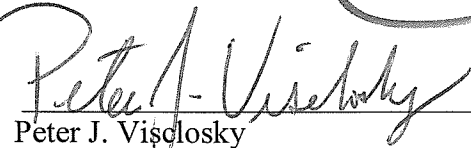
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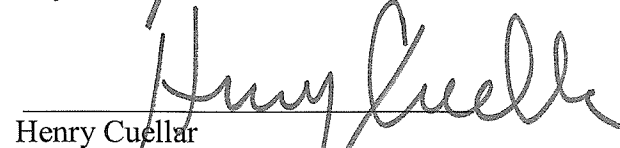
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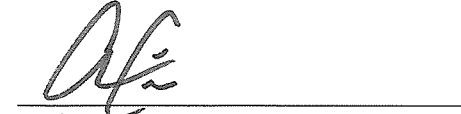


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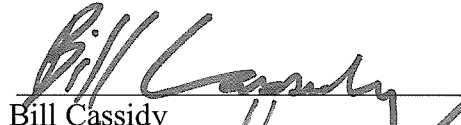

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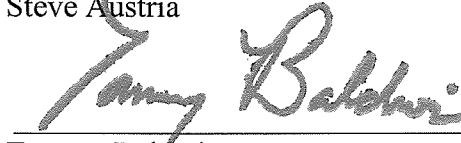

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