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EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

Congress of the United States
House of Representatives
Washington, DC 20515-2107

January 7, 2009

2108 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-2107
(202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101
MEDFORD, MA 02155
(781) 396-2900

188 CONCORD STREET, SUITE 102
FRAMINGHAM, MA 01702
(508) 875-2900

<http://markey.house.gov>

Mr. Stephen Johnson
Administrator
Environmental Protection Agency
1300 Pennsylvania Avenue N.W.
Washington, DC

Dear Administrator Johnson:

I write to request information related to the regulation of the bi-products associated with coal-burning power plants.

As you know, a coal ash pond owned by the Tennessee Valley Authority (TVA) ruptured last month, and a billion gallons of toxic sludge were spread over 300 acres in East Tennessee. The sludge contains many heavy metals such as arsenic and other toxic substances that, upon exposure, can lead to cancer, birth defects and the destruction of ecosystems and animal populations.

However, despite the health and environmental risks these materials can pose, an article in today's New York Times asserts that they go largely unregulated and unmonitored. A 2007 EPA study evidently found there were at least 63 sites in 26 States where the water was contaminated by heavy metals that had leached out of the materials. Yet despite the widespread existence of these sites and the widespread identification of contamination caused by them, there is no national policy in place to ensure that the health and safety of the surrounding communities is protected.

This is unacceptable, and I intend to remedy the problem. Accordingly, I ask for your prompt assistance in responding to the following questions:

1. Does EPA believe that coal ash and/or other bi-products associated with coal-burning power plants should be designated a hazardous waste? If not, why not? If so, why has it not already done so? Please provide copies of all EPA studies, memos, draft proposals and other correspondence related to any deliberations associated with such a designation, or alternate approaches to regulating these materials.
2. Does EPA believe that it has sufficient legal authority under existing environmental statutes to regulate coal ash, heavy metals, and other hazardous wastes associated with coal-burning power plants? If so, why hasn't EPA used

this authority? If not, what changes in the law would be needed to give EPA the authority to protect public health and the environment from these wastes?

3. If coal ash and/or other bi-products associated with coal-burning power plants was designated as a hazardous waste, please detail the potential regulatory steps that would follow such a designation.
4. Has EPA examined the manner in which these materials are stored? For example, last month's accident occurred in a storage *pond*. Given the dangers these materials particularly pose to the surrounding water system, has EPA considered the wisdom of allowing them to be stored in this manner in the first place? Please provide copies of all EPA studies, memos, draft proposals and other correspondence related to any deliberations associated with the regulation of the types of facilities that can be used to store these materials.

Thank you very much for your consideration of this important matter. Please provide your responses no later than Friday January 30, 2009. If you have any questions or concerns, please have your staff contact Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,


Edward J. Markey