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June 13, 2011

Administrator Lisa P. Jackson  
United States Environmental Protection Agency  
Washington, D.C. 20460

Dear Administrator Jackson:

As you know, the energy industry is important to my home state of West Virginia. The industry is the backbone of my state's economy, employing thousands of hardworking West Virginians, while providing an important source of tax revenue for local and state governments. Further, my state's manufacturing and service industries benefit from low cost electricity, making them more competitive.

Over the previous two years, the Environmental Protection Agency (EPA) has proposed or issued a series of regulations that have been collectively coined the "EPA Regulatory Train Wreck" by many in the energy industry. These rules will require retrofits and modifications to equipment in power plants, refineries, manufacturing plants, and boilers. I and many of my constituents fear that these burdensome regulations will destroy thousands of Appalachian jobs, along with our unique way of life.

Job losses caused by the EPA's Regulatory Train Wreck are already occurring across Appalachia. On June 9, 2011, American Electric Power (AEP) released its plan for compliance with the EPA's proposed regulations impacting coal-fueled power plants. AEP's compliance plan calls for the retirement of 6,000 megawatts (MW) of coal-fueled power generation, which will result in a net job loss of 600 jobs, along with annual lost wages of approximately \$40 million. In addition, the shuttering of coal-fueled plants will necessarily cause electricity prices to increase in AEP's service area by 10 to 35 percent. According to AEP's estimates, in West Virginia alone 2,080 MW of generation capacity will be permanently retired, resulting in 242 lost jobs, lost wages of \$17 million, and lost payroll and property taxes of \$13 million. AEP estimates that its West Virginia consumers will see rate increases of between 10 and 15 percent.

When we first spoke two years ago, you informed me that the EPA does not consider jobs when making its decisions. Since that time, in a series of Congressional hearings, senior

members of the EPA have been unable to adequately explain how the EPA considers jobs. In one of the most provocative exchanges Mathy Stanislaus, the EPA's Assistant Administrator for the Office of Solid Waste and Emergency Response, when testifying before the House Committee on Energy and Commerce, stated that the "[EPA has] not directly taken a look at jobs."

Due to the uncertainty surrounding the EPA's consideration of employment and economic impact, I have introduced the Employment Protection Act of 2011. My legislation would require the EPA to examine the economic and employment impact of its actions, and to hold public hearings in certain situations. As you know, I recently asked President Obama about the EPA and laid out how its actions are killing jobs and job growth throughout West Virginia and the rest of the country. I told the President that when making its decisions the EPA should consider economic impact and jobs in addition to environmental impact. The President agreed.

In response to my exchange with the President, you called me on June 6, 2011, and informed me that I would be receiving a letter that would clear up any misunderstandings I had about the EPA's practices in regards to consideration of economic impact and employment. I received the EPA's letter dated June 7, 2011, which purported to take the "opportunity to emphasize the importance of cost considerations under the EPA's regulations in making CWA permit decisions." The letter stated that the EPA "does assess economic factors and potential impacts on costs, profitability and feasibility . . ." However, the letter went on to focus upon the cost impact of the EPA's permit decisions, while glossing over the EPA's consideration of employment and the overall economy. Further, the EPA's letter focused entirely upon Clean Water Act Permits, while I am interested in how the EPA considers jobs and economic activity prior to issuing a regulation, policy statement, guidance, implementing any new or substantially altered program, or issuing or denying any permit—essentially all actions taken by the EPA.

Given how serious the consequences of the EPA's Regulatory Train Wreck are to my constituents, I am interested in learning more about how the EPA considers the cumulative impact on the economy and employment when issuing a new regulation, policy statement, guidance, implementing any new or substantially altered program, or issuing or denying any permit. Therefore, I request that you provide me with documentation explaining how the cumulative and non-cumulative economic and employment impact were considered prior to the EPA's issuance of all proposed and/or final regulations that may impact coal-fueled power plants issued since January 1, 2009. Additionally, I request that you provide me with copies of all internal memoranda, communication, analysis, and documents regarding the EPA's consideration of the impact on economic activity and employment (cumulative and non-cumulative) related to these rules and regulations. Specifically, the proposed and/or final rules and regulations that I am interested in include, **but are not limited to** the following (including any successor or substantially similar rule):

- Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone, published at 75 Fed. Reg. 45210 (August 2, 2010);
- National Ambient Air Quality Standards for Ozone, published at 75 Fed. Reg. 2938 (January 19, 2010);

- National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, published at 76 Fed. Reg. 15608 (March 21, 2011);
- National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers, published at 76 Fed. Reg. 15554 (March 21, 2011);
- National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, signed by Administrator Lisa P. Jackson on March 16, 2011;
- Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities, published at 75 Fed. Reg. 35127 (June 21, 2010);
- Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category, published at 74 Fed. Reg. 62995 (December 1, 2009);
- National Pollutant Discharge Elimination System--Proposed Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities, signed by Administrator Lisa P. Jackson on March 28, 2011;
- Primary National Ambient Air Quality Standard for Sulfur Dioxide, published at 75 Fed. Reg. 35520 (June 22, 2010);
- Primary National Ambient Air Quality Standards for Nitrogen Dioxide, published at 75 Fed. Reg. 6474 (February 9, 2010);
- Any rule or guideline promulgated under sections 111(b) or 111(d) of the Clean Air Act (42 U.S.C. 7411(b), 7411(d)) to address climate change;
- Any rule or guideline promulgated by the Administrator of the Environmental Protection Agency under or as the result of section 169A or 169B of the Clean Air Act (42 U.S.C. 7491, 7492); and

- Any rule establishing or modifying a national ambient air quality standard under section 109 of the Clean Air Act (42 U.S.C. 7409).

If you have questions regarding this request please contact my Chief of Staff Joel Brubaker or my Legislative Director Dan Casto at (202) 225-2711. I look forward to the opportunity to conduct an in-depth review of this information.

Sincerely,

Handwritten signature of Shelley Moore Capito in black ink.

Shelley Moore Capito  
Member of Congress

cc: Arvin R. Ganesan, Deputy Associate Administrator for Congressional Affairs