Testimony before

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Committee on Energy and Commerce

Subcommittee on Environment

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Chairman Griffth and members of the Subcommittee on Environment, my name is L. David Glatt, P.E., Director of the North Dakota Department of Environmental Quality. Thank you for the invitation to be here and to provide testimony on the topic, “A Decade Later: A Review of Congressional Action, Environmental Protection Agency Rules and Beneficial Use Opportunities for Coal Ash.”

My testimony today will highlight North Dakota’s experience with the regulation of beneficial use of coal ash, and the federal coal combustion residuals (CCR) program review process. In addition, I will touch on the more recent interest in Rare Earth Metal extraction from coal deposits and coal ash.

**North Dakota Coal Ash Regulation History**

North Dakota is known for its agriculture and energy dominance. It is home to abundant natural resources of lignite coal deposits and significant oil and gas reserves. Since the

1980s, North Dakota has regulated coal ash at several mine-mouth electric generation facilities ensuring the protection of public and environmental health through comprehensive rules which:

- Identify appropriate landfill locations through a multi-interstate agency review process.
- Require groundwater monitoring and routine reporting.
- Restrict permit lengths to a maximum of 10 years.
- Require 30-year post-closure monitoring and financial assurance.
- Require landfill cells to be engineered to ensure slope stability, liner suitability and cap integrity.
- Require a public review and participation in the permit process.

The state rules have, for over four decades, proven to be effective in the protection of the environment and public health.

**Federal Review and "Approval" Process**

With the proven success of North Dakota's CCR program, there was the belief that seeking federal program approval would have its challenges but overall would be a straightforward process. Unfortunately, our assessment could not have been more wrong, as the state has spent over five years seeking federal primacy approval with the process ongoing. Since the state initiated its quest for CCR federal program approval pre- 2020, there have been over three different program draft submittals, a change in North Dakota law in reference to a groundwater definition, and several rounds of "last final comments" with no defined outcome.

The federal review and approval process can be characterized as frustrating, unnecessarily long, time consuming, and at times not rooted in sound science and the law. Federal comments relating to program implementation were provided without visiting the North Dakota facilities, resulting in some comments being seen as inappropriate based on existing site conditions (i.e., recommending placing monitoring wells that would have been in the middle of a haul road, on severe side slopes or that would have pierced the landfill liner). We believe site-specific knowledge of local climate, geology, facility design, and operations is critical in the proper regulation of facilities.

To improve the review and approval process and incentivize states to seek federal program approval, we suggest the following:

- Visit the state seeking federal program approval to get an understanding of the regulatory and physical state-specific conditions.
- Respect and acknowledge state expertise.
- Comply with the law and rigid timelines. Avoid agenda-driven processes by following applicable science and the law.
- Have clearly defined outcomes and goals.
- Acknowledge state sovereignty.
- Pursue a doctrine of cooperative federalism.

**Coal Ash Beneficial Use**

In addition to the North Dakota history of the regulation of handling, storage, and disposal of coal ash, we regulate the beneficial use of certain coal ash materials. We believe coal ash can exhibit certain beneficial use characteristics, and it is not appropriate to regulate

as a hazardous waste. State law (NDCC 23.1-08-04) outlines the legislative intent that coal combustion residuals can be beneficially used in concrete, construction applications, and other innovative uses. To ensure coal ash is beneficially used and does not impart undue public or environmental risks, we require periodic laboratory testing of all coal ashes relating to leachability of trace metals and other physical characteristics. Product testing and approval are required before beneficial use application and required not less than every 5 years or sooner if feed source or EGU environmental controls change.

Some current use of coal ash for beneficial use are:

- Fly ash as concrete admixture
- Grouting mixture for Abandoned Mine Land Reclamation
- Soil stabilization
- Waste solidification at approved sites
- Surface mine haul roads in regulated mines
- Coal slag as roofing granules, sand blast media, road traction material, and golf course sand traps.

**Rare Earth and Critical Minerals**

In the United States, there is growing concern regarding our dependence on imported rare earth minerals, especially those from our foreign adversaries. These rare earth minerals are critical to modern technology. They are needed for technological advancements, manufacturing, and most importantly national defense and security.

North Dakota is ready to step up to meet this growing demand. We are exploring the potential of coal and coal ash products. In our most recent legislative session, we passed a bill that would allow coal companies to further explore mining these rare earths here in the United States. In our state, we have a fantastic team of researchers from state agencies to our universities, and the Energy & Environmental Research Center (EERC) at the University of North Dakota in Grand Forks, looking at the potential for North Dakota lignite to supply marketable quantities of 14 rare earth and other critical minerals. We know rare earth elements are found in CCR, and coal seam margins have the potential to redefine traditional uses of coal toward meeting the U.S. demand for these elements. North Dakota is on the path to refine our knowledge of available resources, extraction technologies, and potential markets to continue to meet the growing demand.

This concludes my testimony, and I will stand for questions.