To:

Lisa Jackson, Administrator, Environmental Protection Agency; **Steven Chu**, Secretary, Department of Energy; **Nancy Sutley**, Chair, Council on Environmental Quality; **Ken Salazar**, Secretary, Department of Interior; **Tim Geithner**, Secretary, Department of the Treasury; **Eric Holder**, Attorney General; **Tom Vilsack**, Secretary, Department of Agriculture; **Hilda Solis**, Secretary, Department of Labor; **Gary Locke**, Secretary, Department of Commerce; **Ray LaHood**, Secretary, Department of Transportation; **Jacob Lew**, Director, Office of Management and Budget; **Jon Wellinghoff**, Chairman, Federal Energy Regulatory Commission; **John Holdren**, Director, Office of Science and Technology Policy

Subject: Liability relief for Carbon Dioxide Capture and Geologic Sequestration

April 12th, 2011

Dear Administrator/Attorney General/Director/Secretary,

On behalf of our millions of members, activists and supporters, we are writing to you in relation to proposals that would relieve operators of carbon dioxide (CO_2) geologic sequestration (GS) sites of regulatory requirements or liabilities.

EPA is now considering a proposed rule under the Resource Conservation and Recovery Act (RCRA) to explore a number of options, including a conditional exemption from the RCRA requirements for hazardous CO_2 streams in order to facilitate implementation of GS.[1] Legislative proposals were introduced in the previous Congress, which would have offered broad liability relief to GS operators. Several State legislatures have been and are considering bills to that effect as well. We are also aware the Federal Task Force convened by President Obama in February, 2010 is now resuming its work on the subject of liability, following the publication of its report in August, 2010. In light of these developments, we would like to share with you our strong concerns surrounding liability relief for GS.

Our groups do not share a common position on Carbon Capture & Sequestration (CCS). Some groups are opposed to or skeptical about deployment of the technology at the local, national or global level, while others have been actively supporting measures to further its research, development and deployment. Despite this broad range of views, we stand united against efforts to relieve CCS operators from regulatory and statutory responsibilities and liabilities that other similar industrial activities routinely shoulder.

[1] A Notice of Proposed Rulemaking has been sent to the Office of Management and Budget, and is projected to be published in the Federal Register in May, 2011. See: http://yosemite.epa.gov/opei/RuleGate.nsf/byRIN/2050-AG60

The breadth of liability relief envisioned by a large number of legislative and regulatory proposals goes significantly beyond any regulatory or statutory exemptions that industrial activities related to CCS enjoy today. In fact, proponents of relief would have us believe that CCS comprises such a special set of activities that it merits an unprecedented legal and regulatory treatment, exempt from the possibility of stricter regulatory requirements and shielded from all liabilities after site closure except perhaps in the case of intentional misconduct and gross negligence. It is hard to think of any technology that enjoys or justifies this kind of treatment.

Commonly practiced activities such as enhanced oil recovery, natural gas storage, hydraulic fracturing for shale gas extraction, and underground injection of hazardous or industrial waste generally do not enjoy the relief from statutory liabilities that proponents want for CCS. Some of these activities entail far higher risks to health and environment. Operators of hazardous waste injection sites, as an example, must demonstrate through modeling that waste will not migrate over a time frame of 10,000 years. And yet, they have had no trouble attracting financing or securing liability risk-management tools in the private marketplace.

In addition, where industrial activities have been pursued under lax regulatory regimes, the list of environmental and public health ills that have resulted is alarming. Environmental regulations and common law liability doctrines are in place for a reason, and exemptions remove an ongoing incentive for sound choices and diligence. The coal ash spill in Tennessee, the recent oil spill in the Gulf of Mexico and the documented contamination from natural gas development are but a few examples and should serve as warnings against exempting operators from the consequences of careless design and operational decisions.

In the case of RCRA, we strongly urge EPA not to exempt geologic sequestration operators from the possibility of hazardous waste regulation under Subtitle C. EPA has appropriately ruled that hazardous waste streams may not be injected in Class VI wells under the Underground Injection Control Program (UIC). But a CO2 stream that includes other contaminants could well have the harmful characteristics of a hazardous waste.

An exemption of CO_2 streams from Subtitle C regulation could mean that operators handling streams with high impurities or with the potential to exhibit hazardous characteristics in the subsurface environment would lack an incentive to conduct clean up in order not to meet the Subtitle C definition of hazardous waste and its subsequent permitting requirements. Worse, this could allow or encourage the intentional commingling of waste in the CO_2 stream. Such an exemption would forego significant environmental and public health safeguards such as:

- Enhanced public participation requirements that are unique to Subtitle C of RCRA;
- More stringent technical requirements of Class I wells compared to Class VI wells under the UIC program;

- Site-wide cleanup requirements reaching every solid (hazardous or nonhazardous) waste management unit at the facility under Section 3004(u) of RCRA ; and
- Remediation authority not limited to USDWs, but that applies more broadly to human health and the environment, again pursuant to Section 3004(u) and (v) of RCRA.

Moreover, RCRA does not only apply to the subsurface portion of a project, but draws the envelope more widely to include surface facilities, and as such may capture environmental hazards that relate to the surface treatment and handling of the stream as well.

Finally, there is the question of public perception. Proponents of CCS, including some of the signatories of this letter, believe that properly selected and appropriately managed geological sites can provide a safe and secure method of storing carbon dioxide for many millennia. But as this letter makes clear, such an outcome is not to be assumed. CCS, like any industrial activity is serious business, and requires careful attention to detail in design, development, operation, and closure. Asserting that industry needs liability relief at any point in this process, including over the long term post closure, is to suggest that perhaps industry is less than certain that it can, in fact, deliver at this high but necessary standard. And, if that is the case, then citizens have the right to wonder whether this is a good idea at all.

Arousing public suspicions, creating moral hazard, increasing the risk to our health and natural resources – including but not limited to drinking water sources – and putting the taxpayer at risk of picking up the consequences of poor operations is neither necessary nor good policy. We ask you to refrain from granting CCS special legal or regulatory favors, and to stick to a tried and tested formula: hold polluters responsible for any harm that they may cause.

Sincerely,

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