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Honorable Members of the House Natural Resources Committee,

My name is Audrey Ernstberger, I am a staff attorney and lobbyist for Kentucky Resources Council (KRC). As many of you know, KRC is a non-profit, nonpartisan Kentucky organization providing legal assistance without charge to citizens and groups around the Commonwealth on environmental and energy issues. I'm contacting you to express KRC's reservations about HJR 121.

The implementation of the Clean Air Act of 1990, adopted in a bipartisan manner by Congress and signed into law by President George H. W. Bush, has increased the cost of coal-fired electricity, because it has required an accounting for the costs that once were paid disproportionately by downwind populations. In directing that the Environmental Protection Agency adopt air quality standards as needed to protect public health with an adequate margin of safety, Congress made a conscious decision, and one that KRC supports strongly, that while the strategies used to achieve the desired air quality would be subject to economic and other considerations, no one should have to choose between essential utility services and their health.

Kentucky has for many years regulated sources of air pollution, including coal-fired power plants, under authority delegated to Kentucky by EPA under the Clean Air Act. In order to achieve and maintain the power to issue permits and to manage the program in Kentucky, the state was required to apply for delegation, and to make commitments regarding the implementation of federal requirements in the Commonwealth.

Nothing in federal law **requires** Kentucky to continue to be the delegated agency, and if the General Assembly determines that the flexibility provided in the permitting, and the discretion provided in compliance and enforcement, by virtue of being a delegated state, is no longer desired, then the state can and should notify the EPA that it no longer wishes to do so, and EPA will directly enforce the air quality and performance standards.

Resolutions such as HJR 121, however, could provoke a loss of that program authority, since while it claims that "air quality standards set for permits and generally for the operation of fossil fuel-fired power plants in the Commonwealth of Kentucky shall not be subject to federal regulation," the reality is that the laws and regulations that comprise our air regulatory program **are** subject to federal review and approval, as are all permits issued for major sources of air pollution under Title V of the Clean Air Act. Under federal law, the state must make certain commitments regarding oversight in order to maintain delegated status to issue permits and set standards. If Kentucky asserts that it is not subject to federal oversight and compliance,

