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October 30, 2014

Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (1101A)
Washington, D.C. 20460

Dear Administrator McCarthy,

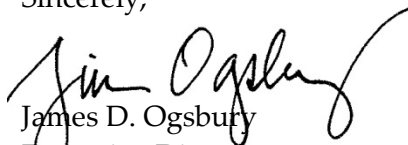
Western Governors understand that the Environmental Protection Agency (EPA) is under a December 19, 2014 deadline to make a determination of the regulatory status of coal combustion residuals (CCRs) under the Resource Conservation and Recovery Act (RCRA). As stated in the Western Governors' Association's Resolution 2014-08, Western Governors agree with EPA's assessments in 1988, 1993, 1999, 2000 and 2005 that CCRs do not warrant regulation as hazardous wastes under RCRA Subtitle C.

Categorization of CCRs as hazardous waste would undercut existing and effective state regulations and result in additional and unwarranted regulations that could add costly burdens to already strained state budgets. Such reclassification would also prevent the use of CCRs for road construction and other economic purposes and result in lost jobs.

Western states have a strong record of effectively protecting human health and the environment – while putting CCRs to beneficial commercial use – through state solid waste, groundwater protection and coal mine regulation programs. That record of excellence needs to be recognized by EPA in its evaluation of this matter.

I have attached our current policy position for your consideration.

Sincerely,


James D. Ogsbury
Executive Director

Attachment



WESTERN
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Western Governors' Association
Policy Resolution 2014 - 08

The Regulation of Coal Combustion Residuals

A. BACKGROUND

1. Coal combustion residuals (CCRs) include fly ash, bottom ash, slag, flue gas emission control wastes, and other byproducts from the combustion of coal and other fossil fuels.
2. At the request of Congress, the U.S. Environmental Protection Agency (EPA) conducted two comprehensive studies of CCR waste (1988, 1999) and, in both cases, recommended that CCRs not be regulated as hazardous waste under the Resource Conservation and Recovery Act (RCRA) Subtitle C. EPA's analyses also concluded that CCR waste "do not warrant regulation [as hazardous waste] under Subtitle C of RCRA" and that "the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes" under state non-hazardous waste programs.
3. In 2005, the EPA and U.S. Department of Energy conducted a study of CCR disposal facilities constructed or expanded since 1994 and state regulatory programs. The study found that state CCR regulatory requirements have become more stringent and the vast majority of new and expanded CCR disposal facilities have state-of-the-art environmental controls.
4. In June 2010, EPA issued proposed rules for the management of CCRs under both RCRA Subtitle C (hazardous waste) and RCRA Subtitle D (solid waste) laws.
5. Many Western states rely upon CCRs for road construction and other beneficial uses. The designation of CCRs as hazardous waste may eliminate the beneficial use of CCRs in road construction and other applications, increasing costs to state departments of transportation and taxpayers.

B. GOVERNORS' POLICY STATEMENT

1. The federal regulation of CCRs as hazardous waste would undercut existing and effective state regulatory authority, resulting in additional and unwarranted regulatory programs that would add costly burdens to states' budgets.
2. Western Governors agree with EPA's assessments in 1988, 1993, 1999, 2000 and 2005 that CCR disposal does not warrant regulation as hazardous wastes under RCRA Subtitle C.
3. Western Governors assert that the Western states have effective regulatory infrastructure in place to continue as the principal regulatory authorities, ensuring

protection of human health and the environment through the safe and secure management of CCRs under state solid waste, groundwater protection and coal mine regulatory programs.

4. The Governors urge EPA's acknowledgement that additional federal CCR regulations are unnecessary and should not be adopted.

C. **GOVERNORS' MANAGEMENT DIRECTIVE**

1. The Governors direct the Western Governors' Association (WGA) staff, where appropriate, to work with Congressional committees of jurisdiction and the Executive Branch to achieve the objectives of this resolution including funding, subject to the appropriation process, based on a prioritization of needs.
2. Furthermore, the Governors direct WGA staff to develop, as appropriate and timely, detailed annual work plans to advance the policy positions and goals contained in this resolution. Those work plans shall be presented to, and approved by, Western Governors prior to implementation. WGA staff shall keep the Governors informed, on a regular basis, of their progress in implementing approved annual work plans.