



**WESTERN
GOVERNORS'
ASSOCIATION**

Western Governors' Association Policy Resolution 2017-07

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. Many Western states, cooperatively with utilities, have demonstrated numerous beneficial uses of CCR, such as additives in cement, soil amendments, geotechnical fill, and use in drywall.
5. In December 2014 EPA issued a final rule to regulate CCR as a non-hazardous waste under Subtitle D of RCRA. EPA's December 2014 final rule created an unintended dual federal and state regulatory system because EPA is unable under Subtitle D of RCRA to delegate the CCR program to states in lieu of the federal program. The rule's only compliance mechanism is for a state or citizen group to bring a citizen suit in federal district court under section 7002 of RCRA.

B. GOVERNORS' POLICY STATEMENT

1. Western Governors agree with EPA's assessments in 1988, 1993, 1999, 2000, 2005, and 2015 that CCR disposal does not warrant regulation as hazardous wastes under RCRA Subtitle C.
2. 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.
3. Governors support safe, beneficial use of CCRs, including for geotechnical and civil engineering purposes, and calls upon EPA to work with states and stakeholders to develop a national framework for advancing beneficial use.
4. Western Governors support legislative changes to amend Subtitle D of RCRA to allow CCR permit programs adopted by states to operate in an efficient, flexible, and protective fashion in lieu of the federal program.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. The Governors direct WGA staff to work with Congressional committees of jurisdiction, the Executive Branch, and other entities, where appropriate, to achieve the objectives of this resolution.
2. Furthermore, the Governors direct WGA staff to consult with the Staff Advisory Council regarding its efforts to realize the objectives of this resolution and to keep the Governors apprised of its progress in this regard.

Western Governors enact new policy resolutions and amend existing resolutions on a bi-annual basis. Please consult www.westgov.org/policies for the most current copy of a resolution and a list of all current WGA policy resolutions.