



## WESTERN GOVERNORS' ASSOCIATION

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March 5, 2010

The Honorable Barack Obama  
President of the United States  
White House, The  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, DC 20500

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave N.W.  
Ariel Rios Bldg., Mail Code: 1101A  
Washington, D.C. 20460

Dear President Obama and Administrator Jackson:

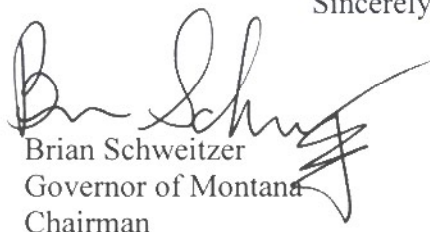
On behalf of the Western Governors' Association we are writing to urge you not to change the regulatory status of coal combustion byproducts from a solid waste to a hazardous waste.


Federal regulation of coal combustion waste as hazardous would undercut existing and effective state regulatory authority resulting in additional and unwarranted regulatory programs that would potentially add costly burdens to states' budgets that are already significantly strained. With appropriate guidance from EPA, all states should review their existing regulations of coal combustion byproducts and make any changes necessary in light of the 2008 TVA impoundment pond failure.

Western Governors agree with US EPA's earlier regulatory determinations that coal combustion byproducts do not warrant regulation as hazardous waste. We believe western states can adequately protect human health and the environment through their state solid waste, groundwater protection and coal mine regulatory programs.

We have attached our recent policy position on this matter for your information.

Sincerely,

  
Brian Schweitzer  
Governor of Montana  
Chairman

  
C.L. "Butch" Otter  
Governor of Idaho  
Vice Chairman

cc: Rahm Emanuel, Chief of Staff



## Western Governors' Association Policy Resolution 10-1

### *The Regulation of Coal Combustion Byproducts*

#### **A. BACKGROUND**

1. Some manufacturing industries located in the West rely on coal combustion byproducts (CCB) and these industries provide critical economical viability to those states.
2. The 1980 Bevill Amendment to the Resource Conservation and Recovery Act (RCRA) prohibited the U.S. Environmental Protection Agency (US EPA) from regulating CCB as a hazardous waste under RCRA Subtitle C until after it "conduct[s] a detailed and comprehensive study and submit[s] a report" to Congress on the "adverse effects on human health and the environment, if any, of the disposal and utilization" of fly ash, bottom ash, slag, flue gas emission control wastes, and other byproducts from the combustion of coal and other fossil fuels to determine whether such regulation is warranted, including "consider[ing] actions of state and other federal agencies with a view to avoiding duplication of effort".
3. US EPA conducted the comprehensive studies required by the Bevill Amendment and reported its findings to Congress on March 8, 1988, and March 31, 1999, and in both Reports recommended that CCB not be regulated as hazardous waste under RCRA Subtitle C.
4. Based on its reports to Congress, US EPA published its final regulatory determinations required by the Bevill Amendment for CCB and concluded on both occasions, first on August 9, 1993, and again on May 22, 2000, that fossil fuel combustion wastes, including CCB, "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. Despite these earlier reports and findings, last year US EPA started internal discussions regarding reversing course and looking at regulating coal combustion byproducts as hazardous waste.
5. CCB disposal has remained a state regulatory responsibility throughout the regulatory process and states have developed and implemented regulatory programs to safely and effectively manage CCB under solid waste management, groundwater protection or coal mine reclamation programs.

#### **B. GOVERNORS' POLICY STATEMENT**

1. Regulation of CCB as hazardous waste has the potential to needlessly impact businesses and jobs associated with putting CCB to beneficial use.

2. A portion of the coal-fired electric generation in the WGA states could be negatively affected if acceptable beneficial use of CCB is disallowed. Ratepayers and small businesses already coping with a down economy could see higher electric bills as a result.
3. Many western states rely upon CCB for road construction and other beneficial uses. The designation of CCB as hazardous waste may eliminate the beneficial use of CCB in road construction and other applications, increasing costs to state DOTs and ultimately to our citizens.
4. The federal regulation of CCB as hazardous waste would undercut existing and effective state regulatory authority resulting in additional and unwarranted regulatory programs and would add costly burdens to states' budgets that are already significantly strained. States should review their existing regulations of CCB and make any changes necessary in light of the 2008 TVA impoundment pond failure.
5. Western Governors agree with US EPA's 1993 and 2000 regulatory determinations that CCB do not warrant regulation as hazardous wastes and that the western states have an effective regulatory infrastructure in place to continue as the principal regulatory authorities to ensure protection of human health and the environment through the safe and secure management of CCB under state solid waste, groundwater protection and coal mine regulatory programs.

**C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. This resolution is to be transmitted to the President of the United States and the Administrator of the U.S. Environmental Protection Agency.

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*The Western Governors' Association is an independent, nonprofit organization representing the governors of 19 states and three U.S.-Flag islands in the Pacific. Through their Association, Western governors identify and address key policy and governance issues in natural resources, the environment, human services, economic development, international relations and public management.*