



June 5, 2008

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

Ms. Susan Bodine
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

444 North Capitol
Street, N.W.
Suite 445
Washington, D.C.
20001

Tel: (202) 624-3660
Fax: (202) 624-3666
Email: ecos@sso.org
Webpage: www.ecos.org

David K. Paylor
Director, Virginia Department
of Environmental Quality
PRESIDENT

Stephen A. Owens
Director, Arizona Department
of Environmental Quality
VICE PRESIDENT

Michael J. Linder
Director, Nebraska Department of
Environmental Quality
SECRETARY-TREASURER

Robert W. King, Jr.
Deputy Commissioner
South Carolina Department of
Health and Environmental
Control
PAST PRESIDENT

R. Steven Brown
Executive Director

Dear Ms. Bodine:

I am writing regarding steps currently under consideration by the U.S. Environmental Protection Agency (EPA) concerning the regulation of coal combustion wastes (CCWs). The Waste Committee of the Environmental Council of the States (ECOS) is closely monitoring the process, and the full ECOS membership may consider an association position on the issue at the ECOS Annual Meeting in September if EPA continues its path toward promulgation of a federal regulation on this matter.

As you know, EPA was directed by the 1980 Bevill Amendment to the Resource Conservation and Recovery Act (RCRA) to "conduct a detailed and comprehensive study and submit a report to Congress on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated primarily from the combustion of coal or other fossil fuels" (RCRA § 8002(n), 42 U.S.C. § 6982(n)). EPA conducted that study and reported its findings in Reports to Congress on March 8, 1988 and on March 31, 1999. In both reports, EPA recommended that CCWs not be regulated as hazardous waste under RCRA Subtitle C.

On August 9, 1993, EPA published its regulatory determination as required by the Bevill Amendment that "regulation of the four large volume fossil-fuel combustion wastes [i.e., CCWs] as hazardous waste under RCRA Subtitle C is unwarranted" (58 Fed. Reg. 42466, 42472). On May 22, 2000, EPA published a final regulatory determination that fossil fuel combustion wastes, including CCWs, "do not warrant regulation [as hazardous waste] under subtitle C of RCRA" (65 Fed. Reg. 32214). In that determination, EPA found that "the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes" (id. at 32217), but EPA also announced its intention to develop national regulations for CCW disposal under Subtitle D of RCRA (id. at 32215).

The ECOS Waste Committee agrees with EPA's determination that CCWs do not warrant regulation as hazardous wastes under RCRA Subtitle C. The committee is concerned, however, that the adoption and implementation of a federal CCW regulatory program – including regulations under Subtitle D of RCRA – would create an additional level of oversight that is not warranted; would be duplicative of existing state regulatory programs; and could result in additional financial burdens on the states.

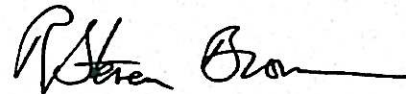
In 2005, EPA and the U.S. Department of Energy (DOE) published a study of CCW disposal facilities constructed or expanded since 1994 and evolving state regulatory programs (Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994 – 2004 (DOE/PI-0004 ANL-EVS/06-4)). That report contained a number of significant findings, including: (1) state CCW regulatory requirements have become more stringent in recent years; (2) the vast majority of new and expanded CCW disposal facilities have state-of-the-art environmental controls; and (3) to the extent that state regulatory agencies were approving deviations from state regulatory requirements, these deviations were based on sound technical criteria. These findings demonstrate a continuing commitment by the states to ensure proper management of CCWs. Moreover, since EPA issued its regulatory determination in 2000, several states have announced proposals for revising and upgrading their state CCW regulatory programs. The ECOS Waste Committee believes that the conclusions of this report and actions of states to enhance their CCW regulatory programs must be taken into account as EPA weighs the need for additional federal CCW regulations.

A significant factor in the Waste Committee's concern stems from the varied geological and climate conditions under which CCWs are managed. The states regulate CCW disposal under a range of regulatory models – solid waste rules, NPDES programs, industrial waste programs, etc. – tailored to the conditions in their states. A “one-size-fits-all” federal regulatory model would limit the flexibility of the states' current regulatory practices in adapting their programs to these varied conditions. Furthermore, it is not the model Congress adopted for solid waste regulation in RCRA Subtitle D, nor what EPA and the states jointly adopted in the EPA/ASTSWMO Guide for Industrial Waste Management (2003).

EPA is under no statutory obligation to promulgate federal regulations applicable to CCW disposal following the regulatory determination that hazardous waste regulation of CCW disposal is not warranted. In addition, the Beville Amendment is clear that, when considering regulatory action to address CCW management, EPA must “consider actions of state and other federal agencies with a view to avoiding duplication of effort” (RCRA § 8002(n), 42 U.S.C. § 6982(n)).

Throughout the Bevill process, CCW disposal has remained a state regulatory responsibility, and the states have taken the initiative to develop and implement effective regulatory programs tailored to the wide-ranging circumstances of CCW management throughout the country. The ECOS Waste Committee has concluded that the principal authority for regulating CCW should remain at the state level. The committee calls upon EPA to conclude that federal regulation of CCW is unnecessary, and therefore should not be adopted.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Steven Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Steven Brown

ECOS Executive Director