



May 11, 2009

Lisa Jackson, Administrator
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Coal Combustion Waste

Dear Administrator Jackson:

We understand that the U.S. Environmental Protection Agency is considering options to regulate and classify Coal Combustion Waste (CCW). We agree that CCW, if improperly handled, can pose a threat to the environment. This acknowledgement has led many states to adopt successful regulatory programs designed to protect public health and the environment. As such, we do not see the need for federal regulation of CCWs.

In North Dakota we continue to successfully protect the environment through state regulation. For example:

- North Dakota has regulated the handling, storage and disposal of CCW for the past 28 years. Developed with input from industry, public and environmental groups, state regulations include permit requirements that identify location restrictions, operating criteria, facility design, groundwater monitoring, corrective action, closure/post closure care and financial assurances.
- The North Dakota permit process includes a commitment for a strong multi-agency and public participation process.
- Based upon the development of the North Dakota regulations, the industry has abandoned unsuitable management practices proven harmful to the environment. The regulations embrace modern engineering and environmental standards with a proven environmental protection track record.

In April 2000, the U.S. EPA considered regulating CCW as a hazardous waste through subtitle C of the Resource Conservation and Recovery Act (RCRA). At that time, the Department of Health communicated to EPA's administrator, Carole M. Browner the following: "The states' regulatory program for these power plant wastes meet all the requirements of an effective program and yet does not bridle the industry with unnecessary paper work and regulation." Since 2000, North Dakota and other states have worked with the

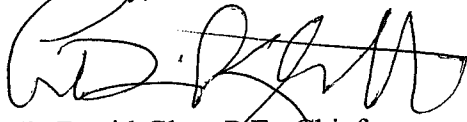
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EPA, U.S. Department of Interior, U.S. Department of Energy and National Academy of Sciences to evaluate CCW issues. We suggest EPA review the findings from those federal and state agencies, and consult with the states before making any decision on the regulation of CCW.

The North Dakota Department of Health believes that its CCW regulatory program, along with many other state programs throughout the nation, provides for effective environmental protection. Additional federal regulation or reclassification of CCW as hazardous is not warranted at this time.

Should you have any questions relating to this matter, we would welcome you to contact us for a detailed overview of our CCW Program. Our solid waste rules can be viewed at:
<http://www.legis.nd.gov/information/html/33-2-.html>.

Sincerely,

A handwritten signature in black ink, appearing to read "L. David Glatt", written over a horizontal line.

L. David Glatt, P.E., Chief
Environmental Health Section
North Dakota Department of Health

LDG:dlp