



— State of —
North Dakota
Office of the Governor

John Hoeven
Governor

October 16, 2009

The Honorable Lisa Jackson, Administrator
US Environmental Protection Agency
Ariel Rios Building, Mail Code: 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

North Dakota and other states recently learned EPA is considering a proposal to regulate coal combustion wastes (CCWs) as hazardous wastes under RCRA Subtitle C. This EPA decision was made after a majority of state regulatory agencies, the Association of State and Territorial Solid Waste Management Officials, the Environmental Council of the States and many elected officials had gone on record declaring the best overall management option is to pursue regulating CCWs as a Subtitle D waste.

We oppose regulating CCWs under RCRA Subtitle C for the following reasons:

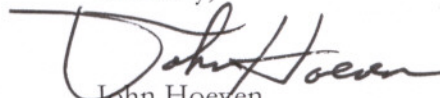
- EPA has concluded on four separate occasions since 1988 that CCWs do not warrant hazardous regulation. These reports conclude that, due to current state CCW activities, an appropriate, reasoned approach would be to regulate CCWs under Subtitle D.
- Regulation as a hazardous waste under Subtitle C would have far-reaching adverse impacts on CCW beneficial use. Years of practical experience and scientific research on the beneficial use of CCWs highlight the environmental and economic benefits of its use in construction and transportation projects. It is our concern that the regulatory stigma of a Subtitle C label, even with specific exemptions, could place unnecessary barriers to the future beneficial use of CCWs.
- We are concerned that regulating CCWs as a Subtitle C waste will have unintended consequences on other state and federal regulatory programs. For example, how will this hazardous waste classification impact beneficial reuse or BART/BACT decisions under the CAA? We do not believe these issues have been adequately vetted or discussed with the states.

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- Our state has a strong record of environmental and public health protection relating to the handling, beneficial reuse and disposal of CCWs. States are clearly in the best position to address the unique geographic and climatic circumstances surrounding the regulation of CCWs.

We would like EPA to engage the states in a meaningful dialogue to develop a reasoned, environmentally protective and economically sound determination for regulating CCWs under Subtitle D.

Sincerely,



John Hoeven
Governor

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