



west virginia department of environmental protection

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October 14, 2009

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

RE: Opposition to Hazardous Waste Regulation of Coal Combustion Byproducts

Dear Administrator Jackson:

I understand that EPA is developing proposed regulations for coal combustion byproducts ("CCBs") under the Resource Conservation & Recovery Act ("RCRA"). I write to express my deep concern with and opposition to any federal regulation that would regulate CCBs as a RCRA hazardous waste.

The West Virginia Department of Environmental Protection (WVDEP), along with other state environmental protection agencies, DOTs, unions, PUCs, chambers of commerce, technical/education organizations, and trade associations have already weighed in on this topic and all unanimously *oppose* regulating CCBs as hazardous waste. These myriad of informed interests argue convincingly that such regulation is not only regulatory overkill, but in fact would be environmentally counter-productive because it would effectively end the beneficial use of most CCBs across the nation. Given that EPA has already determined on at least two prior occasions that hazardous waste regulation is not warranted for these materials, any attempt now to regulate CCBs as hazardous would be both bad science and poor public policy.

From the WVDEP's perspective, such a result would impose undue economic burdens on our agencies and citizens at time when we can least afford it. If compelled to regulate CCBs as hazardous, West Virginia would have to invest significant resources in administering a CCB hazardous waste program that would dwarf our existing program. This is both unnecessary from an environmental perspective – where we already safely regulate CCBs as non-hazardous waste – but would divert our resources from more pressing environmental and economic issues. This

Promoting a healthy environment.

The Honorable Lisa Jackson

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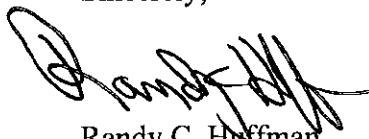
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type of unfunded mandate at a time when many state governments cannot meet existing commitments for education and other vital public services makes no sense and is wholly unwarranted.

Electric power reliability and electricity rates for our citizens also would be adversely affected. Various state PUCs have already written you warning that the over-regulation of CCBs as hazardous waste will cause power plant closures and threaten the provision of reliable and cost-effective power. In addition, the sharply higher operating costs of managing CCBs as hazardous waste by public and private utilities would be passed on to consumers in higher electricity rates.

Given these serious economic and public policy concerns, coupled with the fact that EPA and at least 27 state environmental protection agencies agree that CCBs can be safely regulated as non-hazardous wastes, I strongly encourage EPA to consider proposing to regulate CCBs as a non-hazardous waste. I urge EPA to take a rational and reasoned approach to this issue and develop federal non-hazardous waste rules for CCBs under Subtitle D of RCRA.

Sincerely,



Randy C. Hoffman
Cabinet Secretary

RCH/gc

cc: Rahm Emanuel, White House Chief of Staff
Carol Browner, Assistant to the President for Energy and Climate Change
Mathy V. Stanislaus, Asst. Admin., Office of Solid Waste and Emergency Response
Matt Hale, Director, EPA Office of Solid Waste