



December 14, 2009

The Honorable Edward J. Markey (D-MA), Chairman
The Honorable Fred Upton (R-MI), Ranking Member
Subcommittee on Energy and the Environment
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

Re: Subcommittee Hearing on Drinking Water and Public Health
Impacts of Coal Combustion Waste Disposal

Dear Chairman Markey and Ranking Member Upton:

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

On behalf of the Environmental Council of the States (ECOS) Waste Committee and pursuant to your December 10 hearing, I appreciate the opportunity to submit for the record the association's formal policy on Coal Combustion Waste (CCW) regulation.

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ECOS is the non-profit, non-partisan association of state and territorial environmental commissioners. The association's position on the regulation of CCW is articulated in Resolution 08-14 adopted on September 22, 2008, entitled "The Regulation of Coal Combustion Products" (see Appendix 1).

Michael J. Linder
Director, Nebraska Department of
Environmental Quality
PRESIDENT

ECOS asserts that the federal regulation of CCW is unwarranted in light of the potential state fiscal impacts and the regulatory implications. In the resolution, ECOS expresses support of EPA's previous assessment that CCW disposal does not warrant regulation as hazardous waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Moreover, ECOS agrees with EPA's finding in a 2005 study that "the regulatory infrastructure is generally in place at the state level" to ensure adequate management of these wastes.

Richard Oppen
Director, Montana Department of
Environmental Quality
VICE PRESIDENT

Accordingly, the ECOS resolution calls on EPA to conclude that additional federal CCW regulations are unnecessary because they would be duplicative of most state programs. In addition, the resolution notes that a federal CCW regulatory program would require additional resources to revise or amend existing state programs to conform to new federal regulatory programs. It also points out that ECOS supports safe, beneficial reuse of CCW, including for geotechnical and civil engineering purposes. ECOS members have expressed serious concerns about the chilling effect that any RCRA C or hybrid RCRA C-D approach might have on beneficial reuse programs across the nation.

Thomas Burack
Commissioner, New Hampshire
Department of Environmental Services
SECRETARY-TREASURER

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

For additional information, please do not hesitate to contact ECOS Executive Director Steve Brown at (202) 624-3660 or sbrown@ssso.org.

Regards,

John W. Mitchell
Chair, ECOS Waste Committee/
Director, Division of Environment,
Kansas Department of Health and
Environment

R. Steven Brown
Executive Director