



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

October 15, 2009

Mathy Stanislaus, Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Don Balfour
Senator
Georgia Senate
President, NCSL

Nancy Cyr
Senior Legal Counsel
Nebraska Legislative Research Office
Staff Chair, NCSL

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Executive Director

Re: Consultation on EPA's Proposed Standards for the Management of Coal Combustion Residuals Generated by Electric Power Producers: Executive Order 13132, "Federalism;" and Unfunded Mandates Reform Act (UMRA)

Dear Assistant Administrator Stanislaus:

We are writing on behalf of the National Conference of State Legislatures (NCSL) in response to your request for consultation on the development of proposed standards for the management of coal combustion residuals generated by electric power producers by the Environmental Protection Agency (EPA). NCSL appreciates the EPA's commitment to the principles of Executive Order 13132, "Federalism;" and the Unfunded Mandates Reform Act (UMRA), and values the opportunity to participate in consultation regarding the proposed standards EPA is in the process of preparing. Having offered comments during the recent review of the Agency's guidance documents concerning federalism, NCSL is encouraged to see that the changes made to update the guidance and ensure its relevancy to current regulatory efforts are already yielding results.

Currently, NCSL has not taken a position on the regulation of coal combustion waste (CCW) as either hazardous or non-hazardous waste. However, the current approaches under consideration by EPA raise several concerns for states in implementing potential new requirements under the Resource Conservation and Recovery Act (RCRA). It is our understanding that EPA is considering three possible regulatory scenarios – regulation as a non-hazardous waste under Subtitle D; regulation as a hazardous waste under Subtitle C; or a hybrid Subtitle C/D approach. Information collected by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) indicates that the choice between regulation under RCRA Subtitle C (hazardous waste) and RCRA Subtitle D (non-hazardous waste) could have significant disparate impacts to state programs from both an administrative burden and financial costs perspective.

Under the Phase I survey, ASTSWMO sought information about State management practices for disposal of CCW. The Phase II survey was to obtain information regarding the costs, workload, and

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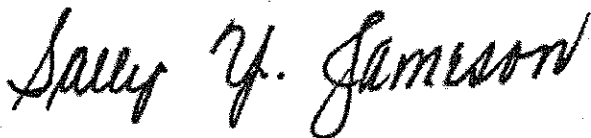
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expertise impacts on State waste programs under the regulatory options being considered by EPA, specifically RCRA Subtitle C (hazardous waste) and RCRA Subtitle D (non-hazardous waste). The results of these two surveys indicate that the choice to regulate coal combustion waste under Subtitle C (hazardous waste) will cost states at least twice as much as Subtitle D regulation and further strain programs which are already facing funding shortfalls. In addition, implementing new recommendations under Subtitle C (hazardous waste) will be both administratively burdensome and in many cases duplicative of existing state requirements. Of further concern for states is the ramification of new recommendations under Subtitle C (hazardous waste) on the beneficial use of coal combustion waste. In most States, a primary requirement for a beneficial use determination is that the waste *not* be hazardous. Regulating coal combustion waste as a hazardous waste will have the combined impact of limiting its beneficial use while increasing the amount of waste needed to be handled by landfills.

For your information we have attached to our comments a summary of the ASTSWMO surveys, which provide a more complete picture of the expected impact on states from the state officials tasked with implementing these programs.

If you have questions about these comments, or for further discussion, please do not hesitate to call on Tamra Spielvogel or Amanda Mason of our staff. Tamra Spielvogel can be reached at (202) 624-8690 or tamra.spielvogel@ncsl.org. Amanda Mason can be reached at (202) 624-3572 or amanda.mason@ncsl.org.

Sincerely,



Delegate Sally Young Jameson, Maryland
Chair, NCSL Agriculture and Energy Committee



Representative Roger Edward Barrus, Utah
Chair, NCSL Environment Committee

Cc: Richard Mattick, Office of Solid Waste and Emergency Response's (OSWER's) Policy Analysis and Regulatory Management Staff, mattick.richard@epa.gov

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