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November 16, 2009

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Dear Assistant Administrator Stanislaus:

As you know, in accordance with the Federalism Executive Order 13132, EPA recently convened a meeting with representatives from numerous state and local organizations to discuss and seek input on several options for the potential federal regulation of coal combustion waste (CCW). While we appreciate the opportunity to engage on this important issue, Governors support their state-run programs and have concerns regarding potential federal regulation of CCW.

Governors have numerous concerns with potential federal regulation of CCW. To begin, according to a survey conducted by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), of the 42 states that have facilities which produce CCW, 36, or 86 percent, require solid waste permits of their CCW facilities. (Three states did not respond to the survey and the remaining three do not have permitting programs.) States are either regulating the waste under their general solid waste regulations or their general industrial waste regulations. Several states have CCW-specific regulations including requirements for groundwater monitoring in 80 percent of the states. Further, many states already voluntarily impose minimum performance standards for both landfills and surface impoundments under the Resource Conservation and Recovery Act (RCRA) subtitle D requirements for the regulation of nonhazardous waste.

States have extensive experience with testing CCW for hazardous materials. Using the standard EPA test for determining if a waste is hazardous under RCRA, states have found that CCW is generally not hazardous. This enables 43 percent of CCW to be put to beneficial use, including in state highway projects. Should EPA regulate CCW as hazardous waste under RCRA Subtitle C, 134 million tons of CCW, or 67 times the current amount, will need to be shipped and disposed of in hazardous waste landfills. Of those states responding to the ASTSWMO survey, 91 percent of them responded that they do not have adequate existing permitted Subtitle C disposal capacity. As you know, it is extremely difficult and controversial to site a hazardous waste landfill and such difficulties should be given significant weight in EPA's deliberations. Importantly, 76 percent of states do have adequate non-hazardous waste disposal capacity.

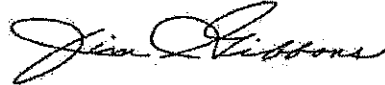
Finally, EPA must also consider the impact its decision to regulate CCW as hazardous will have on state resources. At a time when states are dramatically cutting programs and furloughing and laying off staff, this would be an unnecessary financial burden.

In summary, Governors are very concerned about potential federal regulation of CCW as either a hazardous or nonhazardous substance under RCRA. While we are unaware of issues EPA may have with our state programs, we hope to work with you and your staff to address any questions. We thank you for the opportunity to comment and look forward to working with you.

Sincerely,



Governor Brian Schweitzer
Chair, Natural Resources Committee



Governor Jim Gibbons
Vice Chair, Natural Resources Committee

cc: Dr. Peter Orszag, Director, Office of Management and Budget