



## WESTERN GOVERNORS' ASSOCIATION

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May 15, 2015

Honorable John Boehner  
Speaker of the House  
H – 232, U.S. Capitol  
Washington, D.C. 20515

Honorable Mitch McConnell  
Senate Majority Leader  
S – 230, U.S. Capitol  
Washington, D.C. 20510

Honorable Nancy Pelosi  
House Minority Leader  
H – 204, U.S. Capitol  
Washington, D.C. 20515

Honorable Harry Reid  
Senate Minority Leader  
S – 221, U.S. Capitol  
Washington, D.C. 20510

Dear Speaker Boehner, Majority Leader McConnell, Minority Leader Pelosi and Minority Leader Reid:

Western Governors support congressional efforts to address problematic regulatory confusion created by the Final Rule for the Disposal of Coal Combustion Residuals from Electric Utilities, issued by the Environmental Protection Agency (EPA) in December 2014. As you know, coal combustion residuals (CCRs) are the byproducts of electricity generation from coal sources. EPA's final rule would regulate CCRs as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

Western Governors applaud EPA's decision to regulate CCRs as non-hazardous solid waste under RCRA Subtitle D. We also support EPA's decision not to regulate the beneficial reuse of CCRs. Both of these positions are supported by Western Governors' Association (Policy Resolution [2014-08: The Regulation of Coal Combustion Residuals](#)).

Unfortunately, EPA's final rule produces an unintended regulatory consequence in that it creates a dual federal and state regulatory system. This is because EPA is not allowed under RCRA Subtitle D to delegate the CCR program to states in lieu of the federal program. Also, the rule does not require facilities to obtain permits, does not require states to adopt and implement new rules, and cannot be enforced by EPA. The rule's only compliance mechanism is for a state or citizen group to bring a citizen suit in federal district court under RCRA section 7002. This approach marginalizes the role of state regulation, oversight and enforcement.

Bipartisan legislation, H.R. 1734, the Coal Combustion Residuals Regulation Act of 2015, has been introduced to address this matter. Western Governors support the general principle of this bill, which would allow states to establish

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a permit system for the regulation of CCRs. It would codify much of EPA's final rule and would statutorily address the regulatory shortcoming of the final rule. CCR producers and managers would operate under a single regulatory framework and states would be empowered to enforce permitting requirements. If a state elects not to implement a permit system, EPA would establish and operate a permit system for that state.

Western states have effective regulatory infrastructure in place to operate as the principal regulatory authorities over CCR. Furthermore, they can ensure protection of human health and the environment through the safe and secure management of CCRs under state solid waste, groundwater protection and coal mine regulatory programs. Legislation such as H.R. 1734 recognizes that states are in the best position to implement EPA's rule for CCR regulation and reinforces the appropriate role of states in regulation, oversight and enforcement.

Western Governors appreciate the opportunity to work with you to improve the nation's management of environmental statutes. Thank you for your consideration of our views.

Sincerely,



Brian Sandoval  
Governor, State of Nevada  
Chairman, Western Governors' Association

cc: Honorable Fred Upton  
Honorable Frank Pallone  
Honorable John Shimkus  
Honorable Paul Tonko  
Honorable James Inhofe  
Honorable Barbara Boxer  
Honorable Shelley Moore Capito  
Honorable Thomas Carper