

COAL RESIDUALS REUSE AND MANAGEMENT ACT

SEPTEMBER 26, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2273]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2273) to amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coal Residuals Reuse and Management Act”.

SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE DISPOSAL ACT.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following new section:

“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

“(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt and implement a coal combustion residuals permit program.

“(b) STATE ACTIONS.—

“(1) NOTIFICATION.—Not later than 6 months after the date of enactment of this section (except as provided by the deadline identified under subsection (d)(2)(B)), the Governor of each State shall notify the Administrator, in writing, whether such State will adopt and implement a coal combustion residuals permit program.

“(2) CERTIFICATION.—

“(A) IN GENERAL.—Not later than 36 months after the date of enactment of this section (except as provided in subsections (f)(1)(A) and (f)(1)(C)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State agency responsible for implementing the coal combustion residuals permit program shall submit to the Administrator a certification that such coal combustion residuals permit program meets the specifications described in subsection (c)(1).

“(B) CONTENTS.—A certification submitted under this paragraph shall include—

“(i) a letter identifying the lead State agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;

“(ii) identification of any other State agencies involved with the implementation of the coal combustion residuals permit program;

“(iii) a narrative description that provides an explanation of how the State will ensure that the coal combustion residuals permit program meets the requirements of this section;

“(iv) a legal certification that the State has, at the time of certification, fully effective statutes, regulations, or guidance necessary to implement a coal combustion residuals permit program that meets the specifications described in subsection (c)(1); and

“(v) copies of State statutes, regulations, and guidance described in clause (iv).

“(3) MAINTENANCE OF 4005(c) OR 3006 PROGRAM.—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the State agency responsible for implementing a coal combustion residuals permit program in a State shall maintain an approved program under section 4005(c) or an authorized program under section 3006.

“(c) PERMIT PROGRAM SPECIFICATIONS.—

“(1) MINIMUM REQUIREMENTS.—The specifications described in this subsection for a coal combustion residuals permit program are as follows:

“(A) The revised criteria described in paragraph (2) shall apply to a coal combustion residuals permit program, except as provided in paragraph (3).

“(B) Each structure shall be, in accordance with generally accepted engineering standards for the structural integrity of such structures, designed, constructed, and maintained to provide for containment of the maximum volumes of coal combustion residuals appropriate for the structure. If a structure is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient, the head of such agency has authority to require action to correct the deficiency. If the identified deficiency is not corrected, the head of such agency has authority to require that the structure close in accordance with subsection (h).

“(C) The coal combustion residuals permit program shall apply the revised criteria promulgated pursuant to section 4010(c) for location, design, groundwater monitoring, corrective action, financial assurance, closure and

post-closure described in paragraph (2) and the specifications described in this paragraph to surface impoundments.

“(D) Constituents for detection monitoring shall include boron, chloride, conductivity, fluoride, pH, sulphate, sulfide, and total dissolved solids.

“(E) If a structure that is classified as posing a high hazard potential pursuant to the guidelines published by the Federal Emergency Management Agency entitled ‘Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams’ (FEMA Publication Number 333) is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient with respect to the structural integrity requirement in subparagraph (B), the head of such agency has authority to require action to correct the deficiency. If the identified deficiency is not corrected, the head of such agency has authority to require that the structure close in accordance with subsection (h).

“(F) New structures that first receive coal combustion residuals after the date of enactment of this section shall be constructed with a base located a minimum of two feet above the upper limit of the natural water table.

“(G) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to inspect structures and implement and enforce such permit program.

“(2) REVISED CRITERIA.—The revised criteria described in this paragraph are—

“(A) the revised criteria for design, groundwater monitoring, corrective action, closure, and post-closure, for structures, including—

“(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations; and

“(ii) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding groundwater monitoring requirements described in subpart E of part 258 of title 40, Code of Federal Regulations;

“(B) the revised criteria for location restrictions described in—

“(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, sections 258.11 through 258.15 of title 40, Code of Federal Regulations; and

“(ii) for existing structures that receive coal combustion residuals after the date of enactment of this section, sections 258.11 and 258.15 of title 40, Code of Federal Regulations;

“(C) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for air quality described in section 258.24 of title 40, Code of Federal Regulations; and

“(D) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for financial assurance described in subpart G of part 258 of title 40, Code of Federal Regulations.

“(3) APPLICABILITY OF CERTAIN REQUIREMENTS.—A State may determine that one or more of the requirements of the revised criteria described in paragraph (2) is not needed for the management of coal combustion residuals in that State, and may decline to apply such requirement as part of its coal combustion residuals permit program. If a State declines to apply a requirement under this paragraph, the State shall include in the certification under subsection (b)(2) a description of such requirement and the reasons such requirement is not needed in the State. If the Administrator determines that a State determination under this paragraph does not accurately reflect the needs for the management of coal combustion residuals in the State, the Administrator may treat such State determination as a deficiency under subsection (d).

“(d) WRITTEN NOTICE AND OPPORTUNITY TO REMEDY.—

“(1) IN GENERAL.—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (2) if at any time the State—

“(A) does not satisfy the notification requirement under subsection (b)(1);

“(B) has not submitted a certification under subsection (b)(2);

“(C) does not satisfy the maintenance requirement under subsection (b)(3); or

“(D) is not implementing a coal combustion residuals permit program that meets the specifications described in subsection (c)(1).

“(2) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under this subsection shall—

“(A) include findings of the Administrator detailing any applicable deficiencies in—

“(i) compliance by the State with the notification requirement under subsection (b)(1);

“(ii) compliance by the State with the certification requirement under subsection (b)(2);

“(iii) compliance by the State with the maintenance requirement under subsection (b)(3); and

“(iv) the State coal combustion residuals permit program in meeting the specifications described in subsection (c)(1); and

“(B) identify, in collaboration with the State, a reasonable deadline, which shall be not sooner than 6 months after the State receives the notice, by which the State shall remedy the deficiencies detailed under subparagraph (A).

“(e) IMPLEMENTATION BY ADMINISTRATOR.—

“(1) IN GENERAL.—The Administrator shall implement a coal combustion residuals permit program for a State only in the following circumstances:

“(A) If the Governor of such State notifies the Administrator under subsection (b)(1) that such State will not adopt and implement such a permit program.

“(B) If such State has received a notice under subsection (d) and, after any review brought by the State under section 7006, fails, by the deadline identified in such notice under subsection (d)(2)(B), to remedy the deficiencies detailed in such notice under subsection (d)(2)(A).

“(C) If such State informs the Administrator, in writing, that such State will no longer implement such a permit program.

“(2) REQUIREMENTS.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), such permit program shall consist of the specifications described in subsection (c)(1).

“(3) ENFORCEMENT.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures and the Administrator may use such authorities to inspect, gather information, and enforce the requirements of this section in the State.

“(f) STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.—

“(1) STATE CONTROL.—

“(A) NEW ADOPTION AND IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), the State may adopt and implement such a permit program by—

“(i) notifying the Administrator that the State will adopt and implement such a permit program;

“(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

“(iii) receiving from the Administrator—

“(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

“(II) a timeline for transition of control of the coal combustion residuals permit program.

“(B) REMEDYING DEFICIENT PERMIT PROGRAM.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

“(i) remedying the deficiencies detailed in the notice provided under subsection (d)(2)(A); and

“(ii) receiving from the Administrator—

“(I) a determination that the deficiencies detailed in such notice have been remedied; and

“(II) a timeline for transition of control of the coal combustion residuals permit program.

“(C) RESUMPTION OF IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(C), the State may adopt and implement such a permit program by—

“(i) notifying the Administrator that the State will adopt and implement such a permit program;

“(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

“(iii) receiving from the Administrator—

“(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

“(II) a timeline for transition of control of the coal combustion residuals permit program.

“(2) REVIEW OF DETERMINATION.—

“(A) DETERMINATION REQUIRED.—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii) or (1)(C)(ii), or notifies the Administrator that the deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

“(B) REVIEW.—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination was a final regulation for purposes of section 7006.

“(3) IMPLEMENTATION DURING TRANSITION.—

“(A) EFFECT ON ACTIONS AND ORDERS.—Actions taken or orders issued pursuant to a coal combustion residuals permit program shall remain in effect if—

“(i) a State takes control of its coal combustion residuals permit program from the Administrator under paragraph (1); or

“(ii) the Administrator takes control of a coal combustion residuals permit program from a State under subsection (e).

“(B) CHANGE IN REQUIREMENTS.—Subparagraph (A) shall apply to such actions and orders until such time as the Administrator or the head of the lead State agency responsible for implementing the coal combustion residuals permit program, as applicable—

“(i) implements changes to the requirements of the coal combustion residuals permit program with respect to the basis for the action or order; or

“(ii) certifies the completion of a corrective action that is the subject of the action or order.

“(4) SINGLE PERMIT PROGRAM.—If a State adopts and implements a coal combustion residuals permit program under this subsection, the Administrator shall cease to implement the permit program implemented under subsection (e) for such State.

“(g) EFFECT ON DETERMINATION UNDER 4005(C) OR 3006.—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making a determination of approval for a permit program or other system of prior approval and conditions under section 4005(c) or of authorization for a program under section 3006.

“(h) CLOSURE.—If it is determined, pursuant to a coal combustion residuals permit program, that a structure should close, the time period and method for the closure of such structure shall be set forth, in a schedule, in a closure plan that takes into account the nature and the site-specific characteristics of the structure to be closed. In the case of a surface impoundment, the closure plan shall require, at a minimum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.

“(i) AUTHORITY.—

“(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny any right of any State to adopt or enforce any regulation or requirement respecting coal combustion residuals that is more stringent or broader in scope than a regulation or requirement under this section.

“(2) AUTHORITY OF THE ADMINISTRATOR.—

“(A) IN GENERAL.—Except as provided in subsection (e) of this section and section 6005 of this title, the Administrator shall, with respect to the regulation of coal combustion residuals, defer to the States pursuant to this section.

“(B) IMMINENT HAZARD.—Nothing in this section shall be construed to affect the authority of the Administrator under section 7003 with respect to coal combustion residuals.

“(j) MINE RECLAMATION ACTIVITIES.—A coal combustion residuals permit program implemented under subsection (e) by the Administrator shall not apply to the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations.

“(k) DEFINITIONS.—In this section:

“(1) COAL COMBUSTION RESIDUALS.—The term ‘coal combustion residuals’ means—

“(A) the solid wastes listed in section 3001(b)(3)(A)(i), including recoverable materials from such wastes;

“(B) coal combustion wastes that are co-managed with wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and comprise a relatively small proportion of the total wastes being disposed in the structure;

“(C) fluidized bed combustion wastes;

“(D) wastes from the co-burning of coal with non-hazardous secondary materials provided that coal makes up at least 50 percent of the total fuel burned; and

“(E) wastes from the co-burning of coal with materials described in subparagraph (A) that are recovered from monofills.

“(2) COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—The term ‘coal combustion residuals permit program’ means a permit program or other system of prior approval and conditions that is adopted by or for a State for the management and disposal of coal combustion residuals to the extent such activities occur in structures in such State.

“(3) STRUCTURE.—The term ‘structure’ means a landfill, surface impoundment, or other land-based unit which may receive coal combustion residuals.

“(4) REVISED CRITERIA.—The term ‘revised criteria’ means the criteria promulgated for municipal solid waste landfill units under section 4004(a) and under section 1008(a)(3), as revised under section 4010(c).”

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1001 of the Solid Waste Disposal Act is amended by inserting after the item relating to section 4010 the following:

“Sec. 4011. Management and disposal of coal combustion residuals.”.

SEC. 3. 2000 REGULATORY DETERMINATION.

Nothing in this Act, or the amendments made by this Act, shall be construed to alter in any manner the Environmental Protection Agency’s regulatory determination entitled “Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels”, published at 65 Fed. Reg. 32214 (May 22, 2000), that the fossil fuel combustion wastes addressed in that determination do not warrant regulation under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

PURPOSE AND SUMMARY

This legislation is intended to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels. H.R. 2273 facilitates the recovery and beneficial use of coal combustion residuals by creating a State-based permit program that utilizes the framework and requirements of the existing municipal solid waste landfill permit program as an enforceable minimum Federal standard for the regulation of coal ash. The legislation allows States to be more stringent and require criteria in addition to the minimum specifications in the bill.

H.R. 2273 gives States with solid waste permit programs already approved under the Solid Waste Disposal Act the option to also adopt and implement a coal combustion residuals permit program (permit program). A State that intends to implement a permit program must notify the Administrator of the Environmental Protection Agency (EPA or the Administrator) of its intent and must certify to EPA that its permit program meets the minimum specifications set out in the legislation. The minimum specifications for a permit program are drawn from the revised criteria promulgated by EPA for the municipal solid waste program, published in Title 40, Part 258 of the Code of Federal Regulations. Should a State decide not to adopt and implement a permit program, to not continue to implement a permit program, or simply fail to implement a permit program, EPA would begin a process that involves notifying the State of any alleged deficiencies in the State’s program and al-

lowing the State to refute the allegation or cure any deficiencies. If a State fails to remedy any deficiencies, the Administrator, using the minimum specifications for a permit program, set out in subsection (c) of the bill, would be authorized to assume control of a permit program in that State. The legislation also provides a mechanism for a State that has ceded control of its permit program to EPA to take back the permit program by demonstrating that its program complies with the legislation's minimum specifications. The legislation ensures that there will never be simultaneous regulatory programs for managing coal combustion residuals in a State—either the State or EPA will manage the program, but never both at the same time.

BACKGROUND AND NEED FOR LEGISLATION

On June 21, 2010, EPA promulgated a proposed rule (75 Fed. Reg. 35128) (the Proposed Rule) that set out three regulatory options for management of coal combustion residuals. The first is regulation of coal combustion residuals under Subtitle C of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or RCRA), which regulates hazardous waste. Many believe that EPA's proposal to regulate combustion residuals under Subtitle C of the Solid Waste Disposal Act would place an unwarranted stigma on coal combustion residuals and threaten their beneficial reuse. The second and third regulatory options are to regulate coal combustion residuals under Subtitle D of the Solid Waste Disposal Act; the second would phase out the use of surface impoundments using retroactive siting and design requirements, and the third proposal would allow surface impoundments to operate until the end of their useful life. Stakeholders raised concerns that the Subtitle D proposals would lead to unwarranted, automatic closure of surface impoundments, significant job loss, and higher costs for energy generation.

HEARINGS

On April 14, 2011, the Subcommittee on Environment and the Economy held a legislative hearing on H.R. 1391, the Recycling Coal Combustion Residuals Accessibility Act of 2011, the precursor to H.R. 2273. H.R. 1391 prohibited EPA from regulating coal combustion residuals under Subtitle C of the Solid Waste Disposal Act. At the April 14, 2011, hearing, the Subcommittee received testimony from: The Honorable Mathy Stanislaus, Assistant Administrator for Office of Solid Waste and Emergency Response, United States Environmental Protection Agency; Ms. Mary Zdanowicz, Executive Director, Association of State & Territorial Solid Waste Management Officials; Mr. Thomas Adams, Executive Director, the American Coal Ash Association; Ms. Ari Lewis, Senior Environmental Toxicologist, Gradient; Ms. Dawn Santoianni, Senior Quality Engineer, Veritas Economic Consulting, LLC; Ms. Lisa Evans, Senior Administrative Counsel, Earthjustice; and Mr. Curtis Havens, a citizen of Chester, West Virginia. Several witnesses focused on why regulation of coal combustion residuals under Subtitle C of RCRA is inappropriate, harmful to the economy, and would have a negative impact on jobs. Testimony also addressed the stigma of a designation of coal combustion residuals as "hazardous" and how

even a proposed rule suggesting coal combustion residuals are “hazardous” has already and will continue to significantly impair recycling and beneficial use of coal combustion residuals. Testimony noted that States already regulate coal combustion residuals, scientific data do not support regulation of coal combustion residuals under Subtitle C of RCRA, and that coal combustion residuals routinely fail to meet the criteria for regulation as a hazardous waste. Witnesses also testified on how significant an impact a Subtitle C designation would have on landfill disposal capacity and State solid waste program resources because coal ash is the second largest waste stream in the country. Other testimony criticized current State regulation of coal combustion residuals because States do not require composite liners, fugitive dust controls, groundwater monitoring, and financial assurance and because the structural stability of units for the management and disposal of coal combustion residuals are not routinely inspected.

COMMITTEE CONSIDERATION

On April 6, 2011, Representative David McKinley, together with other members, introduced H.R. 1391, the Recycling Coal Combustion Residuals Accessibility Act of 2011. On June 16, 2011, the Subcommittee on Environment and the Economy met in open markup session to consider H.R. 1391. The bill was not called up, and the Subcommittee immediately recessed. On June 21, 2011, the Subcommittee reconvened and forwarded a discussion draft, without amendment, to the Full Committee for consideration. During the Subcommittee markup, three amendments were offered, but not adopted.

On June 22, 2011 Representative David McKinley, together with other members, introduced the discussion draft as H.R. 2273.

On July 11, 2011, July 12, 2011, and July 13, 2011, the full Committee on Energy and Commerce met in open markup session and considered H.R. 2273. During the markup, Mr. Shimkus offered an amendment in the nature of a substitute. There were five amendments offered to the amendment in the nature of a substitute, which were not adopted. Mr. Shimkus then withdrew his amendment in the nature of a substitute and offered another amendment in the nature of a substitute, which was adopted by voice vote. On July 13, 2011, by a recorded vote of 35–12, the Committee ordered H.R. 2273, as amended, favorably reported for House consideration.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were two recorded votes taken in connection with ordering H.R. 2273 reported. A motion by the Chair to order H.R. 2273, as amended, reported to the House was agreed to by a recorded vote of 35–12.

BILL: H.R. 2273, "Coal Residuals Reuse and Management Act"

AMENDMENT: An amendment by Mr. Markey, No. 1b, to require (1) notice and public hearing prior to a state adopting and implementing a coal combustion residuals permit program, (2) that the results of groundwater monitoring required by the revised criteria be made available to the public in electronic format, (3) that the Administrator determine, after public notice and opportunity for comment, the revised criteria for structures, (4) that the Administrator's written notice to a state of deficiency by that state and the deadline for response, and (5) that determinations by the Administrator regarding adoption, implementation, remedying deficiencies, and resumption of implementation by a state be treated as a final regulation under section 7006 for the purpose of a petition of judicial review.

DISPOSITION: NOT AGREED TO, by a roll call vote of 16 yeas to 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton				Mr. Dingell			
Mr. Stearns				Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns	X		
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts		X		Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green			
Mr. Rogers				Ms. DeGette			
Mrs. Myrick		X		Mrs. Capps	X		
Mr. Sullivan				Mr. Doyle			
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn				Mr. Inslee	X		
Mr. Bilbray		X		Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Matheson		X	
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Mrs. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy							
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo							
Mr. Kinzinger		X					
Mr. Griffith		X					

07/12/2011

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 62**

BILL: H.R. 2273, "Coal Residuals Reuse and Management Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 2273 favorably reported to the House, as amended. (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 35 yeas to 12 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts	X			Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo			
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick	X			Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle	X		
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez			
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray	X			Ms. Baldwin	X		
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Matheson			
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow	X		
Mrs. McMorris Rodgers				Ms. Matsui		X	
Mr. Harper	X			Mrs. Christensen			
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

07/13/2011

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing on April 14, 2011, and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 2273 is to create a state-based regulatory program for coal combustion residuals under Subtitle D of the Solid Waste Disposal Act.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND
TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2273, the Coal Residuals Reuse and Management Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 2273 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee believes that the adoption of this legislation will result in no significant impact to federal spending.

The Congressional Budget Office (CBO) estimates that the workload cost to the United States in the fifth year after enactment could exceed \$500,000. CBO assumes that EPA would need to investigate certain State permit programs and that the cost of doing so could range from \$1 million to \$2 million. CBO suggests that such reviews would be initiated by a petition from a non-governmental environmental advocacy organization or other interested party. This assumes that within 5 years of enactment, a number of states will fail to implement permit programs and that this programmatic failure will be so patent and serious that it will require significant EPA resources to investigate.

In the Committee's view, allegations that States are failing to implement an otherwise facially adequate permit program would not be ripe soon enough to trigger \$500,000 or more of EPA's workload as early as 2016. However, the Committee agrees with CBO that EPA workload resulting from this bill will cost less than \$500,000 in each of the first 4 years after enactment. The Committee also agrees with CBO that the cost to the States and the private sector will be well below the thresholds established for intergovernmental mandates or private sector mandates as defined in the Unfunded Mandates Reform Act.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by

the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

AUGUST 1, 2011.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2273, the Coal Residuals Reuse and Management Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2273—Coal Residuals Reuse and Management Act of 2011

Summary: H.R. 2273 would provide for the management and disposal of coal combustion residuals (CCR) under subtitle D of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act (RCRA). (CCR consists of inorganic residues that remain after pulverized coal is burned.) Consistent with subtitle D of RCRA, this legislation would allow states to create and enforce their own CCR permit programs while providing the Environmental Protection Agency (EPA) with limited authority to review states' permit programs. However, H.R. 2273 would enable EPA to directly regulate CCR in states that fail to set up their own programs or in states where the permit program is determined to be deficient and is not subsequently remedied by the state.

CBO estimates that enacting this legislation would cost \$2 million over the 2012–2016 period, subject to the availability of appropriated funds. Enacting H.R. 2273 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2273 would impose an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA), by requiring states to notify EPA whether they will adopt and implement a CCR permit program. CBO estimates that the cost of that mandate would fall well below the annual threshold established in UMRA (\$71 million in 2011, adjusted annually for inflation).

H.R. 2273 contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 2273 would cost EPA \$2 million over the next five years. The costs of this legislation fall within budget function 300 (natural resources and environment).

Basis of estimate: For this estimate, CBO assumes that H.R. 2273 will be enacted by the end of fiscal year 2011 and that the necessary amounts will be appropriated.

Certification of State CCR permit programs

Based on information from EPA and other industry experts, CBO expects that all states with coal-fired power plants (that is, 45 states and Puerto Rico) would most likely elect to operate their own programs to manage disposal of the waste material. Under this legislation, states would have six months after the bill's enactment to

notify EPA of their intentions to adopt and implement their own CCR permit program; then, within three years of the bill's enactment, the state agencies responsible for implementing the permit programs would be required to submit certifications of the state programs to EPA. Because this legislation would not provide EPA with the authority to substantially review certifications, CBO estimates that EPA's workload for this activity over the 2012–2015 period would not be significant. Based on information from EPA, CBO estimates that over the 2012–2015 period, EPA would incur costs of about \$200,000 to \$300,000 annually to support the initial certification process.

Review of existing State CCR permit programs

H.R. 2273 would provide EPA with the authority to evaluate whether a state's CCR permit program is being implemented consistent with the minimum program specifications established under the bill. Consequently, EPA's costs to implement the legislation could increase beginning in 2016—after state programs are certified and operational—to the extent that EPA would need to review certain state CCR permit programs for deficiencies. According to EPA and other industry experts, such reviews could be initiated by a petition for government action from an environmental group or other interested parties. While it is not likely that EPA would immediately review the CCR permit programs for all states, some reviews of programs in states with high coal consumption would probably be initiated beginning in 2016. Based on information from EPA, CBO estimates that reviewing a state program would cost, on average, about \$165,000 and would generally take less than one year to complete. Thus, assuming that EPA would initiate reviews of several state CCR permit programs beginning in 2016, CBO estimates that work would cost \$1 million to \$2 million in 2016. (Additional reviews and EPA costs could occur after 2016.)

Pay-As-You-Go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 2273 would impose an intergovernmental mandate as defined in UMRA. The bill would require states to notify EPA whether they will adopt and implement a CCR permit program. CBO estimates that the cost of that notification requirement would be small and well below the threshold established for intergovernmental mandates (\$71 million in 2011, adjusted annually for inflation). If states chose to adopt and implement a CCR permit program, any costs they incurred would result from participation in a voluntary federal program and not from the requirements of an intergovernmental mandate.

Estimated impact on the private sector: H.R. 2273 contains no private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Susanne S. Mehlman and Susan Willie; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

This legislation creates no advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

This section entitles the Act as the “Coal Residuals Reuse and Management Act.”

Sec. 2. Amendment to Subtitle D of the Solid Waste Disposal Act

Section 2 amends Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) by adding a new section, section 4011, Management and Disposal of Coal Combustion Residuals.

Subsection (a) of new section 4011 permits States to choose whether to adopt and implement a permit program, as defined in subsection (k) paragraph (2) of H.R. 2273. It is the intent of the Committee that a permit program be adopted and implemented in every State that generates, stores, disposes of, or uses coal combustion residuals. The Committee believes that States are best situated to structure a permit program. The Committee intends for H.R. 2273 to provide States flexibility regarding their individual permit programs while ensuring that the States have the necessary authorities and procedures, including staffing and technical capabilities, to allow them to implement a permit program that meets the minimum specifications set out in this bill.

Subsection (b) of new section 4011 sets out the requirements a State must comply with to adopt and implement a permit program. Paragraph (b)(1) requires a State that intends to adopt and implement a coal combustion residuals permit program to notify EPA within six months of enactment of H.R. 2273 that it intends to do so.

Paragraph (b)(2) of new section 4011 requires States that intend to adopt and implement a permit program to certify to EPA, within 36 months of enactment of H.R. 2273, that its permit program meets the specifications set out in this bill. The certification must identify the lead State agency responsible for implementing the permit program and any other State agencies involved. The certification also must contain a narrative explanation of how the State permit program will meet the specifications. Paragraph (b)(2) further requires that each State that intends to implement a permit program provide a legal certification that it has fully effective statutes, regulations, or guidance necessary to carry out the permit

program. The Committee intends that States will have the appropriate statutes, regulations, or guidance in effect at the time of the certification. The Committee also acknowledges that, consistent with the State Implementation Rule for the Part 258 municipal solid waste landfill permit program [40 CFR Part 239], a legal certification may be signed by either the State Attorney General or independent legal counsel designated by the State.

Paragraph (b)(3) of new section 4011 provides that in order to adopt or implement a permit program, the State must maintain an approved program for municipal solid waste under section 4005(c) or an authorized hazardous waste program under section 3006 of the Solid Waste Disposal Act. [In the Committee's view States with an approved program under section 4005(c) or an authorized program under section 3006 of the Solid Waste Disposal Act have already adequately demonstrated to the Administrator that they are capable of administering such permit programs.] [The Committee believes that States that are approved under 4005(c) or authorized by 3006 have established sufficient evidence of their capability to implement a permit program.] Upon submission of its certification, a State may immediately commence or continue the implementation of a permit program. States that are already implementing a permit program may continue to operate the program while the State completes the certification process.

Subsection (c) of new section 4011 lays out the minimum Federal standards for any permit program. Paragraph (c)(1) describes the specifications for a permit program as follows:

Subparagraph (A) of paragraph (c)(1) of new section 4011 requires that specific provisions of the revised criteria (for design, ground water monitoring, corrective action, closure, and post-closure) be applied as part of a State permit program. A State permit program may apply any of the revised criteria in 40 CFR, Part 258. Paragraph (c)(2) highlights parts of 40 CFR Part 258 that apply to all permit programs, subject to new section 4011 (c)(3), which allows States to determine that, on a programmatic basis, certain revised criteria are not appropriate.

Subparagraph (B) of paragraph (c)(1) of new section 4011 requires structural stability assessments for structures used for the storage and disposal of coal combustion residuals. The Committee intends for States to incorporate this requirement into permit programs to ensure that structures are not only designed and constructed properly, but also maintained so as to remain structurally sound. The design, construction, and maintenance of structures are to be assessed in accordance with generally accepted engineering standards. The Committee intends that the terms "generally accepted engineering standards" have the same meaning as the terms "recognized and generally accepted good engineering practices" as used in EPA's Proposed Rule. EPA defines "recognized and generally accepted good engineering practices" as "engineering, operation, or maintenance activities based on established codes, standards, published technical reports or recommended practices or a similar document. Recognized and generally accepted good engineering practices detail generally approved ways to perform specific engineering, inspection or mechanical integrity activities." This subparagraph provides the head of an agency responsible for implementing a permit program with authority to determine whether

structural integrity is deficient based on these recognized and generally accepted good engineering practices. This subparagraph also provides authority to require corrective action for such deficiency and authorizes the permitting agency to require closure (pursuant to subsection (h)) if corrective action is not possible for the identified deficiency.

Subparagraph (C) of paragraph (c)(1) of new section 4011 applies specific parts of the revised criteria (location, design, groundwater monitoring, corrective action, financial assurance, closure and post-closure), which were originally promulgated by EPA for municipal solid waste landfills, to surface impoundments used for the storage and disposal of coal combustion residuals. The Committee notes that the revised criteria promulgated by EPA for municipal solid waste landfills, 40 CFR, Part 258, are based on the standard that the criteria be protective of human health and the environment.

Subparagraph (D) of paragraph (c)(1) of new section 4011 sets out the groundwater detection monitoring constituents relevant to coal combustion residuals, and includes some constituents not identified in the revised criteria, namely, boron, chloride, conductivity, fluoride, pH, sulphate, sulfide, and total dissolved solids.

Subparagraph (E) of paragraph (c)(1) of new section 4011 sets out the authority of each permit program to determine whether structures classified as posing a “high hazard potential”—using the Federal Emergency Management Agency Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams, (FEMA Publication Number 333)—are deficient based upon structural integrity assessments and if so, to require corrective action for such deficiency. This subparagraph also authorizes the permitting authority to require closure (pursuant to subsection (h) of the bill) if corrective action is not possible for the identified deficiency.

Subparagraph (F) of paragraph (c)(1) of new section 4011 provides that new structures that receive coal combustion residuals after the date of enactment must be constructed with a minimum base of 2 feet above the upper limit of the water table. This subparagraph ensures that the location restrictions in the revised criteria are sufficient to address coal combustion residuals and surface impoundments.

Subparagraph (G) of paragraph (c)(1) of new section 4011 acknowledges State authority to inspect structures and enforce a coal combustion residuals permit program.

Paragraph (c)(2) of new section 4011 identifies specific provisions of the revised criteria that are to be applied as part of all permit programs. This paragraph delineates a subset of the revised criteria as part of the minimum Federal baseline applicable to all coal combustion residuals permit programs. While H.R. 2273 expressly requires certain elements of the revised criteria to be included in any coal combustion residuals permit program, the Committee intends that States may apply any of the revised criteria, promulgated by the Administrator as necessary to protect human health and the environment under RCRA sections 4004(a) and 1008(a)(3) and revised under section 4010(c) of RCRA, published at 40 CFR Part 258.

Subparagraph (A) of paragraph (c)(2) of new section 4011 specifically includes the revised criteria from 40 CFR Part 258 for design, groundwater monitoring, corrective action, closure, and post-clo-

sure. A permit program must include design criteria in 40 CFR 258.40 for new structures and lateral expansions of structures that begin receiving coal combustion residuals after the date of enactment and must require that all structures that receive coal combustion residuals after the date of enactment have groundwater monitoring as described in 40 CFR 258 subpart E.

Subparagraph (B) of paragraph (c)(2) of new section 4011 requires a permit program to have location restrictions appropriate to the type of structure. The Committee recognizes that new structures and lateral expansions of existing structures require different siting restrictions from those applicable for existing structures. New structures and lateral expansions of existing structures that begin receiving coal combustion residuals after the date of enactment must comply with the location restrictions in 40 CFR 258.11 through 258.15. Permitting of existing structures need only include the location restrictions in 40 CFR 258.11 and 258.15.

Subparagraph (C) of paragraph (c)(2) of new section 4011 requires a permit program to include the requirements in 40 CFR Part 258.24. While the Committee considers the applicable Clean Air Act provisions and individual State fugitive dust requirements adequate to address any potential dust issues with coal combustion residuals structures, the bill does require that structures that receive coal combustion residuals after enactment comply with the revised criteria for air quality described in section 40 CFR 258.24.

Subparagraph (D) of paragraph (c)(2) of new section 4011 requires a permit program to include the financial assurance requirements in section 40 CFR 258 subpart G.

Paragraph (c)(3) of new section 4011 allows States to determine that certain elements of the revised criteria set forth in paragraph (c)(2) are not needed for the management of coal combustion residuals under the States' permit program and a State may decline to apply those particular criteria to the entire permit program. Whether or not a State determines that a requirement of the revised criteria is not needed for its permit program, nothing in this subsection limits the ability of permitting authorities to tailor application of the criteria on a permit-by-permit basis.

Subsection (d) of new section 4011 requires the Administrator to provide written notice to a State that fails to take certain actions and allows a State that receives written notice from the Administrator an opportunity to remedy any deficiency identified. The Administrator's notice requirement is triggered if a State fails to: (A) notify the Administrator regarding whether it intends to adopt and implement a permit program within six months of the date of enactment; (B) submit a certification that its permit program meets the minimum specifications within 36 months of the date of enactment; (C) maintain either an approved Municipal Solid Waste permit program under section 4005(c) of the Solid Waste Disposal Act or a hazardous waste permit program under section 3006 of the Solid Waste Disposal Act; or (D) implement a permit program. After certifying to the Administrator that it has the requisite statutes, regulations, or guidance in place, a State will need a reasonable time period to fully implement a permit program and begin issuing and enforcing permits. Because the legislation provides deference to States for the regulation of coal combustion residuals, the Committee expects that before EPA sends written notice under

subsection (d) of new section 4011, EPA will communicate with the State regarding any alleged failure to implement a permit program and will consider carefully the State's perspective. This deference to the State is required by subsection (i) of new section 4011.

Paragraph (2) of subsection (d) of new section 4011 details the contents of a written notice provided by the Administrator to a State that fails to take actions identified in paragraph (d)(1). The Committee intends that the Administrator include in the written notice, the Agency's findings regarding whether a State: failed to comply with the notification requirement under subsection (b)(1); failed to comply with the certification requirement under subsection (b)(2); failed to comply with the maintenance requirement under subsection (b)(3); or is not implementing a permit program that meets the minimum specifications under subsection (c)(1). This subsection also requires the Administrator to collaborate with a State that receives a written notice to set a reasonable deadline for the State to remedy any deficiencies identified by the Administrator in the notice. The deadline may not be sooner than six months from the date the State receives the written notice.

Subsection (d), paragraph (2) of new section 4011 sets forth the factors that may be contained in a notice from the Administrator to a State detailing the Agency's position that a State's permit program is deficient, including that a State's program does not meet the minimum permit program specifications set forth in paragraph (c)(1) of H.R. 2273. The Administrator's evaluation of a State program is limited to the specifications set forth in paragraph (c)(1). The Administrator may not assert that a State's program is deficient based upon a claim that the program does not contain a requirement not specifically set forth in paragraph (c)(1).

Subsection (e) of new section 4011 requires the Administrator to implement and administer a permit program for a State in only three (3) circumstances: (1) the Governor of a State notifies the Administrator that such State will not adopt and implement its own permit program; (2) the State receives a notice of deficiency under subsection (d) and after completion of judicial review under section 7006 of the Solid Waste Disposal Act, fails to remedy the deficiency by the date agreed upon by the State and the Administrator; or (3) a State informs the Administrator that such State no longer wishes to implement a permit program.

Subsection (e) further provides that in circumstances where the Administrator implements a permit program for a State under subsection (e), such a permit program be confined to the program specifications set forth in subsection (c)(1) of the bill. H.R. 2273 does not authorize a program implemented by the Administrator to include requirements not specifically identified in subsection (c)(1).

When the Administrator is implementing a permit program under this subsection, the legislation provides EPA with the inspection and enforcement authorities referred to in 4005(c)(2)(A) of the Solid Waste Disposal Act. The authorities referred to in section 4005(c)(2)(A) of the Solid Waste Disposal Act are those in sections 3007 and 3008 of the Solid Waste Disposal Act. Absent an imminent hazard addressed by EPA under section 7003 of the Solid Waste Disposal Act, nothing in new section 4011 grants EPA inspection and enforcement authority in States whose permit pro-

grams have not been assumed by the Administrator pursuant to the provisions of subsection (e).

Subsection (f) of new section 4011 sets out the procedural requirements States must follow to regain control of their permit program. Subparagraph (1)(A) provides that if EPA is implementing a permit program because the Governor notified the Administrator that such State did not intend to adopt and implement a permit program, a State may resume control of its permit program by: (1) notifying EPA of its intent to adopt and implement a permit program; (2) certifying to EPA within six months of notification, pursuant to the requirements provided in subsection (b)(2) of H.R. 2273, that its program meets the minimum specifications for a permit program; and (3) receiving from the Administrator a determination that the State's permit program meets the minimum program specifications described in subsection (c)(1) of H.R. 2273 and a timeline for transition of control of the permit program from the Administrator to the State agency responsible for implementing the State's permit program.

Subparagraph (B) of paragraph (f)(1) of new section 4011 provides that, if the Administrator is implementing a permit program because a State failed to remedy an identified deficiency with its permit program, a State may take back control of its permit program by: (1) correcting deficiencies identified by the Administrator; and (2) receiving a determination from the Administrator that the State adequately remedied any deficiencies in the permit program and a timeline for transition of control of the permit program from the Administrator to the State official responsible for operating the State's permit program.

Subparagraph (C) of paragraph (f)(1) of new section 4011 provides that, if the Administrator is implementing a permit program because a State informed the Administrator that the State will no longer implement its own permit program, a State may resume implementation of its permit program by: (1) notifying the Administrator of its intent to adopt and implement a permit program; (2) providing the Administrator, within 6 months of its notification, a certification pursuant to the requirements provided in paragraph (2) of subsection (b); and (3) receiving a determination from the Administrator that the State's permit program meets the minimum program specifications described in paragraph (1) of subsection (c) and a timeline for transition of control of the permit program from the Administrator to the State official responsible for operating the State's permit program.

Subparagraph (A) of paragraph (f)(2) of new section 4011 provides that if a State begins the process of taking control of a permit program from the Administrator by submitting a certification, or notifies the Administrator that it has corrected any identified deficiencies with its permit program, the Administrator, within 90 days of the date on which a State initiates the process of taking back its permit program, is required to make a determination as to whether the relevant statutory criteria have been met for a State to take over control of its permit program.

Subparagraph (B) of paragraph (f)(2) of new section 4011 allows a State to obtain a review of the Administrator's determination of whether a State may take over implementation of its permit program as if such determination were a final regulation subject to ju-

dicial review under section 7006 of the Solid Waste Disposal Act. A determination made by the Administrator under subsection (f)(2)(B) of new section 4011 is considered a final regulation for purposes of section 7006 of the Solid Waste Disposal Act and is subject to judicial review.

Paragraph (3) of subsection (f) of new section 4011 provides that during the transition of control of a permit program between a State and the Administrator, actions taken and orders issued remain in effect. This provision was included to prevent a gap in regulation. Control will remain with the entity transferring the permit program until the entity assuming the program is able to fully implement the permit program. Subparagraphs (A) and (B) require existing actions, orders, or permits issued pursuant to a permit program to remain in effect until the entity assuming control of the permit program: (1) implements changes to the requirements of the permit program with respect to the basis for the action or order or (2) certifies the completion of a corrective action that is the subject of the action or order.

Paragraph (4) of subsection (f) of new section 4011 requires that there be only one permit program in each State at any given time. Therefore, H.R. 2273 requires that if a State regains control of a permit program from the Administrator, the Administrator cease to implement permit program.

Subsection (g) of new section 4011 prohibits the Administrator from considering the implementation of a permit program in making a determination under section 4005(c) or 3006 of this title. The Committee intends that if the Administrator is implementing a permit program under subsection (e) of new section 4011 in a State, the Administrator may not use that fact against a State in approving or withdrawing approval for a Municipal Solid Waste permit program under section 4005(c) of the Solid Waste Disposal Act or issuing or withdrawing authorization under section 3006 of the Solid Waste Disposal Act for a hazardous waste program.

Subsection (h) of new section 4011 states that if, pursuant to a permit program, it is determined that a structure should close, the time period and method for the closure of such structure shall be set forth in a schedule that is part of a site-specific closure plan that takes into account the location and characteristics of the structure to be closed. In the case of surface impoundments, this subsection requires the closure plan, at a minimum, to address the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover. The Committee recognizes that whether, and to what degree, dewatering of an impoundment and/or stabilization of the remaining coal combustion residuals is necessary to support a final cover will likely involve a site specific engineering evaluation that should be part of the closure plan. The Committee also recognizes that based on an engineering evaluation that may be part of the closure plan, stabilization beyond dewatering may not be necessary to support a final cover system.

The Committee intends that closure of structures for the management and disposal of coal combustion residuals, as defined in paragraph (k)(3), involves a range of site-specific factors and that the closure timeframes applicable to municipal solid waste landfills under 40 CFR, Part 258 of Title 40 may not be appropriate. For example, municipal solid waste landfill closure requirements in

Part 258 allow 180 days for closure, but the closure of surface impoundments containing coal combustion residuals may take significantly longer because dewatering and draining the liquid must be done gradually. This subsection ensures that if a permitting authority determines that a coal combustion waste structure must close, closure requirements take into account site-specific factors and the closure plan takes into account the time needed to address the issue of alternate disposal capacity to replace the closed structure.

The Committee also understands that coal combustion residual impoundments often serve a wastewater management function by receiving and handling water from other power plant processes, including storm water run-off. The Committee anticipates that a closure plan, issued pursuant to this subsection, would recognize this ancillary function and provide a reasonable time for alternative wastewater treatment facilities to be permitted and constructed.

Subsection (i) of the new section 4011 provides that nothing in new section 4011 of the Solid Waste Disposal Act precludes or denies any right of any State to adopt or enforce any regulation or requirement, respecting coal combustion residuals, that is more stringent or broader in scope than a regulation or requirement required under new section 4011 of the Solid Waste Disposal Act. This provision is consistent with other subtitles of the Solid Waste Disposal Act that allow States to be more stringent than the Federal baseline established by this legislation.

Paragraph (2)(A) of subparagraph (i) of new section 4011 requires that, with respect to the regulation of coal combustion residuals, the Administrator defer regulation to the States unless the Administrator is regulating coal combustion residuals in a State pursuant to a program authorized under subsection (e) of new section 4011 or as part of the Administrator's authorities regarding Federally-funded projects involving procurement of cement or concrete under section 6005 of the Solid Waste Disposal Act. The Committee understands that a blanket prohibition on the authority of the Administrator to regulate coal combustion residuals under any subtitle of the Solid Waste Disposal Act could have adverse impacts where State laws preclude a State from regulating more stringently than the Administrator. This provision also precludes the Administrator from finalizing the proposed coal combustion residual regulations promulgated on June 21, 2011, and prohibits the Administrator from promulgating any additional regulations to regulate coal combustion residuals.

Paragraph (2)(B) of subparagraph (i) of new section 4011 states that nothing in this section shall be construed to affect the authority of the Administrator under section 7003 of the Solid Waste Disposal Act to address imminent and substantial endangerments to health or the environment with respect to the disposal of coal combustion residuals.

Subparagraph (j) of the new section 4011 states that a permit program implemented by the Administrator under subsection (e) of new section 4011 shall not apply to the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations. The Department of the Interior, Office of Surface Mining Reclamation and Enforcement under the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1234 et seq.)

governs the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations. In addition, several States utilize their solid waste laws and regulations to govern the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations and the legislation does not affect such State authorities.

Subsection (k) of new section 4011 identifies the following terms and states their meaning:

Paragraph (1) of subsection (k) defines “coal combustion residuals” to include those solid wastes identified in Section 3001(b)(3)(A)(i) of the Solid Waste Disposal Act, including recoverable materials from such wastes. Section 3001(b)(3)(A)(I) defines these wastes to be: fly ash waste, bottom ash waste, slag waste, and flue gas emissions control waste generated primarily from the combustion of coal or other fossil fuels. “Coal combustion residuals” also includes other non-hazardous wastes: (1) coal combustion waste when co-managed with certain other wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and comprise a relatively small proportion of the total wastes being disposed of in the structure; (2) fluidized bed combustion wastes; (3) wastes from co-burning coal with non-hazardous secondary materials provided that coal makes up at least 50% of the total fuel burned; and (4) wastes that are recovered from monofills, which consist of wastes from co-burning coal with fly ash waste, bottom ash waste, slag waste, and flue gas emissions control waste generated primarily from the combustion of coal or other fossil fuels.

Paragraph (2) of subsection (k) defines “coal combustion residuals permit program” to mean a permit program that is adopted by a State or, as conditioned in this bill by the Administrator, for a State for the management and disposal of coal combustion residuals to the extent such activities occur in structures in such State. The limitation in the definition, “to the extent such activities occur in structures in such State” is included because States where coal is not produced or burned for electricity, or where coal combustion residuals are not stored or disposed of, may not need a permit program.

Paragraph (3) of subsection (k) defines “structure” to include landfills, surface impoundments, or other land-based units which may receive coal combustion residuals, including both wet and dry surface impoundments. The Committee is aware that 40 CFR, Part 258 was promulgated by the Administrator to regulate municipal solid waste landfills. The Committee, however, intends this legislation to govern all land-based disposal units for coal combustion residuals and believes that the requirements in 40 CFR Part 258 are adaptable and appropriate for disposal of coal combustion residuals in structures other than solid waste landfills. The Committee believes that this legislation closes any perceived gaps between the requirements of 40 CFR Part 258 and what is required to regulate land-based disposal units other than solid waste landfills.

The Committee does not intend to include in the definition of “structure,” land-based units at coal-fired electric power plants—such as cooling water, polishing, or storm water ponds—which re-

ceive small or incidental amounts of, and are not intended to serve as disposal structures for, coal combustion residuals.

Paragraph (4) of subsection (k) defines the term ‘revised criteria’ to mean the criteria promulgated for Municipal Solid Waste landfill units under 4004(a) of the Solid Waste Disposal Act and under 1008(a)(3) of the Solid Waste Disposal Act, as revised under section 4010(c) of the Solid Waste Disposal Act. The Committee believes that it is not necessary for EPA to promulgate new regulations. EPA acknowledged in the Proposed Rule that the “part 258 criteria represent a reasonable balance between ensuring the protection of human health and the environment from the risks of these wastes and the practical realities of facilities’ ability to implement the criteria.”

The Committee expects that permit programs using the minimum Federal baseline established by this legislation will meet the standard of protecting human health and the environment, and notes that the ‘revised criteria’ that serve as the baseline for permit programs consist of criteria that the Administrator promulgated pursuant to sections 1008(a)(3), 4004(a), and 4010(c) of RCRA—and which require that the Agency’s promulgated regulations provide:

“ . . . for the protection of public health and the environment. . . .” [1008(a)];

“ . . . no reasonable probability of adverse effects on health or the environment” [4004(a)]; and

“the criteria . . . necessary to protect human health and the environment. . . .” [4010(c)].

Finally, while H.R. 2273 does not preclude EPA from revising the criteria in Part 258, such future revisions to Part 258 would apply to the entire municipal solid waste landfill program.

Sec. 3. 2000 Regulatory determination

This section provides that nothing in H.R. 2273 shall be construed to alter EPA’s regulatory determination entitled “Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels,” published at 65 Fed. Reg. 32214 (May 22, 2000).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”:

SUBTITLE A—GENERAL PROVISIONS

Sec. 1001. Short title and table of contents.

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SUBTITLE D—STATE OR REGIONAL SOLID WASTE PLANS

Sec. 4001. Objectives of subtitle.

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Sec. 4011. *Management and disposal of coal combustion residuals.*

* * * * *

Subtitle D—State or Regional Solid Waste Plans

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SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

(a) *STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.*—Each State may adopt and implement a coal combustion residuals permit program.

(b) *STATE ACTIONS.*—

(1) *NOTIFICATION.*—Not later than 6 months after the date of enactment of this section (except as provided by the deadline identified under subsection (d)(2)(B)), the Governor of each State shall notify the Administrator, in writing, whether such State will adopt and implement a coal combustion residuals permit program.

(2) *CERTIFICATION.*—

(A) *IN GENERAL.*—Not later than 36 months after the date of enactment of this section (except as provided in subsections (f)(1)(A) and (f)(1)(C)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State agency responsible for implementing the coal combustion residuals permit program shall submit to the Administrator a certification that such coal combustion residuals permit program meets the specifications described in subsection (c)(1).

(B) *CONTENTS.*—A certification submitted under this paragraph shall include—

(i) a letter identifying the lead State agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;

(ii) identification of any other State agencies involved with the implementation of the coal combustion residuals permit program;

(iii) a narrative description that provides an explanation of how the State will ensure that the coal combustion residuals permit program meets the requirements of this section;

(iv) a legal certification that the State has, at the time of certification, fully effective statutes, regulations, or guidance necessary to implement a coal combustion residuals permit program that meets the specifications described in subsection (c)(1); and

(v) copies of State statutes, regulations, and guidance described in clause (iv).

(3) *MAINTENANCE OF 4005(C) OR 3006 PROGRAM.*—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the State agency responsible for implementing a coal combustion residuals permit program in a State shall maintain an approved program under section 4005(c) or an authorized program under section 3006.

(c) *PERMIT PROGRAM SPECIFICATIONS.*—

(1) *MINIMUM REQUIREMENTS.*—The specifications described in this subsection for a coal combustion residuals permit program are as follows:

(A) The revised criteria described in paragraph (2) shall apply to a coal combustion residuals permit program, except as provided in paragraph (3).

(B) Each structure shall be, in accordance with generally accepted engineering standards for the structural integrity of such structures, designed, constructed, and maintained to provide for containment of the maximum volumes of coal combustion residuals appropriate for the structure. If a structure is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient, the head of such agency has authority to require action to correct the deficiency. If the identified deficiency is not corrected, the head of such agency has authority to require that the structure close in accordance with subsection (h).

(C) The coal combustion residuals permit program shall apply the revised criteria promulgated pursuant to section 4010(c) for location, design, groundwater monitoring, corrective action, financial assurance, closure and post-closure described in paragraph (2) and the specifications described in this paragraph to surface impoundments.

(D) Constituents for detection monitoring shall include boron, chloride, conductivity, fluoride, pH, sulphate, sulfide, and total dissolved solids.

(E) If a structure that is classified as posing a high hazard potential pursuant to the guidelines published by the Federal Emergency Management Agency entitled “Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams” (FEMA Publication Number 333) is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient with respect to the structural integrity requirement in subparagraph (B), the head of such agency has authority to require action to correct the deficiency. If the identified deficiency is not corrected, the head of such agency has authority to require that the structure close in accordance with subsection (h).

(F) New structures that first receive coal combustion residuals after the date of enactment of this section shall be constructed with a base located a minimum of two feet above the upper limit of the natural water table.

(G) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority

to inspect structures and implement and enforce such permit program.

(2) *REVISED CRITERIA.*—The revised criteria described in this paragraph are—

(A) the revised criteria for design, groundwater monitoring, corrective action, closure, and post-closure, for structures, including—

(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations; and

(ii) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding groundwater monitoring requirements described in subpart E of part 258 of title 40, Code of Federal Regulations;

(B) the revised criteria for location restrictions described in—

(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, sections 258.11 through 258.15 of title 40, Code of Federal Regulations; and

(ii) for existing structures that receive coal combustion residuals after the date of enactment of this section, sections 258.11 and 258.15 of title 40, Code of Federal Regulations;

(C) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for air quality described in section 258.24 of title 40, Code of Federal Regulations; and

(D) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for financial assurance described in subpart G of part 258 of title 40, Code of Federal Regulations.

(3) *APPLICABILITY OF CERTAIN REQUIREMENTS.*—A State may determine that one or more of the requirements of the revised criteria described in paragraph (2) is not needed for the management of coal combustion residuals in that State, and may decline to apply such requirement as part of its coal combustion residuals permit program. If a State declines to apply a requirement under this paragraph, the State shall include in the certification under subsection (b)(2) a description of such requirement and the reasons such requirement is not needed in the State. If the Administrator determines that a State determination under this paragraph does not accurately reflect the needs for the management of coal combustion residuals in the State, the Administrator may treat such State determination as a deficiency under subsection (d).

(d) *WRITTEN NOTICE AND OPPORTUNITY TO REMEDY.*—

(1) *IN GENERAL.*—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (2) if at any time the State—

(A) does not satisfy the notification requirement under subsection (b)(1);

(B) has not submitted a certification under subsection (b)(2);

(C) does not satisfy the maintenance requirement under subsection (b)(3); or

(D) is not implementing a coal combustion residuals permit program that meets the specifications described in subsection (c)(1).

(2) *CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.*—A notice provided under this subsection shall—

(A) include findings of the Administrator detailing any applicable deficiencies in—

(i) compliance by the State with the notification requirement under subsection (b)(1);

(ii) compliance by the State with the certification requirement under subsection (b)(2);

(iii) compliance by the State with the maintenance requirement under subsection (b)(3); and

(iv) the State coal combustion residuals permit program in meeting the specifications described in subsection (c)(1); and

(B) identify, in collaboration with the State, a reasonable deadline, which shall be not sooner than 6 months after the State receives the notice, by which the State shall remedy the deficiencies detailed under subparagraph (A).

(e) *IMPLEMENTATION BY ADMINISTRATOR.*—

(1) *IN GENERAL.*—The Administrator shall implement a coal combustion residuals permit program for a State only in the following circumstances:

(A) If the Governor of such State notifies the Administrator under subsection (b)(1) that such State will not adopt and implement such a permit program.

(B) If such State has received a notice under subsection (d) and, after any review brought by the State under section 7006, fails, by the deadline identified in such notice under subsection (d)(2)(B), to remedy the deficiencies detailed in such notice under subsection (d)(2)(A).

(C) If such State informs the Administrator, in writing, that such State will no longer implement such a permit program.

(2) *REQUIREMENTS.*—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), such permit program shall consist of the specifications described in subsection (c)(1).

(3) *ENFORCEMENT.*—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures and the Administrator may use such authorities to inspect, gather information, and enforce the requirements of this section in the State.

(f) *STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.*—

(1) *STATE CONTROL.*—

(A) *NEW ADOPTION AND IMPLEMENTATION BY STATE.*—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), the State may adopt and implement such a permit program by—

- (i) notifying the Administrator that the State will adopt and implement such a permit program;
- (ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and
- (iii) receiving from the Administrator—
 - (I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and
 - (II) a timeline for transition of control of the coal combustion residuals permit program.

(B) *REMEDYING DEFICIENT PERMIT PROGRAM.*—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

- (i) remedying the deficiencies detailed in the notice provided under subsection (d)(2)(A); and
- (ii) receiving from the Administrator—
 - (I) a determination that the deficiencies detailed in such notice have been remedied; and
 - (II) a timeline for transition of control of the coal combustion residuals permit program.

(C) *RESUMPTION OF IMPLEMENTATION BY STATE.*—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(C), the State may adopt and implement such a permit program by—

- (i) notifying the Administrator that the State will adopt and implement such a permit program;
- (ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and
- (iii) receiving from the Administrator—
 - (I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and
 - (II) a timeline for transition of control of the coal combustion residuals permit program.

(2) *REVIEW OF DETERMINATION.*—

(A) *DETERMINATION REQUIRED.*—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii) or (1)(C)(ii), or notifies the Administrator that the deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

(B) *REVIEW.*—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination was a final regulation for purposes of section 7006.

(3) *IMPLEMENTATION DURING TRANSITION.*—

(A) *EFFECT ON ACTIONS AND ORDERS.*—Actions taken or orders issued pursuant to a coal combustion residuals permit program shall remain in effect if—

(i) a State takes control of its coal combustion residuals permit program from the Administrator under paragraph (1); or

(ii) the Administrator takes control of a coal combustion residuals permit program from a State under subsection (e).

(B) *CHANGE IN REQUIREMENTS.*—Subparagraph (A) shall apply to such actions and orders until such time as the Administrator or the head of the lead State agency responsible for implementing the coal combustion residuals permit program, as applicable—

(i) implements changes to the requirements of the coal combustion residuals permit program with respect to the basis for the action or order; or

(ii) certifies the completion of a corrective action that is the subject of the action or order.

(4) *SINGLE PERMIT PROGRAM.*—If a State adopts and implements a coal combustion residuals permit program under this subsection, the Administrator shall cease to implement the permit program implemented under subsection (e) for such State.

(g) *EFFECT ON DETERMINATION UNDER 4005(C) OR 3006.*—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making a determination of approval for a permit program or other system of prior approval and conditions under section 4005(c) or of authorization for a program under section 3006.

(h) *CLOSURE.*—If it is determined, pursuant to a coal combustion residuals permit program, that a structure should close, the time period and method for the closure of such structure shall be set forth, in a schedule, in a closure plan that takes into account the nature and the site-specific characteristics of the structure to be closed. In the case of a surface impoundment, the closure plan shall require, at a minimum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.

(i) *AUTHORITY.*—

(1) *STATE AUTHORITY.*—Nothing in this section shall preclude or deny any right of any State to adopt or enforce any regulation or requirement respecting coal combustion residuals that is more stringent or broader in scope than a regulation or requirement under this section.

(2) *AUTHORITY OF THE ADMINISTRATOR.*—

(A) *IN GENERAL.*—Except as provided in subsection (e) of this section and section 6005 of this title, the Administrator shall, with respect to the regulation of coal combustion residuals, defer to the States pursuant to this section.

(B) *IMMINENT HAZARD.*—Nothing in this section shall be construed to affect the authority of the Administrator under section 7003 with respect to coal combustion residuals.

(j) *MINE RECLAMATION ACTIVITIES.*—A coal combustion residuals permit program implemented under subsection (e) by the Administrator shall not apply to the utilization, placement, and storage of

coal combustion residuals at surface mining and reclamation operations.

(k) *DEFINITIONS.—In this section:*

(1) *COAL COMBUSTION RESIDUALS.—The term “coal combustion residuals” means—*

(A) the solid wastes listed in section 3001(b)(3)(A)(i), including recoverable materials from such wastes;

(B) coal combustion wastes that are co-managed with wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and comprise a relatively small proportion of the total wastes being disposed in the structure;

(C) fluidized bed combustion wastes;

(D) wastes from the co-burning of coal with non-hazardous secondary materials provided that coal makes up at least 50 percent of the total fuel burned; and

(E) wastes from the co-burning of coal with materials described in subparagraph (A) that are recovered from monofills.

(2) *COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—The term “coal combustion residuals permit program” means a permit program or other system of prior approval and conditions that is adopted by or for a State for the management and disposal of coal combustion residuals to the extent such activities occur in structures in such State.*

(3) *STRUCTURE.—The term “structure” means a landfill, surface impoundment, or other land-based unit which may receive coal combustion residuals.*

(4) *REVISED CRITERIA.—The term “revised criteria” means the criteria promulgated for municipal solid waste landfill units under section 4004(a) and under section 1008(a)(3), as revised under section 4010(c).*

* * * * *

ADDITIONAL VIEWS

There was some confusion surrounding H.R. 2273, the Coal Residuals Reuse and Management Act, when it was reported from the Committee on Energy and Commerce. On April 6, 2011, the Subcommittee on Environment and Economy held a legislative hearing on H.R. 1391. H.R. 1391 was a completely different proposal than H.R. 2273, and the Subcommittee never held a hearing on H.R. 2273. As a result, there is no legislative record that explains how the legislation is envisioned to be implemented, or what stakeholders views are on the legislation.

Although members requested a hearing at the full committee markup in order to better understand the legislation, no hearing has been scheduled. Instead, members on both sides of the Committee were forced to rely on representations made by majority staff about the effect and intent of the legislation. Those representations are not reflected in the report on this bill.

For example, during consideration, members were told that the legislation would allow EPA to tailor disposal criteria to reflect the risks of Coal Combustion Residual (CCR) disposal, although no revisions would be required. In contrast, the report states:

“[W]hile H.R. 2273 does not preclude EPA from revising the criteria in Part 258, such future revisions would apply to the entire municipal solid waste landfill program.”

If this statement accurately reflects the intent and effect of the legislation, then EPA is precluded from tailoring or adapting criteria for the disposal of CCR. Unsafe CCR disposal can lead to contamination from aluminum, arsenic, boron, cadmium, chloride, fluoride, iron, lead, manganese, mercury, molybdenum, and sulfate. This list of contaminants is different from those posing a threat from unsafe disposal of municipal solid waste.

Also during consideration, representations were made about the incorporation of the protectiveness standard of RCRA Section 4010(C). That section, pursuant to which the criteria for disposal of municipal solid waste were promulgated, establishes that criteria for disposal must include the requirements necessary to protect human health and the environment from the risks associated with disposal of municipal solid waste. However, the majority report does not reflect that intent. The majority writes:

The Administrator’s evaluation of a State program is limited to the specifications set forth in paragraph (c)(1). The Administrator may not assert that a State’s program is deficient based upon a claim that the program does not contain a requirement not specifically set forth in paragraph (c)(1).

Thus, according to the Committee report, if a plan includes the requirements specifically set forth in paragraph (c)(1) but is not sufficient to protect human health and the environment, the EPA would be blocked from finding that plan deficient. This statement from the majority conflicts with representations that were made about the incorporation of a standard of protectiveness.

This confusion extends to specific requirements, such as dust control. In its subtitle D proposal for CCR disposal, EPA required dust control “by either covering or otherwise managing CCRs to control wind dispersal of dust, emplacement as wet conditioned CCRs to control wind dispersal, when stored in piles, or storage in tanks or buildings.”¹ That requirement was included because of health concerns. For instance, EPA has stated:

Inhalation of hexavalent chromium has been shown to cause lung cancer. By requiring fugitive dust controls, the proposed rule would reduce inhalation exposure to hexavalent chromium near CCR disposal units that are not currently required to control fugitive dust.²

The risk of exposure to hexavalent chromium through inhalation is in addition to general risks from exposure to particulate matter. At the subcommittee hearing on this topic, witnesses from the ASTWMO and the American Coal Ash Association testified that

¹ 75 F.R. 35175.

² 75 F.R. 35215.

they support improvements to the standards for landfill disposal, such as dust control.

Representations were made during consideration of the bill that the legislation would incorporate the dust control requirements included in EPA's subtitle D proposal. However, the majority report makes clear that these requirements are not intended to be included in the legislation. Instead, the majority writes:

"[T]he Committee considers the applicable Clean Air Act provisions and individual State fugitive dust requirements adequate to address any potential dust issues with coal combustion residuals structures."

These discrepancies are illustrative, but do not represent an exhaustive list. The Committee has still not heard from the EPA or stakeholders on the legislation. The one piece of expert analysis available to the Committee, the analysis of costs prepared by the Congressional Budget Office, has been rejected by the majority in their report. Although the Congressional Budget Office expects that EPA will need to review state permit programs to ensure that they are meeting the specifications of the bill. The majority rejects this idea, demonstrating that they do not intend the EPA to play a role in ensuring sufficient state programs to protect human health and the environment.

The majority's rejection of the CBO score raises significant concerns about how the program will be paid for and as to whether the majority understands the effects and implementation of the legislation they have reported.

It is clear that this legislation must be subject to additional scrutiny, and the legislative record is not yet sufficient to inform a floor vote on this legislation.

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