

COAL RESIDUALS REUSE AND MANAGEMENT ACT OF
2013

JULY 10, 2013.—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

DISSENTING VIEWS

[To accompany H.R. 2218]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2218) to amend subtitle D of the Solid Waste Disposal Act to encourage recovery and beneficial use of coal combustion residuals and establish requirements for the proper management and disposal of coal combustion residuals that are protective of human health and the environment, 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 AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Coal Residuals Reuse and Management Act of 2013”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Management and disposal of coal combustion residuals.
- Sec. 3. 2000 regulatory determination.
- Sec. 4. Technical assistance.
- Sec. 5. Federal Power Act.

SEC. 2. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.

(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:

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

“(a) **STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.**—Each State may adopt, implement, and enforce a coal combustion residuals permit program if such State provides the notification required under subsection (b)(1), and the certification required under subsection (b)(2).

“(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)(3)(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 subsection (f)(1)(A)), 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 implementing agency shall submit to the Administrator a certification that such coal combustion residuals permit program meets the requirements described in subsection (c).

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

“(i) a letter identifying the lead State implementing agency, 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) an explanation of how the State coal combustion residuals permit program meets the requirements of this section, including a description of the State’s—

“(I) process to inspect or otherwise determine compliance with such permit program;

“(II) process to enforce the requirements of such permit program;

“(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program;

“(IV) statutes, regulations, or policies pertaining to public access to information, such as groundwater monitoring data; and

“(V) statutes, regulations, or policies pertaining to structural integrity or dam safety that may be applied to structures through such permit program;

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

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

“(C) UPDATES.—A State may update the certification as needed to reflect changes to the coal combustion residuals permit program.

“(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 implementing agency shall maintain an approved permit program or other system of prior approval and conditions under section 4005(c) or an authorized program under section 3006.

“(c) REQUIREMENTS FOR A COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—A coal combustion residuals permit program shall consist of the following:

“(1) GENERAL REQUIREMENTS.—

“(A) IN GENERAL.—The implementing agency shall—

“(i) apply the subset of the revised criteria described in paragraph (2) to owners or operators of structures, including surface impoundments, that receive coal combustion residuals on or after the date of enactment of this section;

“(ii) with respect to structures that are receiving coal combustion residuals as of the date of enactment of this section, take the actions required under paragraph (3);

“(iii) impose requirements for surface impoundments that do not meet certain criteria pursuant to paragraph (4); and

“(iv) require that closure of structures occur in accordance with paragraph (5).

“(B) STRUCTURAL INTEGRITY.—

“(i) ENGINEERING CERTIFICATION.—The implementing agency shall require that an independent registered professional engineer certify that—

“(I) the design of each structure that receives coal combustion residuals on or after the date of enactment of this section is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein; and

“(II) the construction and maintenance of the structure will ensure structural stability.

“(ii) EMERGENCY ACTION PLAN.—The implementing agency shall require that the owner or operator of any structure that is a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section and that is classified by the State 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) prepare and maintain an emergency action plan that identifies responsible persons and actions to be taken in the event of a dam safety emergency.

“(iii) INSPECTION.—

“(I) IN GENERAL.—The implementing agency shall require that structures that are surface impoundments that receive coal combustion residuals on or after the date of enactment of this section be inspected not less than annually by an independent registered professional engineer to assure that the design, operation, and maintenance of the surface impoundment is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein, so as to ensure dam stability.

“(II) POTENTIALLY HAZARDOUS CONDITIONS.—The implementing agency shall require that if an inspection under subclause (I), or a periodic evaluation under clause (iv), reveals a potentially hazardous condition, the owner or operator of the structure shall immediately take action to mitigate the potentially hazardous condition and notify appropriate State and local first responders.

“(iv) PERIODIC EVALUATION.—The implementing agency shall require that structures that are surface impoundments that receive coal combustion residuals on or after the date of enactment of this section be periodically evaluated for appearances of structural weakness.

“(v) DEFICIENCY.—

“(I) IN GENERAL.—If the head of the implementing agency determines that a structure is deficient with respect to the requirements in clause (i), (iii), or (iv), the head of the agency has the authority

to require action to correct the deficiency according to a schedule determined by the agency.

“(II) UNCORRECTED DEFICIENCIES.—If a deficiency is not corrected according to the schedule, the head of the implementing agency has the authority to require that the structure close in accordance with paragraph (5).

“(III) DAM SAFETY CONSULTATION.—In the case of a structure that is a surface impoundment, the head of the implementing agency shall, in making a determination under subclause (I), consult with appropriate State dam safety officials.

“(C) LOCATION.—The implementing agency shall require that structures that first receive coal combustion residuals on or after the date of enactment of this section shall be constructed with a base located a minimum of 2 feet above the upper limit of the water table, unless it is demonstrated to the satisfaction of the implementing agency that—

“(i) the hydrogeologic characteristics of a structure and surrounding land would preclude such a requirement; and

“(ii) the function and integrity of the liner system will not be adversely impacted by contact with the water table.

“(D) WIND DISPERSAL.—

“(i) IN GENERAL.—The implementing agency shall require that owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section address wind dispersal of dust by requiring cover, or by wetting coal combustion residuals with water to a moisture content that prevents wind dispersal, facilitates compaction, and does not result in free liquids.

“(ii) ALTERNATIVE METHODS.—Subject to the review and approval by the implementing agency, owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section may propose alternative methods to address wind dispersal of dust that will provide comparable or more effective control of dust.

“(E) PERMITS.—The implementing agency shall require that owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section apply for and obtain permits incorporating the requirements of the coal combustion residuals permit program.

“(F) PUBLIC AVAILABILITY OF INFORMATION.—Except for information with respect to which disclosure is prohibited under section 1905 of title 18, United States Code, the implementing agency shall ensure that—

“(i) documents for permit determinations are made available for public review and comment under the public participation process described in subsection (b)(2)(B)(iii)(III) or in subsection (e)(6), as applicable;

“(ii) final determinations on permit applications are made known to the public; and

“(iii) groundwater monitoring data collected under paragraph (2) is publicly available.

“(G) AGENCY AUTHORITY.—

“(i) IN GENERAL.—The implementing agency has the authority to—

“(I) obtain information necessary to determine whether the owner or operator of a structure is in compliance with the requirements of this subsection;

“(II) conduct or require monitoring and testing to ensure that structures are in compliance with the requirements of this subsection; and

“(III) enter, at reasonable times, any site or premise subject to the coal combustion residuals permit program for the purpose of inspecting structures and reviewing records relevant to the design, operation, and maintenance of structures.

“(ii) MONITORING AND TESTING.—If monitoring or testing is conducted under clause (i)(II) by or for the implementing agency, the implementing agency shall, if requested, provide to the owner or operator—

“(I) a written description of the monitoring or testing completed;

“(II) at the time of sampling, a portion of each sample equal in volume or weight to the portion retained by or for the implementing agency; and

“(III) a copy of the results of any analysis of samples collected by or for the implementing agency.

“(2) REVISED CRITERIA.—The subset of the revised criteria referred to in paragraph (1)(A)(i) are as follows:

“(A) DESIGN REQUIREMENTS.—For new structures, and lateral expansions of existing structures, that first receive coal combustion residuals on or 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, except that the leachate collection system requirements described in section 258.40(a)(2) of title 40, Code of Federal Regulations, do not apply to structures that are surface impoundments.

“(B) GROUNDWATER MONITORING AND CORRECTIVE ACTION.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria regarding groundwater monitoring and corrective action requirements described in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this subparagraph, the revised criteria shall also include—

“(i) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

“(ii) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids.

“(C) CLOSURE.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, in a manner consistent with paragraph (5), the revised criteria for closure described in subsections (a) through (c) and (h) through (j) of section 258.60 of title 40, Code of Federal Regulations.

“(D) POST-CLOSURE.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for post-closure care described in section 258.61 of title 40, Code of Federal Regulations, except for the requirement described in subsection (a)(4) of that section.

“(E) LOCATION RESTRICTIONS.—The revised criteria for location restrictions described in—

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

“(F) AIR QUALITY.—For all structures that receive coal combustion residuals on or 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.

“(G) FINANCIAL ASSURANCE.—For all structures that receive coal combustion residuals on or 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.

“(H) SURFACE WATER.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations.

“(I) RECORDKEEPING.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations.

“(J) RUN-ON AND RUN-OFF CONTROL SYSTEMS FOR LAND-BASED UNITS.—For all landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for run-on and run-off control systems described in section 258.26 of title 40, Code of Federal Regulations.

“(K) RUN-OFF CONTROL SYSTEMS FOR SURFACE IMPOUNDMENTS.—For all surface impoundments that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

“(3) PERMIT PROGRAM IMPLEMENTATION FOR EXISTING STRUCTURES.—

“(A) NOTIFICATION.—Not later than the date on which a State submits a certification under subsection (b)(2), not later than 30 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 36

months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall notify owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section within the State of—

“(i) the obligation to apply for and obtain a permit under subparagraph (C); and

“(ii) the requirements referred to in subparagraph (B).

“(B) COMPLIANCE WITH CERTAIN REQUIREMENTS.—Not later than 12 months after the date on which a State submits a certification under subsection (b)(2), not later than 42 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 48 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall require owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section to comply with—

“(i) the requirements under paragraphs (1)(B)(ii) and (iii), (1)(D), (2)(B), (2)(F), (2)(H), (2)(J), and (2)(K); and

“(ii) the groundwater recordkeeping requirement described in section 258.29(a)(5) of title 40, Code of Federal Regulations.

“(C) PERMITS.—

“(i) PERMIT DEADLINE.—Not later than 48 months after the date on which a State submits a certification under subsection (b)(2), not later than 78 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 84 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall issue, with respect to a structure that is receiving coal combustion residuals as of the date of enactment of this section, a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

“(ii) APPLICATION DEADLINE.—The implementing agency shall identify, in collaboration with the owner or operator of a structure described in clause (i), a reasonable deadline by which the owner or operator shall submit a permit application under such clause.

“(D) INTERIM OPERATION.—

“(i) PRIOR TO DEADLINES.—With respect to any period of time on or after the date of enactment of this section but prior to the applicable deadline in subparagraph (B), the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section may continue to operate such structure until such applicable deadline under the applicable authority in effect.

“(ii) PRIOR TO PERMIT.—Unless the implementing agency determines that the structure should close pursuant to paragraph (5), if the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

“(4) REQUIREMENTS FOR SURFACE IMPOUNDMENTS THAT DO NOT MEET CERTAIN CRITERIA.—

“(A) SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES WITHIN 10 YEARS OF THE DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of subparagraph (D) if the surface impoundment—

“(I) does not—

“(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) within 10 years after the date of enactment of this section, is required under section 258.56(a) of title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

“(ii) DEADLINE TO MEET GROUNDWATER PROTECTION STANDARD.—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, established by the implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective measures are required shall be met—

“(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

“(II) not later than 10 years after the date of enactment of this section.

“(B) SURFACE IMPOUNDMENTS SUBJECT TO A STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of subparagraph (D) if the surface impoundment—

“(I) does not—

“(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) as of the date of enactment of this section, is subject to a State corrective action requirement.

“(ii) DEADLINE TO MEET GROUNDWATER PROTECTION STANDARD.—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, established by the implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective measures are required shall be met—

“(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

“(II) not later than 8 years after the date of enactment of this section.

“(C) EXTENSION OF DEADLINE.—

“(i) IN GENERAL.—Except as provided in clause (ii) of this subparagraph, the deadline for meeting a groundwater protection standard under subparagraph (A)(ii) or (B)(ii) may be extended by the implementing agency, after opportunity for public notice and comment under the public participation process described in subsection (b)(2)(B)(iii)(III), or in subsection (e)(6) based on—

“(I) the effectiveness of any interim measures implemented by the owner or operator of the facility under section 258.58(a)(3) of title 40, Code of Federal Regulations;

“(II) the level of progress demonstrated in meeting the groundwater protection standard;

“(III) the potential for other adverse human health or environmental exposures attributable to the contamination from the surface impoundment undergoing corrective action; and

“(IV) the lack of available alternative management capacity for the coal combustion residuals and related materials managed in the impoundment at the facility at which the impoundment is located if the owner or operator has used best efforts, as necessary, to design, obtain any necessary permits, finance, construct, and render operational the alternative management capacity during the

time period for meeting a groundwater protection standard in subparagraph (A)(ii) or (B)(ii).

“(ii) EXCEPTION.—The deadline under subparagraph (A)(ii) or (B)(ii) shall not be extended if there has been contamination of public or private drinking water systems attributable to a surface impoundment undergoing corrective action, unless the contamination has been addressed by providing a permanent replacement water system.

“(D) ADDITIONAL REQUIREMENTS.—

“(i) CLOSURE.—If the deadline under subparagraph (A)(ii), (B)(ii), or (C) is not satisfied, the surface impoundment shall cease receiving coal combustion residuals and initiate closure under paragraph (5).

“(ii) INTERIM MEASURES.—

“(I) IN GENERAL.—Except as provided in subclause (II), not later than 90 days after the date on which the assessment of corrective measures is initiated, the owner or operator of a surface impoundment described in subparagraph (A) or (B) shall implement interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.

“(II) IMPOUNDMENTS SUBJECT TO STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.—Subclause (I) shall only apply to surface impoundments subject to a State corrective action requirement as of the date of enactment of this section if the owner or operator has not implemented interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.

“(E) SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES MORE THAN 10 YEARS AFTER DATE OF ENACTMENT.—

“(i) IN GENERAL.—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) if the surface impoundment—

“(I) does not—

“(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

“(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

“(II) more than 10 years after the date of enactment of this section, is required under section 258.56(a) title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

“(ii) REQUIREMENTS.—

“(I) CLOSURE.—The surface impoundments identified in clause (i) shall cease receiving coal combustion residuals and initiate closure in accordance with paragraph (5) after alternative management capacity at the facility is available for the coal combustion residuals and related materials managed in the impoundment.

“(II) BEST EFFORTS.—The alternative management capacity shall be developed as soon as practicable with the owner or operator using best efforts to design, obtain necessary permits for, finance, construct, and render operational the alternative management capacity.

“(III) ALTERNATIVE CAPACITY MANAGEMENT PLAN.—The owner or operator shall, in collaboration with the implementing agency, prepare a written plan that describes the steps necessary to develop the alternative management capacity and includes a schedule for completion.

“(IV) PUBLIC PARTICIPATION.—The plan described in subclause (III) shall be subject to public notice and comment under the public participation process described in subsection (b)(2)(B)(iii)(III) or in subsection (e)(6), as applicable.

“(5) CLOSURE.—

“(A) IN GENERAL.—If it is determined by the implementing agency that a structure should close because the requirements of a coal combustion residuals permit program are not being satisfied with respect to such struc-

ture, or if it is determined by the owner or operator that a structure should close, the time period and method for the closure of such structure shall be set forth in a closure plan that establishes a deadline for completion of closure as soon as practicable and that takes into account the nature and the site-specific characteristics of the structure to be closed.

“(B) SURFACE IMPOUNDMENT.—In the case of a surface impoundment, the closure plan under subparagraph (A) shall require, at a minimum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.

“(d) FEDERAL REVIEW OF STATE PERMIT PROGRAMS.—

“(1) IN GENERAL.—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (3) if at any time the State—

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

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

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

“(D) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2), that meets the requirements described in subsection (c);

“(E) is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2)—

“(i) that is consistent with such certification; and

“(ii) for which the State continues to have in effect statutes or regulations necessary to implement such program; or

“(F) does not make available to the Administrator, within 90 days of a written request, specific information necessary for the Administrator to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E).

“(2) REQUEST.—If a request described in paragraph (1)(F) is proposed pursuant to a petition to the Administrator, the Administrator shall only make the request if the Administrator does not possess the information necessary to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E) of such paragraph.

“(3) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under paragraph (1) shall—

“(A) include findings of the Administrator detailing any applicable deficiencies described in subparagraphs (A) through (F) of paragraph (1); and

“(B) identify, in collaboration with the State, a reasonable deadline by which the State shall remedy such applicable deficiencies, which shall be—

“(i) in the case of a deficiency described in subparagraphs (A) through (E) of paragraph (1), not earlier than 180 days after the date on which the State receives the notice; and

“(ii) in the case of a deficiency described in paragraph (1)(F), not later than 90 days after the date on which the State receives the notice.

“(4) CRITERIA FOR DETERMINING DEFICIENCY OF STATE PERMIT PROGRAM.—In making a determination whether a State has failed to satisfy the requirements described in subparagraphs (A) through (E) of paragraph (1), or a determination under subsection (e)(1)(B), the Administrator shall consider, as appropriate—

“(A) whether the State’s statutes or regulations to implement a coal combustion residuals permit program are not sufficient to meet the requirements described in subsection (c) because of—

“(i) failure of the State to promulgate or enact new statutes or regulations when necessary; or

“(ii) action by a State legislature or court striking down or limiting such State statutes or regulations;

“(B) whether the operation of the State coal combustion residuals permit program fails to comply with the requirements of subsection (c) because of—

“(i) failure of the State to issue permits as required in subsection (c)(1)(E);

“(ii) repeated issuance of permits by the State which do not meet the requirements of subsection (c);

“(iii) failure of the State to comply with the public participation requirements of this section; or

“(iv) failure of the State to implement corrective action requirements as described in subsection (c)(2)(B); and

“(C) whether the enforcement of a State coal combustion residuals permit program fails to comply with the requirements of this section because of—

“(i) failure to act on violations of permits, as identified by the State;

or

“(ii) repeated failure by the State to inspect or otherwise determine compliance pursuant to the process identified in subsection (b)(2)(B)(iii)(I).

“(e) IMPLEMENTATION BY ADMINISTRATOR.—

“(1) FEDERAL BACKSTOP AUTHORITY.—The Administrator shall implement a coal combustion residuals permit program for a State only if—

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

“(B) the State has received a notice under subsection (d) and the Administrator determines, after providing a 30-day period for notice and public comment, that the State has failed, by the deadline identified in the notice under subsection (d)(3)(B), to remedy the deficiencies detailed in the notice under subsection (d)(3)(A); or

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

“(2) REVIEW.—A State may obtain a review of a determination by the Administrator under this subsection as if the determination was a final regulation for purposes of section 7006.

“(3) OTHER STRUCTURES.—For structures that receive coal combustion residuals on or after the date of enactment of this section located on property within the exterior boundaries of a State that the State does not have authority or jurisdiction to regulate, the Administrator shall implement a coal combustion residuals permit program only for those structures.

“(4) REQUIREMENTS.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1) or (3), the permit program shall consist of the requirements described in subsection (c).

“(5) ENFORCEMENT.—

“(A) IN GENERAL.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1)—

“(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is implementing the coal combustion residuals permit program; and

“(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section in the State.

“(B) OTHER STRUCTURES.—If the Administrator implements a coal combustion residuals permit program under paragraph (3)—

“(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is implementing the coal combustion residuals permit program; and

“(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section for the structures for which the Administrator is implementing the coal combustion residuals permit program.

“(6) PUBLIC PARTICIPATION PROCESS.—If the Administrator implements a coal combustion residuals permit program for a State under this subsection, the Administrator shall provide a 30-day period for the public participation process required in paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of subsection (c).

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

“(1) STATE CONTROL.—

“(A) NEW ADOPTION, OR RESUMPTION OF, AND IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), or 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, after providing a 30-day period for notice and public comment, that the State coal combustion residuals per-

mit program meets the requirements described in subsection (c); 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 only the deficiencies detailed in the notice pursuant to subsection (d)(3)(A); and

“(ii) receiving from the Administrator—

“(I) a determination, after providing a 30-day period for notice and public comment, 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.

“(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 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.—Program requirements of, and 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 program requirements, actions, and orders until such time as—

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

“(ii) the State or the Administrator, whichever took the action or issued the order, 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)(1) 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) 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 subsections (d) and (e) and section 6005, 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 as affecting the authority of the Administrator under section 7003 with respect to coal combustion residuals.

“(C) ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon request from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide to such State agency only the enforcement assistance requested.

“(D) CONCURRENT ENFORCEMENT.—Except as provided in subparagraph (C), the Administrator shall not have concurrent enforcement authority when a State is implementing a coal combustion residuals permit program,

including during any period of interim operation described in subsection (c)(3)(D).

“(E) OTHER AUTHORITY.—The Administrator shall not have authority to finalize the proposed rule published at pages 35128 through 35264 of volume 75 of the Federal Register (June 21, 2010).

“(F) OTHER RESPONSE AUTHORITY.—Nothing in this section shall be construed as affecting the authority of the Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) with respect to coal combustion residuals.

“(3) CITIZEN SUITS.—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

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

“(j) 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 all of the authorities, activities, and procedures that comprise the system of prior approval and conditions implemented by or for a State to regulate the management and disposal of coal combustion residuals.

“(3) CODE OF FEDERAL REGULATIONS.—The term ‘Code of Federal Regulations’ means the Code of Federal Regulations (as in effect on the date of enactment of this section) or any successor regulations.

“(4) IMPLEMENTING AGENCY.—The term ‘implementing agency’ means the agency responsible for implementing a coal combustion residuals permit program for a State, which shall either be the lead State implementing agency identified under subsection (b)(2)(B)(i) or the Administrator pursuant to subsection (e).

“(5) PERMIT; PRIOR APPROVAL AND CONDITIONS.—Except as provided in subsections (b)(3) and (g), the terms ‘permit’ and ‘prior approval and conditions’ mean any authorization, license, or equivalent control document that incorporates the requirements of subsection (c).

“(6) 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).

“(7) STRUCTURE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘structure’ means a landfill, surface impoundment, or other land-based unit which receives, or is intended to receive, coal combustion residuals.

“(B) DE MINIMIS RECEIPT.—The term ‘structure’ does not include any land-based unit that receives only de minimis quantities of coal combustion residuals if the presence of coal combustion residuals is incidental to the material managed in the unit.”.

(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.).

SEC. 4. TECHNICAL ASSISTANCE.

Nothing in this Act, or the amendments made by this Act, shall be construed to affect the authority of a State to request, or the Administrator of the Environmental Protection Agency to provide, technical assistance under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

SEC. 5. FEDERAL POWER ACT.

Nothing in this Act, or the amendments made by this Act, shall be construed to affect the obligations of an owner or operator of a structure (as defined in section 4011 of the Solid Waste Disposal Act, as added by this Act) under section 215(b)(1) of the Federal Power Act (16 U.S.C. 824o(b)(1)).

PURPOSE AND SUMMARY

The legislation is a new approach to establishing a permit program under the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act or RCRA). It establishes, in statute, a Federal standard of protection that consists of minimum requirements that will ensure protection of human health and the environment. The purpose of the legislation is to establish the minimum requirements for the proper management and disposal of materials generated by the combustion of coal that will be implemented through State-based permit programs. The minimum requirements in H.R. 2218 utilize the framework and Federal requirements of the existing municipal solid waste landfill management program in addition to other protective, minimum Federal requirements for the management and disposal of coal combustion residuals. The bill allows State permit programs to be more stringent than the minimum requirements outlined in the bill. The legislation also is intended to encourage recovery and beneficial use of coal combustion residuals.

BACKGROUND AND NEED FOR LEGISLATION

EPA PROPOSED RULE

On June 21, 2010, the Environmental Protection Agency (EPA) promulgated a proposed rule to regulate coal combustion residuals (75 FR 35128) (the “Proposed Rule”). In the Proposed Rule, EPA set out three regulatory options for management of coal combustion residuals. One proposal would create an enforceable permit program for coal combustion residuals under Subtitle C of RCRA. The other two proposals would impose self-implementing requirements under Subtitle D of RCRA. The second proposal, under Subtitle D, would require the automatic phase out of surface impoundments regardless of whether the surface impoundments were structurally sound or resulting in a release of pollutants to the environment. A third alternative also would regulate coal combustion residuals under Subtitle D, but would not require such a phase out of surface impoundments.

Many stakeholders believe that EPA’s proposal to regulate combustion residuals under Subtitle C of RCRA (under which EPA regulates hazardous waste) placed an unwarranted stigma on coal combustion residuals and threatened their beneficial re-use. Furthermore, to regulate coal combustion residuals under Subtitle C of RCRA, EPA would have to reverse the regulatory determinations

made under the Bevill Amendment.¹ And it is not clear that EPA could legally reverse the regulatory determinations in that manner.

Concern also was raised regarding EPA's other proposals; specifically, that the new regulations under Subtitle D of RCRA would lead to the closure of structurally-sound surface impoundments not posing a pollution risk, a significant loss of jobs, and higher energy costs.

BENEFICIAL USE

Coal combustion residuals are a valuable constituent in a variety of products and applications. The Proposed Rule and the suggestion that coal combustion residuals be regulated as a hazardous waste created significant uncertainty regarding beneficial reuse of coal combustion residuals. Companies engaged in the beneficial use of coal combustion residuals have testified before the Committee that EPA's proposal to regulate disposed CCRs as hazardous waste has created a stigma in the beneficial use marketplace, causing contractors, engineers and architects who use or specify the use of coal combustion residuals in various products, such as concrete and wall board, and in various applications, such as road base, to reduce their demand for coal combustion residuals that are beneficially used, and also causing utilities in some cases to restrict their supply of coal combustion residuals for beneficial use. H.R. 2218 makes clear that disposed coal combustion residuals are not to be regulated as hazardous waste which should remove the stigma that has been negatively impacting the beneficial use marketplace. The Committee intends to promote the environmental and economic benefits of a robust beneficial use market because beneficial use conserves natural resources, improves the durability and strength of manufactured products and structures, reduces greenhouse gas emissions, lessens the need for waste disposal units, and provides significant domestic economic benefits.

LITIGATION

On April 5, 2012, several environmental groups filed a lawsuit in the United States District Court for the District of Columbia seeking to compel EPA to issue a final rule to regulate coal combustion residuals. Several other stakeholders have since joined the litigation including two companies that beneficially reuse coal combustion residuals. The environmental plaintiffs requested that the Court order EPA to complete the rulemaking for coal combustion residuals within six months. EPA notified the Court that because of the complexity of the rule and because the Agency received almost 450,000 comments on the Proposed Rule, the Agency needs more time than six months to promulgate a legally defensible rule. It is the Committee's expectation that H.R. 2218 would provide a legislative solution and resolve the pending litigation.

¹In 1980, the "Bevill Amendment" precluded EPA from listing coal ash (and other large volume, low toxicity wastes) as hazardous waste until it had conducted a study and made a report to Congress regarding the characteristics and management of these materials, to determine whether regulation under subtitle C was warranted. In regulatory determinations issued in 1993 and in 2000, pursuant to the Bevill Amendment, EPA has found that subtitle C regulation of coal ash is not warranted. In the 2000 regulatory determination EPA said that federal regulation under subtitle D would be appropriate.

BACKGROUND

H.R. 2218 is similar to H.R. 2273, which passed the House during the 112th Congress on October 14, 2011, and was introduced in the Senate as S. 1751 by Senators Hoeven and Conrad. The text of H.R. 2273 was included as an amendment to H.R. 4348, the “Surface Transportation Extension Act of 2012, Part II.” Senators Hoeven and Baucus introduced a revised version, S. 3512, on August 2, 2012. S. 3512 had 24 original cosponsors, twelve Democrats and twelve Republicans. The text of S. 3512 was included in H.R. 3409, which passed the House on September 21, 2012. The Subcommittee on Environment and the Economy held a hearing on a Discussion Draft, the “Coal Ash Recycling and Oversight Act of 2013,” which was the same text as S. 3512. H.R. 2218 is the product of additional bi-partisan, bi-cameral, and inter-branch discussions regarding the management and disposal of coal combustion residuals.

HEARINGS

On April 11, 2013, the Subcommittee on Environment and the Economy held a hearing on a “Discussion Draft, the Coal Ash Recycling and Oversight Act of 2013.” The Subcommittee received testimony from:

- Mathy Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response, United States Environmental Protection Agency;
 - Robert J. Martineau, Jr., Commissioner, Tennessee Department of Environment and Conservation;
 - Stephen A. Cobb, P.E., Chief, Governmental Hazardous Waste Branch Land Division, Alabama Department of Environmental Management;
 - Susan Parker Bodine, Partner, Barnes & Thornburg LLP;
 - Lisa Evans, Senior Administrative Counsel, Earthjustice;
- and,
- Jack Spadaro, Mine Safety & Health and Environmental Consultant.

COMMITTEE CONSIDERATION

On June 3, 2013, Representative David McKinley introduced H.R. 2218, the “Coal Residuals Reuse and Management Act of 2013.” On June 5 and 6, 2013, the Subcommittee on Environment and the Economy met in open markup session and by voice vote forwarded the bill, without amendment, to the full Committee for consideration. During the subcommittee markup no amendments were offered.

On June 18 and 19, 2013, the full Committee on Energy and Commerce met in open markup session and considered H.R. 2218. During the markup, six amendments were offered and one, offered by Mr. Shimkus, was adopted by voice vote. On June 19, 2013, the Committee ordered H.R. 2218 favorably reported to the House, as amended, by a record vote of 31 ayes and 16 nays.

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 five record votes taken in connection with ordering H.R. 2218 reported. A motion by the Chair to order H.R. 2218 reported to the House, as amended, was agreed to by a recorded vote of 31 ayes and 16 nays. The following reflects the recorded votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 15**

BILL: H.R. 2218, the "Coal Residuals Reuse and Management Act of 2013"

AMENDMENT: An amendment offered by Mr. Green, No. 2, to require an implementing agency and structures to meet requirements as necessary to protect human health and the environment.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton				Mr. Markey			
Mr. Whitfield		X		Mr. Pallone			
Mr. Shimkus		X		Mr. Rush	X		
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette			
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers				Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch			
Mr. Gardner				Mr. Lujan			
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

06/19/2013

**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 16**

BILL: H.R. 2218, the "Coal Residuals Reuse and Management Act of 2013"

AMENDMENT: An amendment offered by Mr. Rush, No. 3, to provide that if the Administrator determines that a structure is in violation of a State coal combustion residuals permit program, and the State has not taken appropriate action to enforce such permit program with respect to such structure, the Administrator may inspect such structure and enforce the requirements of such permit program with respect to such structure.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 24 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Markey			
Mr. Whitfield				Mr. Pallone			
Mr. Shimkus		X		Mr. Rush	X		
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green			
Mr. Rogers		X		Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey				Mr. Matheson	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers				Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch			
Mr. Gardner				Mr. Lujan			
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 17**

BILL: H.R. 2218, the "Coal Residuals Reuse and Management Act of 2013"

AMENDMENT: An amendment offered by Mr. Waxman, No. 4, to provide that the implementing agency shall require that all wet disposal structures meet criteria for design, construction, operation, and maintenance sufficient to prevent groundwater contamination.

DISPOSITION: NOT AGREED TO, by a roll call vote of 19 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone			
Mr. Shimkus		X		Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey				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		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch			
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 18**

BILL: H.R. 2218, the "Coal Residuals Reuse and Management Act of 2013"

AMENDMENT: An amendment offered by Ms. Christensen, No. 5, to provide that implementing agency shall ensure that the coal combustion residuals permit program does not adversely impact vulnerable populations and to define the term "vulnerable populations."

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell	X		
Mr. Barton		X		Mr. Markey			
Mr. Whitfield		X		Mr. Pallone			
Mr. Shimkus		X		Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers		X		Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	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		Ms. Christensen	X		
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson				Mr. Braley	X		
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 19**

BILL: H.R. 2218, the "Coal Residuals Reuse and Management Act of 2013"

AMENDMENT: A motion by Mr. Upton to order H.R. 2218 favorably reported to the House, as amended.
(Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 31 yeas and 16 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell		X	
Mr. Barton	X			Mr. Markey			
Mr. Whitfield	X			Mr. Pallone			
Mr. Shimkus	X			Mr. Rush			
Mr. Pitts	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mr. Murphy	X			Mrs. Capps		X	
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky		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			Ms. Christensen			
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy	X			Mr. Sarbanes		X	
Mr. Guthrie	X			Mr. McNerney		X	
Mr. Olson				Mr. Braley		X	
Mr. McKinley	X			Mr. Welch		X	
Mr. Gardner	X			Mr. Lujan		X	
Mr. Pompeo	X			Mr. Tonko		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

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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 11, 2013, and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 2218 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. 2218, the “Coal Ash Recycling and Oversight Act of 2013,” would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2218, the “Coal Ash Recycling and Oversight Act of 2013,” contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

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:

JUNE 28, 2013.

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. 2218, the Coal Residuals Reuse and Management Act of 2013.

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. 2218—Coal Residuals Reuse and Management Act of 2013

Summary: H.R. 2218 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. 2218 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 implementing this legislation would cost \$2 million over the 2014–2018 period, subject to the availability of appropriated funds. Enacting H.R. 2218 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2218 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by expanding an existing preemption of state laws that regulate greenhouse gases from motor vehicles and by requiring states to notify EPA whether they will adopt and implement a permit program for CCR. The bill also would impose an intergovernmental and private-sector mandate on owners and operators of structures that receive CCR by establishing minimum federal requirements for the management and disposal of CCR. Based on information from EPA, a small number of public entities would be required to comply with the federal standards, and CBO estimates that the cost for those entities to comply would fall below UMRA's annual threshold for intergovernmental mandates (\$75 million in 2013, adjusted annually for inflation). However, given the number of private-sector entities that would need to take corrective action and the costs to comply, CBO estimates that the cost of the mandates would probably exceed the annual threshold established in UMRA for private-sector mandates (\$150 million in 2013, adjusted annually for inflation).

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 2218 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. 2218 will be enacted by the beginning of fiscal year 2014 and that the necessary amounts will be made available from appropriated funds.

Certification of State CCR Permit Programs and CCR Permitting on Tribal Lands

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 probably 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.

In addition, this legislation would require EPA to implement a CCR permit program on tribal lands. Because this legislation would not provide EPA with the authority to substantially review

certifications and because there are only three coal-generating stations located on tribal lands that would require permits, CBO estimates that EPA's workload for this activity over the 2014–2018 period would not be significant.

Based on information from EPA, CBO estimates that, over the 2014–2018 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. 2218 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 2018—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 2018. 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 2018, CBO estimates that work would cost \$1 million to \$2 million in 2016. (Additional reviews and EPA costs could occur after 2018.)

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 2218 would impose intergovernmental mandates as defined in UMRA by expanding an existing preemption of state laws that regulate greenhouse gases from motor vehicles and by requiring states to tell EPA whether they will adopt and implement a permit program for CCR. Although the preemption would limit the application of state law, CBO estimates that it would impose no duty on state governments that would result in additional spending. CBO estimates that the cost, if any, of the notification requirement would be small. If states chose to adopt and implement a CCR program, any costs they incurred would result from participation in a voluntary federal program and not from the requirements of an intergovernmental mandate.

By establishing minimum federal requirements for the management and disposal of CCR, the bill would impose an intergovernmental and private-sector mandate on owners and operators of structures that receive CCR. Based on information from EPA, a small number of public entities would be required to comply with the federal standards, and CBO estimates that the cost for those entities to comply would fall below UMRA's annual threshold for intergovernmental mandates (\$75 million in 2013, adjusted annually for inflation).

The cost of the mandate on the private sector would depend on the number of entities that would need to take corrective action. Based on information from EPA and industry sources, CBO esti-

mates that those costs would amount to \$150 million or more annually. Consequently, the cost of the mandates would probably exceed the annual threshold established in UMRA for private-sector mandates (\$150 million in 2013, adjusted annually for inflation).

Estimate prepared by: Federal Costs: Susanne S. Mehlman and Susan Willie; Impact on State, Local, and Tribal Governments: Melissa Merrell; 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.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2218 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2218 does not specifically direct to be completed specific rule making within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

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

Section 1. Short title and table of contents

This section provides the short title of “Coal Residuals Reuse and Management Act of 2013” and identifies the sections of the bill as follows: Section 1, Short Title and Table of Contents; Section 2, Management and Disposal of Coal Combustion Residuals; Section 3, 2000 Regulatory Determination; Section 4, Technical Assistance, and Section 5, Federal Power Act.

Section 2. Management and disposal of coal combustion residuals

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 coal combustion residuals (CCRs) permit program. It is the intent of the Committee that such a permit program be adopted and implemented in every State that generates, stores, disposes of, or uses CCRs. The Committee believes that States are best situated to create a permit program, and the Committee intends to provide States flexibility regarding their individual permit programs while ensuring that States have the necessary authorities and procedures, including staffing and technical capabilities, to allow them to implement a permit program that meets the minimum requirements set out in this bill.

Subsection (b) of new section 4011 sets out certain 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 the Administrator of the EPA that it intends to do so within six months of enactment.

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, that the permit program meets the specifications set out in this section. 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, a description of the State's process to inspect and enforce the permit program, the public participation process for promulgation of regulations and issuance of permits, and a description of the State statutes, regulations, or policies regarding public access to information and structural integrity or dam safety. 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 or regulations necessary to carry out the permit program. The Committee expects that States will have the appropriate statutes or regulations in effect at the time of the certification and will provide copies of the statutes and regulations to the Administrator. The Committee intends that States will promulgate statutes and regulations necessary to implement a coal combustion residuals permit program. The Committee acknowledges that a State may need to update the certification as necessary to reflect changes to the permit program. 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. It is the view of the Committee that States with an approved program under section 4005(c) or an authorized program under section 3006 of the Solid Waste Disposal Act already have adequately demonstrated to the Administrator that they are capable of administering such permit programs and that EPA approval prior to the start of implementation is not nec-

essary. Upon submission of its certification, the Committee intends that a State immediately may commence or continue the implementation of a permit program. States that already are 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 requirements for a coal combustion residuals permit program. The Committee intends that the requirements in subsection (c) are minimum national criteria to ensure protection of human health and the environment, and they comprise a Federal standard of protection for the regulation of coal combustion residuals. The Committee believes that permit programs that incorporate the minimum requirements in the bill will be protective of human health and the environment. Paragraph (c)(1) describes the specifications for a permit program as follows.

Paragraph (c)(1) of new section 4011 requires that specific provisions of the revised criteria set out in paragraph (c)(2) be applied to owners or operators of structures, including surface impoundments, that receive coal combustion residuals. Paragraph (c)(1) also requires that structures that receive coal combustion residuals as of the date of enactment take actions required under paragraph (c)(3), imposes requirements for surface impoundments that do not meet the criteria in paragraph (c)(4), and requires that closure of structures occur in accordance with paragraph (c)(5).

Subparagraph (c)(1)(B) of new section 4011 requires structural stability assessments for all structures used for the storage and disposal of coal combustion residuals. This subparagraph requires that permit programs have an independent, registered, professional engineer certify that the design of each structure is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids that can be impounded therein. An independent, registered, professional engineer also must certify that the construction and maintenance will ensure structural stability.

The Committee intends that “recognized and generally accepted good engineering practices” be defined in the same manner as EPA defined the term in the Proposed Rule as “engineering, operation, or maintenance activities based on established codes, standards, published technical reports or recommended practices or a similar document.” EPA further explained that “recognized and generally accepted good engineering practices detail generally approved ways to perform specific engineering, inspection or mechanical integrity activities.” The Committee intends that the term “independent” also has the meaning attributed to it by EPA in the Proposed Rule and means a registered professional engineer who is not an employee of the owner or operator of a structure. This subparagraph requires that the construction and maintenance of structures ensure dam stability and requires that the owner or operator of a structure prepare an emergency action plan for a structure that is classified by the implementing agency as “high hazard” pursuant to the guidelines published by the Federal Emergency Management Agency (FEMA). This subparagraph also requires that surface impoundments that receive CCRs after enactment be inspected at least annually by an independent registered professional engineer to ensure that they remain able to contain the maximum volume

of coal combustion residuals and liquids, and be evaluated periodically for appearances of structural weakness. This subparagraph also provides authority to require that action be taken to remedy identified deficiencies and authorizes the implementing agency to require closure if deficiencies are not corrected. The Committee acknowledges that most States have dam safety personnel with expertise in making determinations regarding the structural deficiency of a surface impoundment. Therefore, this subparagraph requires that the implementing agency consult with State dam safety officials when making a determination under this subparagraph.

Subparagraph (c)(1)(C) of new section 4011 provides that new structures that first 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 unless it is demonstrated to the satisfaction of the agency implementing a permit program that the hydrogeologic characteristics of the structure preclude the requirement and that the liner system will not be impacted by contact with the water table.

Subparagraph (D) of paragraph (c)(1) of new section 4011 provides that a permit program address wind dispersal of dust by requiring cover or wetting of coal combustion residuals to a moisture content that prevents wind dispersal and facilitates compaction, but does not result in free liquids. The owner or operator of a structure may suggest alternative methods to address wind dispersal, but the agency implementing a permit program must review and approve the alternate method.

Subparagraph (E) of paragraph (c)(1) of new section 4011 requires the agency responsible for implementing a permit program to require the owner or operator of any structure that receives CCRs after enactment to apply for and obtain a permit that incorporates the requirements set out in subsection (c).

Subparagraph (F) of paragraph (c)(1) of new section 4011 requires that, with the exception of information that is protected under section 1905 of Title 18, United States Code, documents for permit determinations be made available for public review and comment pursuant to the State's public notice and comment process described in the certification under subparagraph (b)(2)(B). This subparagraph also requires that final determinations on permit applications and groundwater monitoring data be made publicly available.

Subparagraph (G) of paragraph (c)(1) of new section 4011 provides the agency implementing a permit program with authority to obtain information and to conduct monitoring and testing to make sure that structures are in compliance with the requirements of subsection (c). This subparagraph also provides the implementing agency authority to enter, at reasonable times, any site or premise subject to a permit program to review records relevant to the operation and maintenance of structures or to inspect structures. This subparagraph provides that an agency implementing a permit program that conducts monitoring or testing, must (if requested) provide to the owner or operator a written description of the monitoring or testing completed and at the time of sampling, provide a portion of each sample equal in volume or weight to that retained by or for the agency, and the results of sample analysis.

Paragraph (c)(2) of new section 4011 specifies a subset of the criteria set out in Title 40, Part 258 of the Code of Federal Regulations that are required to be part of a coal combustion residuals permit program. Part 258 was promulgated by EPA pursuant to direction from Congress (in sections 4010(c) and 4004(a) of RCRA) that the criteria be necessary “to protect human health and the environment.” Further, EPA stated in the Proposed Rule as follows:

[I]n developing the proposed RCRA subtitle D option for CCRs, EPA considered a number of existing requirements as relevant models for minimum national standards for the safe disposal of CCRs. The primary source was the existing requirements under 40 CFR part 258, applicable to municipal solid waste landfills, which provide a comprehensive framework for all aspects of disposal in land-based units, such as CCR landfills. Based on the Agency’s substantial experience with these requirements, EPA believes 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 believes that by incorporating the revised criteria in Part 258—which were promulgated by EPA as those necessary to protect human health and the environment—the minimum requirements set out in H.R. 2218 fully protect human health and the environment.

Subparagraph (A) of paragraph (c)(2) of new section 4011 specifically includes the revised criteria from 40 CFR Part 258 regarding design requirements. 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, except that the leachate collection system requirements in section 258.40(a)(2) do not apply to structures that are surface impoundments.

Subparagraph (B) of paragraph (c)(2) of new section 4011 requires that all structures that receive coal combustion residuals on or after the date of enactment have groundwater monitoring as described in 40 CFR 258 subpart E. This subparagraph also incorporates additional groundwater monitoring constituents specific to coal combustion residuals. Specifically included in the minimum requirements for detection monitoring are: boron, chloride, conductivity, fluoride, mercury, pH, sulfate, and total dissolved solids. For assessment monitoring establishing a groundwater protection standard, and assessment of corrective measures, the minimum requirements include: aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids.

Subparagraph (C) of paragraph (c)(2) of new section 4011 specifies the applicable requirements in 40 CFR 258.60 for closure. The Committee recognizes that certain requirements in 40 CFR 258.60 are not applicable and therefore, are excluded.

Subparagraph (D) of paragraph (c)(2) of new section 4011 requires a permit program to include the requirements in 40 CFR 258.61 for post-closure care.

Subparagraph (E) 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 (F) of paragraph (c)(2) of new section 4011 requires a permit program to include the requirements in 40 CFR Part 258.24. 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, but this Title requires that structures that receive coal combustion residuals after enactment also comply with the revised criteria for air quality described in section 40 CFR 258.24.

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

Subparagraph (H) of paragraph (c)(2) of new section 4011 requires a permit program to include the surface water requirements in section 40 CFR 258.27.

Subparagraph (I) of paragraph (c)(2) of new section 4011 requires a permit program to include the recordkeeping requirements in section 40 CFR 258.29.

Subparagraph (J) of paragraph (c)(2) of new section 4011 requires a permit program to apply the revised criteria for run-on and run-off control systems described in 40 CFR 258.26 to landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals after the date of enactment.

Subparagraph (K) of paragraph (c)(2) of new section 4011 requires a permit program to apply only the revised criteria for run-off control systems described in 40 CFR 258.26(a)(2) to surface impoundments that receive coal combustion residuals after the date of enactment.

Paragraph (c)(3) of new section 4011 sets a schedule for permit program implementation for structures that receive CCR on or after the date of enactment. Not later than when a State submits its permit program certification to the Administrator, 30 months after a State notifies the Administrator of EPA that it does not intend to develop a CCR permit program, or 36 months after the date of enactment when the Administrator is implementing a permit program under subsection (e)(3), the implementing agency must notify owners of structures receiving CCRs, as of the date of enactment, of the obligation to obtain a permit and of the requirements (in subparagraph (c)(3)(B)) that the owners or operators will be required to comply with during the period of interim operation. The Committee intends that not later than 3 years after the date of enactment, all owners or operators of structures will be notified of the applicable coal combustion residual permit program requirements.

Subparagraph (c)(3)(B) of new section 4011 establishes a schedule by which owners or operators of structures that are receiving

CCRs as of the date of enactment must comply with certain requirements from subsections (c)(1) and (c)(2); in particular, the (c)(1) requirements regarding creation of an emergency action plan, annual inspection regarding the design, construction, and maintenance of surface impoundments, and the (c)(2) requirements for groundwater monitoring and corrective action, air quality, surface water, run-on and run-off for land-based units, run-off for surface impoundments, and specific groundwater record keeping requirements. Compliance with these requirements must begin no later than 12 months after a State submits its certification, 42 months after the Administrator receives notice that a State will not operate its own permit program, or 48 months after enactment for a program to be implemented by the Administrator under (e)(3). The Committee intends that no later than 4 years after the date of enactment, owners or operators of structures will comply with the specified requirements.

Subparagraph (c)(3)(C) of new section 4011 provides that the implementing agency must issue a permit or deny an application within 48 months after the State submits its certification, 78 months after the Administrator receives notice from a State that it does not intend to operate its own permit program, or 84 months after enactment for programs implemented by the Administrator. The implementing agency must collaborate with the structure's owner or operator to identify a deadline by which a permit application must be submitted. The Committee intends that permits will be issued within seven years from the date of enactment.

Subparagraph (c)(3)(D) of new section 4011 provides that structures receiving CCRs on or after the date of enactment may continue to operate under existing authority between the date of enactment and the deadlines by which they must comply with the requirements in Subparagraph (c)(3)(B). After the applicable deadlines and before receiving a permit that meets the minimum requirements, a structure in compliance with the requirements in subparagraph (c)(3)(B) may continue to operate unless it is required by the implementing agency to close under Paragraph (5). The purpose of this provision is to ensure that owners or operators may continue to operate from the date of enactment through the interim period of operation and to ensure that owners and operators that are in compliance with the requirements in subparagraph (c)(3)(B) may continue to operate even in the absence of a permit until such time as the implementing agency issues a final permit that incorporates the minimum requirements for a coal combustion residuals permit program or issues a permit denial.

Paragraph (c)(4) of new section 4011 applies, in addition to the groundwater monitoring and corrective action requirements in (c)(2)(B), to surface impoundments that do not have a liner system described in 40 CFR 258.40(b) and that do not meet the design criteria described in 40 CFR 258.40(a)(1).

Subparagraph (c)(4)(A) of new section 4011 provides that surface impoundments that, within 10 years of the date of enactment, are required to undergo an assessment of corrective measures for any constituent identified in paragraph (2)(B) for which assessment groundwater monitoring is required, must meet the groundwater protection standard established by the agency implementing the

permit program at the relevant point of compliance as soon as practicable, but not later than 10 years from the date of enactment.

Subparagraph (c)(4)(B) of new section 4011 provides that surface impoundments that are subject to a State corrective action requirement as of the date of enactment, must meet the groundwater protection standard established by the agency implementing the permit program at the relevant point of compliance as soon as practicable, but not later than 8 years from the date of enactment.

Subparagraph (c)(4)(C) of new section 4011 provides that the deadlines for meeting the groundwater protection standard in subparagraphs (B) and (C) may be extended by the agency responsible for implementing the coal combustion residuals permit program, after opportunity for public notice and comment, based on the following factors: (1) consideration of the effectiveness of any interim measures implemented by the owner or operator of the facility under section 258.58(a)(3) of title 40, Code of Federal Regulations; (2) the level of progress demonstrated in meeting the groundwater protection standard; (3) the potential for other adverse human health or environmental exposures attributable to the contamination from the surface impoundment undergoing corrective action; and (4) the lack of available alternative management capacity for the coal combustion residuals and related materials managed in the impoundment at the facility at which the impoundment is located if the owner or operator has used best efforts, as necessary, to design, obtain any necessary permits, finance, construct, and render operational the alternative management capacity during the time period for meeting the groundwater protection standard. The deadlines may not be extended if there has been contamination of public or private drinking water systems attributable to a surface impoundment undergoing corrective action, unless the contamination has been addressed by providing a permanent replacement water system.

Subparagraph (c)(4)(D) of new section 4011 provides that if the impoundments identified in (c)(4)(A) and (c)(4)(B) do not meet the groundwater protection standard, they must cease receiving coal combustion residuals and initiate closure pursuant to subparagraph (c)(5). This subparagraph also provides that, within 90 days of the date an assessment of corrective measures is initiated, the owner or operator of a surface impoundment must implement interim measures, as necessary, under the factors in 40 CFR 58.58(a)(3). For surface impoundments subject to a State corrective action requirement on the date of enactment, the owner or operator must implement interim measures, as necessary, if interim measures have not been previously implemented.

Subparagraph (c)(4)(E) of new section 4011 provides that surface impoundments that more than 10 years after date of enactment are required to undergo an assessment of corrective measures, shall cease receiving coal combustion residuals and initiate closure under subparagraph (c)(5) after alternative management capacity for the coal combustion residuals and related materials managed in the impoundment at the facility is available. The alternative management capacity is required to be developed as soon as practicable with the owner or operator using best efforts, to design, obtain necessary permits, finance, construct, and render operational the alternative management capacity. The owner or operator must, in col-

laboration with the agency responsible for implementing the coal combustion residuals permit program, prepare a written plan, subject to public notice and comment, which describes the steps necessary to develop the alternative management capacity and includes a schedule for completion.

Paragraph (c)(5) of new section 4011 provides that if an implementing agency, or the structure's owner or operator, determines that a structure should close, the time period and method for closure must be set forth in a closure plan. The deadline set out in the plan for completing closure must be as soon as practicable taking into account site-specific characteristics. The closure plan for surface impoundments must include removal of liquid and stabilization of remaining waste, as necessary to support the final cover. The Committee intends that closure of structures involve a range of site-specific factors and that the closure timeframes applicable to municipal solid waste landfills under 40 CFR, Part 258 not apply to CCRs. For that reason these time frames were excluded from the revised criteria in subsection (c)(2). 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 paragraph, would recognize this ancillary function and provide a reasonable time for alternative wastewater treatment facilities to be permitted and constructed.

Subsection (d) of new section 4011 provides for Federal review of State permit programs and 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; (D) implement a permit program that meets the specifications in (c); (E) implement a permit program that is consistent with the certification under (b)(2) and for which the State continues to have in effect the statutes or regulations necessary to implement such permit program; or (F) if a State fails, upon written request from the Administrator, to make available information regarding whether the State has complied with the requirements in subparagraphs (A) through (E). The information

must be made available within 90 days of the Administrator's written request. The information request may be made only if the Administrator does not possess the information requested at the time of the request.

Paragraph (d)(3) 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 requirements in subparagraphs (A) through (F). This paragraph 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 except for a deficiency under subparagraph (F) for which the deadline may not be later than 90 days.

Paragraph (d)(4) of new section 4011 sets out deficiency criteria with which the Administrator can determine if a State permit does not meet the requirements of paragraphs (A) through (E) of paragraph (d)(1), or to implement a program for a State under subsection (e). These criteria include whether a State's statutes or regulations are not sufficient to meet the minimum requirements in subsection (c); whether a State has failed to promulgate or enact necessary new statutes or regulations; whether actions by a State legislature or court limit such State statutes or regulations; whether a State permit program fails to issue permits required in (c)(1) or repeatedly issues permits that do not meet the requirements in subsection (c); whether a State fails to comply with public participation requirements of this section; whether a State fails to implement corrective action requirements; or whether enforcement of a State permit does not comply with new section 4011 because of failure to act on violations or failure to inspect. The Committee believes that the specific objective criteria listed in subparagraph (d)(4) provide the necessary parameters for EPA to determine whether a State permit program is deficient.

Subsection (e) of new section 4011 provides that the Administrator must implement and administer a permit program for a State only if: (1) the Governor of a State notifies the Administrator that the 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 public notice and comment, 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. A State may obtain review of this determination by the Administrator as if the determination was a final regulation under section 7006 of the Solid Waste Disposal Act. The Committee intends that the Administrator's authority under subsection (d) to assess—at any time—whether a State permit program is deficient, combined with the authority of the Administrator under subsection (e) to assume implementation of a deficient permit program, provides a legal backstop for State permit programs.

Paragraph (e)(3) provides that the Administrator must implement a permit program for structures that receive CCRs after en-

actment and that are within exterior boundaries of a State that a State does not have authority to regulate. The Committee intends that this provision only allow the Administrator to regulate structures on property governed by an Indian tribe.

Subsection (e) further requires 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) and specifically does not authorize a program implemented by the Administrator to include requirements not specifically identified in subsection (c).

Paragraph (e)(5) provides that when implementing a permit program under subsection (e), the Administrator may inspect, gather information, and enforce requirements of this Act using the inspection and enforcement authorities referred to in 4005(c)(2)(A) of the Solid Waste Disposal Act, which references 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 programs have not been assumed by the Administrator pursuant to the provisions of subsection (e).

Paragraph (e)(6) provides that if implementing a CCR permit program for a State under subsection (e), the Administrator must provide a 30 day period for public participation for granting an extension under subparagraph (c)(4)(C)(i) and when developing a plan under (c)(4)(E)(ii)(IV).

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 State notified the Administrator that it had chosen not to do so, a State may resume control of its permit program by notifying the Administrator that it will adopt and implement a permit program. Within six months of notification, the State must certify to EPA, pursuant to the requirements provided in subsection (b)(2), that its program meets the minimum specifications for a permit program. Before a State may resume authority for implementation, it must receive from the Administrator 1) a determination, after notice and a 30 day period for public comment, that the State's permit program meets the minimum program specifications described in subsection (c) and 2) 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 (f)(1)(B) provides that, if the Administrator is implementing a permit program because a State failed to remedy an identified deficiency, a State may take back control of its permit program by (1) correcting only the deficiencies identified by the Administrator in the initial notice under subsection (d) and (2) receiving a determination from the Administrator, after notice and a 30 day period for public comment, that the State has 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 (f)(2)(A) 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 State has met applicable statutory criteria.

Subparagraph (f)(2)(B) 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 was a final regulation subject to judicial review under section 7006 of the Solid Waste Disposal Act.

Paragraph (f)(3) 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 would 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) changes 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 (f)(4) requires that there be only one permit program pursuant to new section 4011 in each State at any given time and requires that if a State regains control of a permit program from the Administrator, the Administrator cease to implement its permit program.

Subsection (g) 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.

Paragraph (h)(1) 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 (h)(2) requires that, with respect to the regulation of coal combustion residuals, the Administrator defer regulation to the States unless the Administrator makes a deficiency finding under subsection (d), is regulating coal combustion residuals in a State pursuant to a program authorized under subsection (e), 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 unintended consequences where State laws preclude a State from regulating more stringently than the Administrator. Paragraph (h)(2) also precludes the Administrator from promulgating additional regulations specifically for the regulation of coal combustion residuals.

Subparagraph (h)(2)(B) is a savings clause to clarify that nothing in the Coal Residuals Reuse and Management Act of 2013 affects 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 (h)(2)(C) allows the Administrator to provide enforcement assistance when requested by a State, but only the specific assistance requested by the State.

Subparagraph (h)(2)(D) provides that, unless a State requests enforcement assistance, if a State is implementing a permit program, the Administrator would have no concurrent enforcement authority including during the period of interim operation described in subsection (c)(3)(D).

Subparagraph (h)(2)(E) precludes the Administrator from finalizing the proposed rule published at pages 35138 through 35263 of volume 75 of the Federal Register.

Subparagraph (h)(2)(F) is a savings clause to clarify that nothing in the Coal Residuals Reuse and Management Act of 2013 affects the authority of the Administrator under the Comprehensive Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. 9601 et seq.).

Paragraph (h)(3) is a savings clause clarifying that this legislation does not affect the authority of a person to commence an action under section 7002 of the Solid Waste Disposal Act.

Subsection (i) provides that a permit program implemented by the Administrator under subsection (e) 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 this Title does not affect such State authorities.

Subsection (j) includes the following definitions:

- “Coal combustion residuals” includes 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. The Committee intends that permit programs created pursuant to new section 4011 regulate ash waste generated primarily from the

combustion of coal. “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.

- “Coal combustion residuals permit program” means all of the authorities, activities, and procedures that comprise the system of prior approval and conditions implemented by or for a State to regulate the management and disposal of coal combustion residuals or, as conditioned in this Title, by the Administrator for a State.

- “Code of Federal Regulations” means the Code of Federal Regulations (as in effect on the date of enactment of this section) or any successor regulations.

- “Implementing agency” means the lead State implementing agency in clause (b)(2)(B)(i) or the Administrator acting pursuant to subsection (e).

- “Permit; prior approval and conditions” means any authorization, license, or equivalent control document that incorporates the requirements and revised criteria in subsection (c).

- “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). 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 the Solid Waste Disposal Act. These applicable provisions 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)].

Accordingly, the Committee expects that the Federal standard of protection, which is comprised of the minimum requirements in this legislation, will protect human health and the environment without promulgation of new Federal regulations for coal combustion residuals. As the Environmental Protection Agency acknowledged in its Proposed Rule, 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.”

Finally, while the legislation 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.

- “Structure” includes landfills, surface impoundments, or other land-based units which may receive coal combustion residuals. While the Committee is aware that 40 CFR Part 258 was promulgated to regulate municipal solid waste landfills, the Committee 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 leaves no gaps between the requirements of 40 CFR Part 258 and what is required to regulate land-based disposal units other than solid waste landfills.

“Structure” does not include any land-based unit that receives only de minimis quantities of coal combustion residuals if the presence of coal combustion residuals is incidental to the material managed in the unit. Nor does the Committee intend “structure” to include land-based units at coal-fired electric power plants—such as cooling water, polishing, or storm water ponds—which receive small or incidental amounts of, and are not intended to serve as disposal structures for, coal combustion residuals. The Committee also does not intend that the term “other land-based unit” include temporary piles or other inventories of coal combustion residuals stored by manufacturers for purposes of recycling or beneficial reuse.

Section 3. 2000 Regulatory determination

This section provides that nothing in this Title 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).

Section 4. Technical assistance

This section provides that nothing in this Title be construed to affect the authority of a State to request, or the Administrator to provide, technical assistance under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

Section 5. Federal Power Act

This section provides that nothing in this Title be construed to affect the obligations of the owner or operator of a structure under section 215(b)(1) of the Federal Power Act (16 U.S.C. 824o(b)(1)).”

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
Subtitle A—General Provisions

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 D—State or Regional Solid Waste Plans						
Sec. 4001. Objectives of subtitle.						
*	*	*	*	*	*	*
Sec. 4011. <i>Management and disposal of coal combustion residuals.</i>						
*	*	*	*	*	*	*
Subtitle D—State or Regional Solid Waste Plans						
*	*	*	*	*	*	*

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

(a) *STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.*—Each State may adopt, implement, and enforce a coal combustion residuals permit program if such State provides the notification required under subsection (b)(1), and the certification required under subsection (b)(2).

(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)(3)(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 subsection (f)(1)(A)), 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 implementing agency shall submit to the Administrator a certification that such coal combustion residuals permit program meets the requirements described in subsection (c).

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

- (i) a letter identifying the lead State implementing agency, 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) an explanation of how the State coal combustion residuals permit program meets the requirements of this section, including a description of the State’s—

(I) process to inspect or otherwise determine compliance with such permit program;

(II) process to enforce the requirements of such permit program;

(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program;

(IV) statutes, regulations, or policies pertaining to public access to information, such as groundwater monitoring data; and

(V) statutes, regulations, or policies pertaining to structural integrity or dam safety that may be applied to structures through such permit program;

(iv) a certification that the State has in effect, at the time of certification, statutes or regulations necessary to implement a coal combustion residuals permit program that meets the requirements described in subsection (c); and

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

(C) **UPDATES.**—A State may update the certification as needed to reflect changes to the coal combustion residuals permit program.

(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 implementing agency shall maintain an approved permit program or other system of prior approval and conditions under section 4005(c) or an authorized program under section 3006.

(c) **REQUIREMENTS FOR A COAL COMBUSTION RESIDUALS PERMIT PROGRAM.**—A coal combustion residuals permit program shall consist of the following:

(1) **GENERAL REQUIREMENTS.**—

(A) **IN GENERAL.**—The implementing agency shall—

(i) apply the subset of the revised criteria described in paragraph (2) to owners or operators of structures, including surface impoundments, that receive coal combustion residuals on or after the date of enactment of this section;

(ii) with respect to structures that are receiving coal combustion residuals as of the date of enactment of this section, take the actions required under paragraph (3);

(iii) impose requirements for surface impoundments that do not meet certain criteria pursuant to paragraph (4); and

(iv) require that closure of structures occur in accordance with paragraph (5).

(B) **STRUCTURAL INTEGRITY.**—

(i) **ENGINEERING CERTIFICATION.**—The implementing agency shall require that an independent registered professional engineer certify that—

(I) the design of each structure that receives coal combustion residuals on or after the date of enactment of this section is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein; and

(II) the construction and maintenance of the structure will ensure structural stability.

(ii) *EMERGENCY ACTION PLAN.*—The implementing agency shall require that the owner or operator of any structure that is a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section and that is classified by the State 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) prepare and maintain an emergency action plan that identifies responsible persons and actions to be taken in the event of a dam safety emergency.

(iii) *INSPECTION.*—

(I) *IN GENERAL.*—The implementing agency shall require that structures that are surface impoundments that receive coal combustion residuals on or after the date of enactment of this section be inspected not less than annually by an independent registered professional engineer to assure that the design, operation, and maintenance of the surface impoundment is in accordance with recognized and generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids which can be impounded therein, so as to ensure dam stability.

(II) *POTENTIALLY HAZARDOUS CONDITIONS.*—The implementing agency shall require that if an inspection under subclause (I), or a periodic evaluation under clause (iv), reveals a potentially hazardous condition, the owner or operator of the structure shall immediately take action to mitigate the potentially hazardous condition and notify appropriate State and local first responders.

(iv) *PERIODIC EVALUATION.*—The implementing agency shall require that structures that are surface impoundments that receive coal combustion residuals on or after the date of enactment of this section be periodically evaluated for appearances of structural weakness.

(v) *DEFICIENCY.*—

(I) *IN GENERAL.*—If the head of the implementing agency determines that a structure is deficient with respect to the requirements in clause (i), (iii), or (iv), the head of the agency has the authority to require action to correct the deficiency according to a schedule determined by the agency.

(II) *UNCORRECTED DEFICIENCIES.*—If a deficiency is not corrected according to the schedule, the head of the implementing agency has the authority to require that the structure close in accordance with paragraph (5).

(III) *DAM SAFETY CONSULTATION.*—In the case of a structure that is a surface impoundment, the head of the implementing agency shall, in making a determination under subclause (I), consult with appropriate State dam safety officials.

(C) *LOCATION.*—The implementing agency shall require that structures that first receive coal combustion residuals on or after the date of enactment of this section shall be constructed with a base located a minimum of 2 feet above the upper limit of the water table, unless it is demonstrated to the satisfaction of the implementing agency that—

(i) the hydrogeologic characteristics of a structure and surrounding land would preclude such a requirement; and

(ii) the function and integrity of the liner system will not be adversely impacted by contact with the water table.

(D) *WIND DISPERSAL.*—

(i) *IN GENERAL.*—The implementing agency shall require that owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section address wind dispersal of dust by requiring cover, or by wetting coal combustion residuals with water to a moisture content that prevents wind dispersal, facilitates compaction, and does not result in free liquids.

(ii) *ALTERNATIVE METHODS.*—Subject to the review and approval by the implementing agency, owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section may propose alternative methods to address wind dispersal of dust that will provide comparable or more effective control of dust.

(E) *PERMITS.*—The implementing agency shall require that owners or operators of structures that receive coal combustion residuals on or after the date of enactment of this section apply for and obtain permits incorporating the requirements of the coal combustion residuals permit program.

(F) *PUBLIC AVAILABILITY OF INFORMATION.*—Except for information with respect to which disclosure is prohibited under section 1905 of title 18, United States Code, the implementing agency shall ensure that—

(i) documents for permit determinations are made available for public review and comment under the public participation process described in subsection (b)(2)(B)(iii)(III) or in subsection (e)(6), as applicable;

(ii) final determinations on permit applications are made known to the public; and

(iii) groundwater monitoring data collected under paragraph (2) is publicly available.

(G) AGENCY AUTHORITY.—

(i) IN GENERAL.—The implementing agency has the authority to—

(I) obtain information necessary to determine whether the owner or operator of a structure is in compliance with the requirements of this subsection;

(II) conduct or require monitoring and testing to ensure that structures are in compliance with the requirements of this subsection; and

(III) enter, at reasonable times, any site or premise subject to the coal combustion residuals permit program for the purpose of inspecting structures and reviewing records relevant to the design, operation, and maintenance of structures.

(ii) MONITORING AND TESTING.—If monitoring or testing is conducted under clause (i)(II) by or for the implementing agency, the implementing agency shall, if requested, provide to the owner or operator—

(I) a written description of the monitoring or testing completed;

(II) at the time of sampling, a portion of each sample equal in volume or weight to the portion retained by or for the implementing agency; and

(III) a copy of the results of any analysis of samples collected by or for the implementing agency.

(2) REVISED CRITERIA.—The subset of the revised criteria referred to in paragraph (1)(A)(i) are as follows:

(A) DESIGN REQUIREMENTS.—For new structures, and lateral expansions of existing structures, that first receive coal combustion residuals on or 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, except that the leachate collection system requirements described in section 258.40(a)(2) of title 40, Code of Federal Regulations, do not apply to structures that are surface impoundments.

(B) GROUNDWATER MONITORING AND CORRECTIVE ACTION.—For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria regarding groundwater monitoring and corrective action requirements described in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this subparagraph, the revised criteria shall also include—

(i) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

(ii) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents alu-

minum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids.

(C) **CLOSURE.**—*For all structures that receive coal combustion residuals on or after the date of enactment of this section, in a manner consistent with paragraph (5), the revised criteria for closure described in subsections (a) through (c) and (h) through (j) of section 258.60 of title 40, Code of Federal Regulations.*

(D) **POST-CLOSURE.**—*For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for post-closure care described in section 258.61 of title 40, Code of Federal Regulations, except for the requirement described in subsection (a)(4) of that section.*

(E) **LOCATION RESTRICTIONS.**—*The revised criteria for location restrictions described in—*

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

(F) **AIR QUALITY.**—*For all structures that receive coal combustion residuals on or 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.*

(G) **FINANCIAL ASSURANCE.**—*For all structures that receive coal combustion residuals on or 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.*

(H) **SURFACE WATER.**—*For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations.*

(I) **RECORDKEEPING.**—*For all structures that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations.*

(J) **RUN-ON AND RUN-OFF CONTROL SYSTEMS FOR LAND-BASED UNITS.**—*For all landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for run-on and run-off control systems described in section 258.26 of title 40, Code of Federal Regulations.*

(K) **RUN-OFF CONTROL SYSTEMS FOR SURFACE IMPOUNDMENTS.**—*For all surface impoundments that receive coal combustion residuals on or after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.*

(3) *PERMIT PROGRAM IMPLEMENTATION FOR EXISTING STRUCTURES.*—

(A) *NOTIFICATION.*—Not later than the date on which a State submits a certification under subsection (b)(2), not later than 30 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 36 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall notify owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section within the State of—

(i) the obligation to apply for and obtain a permit under subparagraph (C); and

(ii) the requirements referred to in subparagraph (B).

(B) *COMPLIANCE WITH CERTAIN REQUIREMENTS.*—Not later than 12 months after the date on which a State submits a certification under subsection (b)(2), not later than 42 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 48 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall require owners or operators of structures that are receiving coal combustion residuals as of the date of enactment of this section to comply with—

(i) the requirements under paragraphs (1)(B)(ii) and (iii), (1)(D), (2)(B), (2)(F), (2)(H), (2)(J), and (2)(K); and

(ii) the groundwater recordkeeping requirement described in section 258.29(a)(5) of title 40, Code of Federal Regulations.

(C) *PERMITS.*—

(i) *PERMIT DEADLINE.*—Not later than 48 months after the date on which a State submits a certification under subsection (b)(2), not later than 78 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 84 months after the date of enactment of this section with respect to a coal combustion residuals permit program that is being implemented by the Administrator under subsection (e)(3), as applicable, the implementing agency shall issue, with respect to a structure that is receiving coal combustion residuals as of the date of enactment of this section, a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

(ii) *APPLICATION DEADLINE.*—The implementing agency shall identify, in collaboration with the owner or operator of a structure described in clause (i), a reasonable deadline by which the owner or operator shall submit a permit application under such clause.

(D) *INTERIM OPERATION.*—

(i) *PRIOR TO DEADLINES.*—With respect to any period of time on or after the date of enactment of this section but prior to the applicable deadline in subparagraph (B), the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section may continue to operate such structure until such applicable deadline under the applicable authority in effect.

(ii) *PRIOR TO PERMIT.*—Unless the implementing agency determines that the structure should close pursuant to paragraph (5), if the owner or operator of a structure that is receiving coal combustion residuals as of the date of enactment of this section meets the requirements referred to in subparagraph (B) by the applicable deadline in such subparagraph, the owner or operator may operate the structure until such time as the implementing agency issues, under subparagraph (C), a final permit incorporating the requirements of the coal combustion residuals permit program, or a final denial for an application submitted requesting such a permit.

(4) *REQUIREMENTS FOR SURFACE IMPOUNDMENTS THAT DO NOT MEET CERTAIN CRITERIA.*—

(A) *SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES WITHIN 10 YEARS OF THE DATE OF ENACTMENT.*—

(i) *IN GENERAL.*—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of subparagraph (D) if the surface impoundment—

(I) does not—

(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

(II) within 10 years after the date of enactment of this section, is required under section 258.56(a) of title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

(ii) *DEADLINE TO MEET GROUNDWATER PROTECTION STANDARD.*—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, estab-

lished by the implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective measures are required shall be met—

(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

(II) not later than 10 years after the date of enactment of this section.

(B) **SURFACE IMPOUNDMENTS SUBJECT TO A STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.**—

(i) **IN GENERAL.**—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment of this section to comply with the requirements in clause (ii) of this subparagraph and clauses (i) and (ii) of subparagraph (D) if the surface impoundment—

(I) does not—

(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

(II) as of the date of enactment of this section, is subject to a State corrective action requirement.

(ii) **DEADLINE TO MEET GROUNDWATER PROTECTION STANDARD.**—Except as provided in subparagraph (C), the implementing agency shall require that the groundwater protection standard, for surface impoundments identified in clause (i) of this subparagraph, established by the implementing agency under section 258.55(h) or 258.55(i) of title 40, Code of Federal Regulations, for any constituent for which corrective measures are required shall be met—

(I) as soon as practicable at the relevant point of compliance, as described in section 258.40(d) of title 40, Code of Federal Regulations; and

(II) not later than 8 years after the date of enactment of this section.

(C) **EXTENSION OF DEADLINE.**—

(i) **IN GENERAL.**—Except as provided in clause (ii) of this subparagraph, the deadline for meeting a groundwater protection standard under subparagraph (A)(ii) or (B)(ii) may be extended by the implementing agency, after opportunity for public notice and comment under the public participation process described in subsection (b)(2)(B)(iii)(III), or in subsection (e)(6) based on—

(I) the effectiveness of any interim measures implemented by the owner or operator of the facility under section 258.58(a)(3) of title 40, Code of Federal Regulations;

(II) the level of progress demonstrated in meeting the groundwater protection standard;

(III) the potential for other adverse human health or environmental exposures attributable to the contamination from the surface impoundment undergoing corrective action; and

(IV) the lack of available alternative management capacity for the coal combustion residuals and related materials managed in the impoundment at the facility at which the impoundment is located if the owner or operator has used best efforts, as necessary, to design, obtain any necessary permits, finance, construct, and render operational the alternative management capacity during the time period for meeting a groundwater protection standard in subparagraph (A)(ii) or (B)(ii).

(ii) *EXCEPTION.*—The deadline under subparagraph (A)(ii) or (B)(ii) shall not be extended if there has been contamination of public or private drinking water systems attributable to a surface impoundment undergoing corrective action, unless the contamination has been addressed by providing a permanent replacement water system.

(D) *ADDITIONAL REQUIREMENTS.*—

(i) *CLOSURE.*—If the deadline under subparagraph (A)(ii), (B)(ii), or (C) is not satisfied, the surface impoundment shall cease receiving coal combustion residuals and initiate closure under paragraph (5).

(ii) *INTERIM MEASURES.*—

(I) *IN GENERAL.*—Except as provided in subclause (II), not later than 90 days after the date on which the assessment of corrective measures is initiated, the owner or operator of a surface impoundment described in subparagraph (A) or (B) shall implement interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.

(II) *IMPOUNDMENTS SUBJECT TO STATE CORRECTIVE ACTION REQUIREMENT AS OF THE DATE OF ENACTMENT.*—Subclause (I) shall only apply to surface impoundments subject to a State corrective action requirement as of the date of enactment of this section if the owner or operator has not implemented interim measures, as necessary, under the factors in section 258.58(a)(3) of title 40, Code of Federal Regulations.

(E) *SURFACE IMPOUNDMENTS THAT REQUIRE ASSESSMENT OF CORRECTIVE MEASURES MORE THAN 10 YEARS AFTER DATE OF ENACTMENT.*—

(i) *IN GENERAL.*—In addition to the groundwater monitoring and corrective action requirements described in paragraph (2)(B), the implementing agency shall require a surface impoundment that receives coal combustion residuals on or after the date of enactment

of this section to comply with the requirements in clause (ii) if the surface impoundment—

(I) does not—

(aa) have a liner system described in section 258.40(b) of title 40, Code of Federal Regulations; and

(bb) meet the design criteria described in section 258.40(a)(1) of title 40, Code of Federal Regulations; and

(II) more than 10 years after the date of enactment of this section, is required under section 258.56(a) title 40, Code of Federal Regulations, to undergo an assessment of corrective measures for any constituent covered under subpart E of part 258 of title 40, Code of Federal Regulations, or otherwise identified in paragraph (2)(B)(ii) of this subsection, for which assessment groundwater monitoring is required.

(ii) REQUIREMENTS.—

(I) CLOSURE.—The surface impoundments identified in clause (i) shall cease receiving coal combustion residuals and initiate closure in accordance with paragraph (5) after alternative management capacity at the facility is available for the coal combustion residuals and related materials managed in the impoundment.

(II) BEST EFFORTS.—The alternative management capacity shall be developed as soon as practicable with the owner or operator using best efforts to design, obtain necessary permits for, finance, construct, and render operational the alternative management capacity.

(III) ALTERNATIVE CAPACITY MANAGEMENT PLAN.—The owner or operator shall, in collaboration with the implementing agency, prepare a written plan that describes the steps necessary to develop the alternative management capacity and includes a schedule for completion.

(IV) PUBLIC PARTICIPATION.—The plan described in subclause (III) shall be subject to public notice and comment under the public participation process described in subsection (b)(2)(B)(iii)(III) or in subsection (e)(6), as applicable.

(5) CLOSURE.—

(A) IN GENERAL.—If it is determined by the implementing agency that a structure should close because the requirements of a coal combustion residuals permit program are not being satisfied with respect to such structure, or if it is determined by the owner or operator that a structure should close, the time period and method for the closure of such structure shall be set forth in a closure plan that establishes a deadline for completion of closure as soon as practicable and that takes into account the nature and the site-specific characteristics of the structure to be closed.

(B) *SURFACE IMPOUNDMENT.*—*In the case of a surface impoundment, the closure plan under subparagraph (A) shall require, at a minimum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.*

(d) *FEDERAL REVIEW OF STATE PERMIT PROGRAMS.*—

(1) *IN GENERAL.*—*The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (3) if at any time the State—*

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

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

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

(D) *is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2), that meets the requirements described in subsection (c);*

(E) *is not implementing a coal combustion residuals permit program, with respect to which the State has submitted a certification under subsection (b)(2)—*

(i) *that is consistent with such certification; and*

(ii) *for which the State continues to have in effect statutes or regulations necessary to implement such program; or*

(F) *does not make available to the Administrator, within 90 days of a written request, specific information necessary for the Administrator to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E).*

(2) *REQUEST.*—*If a request described in paragraph (1)(F) is proposed pursuant to a petition to the Administrator, the Administrator shall only make the request if the Administrator does not possess the information necessary to ascertain whether the State has satisfied the requirements described in subparagraphs (A) through (E) of such paragraph.*

(3) *CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.*—*A notice provided under paragraph (1) shall—*

(A) *include findings of the Administrator detailing any applicable deficiencies described in subparagraphs (A) through (F) of paragraph (1); and*

(B) *identify, in collaboration with the State, a reasonable deadline by which the State shall remedy such applicable deficiencies, which shall be—*

(i) *in the case of a deficiency described in subparagraphs (A) through (E) of paragraph (1), not earlier than 180 days after the date on which the State receives the notice; and*

(ii) *in the case of a deficiency described in paragraph (1)(F), not later than 90 days after the date on which the State receives the notice.*

(4) *CRITERIA FOR DETERMINING DEFICIENCY OF STATE PERMIT PROGRAM.*—*In making a determination whether a State has failed to satisfy the requirements described in subparagraphs*

(A) through (E) of paragraph (1), or a determination under subsection (e)(1)(B), the Administrator shall consider, as appropriate—

(A) whether the State's statutes or regulations to implement a coal combustion residuals permit program are not sufficient to meet the requirements described in subsection (c) because of—

(i) failure of the State to promulgate or enact new statutes or regulations when necessary; or

(ii) action by a State legislature or court striking down or limiting such State statutes or regulations;

(B) whether the operation of the State coal combustion residuals permit program fails to comply with the requirements of subsection (c) because of—

(i) failure of the State to issue permits as required in subsection (c)(1)(E);

(ii) repeated issuance of permits by the State which do not meet the requirements of subsection (c);

(iii) failure of the State to comply with the public participation requirements of this section; or

(iv) failure of the State to implement corrective action requirements as described in subsection (c)(2)(B); and

(C) whether the enforcement of a State coal combustion residuals permit program fails to comply with the requirements of this section because of—

(i) failure to act on violations of permits, as identified by the State; or

(ii) repeated failure by the State to inspect or otherwise determine compliance pursuant to the process identified in subsection (b)(2)(B)(iii)(I).

(e) IMPLEMENTATION BY ADMINISTRATOR.—

(1) FEDERAL BACKSTOP AUTHORITY.—The Administrator shall implement a coal combustion residuals permit program for a State only if—

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

(B) the State has received a notice under subsection (d) and the Administrator determines, after providing a 30-day period for notice and public comment, that the State has failed, by the deadline identified in the notice under subsection (d)(3)(B), to remedy the deficiencies detailed in the notice under subsection (d)(3)(A); or

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

(2) REVIEW.—A State may obtain a review of a determination by the Administrator under this subsection as if the determination was a final regulation for purposes of section 7006.

(3) OTHER STRUCTURES.—For structures that receive coal combustion residuals on or after the date of enactment of this section located on property within the exterior boundaries of a State that the State does not have authority or jurisdiction to regulate, the Administrator shall implement a coal combustion residuals permit program only for those structures.

(4) *REQUIREMENTS.*—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1) or (3), the permit program shall consist of the requirements described in subsection (c).

(5) *ENFORCEMENT.*—

(A) *IN GENERAL.*—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1)—

(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is implementing the coal combustion residuals permit program; and

(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section in the State.

(B) *OTHER STRUCTURES.*—If the Administrator implements a coal combustion residuals permit program under paragraph (3)—

(i) the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures for which the Administrator is implementing the coal combustion residuals permit program; and

(ii) the Administrator may use those authorities to inspect, gather information, and enforce the requirements of this section for the structures for which the Administrator is implementing the coal combustion residuals permit program.

(6) *PUBLIC PARTICIPATION PROCESS.*—If the Administrator implements a coal combustion residuals permit program for a State under this subsection, the Administrator shall provide a 30-day period for the public participation process required in paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of subsection (c).

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

(1) *STATE CONTROL.*—

(A) *NEW ADOPTION, OR RESUMPTION OF, AND IMPLEMENTATION BY STATE.*—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), or 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, after providing a 30-day period for notice and public comment, that the State coal combustion residuals permit program meets the requirements described in subsection (c); 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 only the deficiencies detailed in the notice pursuant to subsection (d)(3)(A); and

(ii) receiving from the Administrator—

(I) a determination, after providing a 30-day period for notice and public comment, 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.

(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 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.*—Program requirements of, and 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 program requirements, actions, and orders until such time as—

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

(ii) the State or the Administrator, whichever took the action or issued the order, 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)(1) for such State.

(g) *EFFECT ON DETERMINATION UNDER 4005(c) OR 3006.*—The Administrator shall not consider the implementation of a coal combus-

tion 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) *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 subsections (d) and (e) and section 6005, 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 as affecting the authority of the Administrator under section 7003 with respect to coal combustion residuals.

(C) *ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.*—Upon request from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide to such State agency only the enforcement assistance requested.

(D) *CONCURRENT ENFORCEMENT.*—Except as provided in subparagraph (C), the Administrator shall not have concurrent enforcement authority when a State is implementing a coal combustion residuals permit program, including during any period of interim operation described in subsection (c)(3)(D).

(E) *OTHER AUTHORITY.*—The Administrator shall not have authority to finalize the proposed rule published at pages 35128 through 35264 of volume 75 of the Federal Register (June 21, 2010).

(F) *OTHER RESPONSE AUTHORITY.*—Nothing in this section shall be construed as affecting the authority of the Administrator under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) with respect to coal combustion residuals.

(3) *CITIZEN SUITS.*—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

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

(j) *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 all of the authorities, activities, and procedures that comprise the system of prior approval and conditions implemented by or for a State to regulate the management and disposal of coal combustion residuals.

(3) **CODE OF FEDERAL REGULATIONS.**—The term “Code of Federal Regulations” means the Code of Federal Regulations (as in effect on the date of enactment of this section) or any successor regulations.

(4) **IMPLEMENTING AGENCY.**—The term “implementing agency” means the agency responsible for implementing a coal combustion residuals permit program for a State, which shall either be the lead State implementing agency identified under subsection (b)(2)(B)(i) or the Administrator pursuant to subsection (e).

(5) **PERMIT; PRIOR APPROVAL AND CONDITIONS.**—Except as provided in subsections (b)(3) and (g), the terms “permit” and “prior approval and conditions” mean any authorization, license, or equivalent control document that incorporates the requirements of subsection (c).

(6) **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).

(7) **STRUCTURE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the term “structure” means a landfill, surface impoundment, or other land-based unit which receives, or is intended to receive, coal combustion residuals.

(B) **DE MINIMIS RECEIPT.**—The term “structure” does not include any land-based unit that receives only de minimis quantities of coal combustion residuals if the presence of coal combustion residuals is incidental to the material managed in the unit.

* * * * *

DISSENTING VIEWS BY REPRESENTATIVE JOHN D.
DINGELL

This is a poor piece of legislation that does nothing to address the underlying issue of coal combustion residual disposal or beneficial reuse through recycling. It is not ready for primetime and stands the traditional way in which we have dealt with the affairs of EPA on its ear. The minority side is prepared to work with our Republican friends to write a good bill. It is easily possible for this committee to write such a piece of legislation. However, the majority has decided to recycle language from the Senate that the Senate admits needs significant revisions.

By allowing states to each create their own program, what we're doing is setting up so we'll have some more fine spills of this nasty stuff. The spill in Wisconsin into Lake Michigan demonstrated that a spill in one state has the potential to affect neighboring state. This legislation does nothing to address the issue of legacy coal ash retention ponds that would not be covered by this bill nor does it provide adequate protections to sources of ground or surface water. Like other environmental laws and regulations that have been in effect for decades, we need a national standard to ensure that treasures such as the Great Lakes and our scenic waters are safe from these spills.

I understand this is an issue that must be addressed. The regulations proposed by EPA may prevent the beneficial use and recycling of coal ash and would hinder not only utilities but also the construction industry. However, as much as I want there to be momentum to move a solution forward, I do not believe this legislation does enough to address the above concerns. The minority would be glad to work and we're glad to help the majority, but we certainly don't want to be embarrassed by putting anything like this on the House floor and then telling people how it's going to help because I know, as sure as God made green apples, that we're going to see very shortly that people are going to be denouncing this legislation.

JOHN D. DINGELL.

DISSENTING VIEWS BY REPRESENTATIVES HENRY A.
WAXMAN AND PAUL D. TONKO

The Coal Residuals Reuse and Management Act of 2013 would abandon the proven models of environmental protection and adopt an approach that we have every reason to believe would fail to protect human health and the environment if enacted. This proposal will not ensure that coal ash is disposed of safely, that groundwater is protected from contamination, that air pollution is adequately controlled, or that catastrophic dam failures are prevented.

THE BILL DOES NOT INCLUDE A STANDARD OF PROTECTION

The Resource Conservation and Recovery Act (RCRA) was enacted to protect public health and the environment from unsafe disposal of solid waste. It created duties reserved to the EPA and programs that could be delegated to the states.

Like other environmental statutes, Congress required state delegation under RCRA to be held to a federal standard of protection. For instance, the law requires that state programs governing municipal solid waste “protect human health and the environment.” These standards are the yardsticks by which it is determined whether a state’s efforts are adequate, and they ensure a consistent level of effort and protection throughout the nation. During the full committee markup of this bill, it was clearly stated by majority counsel that the standard of protection in RCRA would apply to all wastes under RCRA with the exception of coal ash.¹

Standards of protection are important because they ensure that every American family enjoys a basic level of protection. They prevent a race to the bottom among the states in which a state willing to have the laxest protections becomes the dumping ground for neighboring states. And they prevent the unfairness of one state allowing a facility within its borders to contaminate an adjacent state.

The states have recognized the value of federal standards of protection. According to the Environmental Council of the States, “EPA provides great value in achieving protection of human health and the environment by fulfilling numerous important functions, including; establishing minimum national standards [and] ensuring state-to-state consistency in the implementation of those national standards.”²

Although the majority claims in the Committee report that the bill establishes a federal standard of protection by setting some

¹House Committee on Energy and Commerce, *Full Committee Markup of H.R. 2218, the “Coal Residuals Reuse and Management Act of 2013;” H.R. 2226, the “Federal and State Partnership for Environmental Protection Act of 2013;” H.R. 2279, the “Reducing Excessive Deadline Obligations Act of 2013;” and H.R. 2318, the “Federal Facility Accountability Act of 2013,”* 113th Cong. (Jun. 19, 2013).

²Environmental Council of the States, *Resolution 00-1, On Environmental Federalism*, Revised Mar. 20, 2012 (online at www.ecos.org/section/policy/resolution).

“minimum requirements,” these minimum requirements do not ensure human health or the environment will be protected. Moreover, this use of the term “federal standard” is inconsistent with the historical use of the term in environmental policy and with the commonly understood definition of the term. The nonpartisan Congressional Research Service (CRS) has examined the legislation and found that it does not establish a federal standard of protection in the way that term has ever been used.³ By having a set of minimum requirements that are open to state interpretation, the bill does not create a nationally consistent level of protection.

Specifically, the Congressional Research Service has found that nothing in the bill “requires agencies implementing the permit program to establish criteria applicable to [coal ash] structures that will be those necessary to achieve a specific federal standard of protection.”⁴

The proponents of this legislation have been fiercely opposed to ensuring that state programs protect public health and the environment. A democratic amendment offered at the full committee markup to hold state coal ash programs to the same legal standard of protection as other wastes under RCRA was defeated in a party line vote.

If enacted, this legislation will not ensure a consistent national standard to protect against the risks of unsafe coal ash or guarantee that state programs will be protective.

COAL ASH POSES SERIOUS RISKS TO HUMAN HEALTH AND THE ENVIRONMENT

The Environmental Protection Agency (EPA) has documented groundwater contamination from coal ash disposal in 12 states and documented potential groundwater contamination from coal ash in 17 states.⁵ These are coal ash disposal sites where poor disposal practices are contaminating ground water, polluting surface water and harming property values.⁶ In fact, three of those sites are now on the National Priority List for cleanup under Superfund. According to public interest stakeholders, the numbers of damage cases are much higher.

Risks from uncontrolled dust have also been documented. In Gambrills, Maryland, toxic dust from a coal ash disposal site blew into neighboring homes posing threats to the community’s respiratory health.

Coal ash impoundments can also catastrophically fail as happened in Kingston, Tennessee. EPA is currently conducting inspections of existing coal ash impoundments for structural integrity issues. At this time, 28% of impoundments inspected have received a “poor” rating. Those receiving poor ratings include 11 dams that have been rated “high-hazard” because their failure will likely lead

³ Congressional Research Service, *Response to Committee Questions on Coal Ash Recycling and Oversight Act of 2013* (Jun. 4, 2013).

⁴ *Id.*

⁵ U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities*, 75 Fed. Reg. 35128 at 35143 (Jun. 21, 2010).

⁶ *Id.* at 35146.

to the loss of human life.⁷ At least one impoundment, Dominion's Chesapeake Energy Center in Chesapeake, Virginia, was required to address "urgent" recommendations, which EPA said, "require immediate attention to ensure the structural integrity of the impoundment in the near term."⁸

These risks are real, but unfortunately H.R. 2218 will not meaningfully address them.

THE MINIMUM CRITERIA ARE NOT SUFFICIENT TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT

The majority's Committee report states that the minimum requirements set out in the bill will be protective of human health and the environment. However, the requirements do not include the criteria necessary to protect human health and the environment from the risks of coal ash.

For example, the bill does not require existing impoundments that continue receiving coal ash after enactment to be retrofitted with simple liners. Preventing groundwater contamination is more effective and cheaper than cleaning it up, but the bill does not require this simple safeguard to prevent contamination.

Inexplicably, the legislation doesn't require an impoundment to control pollution until 10 years after groundwater contamination has been documented. Even then the legislation allows the impoundment to get additional deadline extensions or to avoid the requirement altogether by closing.

Protecting human health and the environment would require preventing groundwater contamination, not allowing it to continue for ten or more years after it is documented.

According to EPA, its most recent risk assessment for coal ash found "very high potential risks from unlined surface impoundments" including cancer and noncancer risks to the public and significant risks to the environment.⁹

Representative Waxman offered an amendment during Committee consideration to require state programs to include measures to prevent groundwater contamination, but the amendment was defeated in a nearly party line vote.

THE BILL LACKS FEDERAL BACKSTOP ENFORCEMENT AUTHORITY

This legislation lacks provisions to ensure that states enforce the permit programs for disposal of coal ash they put in place. That means that when a state fails to implement their program for coal ash disposal in a way that protects human health and the environment, there is no effective way for the EPA to intervene to ensure the necessary safeguards.

This limitation diverges from the proven model of environmental delegation. According to a recent report by the Congressional Re-

⁷U.S. Environmental Protection Agency, *Coal Combustion Residuals Impoundment Assessment Reports* (online at www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/).

⁸Letter from Suzanne Rudzinski, Director of the Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency to Pamela Faggert, Vice President and Chief Executive Officer, Dominion Resources Services (Jan. 7.2011) (online at www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/dom-chesa-power-request.pdf).

⁹U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals from Electric Utilities*, 75 Fed. Reg. 35128 at 35144 (Jun. 21, 2010).

search Service, in states that have been delegated implementation of federal pollution control laws, “EPA retains the authority and responsibility as determined by each statute to take enforcement measures, generally taking action when there is a violation of an EPA order or consent decree, or when the federal government deems a state to have failed to respond to a major violation in a timely and appropriate manner.”¹⁰ CRS concluded that this legislation fails to include these provisions. Instead, under this bill, if a state fails to do an adequate job of enforcing its program, EPA has only one remedy. EPA can take over a state program when the state has failed to remedy deficiencies in its program by a reasonable deadline set in collaboration with the state. However, such a takeover is highly unlikely to be taken in all but the most extreme circumstances and should offer little comfort to a community facing contamination in state where the state refuses to meaningfully act.

There are current examples of states failing to act to protect their citizens from unsafe and unpermitted releases. For example, in Labadie, Missouri, the state has known for over two decades of a leak that has been gushing 50,000 gallons of toxic coal waste a day, and yet nothing has been done about it. In 2011, the EPA Inspector General found that “state enforcement programs frequently do not meet national goals and states do not always take necessary enforcement actions.”¹¹ Additionally, the IG found that “state enforcement remains inconsistent across the country, providing unequal environmental benefits to the public and an unlevel playing field for regulated industries.”¹²

Representative Rush offered an amendment during Committee consideration to allow federal backstop enforcement authority, but the amendment failed on a party line vote.

THE BILL WILL NOT PROTECT VULNERABLE POPULATIONS

Coal ash contains toxic chemicals, including arsenic, lead, hexavalent chromium, and mercury. These and other chemicals pose a particular risk to certain vulnerable populations, including children, pregnant women, and workers.

Additionally, low-income communities and communities of color shoulder a disproportionate share of the health risks from disposal of coal combustion waste, as with so many environmental issues. Almost 70% of coal ash impoundments in the United States are in areas where household income is lower than the national median. For example, in Louisa, Kentucky, where the Big Sandy coal ash storage site is located, more than 29% of the community lives below the poverty line.

When the Tennessee Valley Authority coal ash impoundment in Kingston, Tennessee, failed, it released 5.4 million cubic yards of toxic sludge, blanketing the Emory River and 300 acres of surrounding land, and creating a Superfund site that could cost up to \$1.2 billion to remediate. The sludge from that spill was removed

¹⁰ Congressional Research Service, *Federal Pollution Control Laws: How are They Enforced?* (Jun. 18, 2013) (RL34384).

¹¹ U.S. Environmental Protection Agency, Office of Inspector General, *EPA Must Improve Oversight of State Enforcement* (Dec. 9, 2011) (12-P-0113) (online at www.epa.gov/oig/reports/2012/20111209-12-P-0113.pdf).

¹² *Id.*

and disposed of in a municipal solid waste landfill in Uniontown, Alabama, where 45% of the population falls below the poverty line.

Several homes are within 100 feet of the landfill where the dumping occurred. The local residents protested the decision, but they were unable to stop the dumping. Dust from the ash was not controlled, and it contaminated their homes, gardens and property. Sulfurous gases blew off the landfill, making people sick. Residents have experienced respiratory illness, headaches, dizziness, nausea, and vomiting. Runoff from the landfill into residential areas has shown arsenic levels 80 times the level allowed under the Safe Drinking Water Act.

Now, the company that operated the landfill has declared bankruptcy, and this community will be unable to recover damages for the harms they have suffered.

Coal ash disposal sites directly impact the health, livelihood, and home values for communities living around these dump sites, but the bill does nothing to ensure that these communities are protected from disproportionate adverse impacts. An amendment offered by Representative Christensen to require that state coal ash permit programs protect vulnerable populations including hot-spot communities was defeated in a nearly party line vote.

CHANGES IN THE MOST RECENT VERSION DO NOT ADDRESS THESE
ISSUES

This bill is based on the proposal that 90% of Democrats opposed when it was considered on the House floor in September of last year. It has been exhaustively analyzed by the Congressional Research Service and found severely wanting. And it has failed to get sufficient support in the U.S. Senate.

The bill reported from the Committee includes a number of small changes from the original discussion draft, none of which were drafted with the input of the Democratic members of the Committee. Some have little substantive effect. Some represent modest improvements. And some make the proposal even more problematic.

For instance, the legislation appears to clarify that EPA cannot find a state coal ash disposal program to be deficient on the basis that the state program is allowing public health to be harmed or groundwater to be contaminated. This clarification makes the legislation even more unworkable than the version considered during the last Congress and exacerbates the issues identified in previous versions of the legislation.

For the reasons stated above, we dissent from the views expressed in the Committee's report.

HENRY A. WAXMAN.
PAUL D. TONKO.