

IMPROVING COAL COMBUSTION RESIDUALS REGULATION
ACT OF 2015

JUNE 9, 2015.—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

MINORITY VIEWS

[To accompany H.R. 1734]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1734) 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 without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The legislation is a distinct approach to establishing permit programs under the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act or RCRA). It establishes, in statute, a Federal baseline for the regulation of coal combustion residuals in the form of minimum requirements that all State permit programs must incorporate. The minimum requirements in the legislation directly incorporate and effectively codify the protective standards set by the Environmental Protection Agency (EPA) in its final rule for coal ash, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities, 80 FR 21302 (April 17, 2015) (Final Rule). The legislation also establishes the process and deadlines for implementation of State permit programs.

BACKGROUND AND NEED FOR LEGISLATION

EPA Proposed Rule

On June 21, 2010, the 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 have created an enforceable permit program for coal combustion residuals under Subtitle C of RCRA. The other two proposals would have imposed self-implementing requirements under Subtitle D of RCRA. The Subtitle D proposal would have required the automatic phase out of surface impoundments regardless 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 have required a phase out of surface impoundments.

There was concern 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, threatened their beneficial re-use, and would have reversed prior regulatory determinations made by EPA. 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.

It was clear in developing a rule for coal combustion residuals that EPA faced a genuine dilemma: create an enforceable permit program for coal ash under Subtitle C of RCRA and thereby designate coal ash as a hazardous waste, or promulgate self-implementing standards for managing coal ash under Subtitle D and leave enforcement to citizen suits and litigation.

Litigation

On April 5, 2012, several environmental groups filed a lawsuit in the United States District Court for the District of Columbia to compel EPA to issue a final rule to regulate coal combustion residuals. Several other stakeholders also joined the litigation, including 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. On May 2, 2014, the United States District Court for the District of Columbia approved a Consent Decree and a December 19, 2014 deadline for EPA to publish a final coal ash rule.

Final Rule

On December 19, 2014, EPA released a pre-publication version of the final rule regulating coal combustion residuals (the Final Rule). The Final Rule regulates coal ash as a non-hazardous waste under Subtitle D of RCRA. While EPA selected the Subtitle D regulatory option, the Agency made it clear in the preamble to the rule that it was leaving open the option of regulating coal ash as a special waste under Subtitle C of RCRA and thereby reversing its prior regulatory determinations at some point in the future.

The Final Rule is self-implementing, meaning that it does not require issuance of permits and there will be no oversight or enforcement by a regulatory agency. Rather, owners and operators of facilities regulated under the Final Rule must comply with the requirements without the interaction of a regulatory authority by certifying compliance with the requirements and posting the certifications on an internet website. Also, because the Final Rule is promulgated under Subtitle D and does not require regulated facilities to obtain permits, does not require the States to adopt and implement the Final Rule, and cannot be enforced by EPA the Final Rule's only compliance mechanism is for a State or citizen group to bring a RCRA citizen suit in Federal district court under section 7002 of that statute against any facility that is alleged to be in noncompliance with the new requirements.

As States' permit programs do not operate in lieu of the Final Rule, there is potential for overlapping or dual regulatory programs. EPA is encouraging States to revise their Solid Waste Management Plans to incorporate the Final Rule. EPA notes in the preamble to the Final Rule that if a State revises its Solid Waste Management Plan to incorporate the Federal requirements, facilities in compliance with an EPA-approved State Solid Waste Management Plan for coal ash that is identical to or more stringent than the Final Rule should be viewed as meeting or exceeding the Federal criteria. However, because there is no mechanism to legally incorporate the Federal requirements into State solid waste management programs, even if a State adopts the Final Rule and incorporates the criteria into the Solid Waste Management Plan, the Final Rule remains in place as an independent set of requirements that must be met.

It is the Committee's expectation that H.R. 1734 would provide a legislative solution to the implementation issues associated with the Final Rule by authorizing State permit programs that incorporate the provisions of the Final Rule.

HEARINGS

On January 22, 2015, the Subcommittee on Environment and the Economy held a hearing entitled “EPA’s 2014 Final Rule: Disposal of Coal Combustion Residuals from Electric Utilities. The Subcommittee received testimony from:

- Mathy Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response, United States Environmental Protection Agency;
 - Thomas Easterly, Commissioner, Indiana Department of Environmental Management;
 - Michael Forbeck, Environmental Program Manager, Pennsylvania Department of Environment, Bureau of Waste Management;
 - Lisa Johnson, Chief Executive Officer and General Manager, Seminole Electric Cooperative, Inc.;
 - Thomas Adams, Executive Director, American Coal Ash Association;
 - James Rower, Executive Director, Utilities Solid Waste Activities Group;
 - Eric Shaeffer, Director, Environmental Integrity Project;
- and,
- Frank Holleman, Senior Attorney, Southern Environmental Law Center.

On March 18 and 24, 2015, the Subcommittee on Environment and the Economy held a hearing on a Discussion Draft entitled “Improving Coal Combustion Residuals Regulation Act of 2015.” The Subcommittee received testimony from:

- Mathy Stanislaus, Assistant Administrator of the Office of Solid Waste and Emergency Response, United States Environmental Protection Agency;
- David Paylor, Director, Virginia Department of Environmental Quality;
- Michael Forbeck, Environmental Program Manager, Pennsylvania Department of Environment, Bureau of Waste Management;
- James Roewer, Executive Director, Utilities Solid Waste Activities Group; and,
- Lisa Evans, Senior Administrative Counsel, Earthjustice.

COMMITTEE CONSIDERATION

On March 24 and 25, 2015, the Subcommittee on Environment and the Economy met in open markup session to consider the discussion draft entitled the “Improving Coal Combustion Residuals Regulation Act of 2015” and favorably forwarded the bill, without amendment, to the full Committee by a recorded vote of 16 yeas and 5 nays.

On April 13, 2015, Representative David McKinley introduced H.R. 1734, the “Improving Coal Combustion Residuals Regulation Act of 2015,” which was substantially similar to the bill forwarded by the Subcommittee.

On April 14 and 15, 2015, the Committee on Energy and Commerce met in open markup session to consider H.R. 1734 and favorably reported the bill, without amendment, to the House by a recorded vote of 32 yeas and 19 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were four record votes taken in connection with ordering H.R. 1734 reported. A motion by the Chair to order H.R. 1734 reported to the House, without amendment, was agreed to by a record vote of 32 yeas and 19 nays. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 114TH CONGRESS
ROLL CALL VOTE # 2**

BILL: H.R. 1734, the "Improving Coal Combustion Residuals Regulation Act of 2015"

AMENDMENT: A motion by Mr. Upton to order H.R. 1734 favorably reported to the House. (Final Passage)

DISPOSITION: **AGREED TO**, by a roll call vote of 32 yeas and 19 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Whitfield	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Pitts	X			Mr. Green			
Mr. Walden				Ms. DeGette			
Mr. Murphy	X			Ms. Capps		X	
Mr. Burgess	X			Mr. Doyle	X		
Mrs. Blackburn	X			Ms. Schakowsky		X	
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Ms. Matsui		X	
Mrs. McMorris Rodgers	X			Ms. Castor		X	
Mr. Harper	X			Mr. Sarbanes		X	
Mr. Lance	X			Mr. McNerney		X	
Mr. Guthrie	X			Mr. Welch		X	
Mr. Olson	X			Mr. Lujan		X	
Mr. McKinley	X			Mr. Tonko		X	
Mr. Pompeo	X			Mr. Yarmuth		X	
Mr. Kinzinger	X			Ms. Clarke		X	
Mr. Griffith	X			Mr. Loeb sack		X	
Mr. Bilirakis	X			Mr. Schrader	X		
Mr. Johnson	X			Mr. Kennedy		X	
Mr. Long	X			Mr. Cardenas		X	
Mrs. Eilmers	X						
Mr. Bucshon	X						
Mr. Flores	X						
Mrs. Brooks	X						
Mr. Mullin	X						
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						

04/15/2015

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing on March 18 and 24, 2015, and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal and objective of H.R. 1734 is to incorporate the technical requirements from EPA's Final Rule for coal combustion residuals into State-based regulatory programs 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. 1734, 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 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 1734 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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 28, 2015.

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. 1734, the Improving Coal Combustion Residuals Regulation Act of 2015.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1734—Improving Coal Combustion Residuals Regulation Act of 2015

Summary: H.R. 1734 would effectively codify a final rule published in the *Federal Register* on April 17, 2014, that establishes national management and disposal standards for 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, the rule and this legislation would allow states to create and enforce their own CCR permit programs. However, H.R. 1734 would enable the Environmental Protection Agency (EPA) to directly regulate CCR in any state that fails to set up its own CCR program or in states where EPA determines that the CCR permit program is deficient.

CBO estimates that implementing this legislation would cost \$2 million over the 2016–2020 period, subject to the availability of appropriated funds. Enacting H.R. 1734 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1734 would impose an intergovernmental mandate, as defined in the Unfunded Mandates Reform Act (UMRA), because it would require states to notify EPA about whether they will adopt and implement a permit program for CCRs. CBO estimates that the administrative cost of that mandate would be small and would fall well below the annual threshold established in UMRA for intergovernmental mandates (\$77 million, adjusted annually for inflation).

The bill contains no private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that implementing H.R. 1734 would cost EPA \$2 million in 2020. 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. 1734 will be enacted by the beginning of fiscal year 2016 and that the necessary amounts will be made available from appropriated funds.

Certification of State CCR Permit Programs

Based on information from EPA and other industry experts, CBO expects that all states with coal-fired power plants (47 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.

Because this legislation would not provide EPA with the authority to substantially review certifications, CBO estimates that EPA's workload for this activity would not be significant over the 2016–2020 period.

Review of existing State CCR Permit Programs

H.R. 1734 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 could increase beginning in 2020—after state programs are certified and operational—if EPA would need to review certain state 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 in all states, some reviews of programs in states with high coal consumption would probably be initiated beginning in 2020. 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, CBO expects that EPA would initiate reviews of CCR permit programs in several states beginning in 2020. Based on the cost of similar reviews, CBO estimates that work would cost 2 million in 2020. (Additional reviews and EPA costs could occur after 2020.)

Pay-As-You-Go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 1734 would impose an intergovernmental mandate, as defined in UMRA, because it would require states to notify EPA about whether they will adopt and implement a permit program for CCRs. CBO estimates that the cost of complying with that mandate would be small and would fall well below the annual threshold established in UMRA for intergovernmental mandates (\$77 million, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 1734 contains no private-sector mandates as defined in UMRA.

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

Estimate approved by: Theresa Gallo, 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. 1734 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. 1734 specifically directs to be completed no rule makings 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 entitles the Act the “Improving Coal Combustion Residuals Regulation Act of 2015” 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 permit program. The Committee expects that such a permit program will be adopted and implemented in every State that generates, stores, disposes of, or uses coal ash. 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 twenty-four months of enactment, that the permit program meets the specifications set out in this section. A State may request from EPA a twelve month extension of the deadline to certify a permit program. In order to receive an extension, a State must describe the efforts to meet the original deadline, demonstrate that the legislative or rulemaking procedures of the State are such that the

State cannot meet the original deadline, and provide a detailed schedule for completion and submission of the certification. 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 an explanation of how the State permit program will meet the minimum requirements and descriptions of the State's process to inspect and enforce the permit program, of the public participation process for promulgation of regulations and issuance of permits, and of the State statutes, regulations, or policies regarding public access to information—including information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure, and corrective action remedies. States must also identify any changes made to the definitions under section 257.53 of title 40, Code of Federal Regulations. Paragraph (b)(2) also requires States that intend to implement a permit program to provide a statement that it has fully effective statutes or regulations necessary to carry out the permit program, copies relevant statutes and regulations, a plan for response to a release from a structure or inactive surface impoundment that has the potential for impact beyond the property boundary, and a plan for coordination among States in the event of a release that crosses State lines. States may update a certification as necessary to reflect changes to the permit program.

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 necessary. 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 directly incorporates the requirements of the Final Rule and 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)(A) of new section 4011 provides that the implementing agency must require owners and operators of structures to apply for and obtain a permit incorporating the applicable requirements of the coal combustion residuals permit program.

Subparagraph (c)(1)(B) of new section 4011 requires the implementing agency to make certain information available to the public, including (i) documents for permit determinations, which must

also be made available for public review and comment; (ii) final determinations on permit applications; (iii) information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a qualified professional engineer), and corrective action remedies (which must be made available on the internet); and (iv) information regarding the exercise by the implementing agency of any discretionary authority granted by the legislation.

The Committee acknowledges that the Final Rule at 40 CFR 257.107 contains a requirement that owners or operators of a coal combustion disposal unit post compliance information on a publicly available website. The Committee recognizes that States typically make compliance information available to the public and that many States already post such information on the Internet. The legislation requires the implementing agency to ensure that such information is made publicly available on an Internet website, and the Committee believes that this requirement results in transparency equivalent to that of the requirement in the Final Rule.

Subparagraph (c)(1)(C) of new section 4011 provides the implementing agency with certain authority, including a requirement that the implementing agency enter any site or premise at which a structure or inactive surface impoundment is located in order to obtain necessary information and conduct monitoring or testing to ensure that structures are in compliance with the requirements of a permit program. Subparagraph (c)(1)(C) also provides that if monitoring or testing is conducted by or for the implementing agency that the implementing agency shall, if requested by an owner or operator, provide a written description of the monitoring or testing completed, a portion of the sample equal in volume or weight to the portion retained by the implementing agency, and a copy of the results of any analysis of samples.

Paragraph (c)(2) of new section 4011 specifies the criteria that must be applied to structures by all coal combustion residuals permit programs. The criteria directly incorporate the requirements established by EPA in the Final Rule. The Committee intends that all permit programs will incorporate the minimum requirements and the Committee believes that by directly incorporating the standards in the Final Rule, which were promulgated by EPA to protect human health and the environment, the minimum requirements set out in the legislation fully protect human health and the environment.

Subparagraph (c)(2)(A) of new section 4011 directly incorporates and requires a permit program to include, at a minimum, the design requirements from the Final Rule at 40 CFR 257.70 and 257.72.

Subparagraph (c)(2)(B)(i) of new section 4011 incorporates and requires a permit program to include, at a minimum, the criteria for groundwater monitoring and corrective action from the Final Rule at 40 CFR 257.90 through 257.98, including for purposes of detection monitoring (the constituents described in appendix III to 40 CFR part 257) and assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures (the constituents described in appendix IV to 40 CFR part 257). Subparagraph (c)(2)(B)(ii) of new section 4011 provides

certain discretionary authority for the implementing agency of a coal combustion residuals permit program, including the authority to (I) establish an alternative point of compliance for the down-gradient monitoring system as described in 40 CFR 257.51(a)(2); (II) establish alternative groundwater protection standards as provided in 40 CFR 258.55(j); (III) determine that corrective action is not necessary or technically feasible as provided in 40 CFR 258.57(e); (IV) allow remediation in accordance with other applicable Federal or State requirements for releases other than releases to groundwater if compliance with such requirements will result in the same level of protection as described in 40 CFR 257.96 through 257.98; (V) authorize alternative groundwater monitoring and corrective action requirements, provided that such requirements are no less stringent than the alternative requirements authorized to be established under subpart E of 40 CFR part 258; and (VI) allow the owner or operator of an existing unlined surface impoundment to continue to operate for eight years after the date of enactment only if the unlined surface impoundment undertakes corrective action under 40 CFR 257.96 through 257.98 and meets the applicable groundwater protection standard and any other applicable requirements established pursuant to this section.

The Committee intends that the groundwater monitoring and corrective action provisions of the Final Rule are the baseline for coal combustion residuals permit programs. However, the Committee recognizes that the Final Rule was drafted to be self-implementing and with that comes certain limitations. The Committee notes that in the preamble to the Final Rule, EPA identified several instances in the Final Rule where the Agency indicated that it would have written the rule differently and would have incorporated certain flexibility if the rule was to be implemented with regulatory oversight; including, establishing an alternative groundwater protection standard, an alternative point of compliance, and determining that remediation of a release is not necessary. The Committee also believes that, because the additional authority and exceptions to the groundwater monitoring and corrective action requirements of the Final Rule are discretionary and the implementing agency may analyze the site-specific conditions and decide that deviating from the requirements in the Final Rule is not appropriate, the exceptions and additional authority are fully protective of human health and the environment and facilitate effective implementation of the protections in the Final Rule.

With respect to releases other than releases to groundwater, the Committee intends that all releases will be addressed by the implementing agency, but notes that certain releases other than releases to groundwater may be more efficiently addressed through other applicable provisions of Federal or State law. The Committee believes that it is appropriate for the implementing agency to require remediation of the release under the other applicable authority so long as the remediation will result in the same level of protection as remediation under the corrective action provisions of the Final Rule at 40 CFR 257.96 through 257.98.

Subparagraph (c)(2)(C) of new section 4011 directly incorporates and requires a permit program to include at a minimum, the closure requirements from the Final Rule at 40 CFR 257.101, 257.102, and 257.103 with two exceptions. The closure criteria in 40 CFR

257.101(a)(1) apply to an existing structure that is an unlined surface impoundment only if the impoundment does not meet the applicable groundwater protection standard or any other applicable requirement and the closure criteria in 40 CFR 257.101(b)(1) do not apply to existing structures that fail to meet certain location restrictions.

The Committee intends that the closure requirements in the Final Rule are the default. However, the Committee believes that providing the implementing agency with discretionary authority to allow unlined surface impoundments a limited opportunity to implement corrective action rather than stop receiving coal combustion residuals within six months of exceeding a groundwater protection standard affords needed flexibility to States that would otherwise not be available without this legislation.

Subparagraph (c)(2)(D) of new section 4011 directly incorporates and requires a permit program to include at a minimum, the post-closure care requirements from the Final Rule at 40 CFR 257.104.

Subparagraph (c)(2)(E) 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 must comply with the location restrictions from the Final Rule at 40 CFR 257.60 through 257.64 and 257.3-1. Permitting of existing structures need only include the location restrictions in 40 CFR 257.64 and 257.3-1.

The Committee believes that retroactive application of all of the location restrictions in the Final Rule is not necessary because the implementing agency will analyze all structures and determine whether they can operate safely. Furthermore, the Committee believes that coal combustion residuals permit programs will ensure that structures that pose a risk will be corrected to eliminate the risk or that they will be closed.

Subparagraph (c)(2)(F) of new section 4011 directly incorporates and requires a permit program to include at a minimum, the criteria for air quality from the Final Rule at 40 CFR 257.80.

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

Subparagraph (c)(2)(H) of new section 4011 requires a permit program to include the surface water requirements in section 40 CFR 257.3-3.

Subparagraph (c)(2)(I) of new section 4011 directly incorporates and requires a permit program to include at a minimum, the recordkeeping requirements in section 40 CFR 257.105.

Subparagraph (c)(2)(J) of new section 4011 directly incorporates and requires a permit program to include, at a minimum, the criteria for run-on and run-off control from the Final Rule at 40 CFR 257.81 for landfills, sand, or gravel pits, or quarries.

Subparagraph (c)(2)(K) of new section 4011 directly incorporates and requires a permit program to include at a minimum, the criteria for hydrologic and hydraulic capacity requirements from the Final Rule at 40 CFR 257.82 for surface impoundments.

Subparagraph (c)(2)(L) of new section 4011 directly incorporates and requires a permit program to include at a minimum the criteria for structural integrity from the Final Rule at 40 CFR 257.73 and 257.74 with the exception that the implementing agency has the discretion to allow surface impoundments that miss the deadline to complete a safety factor assessment to have up to thirty days to complete the assessment. If a structure fails to meet the safety factor assessment criteria during the initial assessment, the implementing agency also has the discretion to provide up to twelve months for an owner or operator to meet the safety factor assessment criteria provided in 40 CFR 257.73(e)(1), but only if the structure does not pose an immediate threat of release.

Subparagraph (c)(2)(M) of new section 4011 directly incorporates and requires a permit program to include, at a minimum, the criteria for inspections from the Final Rule at 40 CFR 257.83 and 257.84.

Paragraph (c)(3)(A) 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, eighteen months after a State notifies the Administrator of EPA that it does not intend to develop a CCR permit program, or twenty-four months after the date of enactment in a case where the Administrator is implementing a permit program under subsection (e)(3), the implementing agency must notify owners of structures of the obligation to obtain a permit and of the requirements in subparagraph (c)(3)(B)(ii) that the owners or operators will be required to comply with during the period of interim operation.

Subparagraph (c)(3)(B) of new section 4011 establishes a schedule by which owners or operators of structures must comply with certain requirements. Not later than eight months after the date of enactment, the implementing agency must require owner and operators of existing structures to install a permanent marker as described in subparagraph (c)(2)(L) and to comply with the requirements for air in subparagraph (c)(2)(F), surface water in subparagraph (c)(2)(H), record keeping in subparagraph (c)(2)(I), and inspections in subparagraph (c)(2)(M). Compliance with certain other requirements must begin no later than twelve months after a state submits its certification, thirty months after the Administrator receives notice that a State will not operate its own permit program, or thirty-six months after enactment for a program to be implemented by the Administrator under (e)(3). These requirements include the criteria for groundwater monitoring and corrective action in subparagraph (c)(2)(B), financial assurance in subparagraph (c)(2)(G), run-on and run-off controls in subparagraph (c)(2)(J), hydrologic and hydraulic capacity in subparagraph (c)(2)(K), and structural integrity in subparagraph (c)(2)(L). The Committee intends that no later than three years after the date of enactment, owners or operators of structures will comply with the specified requirements.

It is the intent of the Committee that the time frames for compliance with the requirements of the Final Rule match as closely as possible the time frames for compliance under the legislation.

Subparagraph (c)(3)(C) of new section 4011 provides that the implementing agency must issue a permit or deny an application

within forty-eight months after the State submits its certification, sixty-six months after the Administrator receives notice from a State that it does not intend to operate its own permit program, or seventy-two 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 six years from the date of enactment.

Subparagraph (c)(3)(D) of new section 4011 provides that, unless required by the implementing agency to close, existing structures 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). If the owner or operator of an existing structure meets the interim requirements described in subparagraph (c)(3)(B), so long as the implementing agency does not require the structure to close, the structure may continue to operate until the final permit is issued under subparagraph (c)(3)(C). The purpose of this provision is to ensure that owners or operators of existing structures may continue to operate from the date of enactment through the interim periods of operation so long as they comply with the applicable requirements.

Paragraph (c)(4) of new section 4011 establishes requirements for inactive coal combustion residuals surface impoundments. The Committee intends that the requirements for inactive surface impoundments be substantially the same as the requirements under the Final Rule.

Subparagraph (c)(4)(A) of new section 4011 provides that within two months from the date of enactment, the owners or operators of inactive coal combustion residuals surface impoundments must submit to EPA and the State in which the impoundment is located, a notice stating whether the impoundment will close within three years of the date of enactment or whether the impoundment will comply with the requirements for a structure under a coal combustion residuals permit program.

Subparagraph (c)(4)(B) of new section 4011 provides discretion for the implementing agency to grant an extension of the closure deadline by no more than two years for an inactive surface impoundment that is undergoing closure, but only if the owner or operator of the impoundment demonstrates to the satisfaction of the implementing agency that the inactive coal combustion residuals surface impoundment does not pose an immediate threat of release and that it is not feasible to complete closure in accordance with the deadline in 40 CFR 257.100 due to complications stemming from climate or weather, because additional time is required to remove the liquid from the surface impoundment due to the volume of coal combustion residuals or the characteristics of the coal combustion residuals in the impoundment, because the geology and terrain surrounding the inactive impoundment will affect the amount of material needed to close the inactive impoundment, or because additional time is required to coordinate with and obtain necessary approvals and permits.

The Committee acknowledges that sometimes, due to the size or location of an inactive surface impoundment, that it is not possible to safely close the impoundment within three years, an extension

of the closure deadline may be necessary. The Committee, however, intends that the implementing agency only exercise its discretion and authorize an extension if there is no immediate threat of a release from the inactive surface impoundment. The Committee also notes that the factors for demonstrating the need for an extension are those identified by EPA in the Final Rule at 40 CFR 257.102(f)(2)(i) as appropriate for an extension of the closure deadlines for active disposal units.

Subparagraph (c)(4)(C) of new section 4011 provides that the implementing agency must require the owner or operator of a closed inactive surface impoundment to perform post-closure care and maintain financial assurance for the post-closure care.

Subparagraph (c)(4)(D) of new section 4011 provides that an inactive coal combustion residuals surface impoundment must be treated as an existing structure and must comply with all of the requirements in paragraphs (c)(1) and (c)(2) if the owner or operator does not submit a notice regarding whether it will undergo closure to EPA and the State in which the impoundment is located or if the owner or operator indicates that the surface impoundment will continue to operate. Subparagraph (c)(4)(D) also provides that an inactive surface impoundment that fails to close by the applicable deadline must be treated as an existing structure and must comply with all of the requirements in paragraphs (c)(1) and (c)(2).

The Committee intends that an inactive impoundment that does not close within three years (or five years if the implementing agency exercises its discretion to allow for up to two additional years for closure) from the date of enactment must comply with all of the same requirements as an active structure, including groundwater monitoring. The Final Rule contains a similar requirement.

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 thirty-six 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 ninety 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 that the State receives the written notice, except for a deficiency under subparagraph (F) for which the deadline may not be later than ninety days.

Paragraph (d)(4) of new section 4011 sets out deficiency criteria with which the Administrator can determine if a State permit program 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 which 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 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 within a State, but the 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 coal combustion residuals permit program for a State under subsection (e), the Administrator must provide a thirty day period for the public participation required under (c)(1)(B)(i).

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 thirty 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 thirty 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 ninety 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.

Subsection (g) of new section 4011 describes the transition of control of a permit program between a State and the Administrator. Subparagraph (g)(1)(A) provides that actions taken and orders issued remain in effect if a State takes control of its permit program from the Administrator or if the Administrator takes control of a permit program from the State. 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 implement fully the permit program. Paragraph (g)(2) requires existing actions, orders, or permits issued pursuant to a permit program to remain in effect until the entity assuming control of the permit program changes the requirements of the permit program with respect to the basis for the action or order; or certifies the completion of a corrective action that is the subject of the action or order.

Paragraph (g)(3) 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, and if the Administrator implements a permit program for a State under subsection (e)(1), the State shall cease to implement its permit program.

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

Paragraph (i)(1) of new section 4011 provides that nothing in new section 4011 of the Solid Waste Disposal Act precludes or denies any right of any State to adopt or enforce any regulation or requirement, respecting coal combustion residuals, that is more stringent or broader in scope than a regulation or requirement required under new section 4011 of the Solid Waste Disposal Act. This provision is consistent with other subtitles of the Solid Waste Disposal Act that allow States to be more stringent than the Federal baseline established by this legislation.

Paragraph (i)(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.

Subparagraph (i)(2)(B) clarifies that nothing in H.R. 1734 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 (i)(2)(C) allows the Administrator to provide enforcement assistance when requested by a State, but only the specific assistance requested by the State.

Subparagraph (i)(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).

Paragraph (i)(3) clarifies that this legislation does not affect the authority of a person to commence an action under section 7002 of the Solid Waste Disposal Act. The Committee intends for H.R. 1734 to address the fact that the Final Rule is enforceable only through citizen suits. However, the Committee does not intend to interfere with the ability of any person to bring a citizen suit under the Solid Waste Disposal Act.

Subsection (j) of new section 4011 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 or underground 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 (k) of new section 4011 addresses the beneficial use of coal combustion residuals. Subparagraph (k)(1)(A) provides that engineered structural fill that is constructed in accordance with ASTM E2277 the "Standard Guide for Design and Construction of Coal Ash Structural Fills," any other published national standard determined appropriate by the implementing agency, or a State standard or program related to fill materials or the management of coal combustion residuals for beneficial use is not considered receipt of coal combustion residuals. Subparagraph (k)(1)(B) provides that engineered structural fill for a building site or foundation; a base or embankment for a bridge, roadway, runway, or railroad; or a dike, levee, berm, or dam that is not part of a structure also is not considered receipt of coal combustion residuals. Paragraph (k)(2) provides that storage in a manner that is consistent with the management of raw materials if the coal combustion residuals being stored are intended to be used in a product or as a raw material is not considered receipt of coal combustion residuals. Paragraph (k)(3) defines beneficial use using the definition in the Final Rule and provides that beneficial use (A) provides a functional benefit; (B) is a substitute for the use of a virgin material; (C) meets

relevant product specifications and regulatory or design standards; and (D) if the use involves placement on the land or coal combustion residuals in non-roadway applications in an amount equal to or greater than the amount described in the Final Rule at 40 CFR 257.53, the person using the coal combustion residuals must demonstrate and keep records showing that such use does not result in environmental releases to groundwater, surface water, soil, or air that are greater than those from a material or product that would be used instead of the coal combustion residuals or exceed the relevant regulatory and health-based benchmarks for human and ecological receptors.

Subsection (l) of new section 4011 describes the legal effect of the Final Rule. The Committee intends that the Final Rule be implemented through enforceable permit programs established under this section. Paragraph (l)(1) provides that the rule may only be implemented through a permit program under this section and that to the extent that any provision of the Final Rule conflicts with or is inconsistent with a provision or requirement of this section, this section will control. Because the Final Rule had not yet been published in the Federal Register as of the date the Committee met in an open markup session (although it has since published on April 17, 2015), paragraph (l)(2) provides that all references to the Code of Federal Regulations refer to the provisions of the pre-publication version of the Final Rule signed by the Administrator on December 19, 2014. Paragraph (l)(3) provides that references to the effective date identified in the Final Rule at 40 CFR 257.51 shall refer to the date of enactment of this section, except that, in the case of any deadline established by such a reference that is in conflict with a deadline established by this section, the deadline established in this section shall control. Paragraph (l)(4) provides that 40 CFR 257.52 is not affected by this section. Paragraph (l)(5) provides that the definitions in the Final Rule at 40 CFR 257.53 shall apply unless they are in conflict or are inconsistent with this section or unless the lead State implementing agency identifies a change in the definitions in the certification and provides a reasonable basis for the changes. The Committee intends that the definitions in the Final Rule be incorporated into coal combustion residuals permit programs unless the State can provide a reasonable basis for making a change in the definitions. Paragraph (l)(6) provides that the criteria described in 40 CFR 257.106 and 257.107 may be incorporated into a coal combustion residuals permit program at the discretion of the implementing agency.

Subsection (m) of new section 4011 includes the following definitions.

Paragraph (m)(1) “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 fifty percent of the total fuel burned; and (4) wastes that are recovered from monofills, which consist of wastes from co-burning coal with fly ash waste, bottom ash waste, slag waste, and flue gas emissions control waste generated primarily from the combustion of coal or other fossil fuels.

Paragraph (m)(2) “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.

Paragraph (m)(3) “Electric Utility; Independent Power Producer” includes only electric utilities and independent power producers that produce electricity on or after the date of enactment of this section.

Paragraph (m)(4) “Existing Structure” means a structure the construction of which commenced before the date of enactment of this section.

Paragraph (m)(5) “Implementing agency” means the lead State implementing agency in clause (b)(2)(B)(i) or the Administrator acting pursuant to subsection (e).

Paragraph (m)(5) “Permit; prior approval and conditions” means any authorization, license, or equivalent control document that incorporates the requirements and revised criteria in subsection (c).

Paragraph (m)(6) “Inactive Coal Combustion Residuals Surface Impoundment” means a surface impoundment located at an electric utility or independent power producer, that, as of the date of enactment of this section does not receive coal combustion residuals, contains coal combustion residuals, and contains liquid.

Paragraph (m)(7) “Structure” includes landfills, surface impoundments, and sand or gravel pit, or quarry that receives coal combustion residuals. The term structure does not include solid waste municipal landfills because they were not included under the Final Rule. 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. The Committee does not 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.

Paragraph (m)(8) “Unlined Surface Impoundment” means a surface impoundment that does not have a liner system described in 40 CFR 257.71.

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						
*	*	*	*	*	*	*
<i>Sec. 4011. 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 in accordance with this section.

(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 24 months after the date of enactment of this section (except as provided in subparagraph (B) and 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) *EXTENSION.*—

(i) *REQUIREMENTS.*—The Administrator may extend the deadline for submission of a certification for a State under subparagraph (A) for a period of 12 months if the State submits to the Administrator a request for such an extension that—

(I) describes the efforts of the State to meet such deadline;

(II) demonstrates that the legislative or rule-making procedures of such State render the State unable meet such deadline; and

(III) provides the Administrator with a detailed schedule for completion and submission of the certification.

(ii) *DETERMINATION.*—If the Administrator does not approve or deny a request submitted under clause (i) by the date that is 30 days after such submission, the request shall be deemed approved.

(C) *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—

(I) a description of the State's—

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

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

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

(dd) statutes, regulations, or policies pertaining to public access to information, including information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a qualified professional engineer), and corrective action remedies; and

(II) identification of any changes to the definitions under section 257.53 of title 40, Code of Federal Regulations, for purposes of the State coal combustion residuals permit program, including a reasonable basis for such changes, as required under subsection (l)(5);

(iv) a statement 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);

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

(vi) a plan for a response by the State to a release at a structure or inactive surface impoundment that has the potential for impact beyond the site on which the structure or inactive surface impoundment is located; and

(vii) a plan for coordination among States in the event of a release that crosses State lines.

(D) 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 lead 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) PERMITS.—The implementing agency shall require that owners or operators of structures apply for and obtain permits incorporating the applicable requirements of the coal combustion residuals permit program.

(B) 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 publicly available for review and comment under the public participation process of the coal combustion residuals permit program;

(ii) final determinations on permit applications are made publicly available;

(iii) information on groundwater monitoring data, structural stability assessments, emergency action plans, fugitive dust control plans, notifications of closure (including any certification of closure by a qualified professional engineer), and corrective action remedies required pursuant to paragraph (2), collected in a manner determined appropriate by the implementing

agency, is publicly available, including on an Internet website; and

(iv) information regarding the exercise by the implementing agency of any discretionary authority granted under this section and not provided for in the rule described in subsection (l)(1) is made publicly available.

(C) AGENCY AUTHORITY.—

(i) IN GENERAL.—The implementing agency shall—

(I) obtain information necessary to determine whether the owner or operator of a structure is in compliance with the requirements of the coal combustion residuals permit program;

(II) conduct or require monitoring or testing to ensure that structures are in compliance with the requirements of the coal combustion residuals permit program; and

(III) enter any site or premise at which a structure or inactive coal combustion residuals surface impoundment is located for the purpose of inspecting such structure or surface impoundment and reviewing relevant records.

(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) CRITERIA.—The implementing agency shall apply the following criteria with respect to structures:

(A) DESIGN REQUIREMENTS.—For new structures, including lateral expansions of existing structures, the criteria regarding design requirements described in sections 257.70 and 257.72 of title 40, Code of Federal Regulations, as applicable.

(B) GROUNDWATER MONITORING AND CORRECTIVE ACTION.—

(i) IN GENERAL.—Except as provided in clause (ii), for all structures, the criteria regarding groundwater monitoring and corrective action requirements described in sections 257.90 through 257.98 of title 40, Code of Federal Regulations, including—

(I) for the purposes of detection monitoring, the constituents described in appendix III to part 257 of title 40, Code of Federal Regulations; and

(II) for the purposes of assessment monitoring, establishing a groundwater protection standard, and assessment of corrective measures, the constituents described in appendix IV to part 257 of title 40, Code of Federal Regulations.

(ii) EXCEPTIONS AND ADDITIONAL AUTHORITY.—

(I) *ALTERNATIVE POINT OF COMPLIANCE.*—Notwithstanding section 257.91(a)(2) of title 40, Code of Federal Regulations, the implementing agency may establish the relevant point of compliance for the down-gradient monitoring system as provided in section 258.51(a)(2) of title 40, Code of Federal Regulations.

(II) *ALTERNATIVE GROUNDWATER PROTECTION STANDARDS.*—Notwithstanding section 257.95(h) of title 40, Code of Federal Regulations, the implementing agency may establish an alternative groundwater protection standard as provided in section 258.55(i) of title 40, Code of Federal Regulations.

(III) *ABILITY TO DETERMINE THAT CORRECTIVE ACTION IS NOT NECESSARY OR TECHNICALLY FEASIBLE.*—Notwithstanding section 257.97 of title 40, Code of Federal Regulations, the implementing agency may determine that remediation of a release from a structure is not necessary as provided in section 258.57(e) of title 40, Code of Federal Regulations.

(IV) *AUTHORITY RELATING TO RELEASES, OTHER THAN RELEASES TO GROUNDWATER.*—Notwithstanding sections 257.90(d) and 257.96(a) of title 40, Code of Federal Regulations, the implementing agency may, with respect to a release from a structure, other than a release to groundwater, authorize, for purposes of complying with this section, remediation of such release in accordance with other applicable Federal or State requirements if compliance with such requirements will result in the same level of protection as compliance with the criteria described in sections 257.96 through 257.98 of title 40, Code of Federal Regulations, taking into consideration the nature of the release.

(V) *GENERAL AUTHORITY RELATING TO GROUNDWATER MONITORING AND CORRECTIVE ACTION.*—Notwithstanding sections 257.90 through 257.98 of title 40, Code of Federal Regulations, the implementing agency may authorize alternative groundwater monitoring and corrective action requirements provided that such requirements are no less stringent than the alternative requirements authorized to be established under subpart E of part 258 of title 40, Code of Federal Regulations.

(VI) *OPPORTUNITY FOR CORRECTIVE ACTION FOR UNLINED SURFACE IMPOUNDMENTS.*—Notwithstanding section 257.101(a)(1) of title 40, Code of Federal Regulations, the implementing agency may allow the owner or operator of an existing structure that is an unlined surface impoundment—

(aa) to continue to operate, pursuant to sections 257.96 through 257.98 of title 40, Code of Federal Regulations, until the date that is

102 months after the date of enactment of this section; and

(bb) to continue to operate after such date as long as such unlined surface impoundment meets the groundwater protection standard established pursuant to this subparagraph and any other applicable requirement established pursuant to this section.

(C) CLOSURE.—For all structures, the criteria for closure described in sections 257.101, 257.102, and 257.103 of title 40, Code of Federal Regulations, except—

(i) the criteria described in section 257.101(a)(1) of title 40, Code of Federal Regulations, shall apply to an existing structure that is an unlined surface impoundment only if—

(I) the unlined surface impoundment is not allowed to continue operation pursuant to subparagraph (B)(ii)(VI)(aa); or

(II) in the case of an unlined surface impoundment that is allowed to continue operation pursuant to subparagraph (B)(ii)(VI)(aa), the date described in such subparagraph has passed and the unlined surface impoundment does not meet the requirements described in subparagraph (B)(ii)(VI)(bb);

(ii) the criteria described in section 257.101(b)(1) of title 40, Code of Federal Regulations, shall not apply to existing structures, except as provided in subparagraphs (E)(i)(II) and (E)(ii); and

(iii) if an implementing agency has set a deadline under clause (i) or (ii) of subparagraph (L), the criteria described in section 257.101(b)(2) of title 40, Code of Federal Regulations, shall apply to structures that are surface impoundments only after such deadline.

(D) POST-CLOSURE.—For all structures, the criteria for post-closure care described in section 257.104 of title 40, Code of Federal Regulations.

(E) LOCATION RESTRICTIONS.—

(i) IN GENERAL.—The criteria for location restrictions described in—

(I) for new structures, including lateral expansions of existing structures, sections 257.60 through 257.64 and 257.3–1 of title 40, Code of Federal Regulations; and

(II) for existing structures, sections 257.64 and 257.3–1 of title 40, Code of Federal Regulations.

(ii) ADDITIONAL AUTHORITY.—The implementing agency may apply the criteria described in sections 257.60 through 257.63 of title 40, Code of Federal Regulations, to existing structures that are surface impoundments.

(F) AIR CRITERIA.—For all structures, the criteria for air quality described in section 257.80 of title 40, Code of Federal Regulations.

(G) *FINANCIAL ASSURANCE.*—For all structures, the criteria for financial assurance described in subpart G of part 258 of title 40, Code of Federal Regulations.

(H) *SURFACE WATER.*—For all structures, the criteria for surface water described in section 257.3–3 of title 40, Code of Federal Regulations.

(I) *RECORDKEEPING.*—For all structures, the criteria for recordkeeping described in section 257.105 of title 40, Code of Federal Regulations.

(J) *RUN-ON AND RUN-OFF CONTROLS.*—For all structures that are landfills, sand or gravel pits, or quarries, the criteria for run-on and run-off control described in section 257.81 of title 40, Code of Federal Regulations.

(K) *HYDROLOGIC AND HYDRAULIC CAPACITY REQUIREMENTS.*—For all structures that are surface impoundments, the criteria for inflow design flood control systems described in section 257.82 of title 40, Code of Federal Regulations.

(L) *STRUCTURAL INTEGRITY.*—For structures that are surface impoundments, the criteria for structural integrity described in sections 257.73 and 257.74 of title 40, Code of Federal Regulations, except that, notwithstanding section 257.73(f)(4) of title 40, Code of Federal Regulations, the implementing agency may provide for—

(i) up to 30 days for an owner or operator to complete a safety factor assessment when an owner or operator has failed to meet an applicable periodic assessment deadline provided in section 257.73(f) of title 40, Code of Federal Regulations; and

(ii) up to 12 months for an owner or operator to meet the safety factor assessment criteria provided in section 257.73(e)(1) of title 40, Code of Federal Regulations, if the implementing agency determines, through the initial safety factor assessment, that the structure does not meet such safety factor assessment criteria and that the structure does not pose an immediate threat of release.

(M) *INSPECTIONS.*—For all structures, the criteria described in sections 257.83 and 257.84 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 18 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 24 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 existing structures of—

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

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

(B) *COMPLIANCE WITH CERTAIN REQUIREMENTS.*—

(i) *INITIAL DEADLINE FOR CERTAIN REQUIREMENTS.*—Not later than 8 months after the date of enactment of this section, the implementing agency shall require owners or operators of existing structures to comply with—

(I) the requirements under paragraphs (2)(F), (2)(H), (2)(I), and (2)(M); and

(II) the requirement for a permanent identification marker under the criteria described in paragraph (2)(L).

(ii) *SUBSEQUENT DEADLINE FOR CERTAIN OTHER REQUIREMENTS.*—Not later than 12 months after 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 require owners or operators of existing structures to comply with—

(I) the requirements under paragraphs (2)(B), (2)(G), (2)(J), (2)(K), and (2)(L); and

(II) the requirement for a written closure plan under the criteria described in paragraph (2)(C).

(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 66 months after the Administrator receives notice under subsection (e)(1)(A), or not later than 72 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 an existing structure, a final permit incorporating the applicable requirements of the coal combustion residuals permit program, or a final denial of an application submitted requesting such a permit.

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

(D) *INTERIM OPERATION.*—

(i) *PRIOR TO DEADLINES.*—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph (2)(C), 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 an existing structure may continue to operate such structure until such applicable deadline under any applicable regulations in effect during such period.

(ii) *PRIOR TO PERMIT.*—Unless the implementing agency determines that the structure should close in accordance with the criteria described in paragraph (2)(C), if the owner or operator of an existing structure 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 of an application submitted requesting such a permit.

(4) *REQUIREMENTS FOR INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS.*—

(A) *NOTICE.*—Not later than 2 months after the date of enactment of this section, each owner or operator of an inactive coal combustion residuals surface impoundment shall submit to the Administrator and the State in which such inactive coal combustion residuals surface impoundment is located a notice stating whether such inactive coal combustion residuals surface impoundment will—

(i) not later than 3 years after the date of enactment of this section, complete closure in accordance with section 257.100 of title 40, Code of Federal Regulations; or

(ii) comply with the requirements of the coal combustion residuals permit program applicable to existing structures that are surface impoundments (except as provided in subparagraph (D)(ii)).

(B) *EXTENSION.*—In the case of an inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i), the implementing agency may extend the closure deadline provided in such subparagraph by a period of not more than 2 years if the owner or operator of such inactive coal combustion residuals surface impoundment—

(i) demonstrates to the satisfaction of the implementing agency that it is not feasible to complete closure of the inactive coal combustion residuals surface impoundment in accordance with section 257.100 of title 40, Code of Federal Regulations, by the deadline provided in subparagraph (A)(i)—

(I) because of complications stemming from the climate or weather, such as unusual amounts of precipitation or a significantly shortened construction season;

(II) because additional time is required to remove the liquid from the inactive coal combustion residuals surface impoundment due to the volume of coal combustion residuals contained in the surface impoundment or the characteristics of the coal combustion residuals in such surface impoundment;

(III) because the geology and terrain surrounding the inactive coal combustion residuals surface impoundment will affect the amount of

material needed to close the inactive coal combustion residuals surface impoundment; or

(IV) because additional time is required to coordinate with and obtain necessary approvals and permits; and

(ii) demonstrates to the satisfaction of the implementing agency that the inactive coal combustion residuals surface impoundment does not pose an immediate threat of release.

(C) **FINANCIAL ASSURANCE.**—The implementing agency shall require the owner or operator of an inactive surface impoundment that has closed pursuant to this paragraph to perform post-closure care in accordance with the criteria described in section 257.104(b)(1) of title 40, Code of Federal Regulations, and to provide financial assurance for such post-closure care in accordance with the criteria described in section 258.72 of title 40, Code of Federal Regulations.

(D) **TREATMENT AS STRUCTURE.**—

(i) **IN GENERAL.**—An inactive coal combustion residuals surface impoundment shall be treated as an existing structure that is a surface impoundment for the purposes of this section, including with respect to the requirements of paragraphs (1) and (2), if—

(I) the owner or operator does not submit a notice in accordance with subparagraph (A); or

(II) the owner or operator submits a notice described in subparagraph (A)(ii).

(ii) **INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS THAT FAIL TO CLOSE.**—An inactive coal combustion residuals surface impoundment for which the owner or operator submits a notice described in subparagraph (A)(i) that does not close by the deadline provided under subparagraph (A)(i) or subparagraph (B), as applicable—

(I) shall be treated as an existing structure for purposes of this section beginning on the date that is the day after such applicable deadline, including by—

(aa) being required to comply with the requirements of paragraph (1), as applicable; and

(bb) being required to comply, beginning on such date, with each requirement of paragraph (2); but

(II) shall not be required to comply with paragraph (3).

(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 as 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 make the request only 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 paragraph (1).

(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) *CONSIDERATIONS 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)(A);

(ii) repeated issuance by the State of permits that 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 required under 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 under subsection (b)(2)(C)(iii)(I).

(e) IMPLEMENTATION BY ADMINISTRATOR.—

(1) FEDERAL BACKSTOP AUTHORITY.—The Administrator shall implement a coal combustion residuals permit program for a State 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 pursuant to 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 and inactive coal combustion residuals surface impoundments 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 and inactive coal combustion residuals surface impoundments.

(4) REQUIREMENTS.—If the Administrator implements a coal combustion residuals permit program 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,

structures, and inactive coal combustion residuals surface impoundments 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, structures, and inactive coal combustion residuals surface impoundments 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 and inactive coal combustion residuals surface impoundments 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 under this subsection, the Administrator shall provide a 30-day period for the public participation process required under subsection (c)(1)(B)(i).

(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 the Administrator provides for 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 to the State 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 the Administrator provides for 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 to the State 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.

(g) IMPLEMENTATION DURING TRANSITION.—

(1) 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—

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

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

(2) CHANGE IN REQUIREMENTS.—Paragraph (1) shall apply to such program requirements, actions, and orders until such time as—

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

(B) with respect to an ongoing corrective action, the State or the Administrator, whichever took the action or issued the order, certifies the completion of the corrective action that is the subject of the action or order.

(3) SINGLE PERMIT PROGRAM.—Except as otherwise provided in this subsection—

(A) if a State adopts and implements a coal combustion residuals permit program under subsection (f), the Administrator shall cease to implement the coal combustion residuals permit program implemented under subsection (e) for such State; and

(B) if the Administrator implements a coal combustion residuals permit program for a State under subsection (e)(1), the State shall cease to implement its coal combustion residuals permit program.

(h) 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 sub-

section (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.

(i) *AUTHORITY.*—

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

(2) *AUTHORITY OF THE ADMINISTRATOR.*—

(A) *IN GENERAL.*—Except as provided in subsections (d), (e), and (g) of this section and section 6005, the Administrator shall, with respect to the regulation of coal combustion residuals under this Act, 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 implementing agency, the Administrator may provide to such State agency only the enforcement assistance requested.

(D) *CONCURRENT ENFORCEMENT.*—Except as provided in subparagraph (C) of this paragraph and subsection (g), 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).

(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.

(j) *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 or underground coal mining and reclamation operations.

(k) *USE OF COAL COMBUSTION RESIDUALS.*—Use of coal combustion residuals in any of the following ways shall not be considered to be receipt of coal combustion residuals for the purposes of this section:

(1) Use as—

(A) engineered structural fill constructed in accordance with—

(i) ASTM E2277 entitled “Standard Guide for Design and Construction of Coal Ash Structural Fills”, including any amendment or revision to that guidance;

(ii) any other published national standard determined appropriate by the implementing agency; or

(iii) a State standard or program relating to—

(I) fill operations for coal combustion residuals;

or

(II) the management of coal combustion residuals for beneficial use; or

(B) engineered structural fill for—

- (i) a building site or foundation;
- (ii) a base or embankment for a bridge, roadway, runway, or railroad; or
- (iii) a dike, levee, berm, or dam that is not part of a structure.

(2) Storage in a manner that is consistent with the management of raw materials, if the coal combustion residuals being stored are intended to be used in a product or as a raw material.

(3) Beneficial use—

- (A) that provides a functional benefit;
- (B) that is a substitute for the use of a virgin material;
- (C) that meets relevant product specifications and regulatory or design standards; and

(D) if such use involves placement on the land of coal combustion residuals in non-roadway applications, in an amount equal to or greater than the amount described in the definition of beneficial use in section 257.53 of title 40, Code of Federal Regulations, for which the person using the coal combustion residuals demonstrates, and keeps records showing, that such use does not result in environmental releases to groundwater, surface water, soil, or air that—

- (i) are greater than those from a material or product that would be used instead of the coal combustion residuals; or
- (ii) exceed relevant regulatory and health-based benchmarks for human and ecological receptors.

(l) EFFECT OF RULE.—

(1) IN GENERAL.—With respect to the final rule entitled “Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities” signed by the Administrator on December 19, 2014—

(A) such rule shall be implemented only through a coal combustion residuals permit program under this section; and

(B) to the extent that any provision or requirement of such rule conflicts, or is inconsistent, with a provision or requirement of this section, the provision or requirement of this section shall control.

(2) REFERENCES TO THE CODE OF FEDERAL REGULATIONS.—For purposes of this section, any reference to a provision of the Code of Federal Regulations added by the rule described in paragraph (1) shall be considered to be a reference to such provision as it is contained in such rule.

(3) EFFECTIVE DATE.—For purposes of this section, any reference in part 257 of title 40, Code of Federal Regulations, to the effective date contained in section 257.51 of such part shall be considered to be a reference to the date of enactment of this section, except that, in the case of any deadline established by such a reference that is in conflict with a deadline established by this section, the deadline established by this section shall control.

(4) APPLICABILITY OF OTHER REGULATIONS.—The application of section 257.52 of title 40, Code of Federal Regulations, is not affected by this section.

(5) *DEFINITIONS.*—The definitions under section 257.53 of title 40, Code of Federal Regulations, shall apply with respect to any criteria described in subsection (c) the requirements of which are incorporated into a coal combustion residuals permit program under this section, except—

(A) as provided in paragraph (1); and

(B) a lead State implementing agency may make changes to such definitions if the lead State implementing agency—

(i) identifies the changes in the explanation included with the certification submitted under subsection (b)(2)(C)(iii); and

(ii) provides in such explanation a reasonable basis for the changes.

(6) *OTHER CRITERIA.*—The criteria described in sections 257.106 and 257.107 of title 40, Code of Federal Regulations, may be incorporated into a coal combustion residuals permit program at the discretion of the implementing agency.

(m) *DEFINITIONS.*—In this section:

(1) *COAL COMBUSTION RESIDUALS.*—The term “coal combustion residuals” means the following wastes generated by electric utilities and independent power producers:

(A) The solid wastes listed in section 3001(b)(3)(A)(i) that are generated primarily from the combustion of coal, 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 that are generated primarily from the combustion of coal.

(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.

(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 a system of prior approval and conditions implemented under this section to regulate the management and disposal of coal combustion residuals.

(3) *ELECTRIC UTILITY; INDEPENDENT POWER PRODUCER.*—The terms “electric utility” and “independent power producer” include only electric utilities and independent power producers that produce electricity on or after the date of enactment of this section.

(4) *EXISTING STRUCTURE.*—The term “existing structure” means a structure the construction of which commenced before the date of enactment of this section.

(5) *IMPLEMENTING AGENCY.*—The term “implementing agency” means the agency responsible for implementing a coal combustion residuals permit program, which shall either be the lead

State implementing agency identified under subsection (b)(2)(C)(i) or the Administrator pursuant to subsection (e).

(6) *INACTIVE COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENT.*—The term “inactive coal combustion residuals surface impoundment” means a surface impoundment, located at an electric utility or independent power producer, that, as of the date of enactment of this section—

(A) does not receive coal combustion residuals;

(B) contains coal combustion residuals; and

(C) contains liquid.

(7) *STRUCTURE.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the term “structure” means a landfill, surface impoundment, sand or gravel pit, or quarry that receives coal combustion residuals on or after the date of enactment of this section.

(B) *EXCEPTIONS.*—

(i) *MUNICIPAL SOLID WASTE LANDFILLS.*—The term “structure” does not include a municipal solid waste landfill.

(ii) *DE MINIMIS RECEIPT.*—The term “structure” does not include any landfill or surface impoundment 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 landfill or surface impoundment.

(8) *UNLINED SURFACE IMPOUNDMENT.*—The term “unlined surface impoundment” means a surface impoundment that does not have a liner system described in section 257.71 of title 40, Code of Federal Regulations.

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MINORITY VIEWS

The unsafe disposal of coal ash presents serious risks to human health and the environment. Contaminants can leach into groundwater and drinking water supplies, or become airborne as toxic dust. Aging or deficient impoundments can fail structurally, resulting in catastrophic floods of toxic sludge entering neighboring communities. Examples of these harms are numerous and well-documented.

On December 19th, 2014, after decades of work, a robust public process, and consideration of over 450,000 public comments, EPA released a final rule to address the serious environmental problems associated with coal ash, while still protecting beneficial reuses.¹ The rule sets out minimum national criteria for the disposal of ash carefully designed to ensure “no reasonable probability of adverse effects on health or the environment.”²

Despite the years of thoughtful work EPA spent developing the rule and the positive public reaction to its publication, H.R. 1734 would set aside the rule and put a weaker and untested program in its place.

H.R. 1734 eliminates the federal floor of protection established by EPA, omits certain requirements that EPA has deemed necessary to protect human health and the environment, delays important health protections, and restricts public access to information. The new state permitting program structure lacks an enforceable standard of protection, abandoning proven models of environmental protection.

The majority report mischaracterizes the need for this legislation and its effects.

A. COAL ASH LEGISLATION IS NOT NEEDED

In the past, some have argued that coal ash legislation was needed because EPA was unable to finalize a protective regulation without endangering beneficial reuse. EPA has now finalized such a regulation. In light of that, the majority report asserts three justifications for legislation: (1) a lack of certainty surrounding the continued ability to beneficially reuse coal ash, (2) a lack of enforcement because of exclusive reliance on citizen suits, and (3) the specter of dual enforcement of both the federal and state requirements.³ All three are without merit.

While the majority report suggests that legislation is needed because EPA could change course and pursue regulation for coal ash as hazardous waste “at some point in the future,” the Agency has

¹U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*, Federal Register, Vol. 80, No. 74, 21302–21501 (April 17, 2015)(online at: <http://www2.epa.gov/coalash/coal-ash-rule>)

²*Id.*, at p.21310.

³Committee Report, p. 2

no plans to do so. EPA's Assistant Administrator was asked at two hearings before the Committee this year whether EPA intended to revisit the decision to regulate coal ash as non-hazardous. Each time, the answer was "no."⁴ Further, revisiting that decision would require a full notice and comment rulemaking which would take several years and require public participation.

On the second point, citizen suits would not be the only means of enforcement under the EPA Final Rule. EPA's expectation, based on discussions with States during the development of the final rule, is that States will revise their Solid Waste Management Plans (SWMPs) to incorporate the rule's requirements.⁵ The rule also provides a mechanism for EPA to review and approve these revised SWMPs. States, then, will have authority to enforce the requirements and to include them in permits, providing enforcement through means other than citizen suits.

The majority report recognizes that states will incorporate these requirements and pursue their own enforcement in arguing that legislation is needed to prevent "overlapping or dual regulatory programs". The majority argues that even if states incorporate the federal requirements into their SWMPs, EPA's rule remains in place as an "independent set of requirements" and subjects industry to overlapping federal and state requirements.⁶ However, under the final rule, EPA will approve state SWMPs if they are identical or more stringent than the federal requirements.⁷ Thus, a utility could not be in full compliance with the State requirements and violate the federal requirements. Conflicting requirements are therefore not a concern.

It is therefore our position that legislation to address coal ash disposal is not needed.

B. H.R. 1734 WOULD UNDERMINE AND DELAY NECESSARY PUBLIC HEALTH PROTECTIONS

In addition to being unnecessary, H.R. 1734 is dangerous and would undermine necessary public health protections.

The majority report states that the requirements in the bill "directly incorporate and effectively codify the protective standards" in EPA's final rule.⁸ However, the bill selectively omits certain EPA's requirements, and grants states significant discretion to change others or enforce "alternative" requirements. As such, H.R. 1734 effectively unravels EPA's efforts to establish cohesive, nationally applicable criteria that are sufficiently protective of human health and the environment.

⁴Testimony of Mathy Stanislaus, Hearing on "HR ____, the Improving Coal Combustion Residuals Regulation Act of 2015," Subcommittee on Environment and the Economy (March 24, 2015) at p.17, (online at: <http://docs.house.gov/meetings/IF/IF18/20150318/103173/HHRG-114-IF18-20150318-SD011.pdf>); Testimony of Mathy Stanislaus, Hearing on "EPA's 2014 Final Rule: Disposal of Coal Combustion Residuals from Electric Utilities," Subcommittee on Environment and the Economy (January 22, 2015) at pp.36-37 (online at: <http://democrats.energycommerce.house.gov/sites/default/files/documents/Preliminary-Transcript-EE-EPA-Rule-Coal-Combustion-Residuals-2015-1-22.pdf>)

⁵Testimony of Mathy Stanislaus, Hearing on "HR ____, the Improving Coal Combustion Residuals Regulation Act of 2015" (March 24, 2015) at p.6, (online at: <http://docs.house.gov/meetings/IF/IF18/20150318/103173/HHRG-114-IF18-20150318-SD011.pdf>).

⁶Committee Report on H.R. 1734, at p.3.

⁷EPA Final Rule, at p.21332.

⁸Committee Report at p. 1

The following are key examples of protective requirements in EPA's final rule that would be eliminated by the bill:

- **Location Restrictions.** The EPA rule prohibits or restricts coal ash disposal structures (1) less than five feet above the upper limit of the uppermost aquifer, (2) in wetlands, (3) in fault areas, (4) in seismic impact zones, and (5) unstable areas.⁹ The bill eliminates all of these location restrictions for existing impoundments except for one: unstable areas.¹⁰

- **Liner Requirements for Existing Surface Impoundments.** The EPA rule requires existing wet surface impoundments to be lined, and lays out design criteria for acceptable liners.¹¹ The bill would eliminate this requirement, and allow unlined or insufficiently lined surface impoundments to continue to receive waste.¹²

- **Closure Requirements for Deficient Structures.** For surface impoundments that fail to meet EPA's standards, the rule requires that they cease receiving waste within six months and close. This includes, for example, those that (1) are unlined and violate groundwater protection standards, (2) fail to meet location restrictions, or (3) fail to meet minimum structural stability requirements.¹³ The bill lacks such closure requirements for deficient structures, and would permit continued operations for years or even indefinitely.¹⁴

The added discretion given to states further erodes the federal floor of requirements set by EPA. The following are just a few significant examples:

- **Groundwater Protection Standards.** The EPA Final Rule establishes minimum requirements for groundwater monitoring and groundwater protection in all states.¹⁵ The bill, in contrast, gives states discretion to choose lower groundwater protection standards and weaken monitoring requirements by altering monitoring parameters and choosing alternative points of compliance away from the disposal boundary.¹⁶

- **Cleanup Requirements.** Where the Final Rule requires all releases and groundwater contamination to be addressed,¹⁷ the bill allows states to decide that groundwater contamination and other pollution need not be cleaned up.¹⁸ The only limits on this state discretion are borrowed from municipal solid waste regulation.¹⁹

- **Scope of Requirements.** Unlike the Final Rule, the bill gives states broad discretion to redefine major terms, including terms that set the scope of permit requirements. For example, states have discretion to define "landfills" to exclude waste piles, to define "surface impoundments" to exclude impoundments below a certain size, and "aquifer" to exclude aquifers not currently serving as drinking water sources.²⁰ These varying definitions have the potential to ex-

⁹ *EPA Final Rule*, at p.21304.

¹⁰ H.R. 1734, Subsection (c)(2)(E).

¹¹ *EPA Final Rule*, at pp.21474–21475.

¹² H.R. 1734, Subsection (l)(5).

¹³ *EPA Final Rule*, at pp.21489–21496.

¹⁴ H.R. 1734, Subsection (c)(2)(C).

¹⁵ *EPA Final Rule*, at pp.21484–21487.

¹⁶ H.R. 1734, Subsection (c)(2)(B)(ii)(I) and (II).

¹⁷ *EPA Final Rule*, at 21487–21489.

¹⁸ H.R. 1734, Subsection (c)(2)(B)(ii)(III) and (IV).

¹⁹ *Id.*

²⁰ H.R. 1734, Subsection (m); *EPA Final Rule*, at 21469–21471.

empt structures covered by minimum requirements in some states from coverage in others.

- **Transparency.** The EPA rule requires that companies make a substantial amount of operations and compliance data, including specific monitoring data, publicly available on an internet site, without exception for information that a company may consider confidential.²¹ Although the majority states that the bill “results in transparency equivalent to that of the requirement in the Final Rule”,²² H.R. 1734 removes many of the specific posting requirements, creates exceptions for information that is claimed to be confidential, and gives discretion to states and facilities to decide how and what information is shared publicly.²³

The bill would also significantly delay compliance. The EPA rule requires coal ash disposal sites to quickly come into compliance with the rule’s requirements, with many requirements effective six months after publication. That six month period began on April 17th with publication of the rule in the Federal Register.²⁴ Although the majority states the intent was for “time frames for compliance . . . match as closely as possible,”²⁵ all time frames will be counted from the date of enactment, which is uncertain but could likely occur after compliance deadlines for the final rule. Further, the bill allows for years of delay of many requirements while states set up and certify their programs and facilities apply for permits. Compliance with interim requirements would not be required for 3–4 years, and full compliance would not be required until permits are issued—potentially 6–7 years after enactment.²⁶

The bill also removes rulemaking authority from EPA such that any change in the technical criteria would have to be done statutorily.²⁷

C. H.R. 1734 COULD RESTRICT CITIZEN ACTIONS TO ENSURE SAFE DISPOSAL OF COAL ASH

The majority claims that it “does not intend to interfere with the ability of any person to bring a citizen suit under the Solid Waste Disposal Act.”²⁸ However, the bill imposes all technical requirements on the state permit program’s “implementing agency”, not the owners and operators of coal ash facilities.²⁹ Because of this, suits to enforce the requirements of the legislation would only be available against those implementing agencies to bring them into compliance with the procedural requirements of establishing a program. In contrast, EPA’s final rule imposes requirements directly on coal ash disposal facilities, meaning that citizen suits are available to bring those facilities into compliance with the protective requirements. This legislation may block RCRA citizen suits against

²¹ *EPA Final Rule*, for a full discussion of the treatment of requirement to post information that may be considered confidential, see pp.21338–21339.

²² Committee Report on H.R. 1734, at p. 10.

²³ H.R. 1734, Subsection (c)(1)(B) and (1)(5).

²⁴ 80 Fed. Reg. 21302 (Apr. 17, 2015). (available online at <http://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf>)

²⁵ Committee Report on H.R. 1734, at p.15.

²⁶ H.P 1734 at Subsection (c)(3).

²⁷ *Id.*, at p. 41.

²⁸ Committee Report on H.R. 1734, at p.22.

²⁹ See H.R. 1734, Subsection (c)(2).

owners and operators of facilities, leaving only suits against the state implementing agencies.

D. THE BILL WOULD UNDERMINE THE PROVEN MODEL OF ENVIRONMENTAL REGULATION

Unlike programs delegated to states under other environmental statutes and state delegation under RCRA for both hazardous and municipal waste, H.R. 1734 would not hold state programs to a standard of protection. The Congressional Research Service released a report on the design of this permit program, which is the same as that in past coal ash bills in the 112th Congress and expanded in the 113th.³⁰ Accordingly to the report, the permit program design lacks an enforceable standard of protection,³¹ substantive EPA review,³² and backstop enforcement authority at the federal level.³³

E. CONCLUSION

This bill is unnecessary and dangerous and should not be enacted. Improper disposal of coal ash presents serious environmental and health risks. The Environmental Protection Agency has taken strong action to address these risks. The new coal ash rule should be allowed to take effect, so that a national standard of protection can be achieved. For the reasons above, we dissent from the views expressed by the majority.

FRANK PALLONE, JR.,
Ranking Member.

PAUL TONKO,
Ranking Member, Subcommittee on Environment and the Economy.

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³⁰ Congressional Research Service, Analysis of Recent Proposals to Amend the Resources Conservation and Recovery Act to Create a Coal Combustion Residuals Permit Program, March 19, 2013, (online at <http://democrats.energycommerce.house.gov/sites/default/files/documents/CRS-Analysis-Recent-Proposals-to-RCRA-2013-3-19.pdf>).

³¹*Id.*, at pp.4, 8.

³²*Id.*, at p. 33.

³³*Id.*, at p. 9.