

July 21, 2015

Dear Representative:

We are writing to urge a “yes” vote on H.R. 1734, the “*Improving Coal Combustion Residuals Regulation Act of 2015.*” H.R. 1734 is essential to ensuring that coal combustion residual (CCR) disposal practices are substantially improved and the new CCR disposal requirements are implemented and enforced in a coherent, efficient and effective manner throughout the country. A “yes” vote is a vote to improve how the Environmental Protection Agency’s (EPA) rule is implemented to better protect the environment and those who live in the vicinity of disposal facilities.

Along with the states and other stakeholders, we applaud the decision by EPA to regulate coal combustion residuals (CCR) as non-hazardous in its final rule. We are deeply concerned, however, that the rule is self-implementing. This means that there is no state permitting authority to issue permits and oversee compliance with the regulatory requirements, enforcement is solely through litigation in the courts, and EPA has no role. Also, where site-specific application of the requirements inevitably requires interpretive judgments, our members will be making multi-million dollar investment decisions without knowing for sure whether those decisions will be considered compliant by whatever court is the final arbiter.

H.R. 1734 accomplishes several very important objectives. The bill:

- Allows the states to establish a state-based permit program to implement regulatory requirements at least as stringent as those in the final CCR rule;
- Provides EPA with authority to review state programs and their implementation of the requirements, and authorizes EPA to implement the permit program where a state chooses not to implement the requirements or has failed to implement them adequately;
- Restores to each state the normal and customary flexibility for tailoring of the federal requirements to address site-specific risk characteristics; and
- Addresses the uncertainty created by EPA’s preamble language suggesting that, in the future, it might reconsider the decision to regulate CCR as non-hazardous.

In the final rule, EPA tries to finesse its lack of authority to establish a permit program under Subtitle D of the Resource Conservation and Recovery Act by encouraging states to amend their solid waste management plans. This pathway does not result in a single set of requirements implemented through a state program, but rather a set of dual regulatory requirements that have the potential to diverge as site-specific application of the requirements are challenged.

H.R. 1734 will accomplish what EPA could not in the CCR rule. By replacing the inefficient and unprecedented self-implementation requirement with a state-based permit program reviewed by

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EPA, Congress will assure that the CCR rule is implemented in a consistent, coherent, and effective manner, with public participation in individual permit decisions.

Sincerely,



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President, Edison Electric Institute



Susan N. Kelly
President & CEO, American Public Power Association



Jo Ann Emerson
Chief Executive Officer, National Rural Electric Cooperative Association



James Roewer
Executive Director, Utility Solid Waste Activities Group