



COMMITTEE ON ENERGY AND COMMERCE

Chairman Fred Upton
114th Congress

The Improving Coal Combustion Residuals Regulation Act of 2015

Overview of Discussion Draft Authored By Rep. David McKinley (R-WV)

The draft legislation utilizes the framework from bills in past Congresses by setting up enforceable state permit programs:

- States will be authorized to immediately implement a coal ash permit program.
- States will be able to choose whether to implement a permit program – if they opt not to, EPA will implement a permit program for that state.
- States that choose to implement a permit program must include all of the requirements for a permit program as laid out in the legislation; states may choose to make their permit programs more protective than the minimum federal requirements.
- EPA will have the ability to review a state permit program at any time to ensure that the permit program meets the minimum statutory requirements.

The draft legislation uses EPA's final rule to set the minimum statutory requirements for state permit programs:

- The legislation in previous Congresses used the Municipal Solid Waste regulations under the Solid Waste Disposal Act as the basis for the minimum requirements for a coal ash permit program. The draft legislation takes into account that the technical requirements set forth by EPA in the final rule are protective of human health and the environment and should be the standard for regulating coal ash. The draft legislation incorporates the requirements in the final rule and uses them as the baseline for what must be included in a coal ash permit program.
 - For example, the structural integrity requirements in a state permit program will be based on 40 CFR 257.73 and 257.74 and the fugitive dust requirements will be based on 40 CFR 257.80.
- The draft legislation also requires that criteria regarding surface water protection and financial assurance be included in coal ash permit programs, and requires financial assurance for maintaining final cover on closed inactive impoundments.
- The draft legislation addresses inactive surface impoundments (those that no longer receive coal ash as of the date of enactment but which still contain coal combustion residuals and liquids) in the same manner as the final rule. If an inactive impoundment does not close within three years it becomes a structure and must go through the permit process. The draft legislation provides for the possibility of short extension if it can be demonstrated that it is not feasible to complete closure (based on the factors EPA set out in the final rule for demonstrating that an extension is necessary) and if the implementing agency determines that there is no immediate threat of release.

- EPA acknowledged in the preamble to the final rule that it removed certain flexibility afforded other Subtitle D permit programs because the final coal ash rule was self-implementing. The draft legislation authorizes states to incorporate certain flexibility into the permit program.

Other significant benefits of the draft legislation:

- There will be direct enforcement of the requirements in the final rule by a regulatory agency through a permit program.
- There will not be a dual regulatory program – the legislation solves the problem regarding the lack of authority for state permit programs to operate in lieu of the federal requirements. Either the state or EPA will be implementing a permit program in every state.
- The legislation will not impact the ability to bring citizen suits under RCRA – it will just alleviate citizen suits as being the only mechanism for enforcement.