

Changes to Energy and Commerce Passed Provisions

Changes to H.R. 910, as it passed the House

- Section 4 is deleted.

Changes to H.R. 2401, as it passed the House

- Section 7 is deleted.
- To the extent proposed rules are now superseded by final rules, updates to provide for final rules are made.
- Report deliverable deadlines are updated to reflect the passage of time since H.R. 2401 was first introduced.

Substantive changes to H.R. 2273, as it passed the House

- Explicitly allows States to update the certification provided to EPA to reflect changes made to a coal combustion residuals permit program and requires States to maintain a permit program consistent with the certification.
- Prohibits construction of a new structure within two feet of the natural water table but allows States to consider the hydrogeologic characteristics and the impact on the water table.
- Requires a State permit program to issue permits and changes the definition of “coal combustion residuals permit program.”
- Requires a State, before it submits its certification to EPA, to notify owners and operators of the groundwater monitoring requirements and requires groundwater monitoring at all structures.
- Provides authority to the implementing agency to obtain necessary information, conduct testing and monitoring, and enter premises to inspect a structure or review records.
- Amends the “revised criteria” in subsection (c)(2) by: exempting surface impoundments from the leachate collection requirements described in 40 CFR 258.40(a)(2); adds revised criteria for closure and post-closure; and by requiring that the specified coal ash constituents be considered for assessment monitoring and for establishing a groundwater protection standard and assessment of corrective measures.
- Requires that unlined surface impoundments first discovered to be leaking after enactment meet groundwater protection standards within ten years or stop receiving coal ash and close. Requires unlined surface impoundments in corrective action at enactment to meet groundwater protection standards within eight years of enactment or stop receiving coal ash and close. Allows States, unless there has been contamination of public or private drinking water systems, grant an extension of the deadline in both cases based on: (A) the effectiveness of interim measures; (B) the level of progress demonstrated in meeting the groundwater protection standard; (C) the potential for other adverse human health or environmental exposures; and (D) the lack of available alternative management capacity for the coal combustion residuals.
- Requires surface impoundments that are required to undertake corrective action after enactment to implement interim measures, as necessary, under the factors in 40 CFR 258.58(a)(3).
- Provides that an unlined surface impoundment, required to implement corrective action more than ten years after enactment, must initiate closure after alternative management capacity is available

for the coal combustion residuals and related materials managed in the unit. Requires the owner/operator to use best efforts to develop alternative management capacity and to prepare a written plan that describes the steps necessary to develop alternative management capacity.

- Applies the minimum permit program specifications directly to owners and operators.
- Requires that permit documents and groundwater monitoring data be made available to the public.
- Requires that the design of structures be in accordance with “generally accepted good engineering practices for containment of the maximum volume of coal combustion residuals and liquids appropriate for the structure” for assessment of structural stability, and an annual inspection of the design, operation, and maintenance of impoundments by an independent registered professional engineer.
- Specifies that fugitive dust requirements include cover or wet placement, but allows owners/operators to suggest alternative methods of dust control.
- Requires States to provide notice and seek public comment if granting an extension of the deadline for unlined, leaking surface impoundments to stop receipt of ash and close, and EPA to provide a 30 day public notice and comment period if taking away or giving back a State permit program.
- Provides that EPA regulate coal combustion residuals on tribal lands.
- Denies EPA (1) concurrent enforcement authority when a State is implementing a permit program except when requested by a State; and (2) authority to finalize its June 2010 Proposed Rule on coal ash.
- Deletes a provision allowing states to waive permit program requirements that the State determined were not needed for the management of coal combustion residuals.
- Requires the States to make information regarding implementation of the permit program available to EPA, but prohibits EPA from requesting information it does not already possess.
- Clarifies that a State may seek judicial review if EPA finds the State permit program to be deficient.
- Provides that nothing in this Act be construed to affect the authority of a State to request, or EPA to provide, technical assistance under the Solid Waste Disposal Act nor to affect obligations under Section 215(b)(1) of the Federal Power Act.
- Provides that the term “structure” does not include land-based units that receive only de minimis quantities of coal combustion residuals incidental to the material managed.