



COMMONWEALTH OF KENTUCKY  
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August 30, 2011

The Honorable Mitch McConnell  
United States Senate  
361-A Russell Senate Office Building  
Washington, DC 20510

Dear Senator McConnell:

I am writing to strongly encourage your support of H.R. 2273, "Coal Residuals Reuse and Management Act," which passed out of House committee with bipartisan support. This bill addresses a long-standing issue with respect to how states should address the management of coal combustion residuals (CCRs) in an environmentally protective manner.

U.S. EPA's recent proposal to establish a regulatory scheme for managing coal combustion residuals would impose enormous and unnecessary economic costs on the management of CCRs in addition to jeopardizing the current beneficial reuse of CCRs. Specifically, U.S. EPA is considering regulating CCRs as a hazardous waste, despite U.S. EPA's previous multiple determinations that coal combustion residual is non-hazardous.

Both the Environmental Council of States and the Association of State and Territorial Solid Waste Management Officials, which represent the bipartisan state environmental leaders, are fully supportive of H.R. 2273.

The proposal outlined in H.R. 2273 addresses CCRs management concerns by using a combination of existing state and federal regulations. It would establish an enforceable federal baseline for the regulation of CCRs that all states must adhere to. The legislation would accomplish this without having U.S. EPA establish additional federal regulations, but instead places that responsibility on the states to conform to these new federal requirements. This bill is a logical, protective approach to managing CCRs without the negative impacts that will result from the EPA's proposed rule.

I have attached a copy of the bill and a fact sheet which should provide answers to questions you may have.

Thank you for your consideration of this important matter, and please do not hesitate to contact me if you have questions or need more information.

Sincerely,

A handwritten signature in black ink that reads "Steven L. Beshear".

Steven L. Beshear

Attachments



**AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
**TO H.R. 2273**  
**OFFERED BY M . \_\_\_\_\_**

Strike all after the enacting clause and insert the  
following:

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Coal Residuals Reuse  
3 and Management Act”.

4 **SEC. 2. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE**  
5                   **DISPOSAL ACT.**

6       Subtitle D of the Solid Waste Disposal Act (42  
7 U.S.C. 6941 et seq.) is amended by adding at the end  
8 the following new section:

9 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**  
10                   **BUSTION RESIDUALS.**

11       “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-  
12 TION RESIDUALS.—Each State may adopt and implement  
13 a coal combustion residuals permit program.

14       “(b) STATE ACTIONS.—

15           “(1) NOTIFICATION.—Not later than 6 months  
16 after the date of enactment of this section (except  
17 as provided by the deadline identified under sub-  
18 section (d)(2)(B)), the Governor of each State shall

1       notify the Administrator, in writing, whether such  
2       State will adopt and implement a coal combustion  
3       residuals permit program.

4           “(2) CERTIFICATION.—

5               “(A) IN GENERAL.—Not later than 36  
6       months after the date of enactment of this sec-  
7       tion (except as provided in subsections (f)(1)(A)  
8       and (f)(1)(C)), in the case of a State that has  
9       notified the Administrator that it will imple-  
10      ment a coal combustion residuals permit pro-  
11      gram, the head of the lead State agency respon-  
12      sible for implementing the coal combustion re-  
13      siduals permit program shall submit to the Ad-  
14      ministrator a certification that such coal com-  
15      bustion residuals permit program meets the  
16      specifications described in subsection (c)(1).

17           “(B) CONTENTS.—A certification sub-  
18      mitted under this paragraph shall include—

19               “(i) a letter identifying the lead State  
20      agency responsible for implementing the  
21      coal combustion residuals permit program,  
22      signed by the head of such agency;

23               “(ii) identification of any other State  
24      agencies involved with the implementation

1 of the coal combustion residuals permit  
2 program;

3 “(iii) a narrative description that pro-  
4 vides an explanation of how the State will  
5 ensure that the coal combustion residuals  
6 permit program meets the requirements of  
7 this section;

8 “(iv) a legal certification that the  
9 State has, at the time of certification, fully  
10 effective statutes, regulations, or guidance  
11 necessary to implement a coal combustion  
12 residuals permit program that meets the  
13 specifications described in subsection  
14 (c)(1); and

15 “(v) copies of State statutes, regula-  
16 tions, and guidance described in clause  
17 (iv).

18 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-  
19 GRAM.—In order to adopt or implement a coal com-  
20 bustion residuals permit program under this section  
21 (including pursuant to subsection (f)), the State  
22 agency responsible for implementing a coal combus-  
23 tion residuals permit program in a State shall main-  
24 tain an approved program under section 4005(c) or  
25 an authorized program under section 3006.

1 “(c) PERMIT PROGRAM SPECIFICATIONS.—

2 “(1) MINIMUM REQUIREMENTS.—The specifica-  
3 tions described in this subsection for a coal combus-  
4 tion residuals permit program are as follows:

5 “(A) The revised criteria described in  
6 paragraph (2) shall apply to a coal combustion  
7 residuals permit program, except as provided in  
8 paragraph (3).

9 “(B) Each structure shall be, in accord-  
10 ance with generally accepted engineering stand-  
11 ards for the structural integrity of such struc-  
12 tures, designed, constructed, and maintained to  
13 provide for containment of the maximum vol-  
14 umes of coal combustion residuals appropriate  
15 for the structure. If a structure is determined  
16 by the head of the agency responsible for imple-  
17 menting the coal combustion residuals permit  
18 program to be deficient, the head of such agen-  
19 cy has authority to require action to correct the  
20 deficiency. If the identified deficiency is not cor-  
21 rected, the head of such agency has authority to  
22 require that the structure close in accordance  
23 with subsection (h).

24 “(C) The coal combustion residuals permit  
25 program shall apply the revised criteria promul-

1 gated pursuant to section 4010(c) for location,  
2 design, groundwater monitoring, corrective ac-  
3 tion, financial assurance, closure and post-clo-  
4 sure described in paragraph (2) and the speci-  
5 fications described in this paragraph to surface  
6 impoundments.

7 “(D) Constituents for detection monitoring  
8 shall include boron, chloride, conductivity, fluo-  
9 ride, pH, sulphate, sulfide, and total dissolved  
10 solids.

11 “(E) If a structure that is classified as  
12 posing a high hazard potential pursuant to the  
13 guidelines published by the Federal Emergency  
14 Management Agency entitled ‘Federal Guide-  
15 lines for Dam Safety: Hazard Potential Classi-  
16 fication System for Dams’ (FEMA Publication  
17 Number 333) is determined by the head of the  
18 agency responsible for implementing the coal  
19 combustion residuals permit program to be defi-  
20 cient with respect to the structural integrity re-  
21 quirement in subparagraph (B), the head of  
22 such agency has authority to require action to  
23 correct the deficiency. If the identified defi-  
24 ciency is not corrected, the head of such agency

1           has authority to require that the structure close  
2           in accordance with subsection (h).

3           “(F) New structures that first receive coal  
4           combustion residuals after the date of enact-  
5           ment of this section shall be constructed with a  
6           base located a minimum of two feet above the  
7           upper limit of the natural water table.

8           “(G) In the case of a coal combustion re-  
9           siduals permit program implemented by a  
10          State, the State has the authority to inspect  
11          structures and implement and enforce such per-  
12          mit program.

13          “(2) REVISED CRITERIA.—The revised criteria  
14          described in this paragraph are—

15                 “(A) the revised criteria for design,  
16                 groundwater monitoring, corrective action, clo-  
17                 sure, and post-closure, for structures, includ-  
18                 ing—

19                         “(i) for new structures, and lateral ex-  
20                         pansions of existing structures, that first  
21                         receive coal combustion residuals after the  
22                         date of enactment of this section, the re-  
23                         vised criteria regarding design require-  
24                         ments described in section 258.40 of title  
25                         40, Code of Federal Regulations; and

1           “(ii) for all structures that receive  
2           coal combustion residuals after the date of  
3           enactment of this section, the revised cri-  
4           teria regarding groundwater monitoring re-  
5           quirements described in subpart E of part  
6           258 of title 40, Code of Federal Regula-  
7           tions;

8           “(B) the revised criteria for location re-  
9           strictions described in—

10           “(i) for new structures, and lateral ex-  
11           pansions of existing structures, that first  
12           receive coal combustion residuals after the  
13           date of enactment of this section, sections  
14           258.11 through 258.15 of title 40, Code of  
15           Federal Regulations; and

16           “(ii) for existing structures that re-  
17           ceive coal combustion residuals after the  
18           date of enactment of this section, sections  
19           258.11 and 258.15 of title 40, Code of  
20           Federal Regulations;

21           “(C) for all structures that receive coal  
22           combustion residuals after the date of enact-  
23           ment of this section, the revised criteria for air  
24           quality described in section 258.24 of title 40,  
25           Code of Federal Regulations; and



1           “(D) for all structures that receive coal  
2           combustion residuals after the date of enact-  
3           ment of this section, the revised criteria for fi-  
4           nancial assurance described in subpart G of  
5           part 258 of title 40, Code of Federal Regula-  
6           tions.

7           “(3) APPLICABILITY OF CERTAIN REQUIRE-  
8           MENTS.—A State may determine that one or more  
9           of the requirements of the revised criteria described  
10          in paragraph (2) is not needed for the management  
11          of coal combustion residuals in that State, and may  
12          decline to apply such requirement as part of its coal  
13          combustion residuals permit program. If a State de-  
14          clines to apply a requirement under this paragraph,  
15          the State shall include in the certification under sub-  
16          section (b)(2) a description of such requirement and  
17          the reasons such requirement is not needed in the  
18          State. If the Administrator determines that a State  
19          determination under this paragraph does not accu-  
20          rately reflect the needs for the management of coal  
21          combustion residuals in the State, the Administrator  
22          may treat such State determination as a deficiency  
23          under subsection (d).

24          “(d) WRITTEN NOTICE AND OPPORTUNITY TO REM-  
25          EDY.—

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

5           “(A) does not satisfy the notification re-  
6 quirement under subsection (b)(1);

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

9           “(C) does not satisfy the maintenance re-  
10 quirement under subsection (b)(3); or

11           “(D) is not implementing a coal combus-  
12 tion residuals permit program that meets the  
13 specifications described in subsection (c)(1).

14           “(2) CONTENTS OF NOTICE; DEADLINE FOR RE-  
15 SPONSE.—A notice provided under this subsection  
16 shall—

17           “(A) include findings of the Administrator  
18 detailing any applicable deficiencies in—

19           “(i) compliance by the State with the  
20 notification requirement under subsection  
21 (b)(1);

22           “(ii) compliance by the State with the  
23 certification requirement under subsection  
24 (b)(2);

1           “(iii) compliance by the State with the  
2           maintenance requirement under subsection  
3           (b)(3); and

4           “(iv) the State coal combustion re-  
5           siduals permit program in meeting the  
6           specifications described in subsection  
7           (c)(1); and

8           “(B) identify, in collaboration with the  
9           State, a reasonable deadline, which shall be not  
10          sooner than 6 months after the State receives  
11          the notice, by which the State shall remedy the  
12          deficiencies detailed under subparagraph (A).

13          “(e) IMPLEMENTATION BY ADMINISTRATOR.—

14                 “(1) IN GENERAL.—The Administrator shall  
15                 implement a coal combustion residuals permit pro-  
16                 gram for a State only in the following cir-  
17                 cumstances:

18                         “(A) If the Governor of such State notifies  
19                         the Administrator under subsection (b)(1) that  
20                         such State will not adopt and implement such  
21                         a permit program.

22                         “(B) If such State has received a notice  
23                         under subsection (d) and, after any review  
24                         brought by the State under section 7006, fails,  
25                         by the deadline identified in such notice under

1 subsection (d)(2)(B), to remedy the deficiencies  
2 detailed in such notice under subsection  
3 (d)(2)(A).

4 “(C) If such State informs the Adminis-  
5 trator, in writing, that such State will no longer  
6 implement such a permit program.

7 “(2) REQUIREMENTS.—If the Administrator  
8 implements a coal combustion residuals permit pro-  
9 gram for a State under paragraph (1), such permit  
10 program shall consist of the specifications described  
11 in subsection (c)(1).

12 “(3) ENFORCEMENT.—If the Administrator im-  
13 plements a coal combustion residuals permit pro-  
14 gram for a State under paragraph (1), the authori-  
15 ties referred to in section 4005(c)(2)(A) shall apply  
16 with respect to coal combustion residuals and struc-  
17 tures and the Administrator may use such authori-  
18 ties to inspect, gather information, and enforce the  
19 requirements of this section in the State.

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

22 “(1) STATE CONTROL.—

23 “(A) NEW ADOPTION AND IMPLEMENTA-  
24 TION BY STATE.—For a State for which the  
25 Administrator is implementing a coal combus-

1           tion residuals permit program under subsection  
2           (e)(1)(A), the State may adopt and implement  
3           such a permit program by—

4                   “(i) notifying the Administrator that  
5                   the State will adopt and implement such a  
6                   permit program;

7                   “(ii) not later than 6 months after the  
8                   date of such notification, submitting to the  
9                   Administrator a certification under sub-  
10                  section (b)(2); and

11                  “(iii) receiving from the Adminis-  
12                  trator—

13                           “(I) a determination that the  
14                           State coal combustion residuals per-  
15                           mit program meets the specifications  
16                           described in subsection (c)(1); and

17                           “(II) a timeline for transition of  
18                           control of the coal combustion residu-  
19                           als permit program.

20                  “(B) REMEDYING DEFICIENT PERMIT PRO-  
21                  GRAM.—For a State for which the Adminis-  
22                  trator is implementing a coal combustion re-  
23                  siduals permit program under subsection  
24                  (e)(1)(B), the State may adopt and implement  
25                  such a permit program by—

1                   “(i) remedying the deficiencies de-  
2                   tailed in the notice provided under sub-  
3                   section (d)(2)(A); and

4                   “(ii) receiving from the Adminis-  
5                   trator—

6                   “(I) a determination that the de-  
7                   ficiencies detailed in such notice have  
8                   been remedied; and

9                   “(II) a timeline for transition of  
10                  control of the coal combustion residu-  
11                  als permit program.

12                  “(C) RESUMPTION OF IMPLEMENTATION  
13                  BY STATE.—For a State for which the Adminis-  
14                  trator is implementing a coal combustion re-  
15                  siduals permit program under subsection  
16                  (e)(1)(C), the State may adopt and implement  
17                  such a permit program by—

18                  “(i) notifying the Administrator that  
19                  the State will adopt and implement such a  
20                  permit program;

21                  “(ii) not later than 6 months after the  
22                  date of such notification, submitting to the  
23                  Administrator a certification under sub-  
24                  section (b)(2); and

1                   “(iii) receiving from the Adminis-  
2                   trator—

3                   “(I) a determination that the  
4                   State coal combustion residuals per-  
5                   mit program meets the specifications  
6                   described in subsection (c)(1); and

7                   “(II) a timeline for transition of  
8                   control of the coal combustion residu-  
9                   als permit program.

10                   “(2) REVIEW OF DETERMINATION.—

11                   “(A) DETERMINATION REQUIRED.—The  
12                   Administrator shall make a determination  
13                   under paragraph (1) not later than 90 days  
14                   after the date on which the State submits a cer-  
15                   tification under paragraph (1)(A)(ii) or  
16                   (1)(C)(ii), or notifies the Administrator that the  
17                   deficiencies have been remedied pursuant to  
18                   paragraph (1)(B)(i), as applicable.

19                   “(B) REVIEW.—A State may obtain a re-  
20                   view of a determination by the Administrator  
21                   under paragraph (1) as if such determination  
22                   was a final regulation for purposes of section  
23                   7006.

24                   “(3) IMPLEMENTATION DURING TRANSITION.—

1           “(A) EFFECT ON ACTIONS AND ORDERS.—  
2           Actions taken or orders issued pursuant to a  
3           coal combustion residuals permit program shall  
4           remain in effect if—

5                   “(i) a State takes control of its coal  
6                   combustion residuals permit program from  
7                   the Administrator under paragraph (1); or

8                   “(ii) the Administrator takes control  
9                   of a coal combustion residuals permit pro-  
10                  gram from a State under subsection (e).

11           “(B) CHANGE IN REQUIREMENTS.—Sub-  
12           paragraph (A) shall apply to such actions and  
13           orders until such time as the Administrator or  
14           the head of the lead State agency responsible  
15           for implementing the coal combustion residuals  
16           permit program, as applicable—

17                   “(i) implements changes to the re-  
18                   quirements of the coal combustion residu-  
19                   als permit program with respect to the  
20                   basis for the action or order; or

21                   “(ii) certifies the completion of a cor-  
22                   rective action that is the subject of the ac-  
23                   tion or order.

24           “(4) SINGLE PERMIT PROGRAM.—If a State  
25           adopts and implements a coal combustion residuals



1 permit program under this subsection, the Adminis-  
2 trator shall cease to implement the permit program  
3 implemented under subsection (e) for such State.

4 “(g) EFFECT ON DETERMINATION UNDER 4005(C)  
5 OR 3006.—The Administrator shall not consider the im-  
6 plementation of a coal combustion residuals permit pro-  
7 gram by the Administrator under subsection (e) in making  
8 a determination of approval for a permit program or other  
9 system of prior approval and conditions under section  
10 4005(c) or of authorization for a program under section  
11 3006.

12 “(h) CLOSURE.—If it is determined, pursuant to a  
13 coal combustion residuals permit program, that a struc-  
14 ture should close, the time period and method for the clo-  
15 sure of such structure shall be set forth, in a schedule,  
16 in a closure plan that takes into account the nature and  
17 the site-specific characteristics of the structure to be  
18 closed. In the case of a surface impoundment, the closure  
19 plan shall require, at a minimum, the removal of liquid  
20 and the stabilization of remaining waste, as necessary to  
21 support the final cover.

22 “(i) AUTHORITY.—

23 “(1) STATE AUTHORITY.—Nothing in this sec-  
24 tion shall preclude or deny any right of any State to  
25 adopt or enforce any regulation or requirement re-

1       pecting coal combustion residuals that is more  
2       stringent or broader in scope than a regulation or  
3       requirement under this section.

4           “(2) AUTHORITY OF THE ADMINISTRATOR.—

5               “(A) IN GENERAL.—Except as provided in  
6       subsection (e) of this section and section 6005  
7       of this title, the Administrator shall, with re-  
8       spect to the regulation of coal combustion re-  
9       siduals, defer to the States pursuant to this sec-  
10      tion.

11           “(B) IMMINENT HAZARD.—Nothing in this  
12      section shall be construed to affect the author-  
13      ity of the Administrator under section 7003  
14      with respect to coal combustion residuals.

15           “(j) MINE RECLAMATION ACTIVITIES.—A coal com-  
16      bustion residuals permit program implemented under sub-  
17      section (e) by the Administrator shall not apply to the uti-  
18      lization, placement, and storage of coal combustion residu-  
19      als at surface mining and reclamation operations.

20           “(k) DEFINITIONS.—In this section:

21               “(1) COAL COMBUSTION RESIDUALS.—The  
22      term ‘coal combustion residuals’ means—

23               “(A) the solid wastes listed in section  
24      3001(b)(3)(A)(i), including recoverable mate-  
25      rials from such wastes;

1           “(B) coal combustion wastes that are co-  
2 managed with wastes produced in conjunction  
3 with the combustion of coal, provided that such  
4 wastes are not segregated and disposed of sepa-  
5 rately from the coal combustion wastes and  
6 comprise a relatively small proportion of the  
7 total wastes being disposed in the structure;

8           “(C) fluidized bed combustion wastes;

9           “(D) wastes from the co-burning of coal  
10 with non-hazardous secondary materials pro-  
11 vided that coal makes up at least 50 percent of  
12 the total fuel burned; and

13           “(E) wastes from the co-burning of coal  
14 with materials described in subparagraph (A)  
15 that are recovered from monofills.

16           “(2) COAL COMBUSTION RESIDUALS PERMIT  
17 PROGRAM.—The term ‘coal combustion residuals  
18 permit program’ means a permit program or other  
19 system of prior approval and conditions that is  
20 adopted by or for a State for the management and  
21 disposal of coal combustion residuals to the extent  
22 such activities occur in structures in such State.

23           “(3) STRUCTURE.—The term ‘structure’ means  
24 a landfill, surface impoundment, or other land-based  
25 unit which may receive coal combustion residuals.

1           “(4) REVISED CRITERIA.—The term ‘revised  
2           criteria’ means the criteria promulgated for munic-  
3           ipal solid waste landfill units under section 4004(a)  
4           and under section 1008(a)(3), as revised under sec-  
5           tion 4010(e).”.

6   **SEC. 3. 2000 REGULATORY DETERMINATION.**

7           Nothing in this Act, or the amendments made by this  
8           Act, shall be construed to alter in any manner the Envi-  
9           ronmental Protection Agency’s regulatory determination  
10          entitled “Notice of Regulatory Determination on Wastes  
11          from the Combustion of Fossil Fuels”, published at 65  
12          Fed. Reg. 32214 (May 22, 2000), that the fossil fuel com-  
13          bustion wastes addressed in that determination do not  
14          warrant regulation under subtitle C of the Solid Waste  
15          Disposal Act (42 U.S.C. 6921 et seq.).



## **H.R. 2273 – FREQUENTLY ASKED QUESTIONS:**

**Q: How is the approach of this bill different from the EPA proposed rule or other typical environmental laws?**

Instead of granting broad discretion to EPA to write new regulations, the bill applies an existing program for Municipal Solid Waste Landfills, to a new waste, coal combustion residuals (CCRs). Unlike EPA's proposed regulations, the bill gives states the primary authority to craft a CCR permit program that best fits the state. The bill sets a federal baseline for regulation of CCRs, but allows the states to take the lead with developing, implementing, and enforcing it. States with existing successful CCR permit programs may continue their programs. Other states would apply existing solid waste statutes and regulations to create a CCR permit program.

The bill provides protections like those under EPA's Proposed Rule, but unlike EPA's Proposed Rule it would not require the automatic phase out/closure of surface impoundments that are operating safely. Instead, the bill requires that structures for the management and disposal of CCRs be assessed for structural integrity and for possible environmental issues through application of a comprehensive groundwater monitoring program.

**Q: Why not just use EPA's Subtitle D proposal?**

The Subtitle D proposal is fundamentally flawed because it does not establish a directly enforceable permit program, but rather would create an unwieldy approach where facilities would certify compliance through a web-based system. Enforcement would rely on citizen suits being brought by the states and/or citizen groups, effectively placing the enforcement mechanism in federal court. The bill avoids this impractical result by placing enforcement authority directly in the hands of the states, unless a state cedes its program to EPA.

The EPA proposal, unlike the bill, requires unnecessary phase out and closure of surface impoundments that are operating safely. The bill instead makes these subject to groundwater monitoring and structural stability requirements. Many surface impoundments are structurally sound, but those that are not would have to undertake corrective action. Some may need to close if necessary. However, to require closure of safely operating surface impoundments just for closure's sake (as would EPA's Subtitle D proposal) would impose significant additional and unnecessary costs on the generators of CCRs thereby potentially increasing electricity rates and negatively impacting jobs.

**Q: What are the practical advantages of the bill?**

For the first time, there will be an enforceable federal baseline for the regulation of CCRs – but states are free to be more stringent and go above the federal baseline.

No new federal regulations are required – EPA said in the Proposed Rule that the protections afforded by the MSW regulations at 40 CFR Part 258 were more than adequate for CCRs.

Using existing regulations allow states to adopt and implement (or continue implementing) CCR permit programs without the significant delay of additional federal rulemaking.

**Q: Surface impoundments are not regulated under 40 CFR 258, how are they included under the bill? What does the bill do regarding differences in how a solid waste is regulated under Part 258 versus what is required to adequately regulate liquid waste in surface impoundments? Aren't the closure requirements for a surface impoundment different from a landfill?**

The bill includes regulation of surface impoundments used for the management and disposal of CCRs by including "surface impoundment" in the definition of "structure" in new RCRA Subtitle D Section 4011 (k)(3). The bill also includes surface impoundments in the permit program specifications at 4011 (c)(1)(c). There are some differences in the requirements of Part 258 regarding how waste is managed in landfills versus how it would be managed in a surface impoundment. The permit program specifications in the bill are tailored to take into account these differences primarily with respect to closure by directing that site-specific closure plans be developed for surface impoundments and that such plans include dewatering and stabilization procedures, as necessary, to ensure proper support is provided for the final cover system.

**Q: Will the permit programs established by the states protect human health and the environment?**

Yes, state permit programs will meet the standard of protecting human health and the environment. The bill sets minimum specifications that a CCR permit program must incorporate. The criteria that serve as the baseline for a CCR permit program are the "revised criteria" (as defined by new RCRA Subtitle D Section 4011 (k)(4) of the bill) that includes the requirements EPA promulgated (and revised) for the municipal solid waste program. EPA promulgated the revised criteria pursuant to Sections 1008(a), 4004(a), and 4010(c) of RCRA – all of which require that EPA promulgate requirements that provide:

- o "appropriate methods and degrees of control that provide at a minimum for protection of public health and welfare, protection of the quality of ground waters and surface waters from leachates... protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act" [1008(a)];
- o "no reasonable probability of adverse effects on health or the environment" [4004(a)]; and
- o "the criteria...necessary to protect human health and the environment..." [4010(c)].

"Protection of human health and the environment" is the standard set forth in the revised criteria already promulgated by EPA as the federal baseline, therefore, it is the standard the states must meet with their CCR permit programs. Moreover, the bill includes requirements that go beyond the MSW landfill criteria that are specifically tailored for CCR structures, including structural stability requirements, groundwater monitoring parameters tailored to the constituents in CCRs, a requirement that new CCR structures be located a minimum distance above the natural water table, and site-specific closure methods for CCR surface impoundments. Combined with application of the Part 258 MSW criteria, this combination of controls ensure that CCR permit programs are protective of human health and the environment.

**Q: Why is EPA not required to write regulations for coal ash? Is EPA precluded from revising the Part 258 criteria?**

Additional EPA regulations are not necessary because Part 258 is an existing, known set of regulations that EPA acknowledges would be adequate for regulation of CCRs. The Agency itself stated in the Proposed Rule (at page 35193) that the:

*“primary source [of the Proposed Rule] was the requirements under Part 258, applicable to municipal solid waste landfills, which provide a comprehensive framework for all aspects of disposal in land-based units, such as CCR landfills. Based on the Agency’s substantial experience with these requirements, EPA believes that the part 258 criteria represent a reasonable balance between ensuring the protection of human health and the environment from the risks of these wastes and the practical realities of facilities’ ability to implement the criteria. The engineered structures regulated under part 258 are very similar to those found at CCR disposal facilities, and the regulations applicable to such units would be expected to address the risks presented by the constituents in CCR wastes. Moreover, CCR wastes do not contain the constituents that are likely to require modification of the existing part 258 requirements, such as organics; for example, no adjustments would be needed to ensure that groundwater monitoring would be protective, as the CCR constituents are all readily distinguishable by standard analytical chemistry.”* [emphasis added].

The bill would not preclude EPA from revising the criteria in Part 258 but revisions to Part 258 would apply to the entire municipal solid waste landfill program. Meanwhile, the bill contains provisions tailored to CCR structures which go beyond the MSW landfill criteria.

**Q: What is EPA’s role with respect to review of a state coal combustion residuals permit program? What is EPA’s role with respect to enforcement? Does EPA have the authority to deal with an inadequate state permit program?**

EPA’s role is to receive from the State the certification and verification that the permit program implemented by the State meets the minimum requirements set forth in the bill. EPA may send a notice letter if a State’s permit program does not meet the minimum requirements for a CCR permit program. EPA does not have discretion to alter the federal baseline for a coal combustion residuals permit program by requiring a State permit program to include requirements other than the permit program specifications in the bill. Regarding enforcement, EPA does not have concurrent or “over-filing” enforcement authority in a State that is running its own CCR permit program.

If a State is implementing a permit program, EPA retains its imminent hazard authority under RCRA 7003 to take action against any CCR unit that may pose an imminent and substantial endangerment to human health and the environment. EPA also has a role to implement a permit program if a State declines to adopt and implement a program or because a State fails to remedy deficiencies identified regarding whether the State’s program meets the minimum federal baseline.

**Q: If a State cedes its CCR program to EPA may the State ever get it back?**

If EPA determines that a state program does not meet the minimum specifications set out in the bill, it would send a notice to the State and the State would have an opportunity to respond and cure any alleged deficiency before EPA may assume responsibilities for administering and enforcing the permit program in lieu of the state.

In a case where a State would voluntarily cede its CCR program to EPA, the State may still get it back. To assume or resume control of a permit program, a State would demonstrate to EPA that its program meets the minimum program specifications.

**Q: May States include more than what is set out in the bill as being the "minimum requirements" for a coal combustion residuals permit program?**

Yes. The ability for States' CCR permit programs to be more stringent than the minimum specifications set out in the bill is a key component of the legislation. States are in the best position to know what is necessary to protect human health and the environment within the state with respect to permitting land disposal units. This provision allows states the flexibility to tailor the state permit program to best fit the needs of the State.



## **MORE FAQs REGARDING H.R. 2273:**

**Q: How long have States been implementing municipal solid waste landfill permit programs? How many States already manage coal ash? Will States have to make significant changes to their existing coal combustion residuals permit programs in order to meet the specifications in the bill?**

States have been implementing Part 258 MSW landfill permit programs approved by EPA since the early 1990s, and many already have permit programs for CCRs. A significant number of the state programs exceed the federal baseline set out in the bill – but some states will have to make changes to bring their CCR programs up to the new minimum federal standards.

**Q: Does EPA have to approve a state program before a State may begin implementing its coal combustion residuals permit program? How will we know whether the states are capable of running a coal combustion residuals permit program? Opponents of the bill claim that states don't regulate CCRs – what incentive will the states have to regulate CCRs under the bill?**

Under the bill States don't need EPA approval before a state may begin (or continue) operating a CCR permit program. States that have previously met the rigorous standards for having an approved municipal solid waste landfill permit program under 4005(c) or an authorized hazardous waste program under 3006, may immediately commence (or continue) implementing a CCR permit program. However, the State must comply with the certification requirements set out in the bill demonstrating that their CCR permit programs meet the minimum criteria set forth in the bill. The states have an incentive to regulate CCRs under this bill because if they refuse or fail to do so, EPA may step in and implement and enforce the CCR permit program in the state.

**Q: Because the bill only expressly includes certain parts of Part 258, is coal ash regulated less than municipal solid waste?**

No. On the contrary, CCRs are regulated *more* than MSW landfills in that there are additional requirements for CCRs over and above what is required under Part 258. For example, the closure provision in (h) requires that a state assess each individual CCR structure and work out a site-specific closure plan. Also, the bill includes a structural integrity assessment that is not required by Part 258 for MSW landfills and directs that all new CCR structures be located a minimum of two feet above the upper limit of the natural water table. Furthermore, in addition to states being able to regulate CCR using any/all of the requirements in Part 258, states may be even more stringent and require protections in addition to those afforded by Part 258.

**Q: Does the bill address land disposal units that have structural integrity issues like the unit at TVA?**

Yes. The bill requires that the design, construction, and maintenance of all CCR management and disposal structures be assessed for structural integrity. If a structure is determined to be deficient, the permitting authority may require corrective action and, if corrective action isn't possible, to require that

the structure be closed. The bill also requires that structures that would be "high hazard potential" under the FEMA Guidelines for Dam Safety be assessed for structural integrity. Deficiencies must be corrected or the structure closed.

**Q: Does the bill address landfills and surface impoundments that have environmental issues such as leaching constituents of concern to groundwater?**

Yes. The bill addresses this by subjecting all CCR structures to comprehensive groundwater monitoring programs. Should groundwater monitoring determine that a CCR structure cannot meet an applicable groundwater protection standard the bill requires CCR permit programs to include corrective action and closure if necessary.

**Q: Does the bill cover all of the constituents of concern for coal ash?**

Yes. Appendix 1 of Part 258, Constituents for Detection Monitoring, does not include some of the detection monitoring constituents particular to CCRs so the bill adds those constituents to what is required in a CCR permit program.

**Q: The bill refers to "generally accepted engineering standards" with respect to assessment of the structural integrity of a coal combustion residual management/disposal structure, what does that term mean?**

"Generally accepted engineering standards" is understood in the same manner as what EPA defines as "recognized and generally accepted good engineering practices" in its proposed coal ash rule, which is "engineering, operation, or maintenance activities based on established codes, standards, published technical reports or recommended practices or a similar document."

**Q: Does the bill require groundwater monitoring and detection and for what structures is groundwater monitoring required?**

Yes. Groundwater detection and assessment monitoring is required for all structures that receive CCR after the date of enactment.

**Q: Does the bill require corrective action? What type of corrective action is required and when?**

Yes, one of the minimum specifications for a CCR permit program is corrective action and the bill requires corrective action for all structures that cannot meet applicable groundwater protection standards. The appropriate corrective action remedies are set forth in Part 258 which EPA indicated in the Proposed Rule was an adequate model for corrective action at CCR landfills and surface impoundments.

**Q: What are EPA's options if a state certifies that it will undertake its own CCR program but then fails to implement it? May EPA come in and take over a program?**

The bill addresses this possibility explicitly. The bill requires the State to maintain an approved CCR program. If a State does not maintain the program EPA sends a written notice of the State's deficiencies and gives the State an opportunity to remedy them. However, the deficiencies are limited to the standards set out in the bill itself. If the State fails to remedy the deficiencies, EPA implements the program for the State.

**Q: Does the bill address "dust" issues associated with coal ash?**

Yes. The bill specifically references 40 CFR 258.24 which requires that owners and operators of land disposal units ensure that the units not violate any applicable requirement developed under a State Implementation Plan – which would include state fugitive dust statutes and regulations.

**Q: Is financial assurance required for a state coal combustion residuals permit program?**

Yes. Financial assurance is a required component of a CCR permit program. As part of a CCR permit program, states must require financial assurance for closure, post-closure care, and corrective action.

**Q: In the bill, not all of the criteria in 40 CFR 258 are expressly set out as a specification that a state coal combustion residual permit program must meet, why were certain parts omitted?**

The minimum specifications expressly include the key environmental components of the Part 258 criteria (e.g. groundwater monitoring, corrective action, siting requirements, design requirements, financial assurance) necessary to ensure that CCR structures are managed in a manner protective of human health and the environment. These minimum criteria serve as part of the federal baseline for all CCR structures. Not all provisions of Part 258 were included in the bill because certain of the Part 258 criteria simply are not applicable to CCR structures but are appropriate for MSW landfills. While the bill includes the key elements of Part 258, it also preserves the inherent flexibility that is built in to the Part 258 regulations that allows states to tailor their CCR permit program to the site-specific conditions of the CCR structures (as is also the case for MSW landfills). Because the bill allows states to be more stringent – states are free to include any/all of the Part 258 requirements.