



H.R. 1734—Improving Coal Combustion Residuals Regulation Act of 2015 (Rep. McKinley, R-WV)

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FLOOR SCHEDULE: SCHEDULED FOR CONSIDERATION ON JULY 22, 2015, SUBJECT TO A [RULE](#)

TOPLINE SUMMARY: [H.R. 1734](#) would codify an Environmental Protection Agency (EPA) [final rule](#) published on April 17, 2015 regarding the recovery and beneficial use of coal combustion residuals (CCR), or coal ash, under the [Resource Conservation and Recovery Act](#) (also known as the Solid Waste Disposal Act). The rule and the bill would allow states to create and enforce their own coal combustion residuals permit programs.

CONSERVATIVE CONCERNS: There are no substantive concerns.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS: A coal combustion residual is defined as a waste generated by electric utilities and independent power producers. H.R. 1734 would amend the Resource Conservation and Recovery Act by authorizing each state to adopt, implement, and enforce a coal combustion residuals permit (CCR) program, and would require the governor of each state to notify the EPA Administrator, in writing, whether such state would implement such permit program within six months of the bill's enactment.

The states that intend to adopt a CCR program would be required to certify to the EPA that such program meets certain requirements to include: (1) a letter identifying the lead state implementing agency; (2) identification of any other state agencies involved with the implementation of the CCR; (3) an explanation of how the state coal combustion residuals permit program meets the legislation's

COST: The Congressional Budget Office (CBO) [estimates](#) that H.R. 1734 would cost \$2 million over the 2016-2020 period. H.R. 1734 would not affect direct spending or revenues and, 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.

requirements; (4) 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 (5) a plan for coordination among states in the event of a release that crosses state lines. A surface impoundment is defined as in-ground structure located at an electric utility or independent power producer that contains combustion residuals, and liquid.

Section 2 of the bill would incorporate provisions of the final rule and would codify CCR permit program requirements. The bill would require the implementing agency to apply new design criteria for structures and new criteria regarding groundwater monitoring and corrective action guidelines in line with [section 257](#) of Title 40, Code of Federal Regulations. Air quality, surface water regulations around structures, record keeping, run-on and run-off controls, hydrologic and hydraulic capacity requirements, structural integrity and inspection requirements would additionally be incorporated under section 257.

Each owner or operator of an inactive coal combustion residuals surface impoundment would be required to submit to the administrator of the EPA and the state in which such inactive CCR surface impoundment is located a notice stating whether the inactive The EPA would additionally be authorized implement a CCR permit program for a state if the governor notifies the EPA that the state would not be adopting a permit program, or if the state failed remedy specified deficiencies related to an existing program.

Section 3 would stipulate that the bill would not alter the EPA's regulatory determination entitled "[Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels](#)". Section 4 would clarify that the bill would not affect the authority of a state to request, or the EPA to provide, technical assistance under the Solid Waste Disposal Act. Section 5 would clarify that the legislation would not affect the obligations of an owner or operator of a structure under section [215\(b\)\(1\) of the Federal Power Act](#).

According to the committee report, H.R. 1734 would establish 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", and would codify standards set by the EPA in its final rule for coal ash. The legislation would address concerns regarding the EPA's initial 2010 [proposed rule](#) which would have made the re-use of coal ash more difficult, and would have reversed prior regulatory determinations made by EPA.

A May 1, 2015 Government Accountability Office (GAO) report on the disposal of coal combustion residuals from electric utilities can be found [here](#). A fact sheet on H.R. 1734 provided by the House Energy and Commerce Committee can be found [here](#). The House Report (H. Rept. 114-143) accompanying H.R. 1734 can be found [here](#).

AMENDMENTS MADE IN ORDER:

- [#1 Shimkus \(R-IL\)](#) (manager's amendment): would amend references to the EPA's final rule to include the date in which the final rule was published in the federal register on April 17, 2015.
- [#3 Pallone \(D-NJ\)](#): would modify a provision regarding the public availability of information by mandating that the implementing agency of a coal combustion residual permit program ensure compliance with [sections 257.106 and 257.107](#) of title 40, code of federal regulations.

- [#6 Castor \(D-FL\)](#): would strike a provision allowing the implementing agency to authorize remediation if a release occurs from a structure, in accordance with applicable federal or state requirements. The amendment would strike the provision that would have only applied if compliance with federal and state requirements would 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.
- [#2 Connolly \(D-VA\)](#): would require the implementing agency to mandate the owner or operator of a closed and inactive surface impoundment to perform [post-closure care](#) in accordance with [section 257.104](#), of title 40, code of federal regulations.
- [#4 Adams \(D-NC\)](#): would require a survey on that identifies all drinking water supply wells within one-half mile down-gradient from the established waste boundary of the surface impoundment. If sampling and water quality analysis conducted indicates that water from a drinking water supply well would exceed groundwater quality standards for constituents associated with the presence of coal combustion residuals, the owner or operator of the surface impoundment, in addition to any other applicable requirement, would be required to replace such water with an alternate supply of potable drinking water.
- [#5 Butterfield \(D-NC\)](#): would allow the requirements of the bill to have no force or effect, if the administrator of the EPA determines that the implementation of the bill would diminish protections for vulnerable populations.

COMMITTEE ACTION: This bill was introduced on April 13, 2015 and was referred to the House Committee on Energy and Commerce. The bill was then ordered to be reported the committee on June 9, 2015.

ADMINISTRATION POSITION: The statement of administration policy is available [here](#). According to the statement, if the President were presented with H.R. 1734 as drafted, his senior advisors would recommend that he veto the bill.

CONSTITUTIONAL AUTHORITY: Congress has the power to enact this legislation pursuant to the following: According to Article I, Section 8, Clause 3 of the Constitution: The Congress shall have power to enact this legislation to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

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