



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

June 3, 2013

To: Members of the Subcommittee on Environment and the Economy

From: Majority Committee Staff

Re: Markup of the “Coal Residuals Reuse and Management Act of 2013”; the Reducing Excessive Deadlines Obligation Act of 2013”; the “Federal Facility Accountability Act of 2013”; and the “Federal and State Partnership for Environmental Protection Act of 2013”

On Wednesday, June 5 and Thursday, June 6, 2013, the Subcommittee on Environment and the Economy will mark up four bills, the “Coal Residuals Reuse and Management Act of 2013”; the “Reducing Excessive Deadline Obligations Act of 2013”; the “Federal Facility Accountability Act of 2013”; and the “Federal and State Partnership for Environmental Protection Act of 2013.”

The Subcommittee on Environment and the Economy held a legislative hearing on the “Coal Ash Recycling and Oversight Act of 2013” on April 11, 2013, and the Subcommittee will consider legislation that incorporates witness suggestions from the hearing.

On May 17, 2013 and May 22, 2013, the Subcommittee on Environment and the Economy held a legislative hearing on the “Reducing Excessive Deadline Obligations Act of 2013”; the “Federal Facility Accountability Act of 2013”; and the “Federal and State Partnership for Environmental Protection Act of 2013.” The Subcommittee will consider versions of those bills that contain the same policy reforms as the bills discussed during the May 17, 2013, and May 22, 2013, hearing.

I. THE COAL RESIDUALS REUSE AND MANAGEMENT ACT OF 2013

Legislative and Regulatory History regarding coal combustion residuals (CCRs)

Generally, the management and disposal of waste is regulated by States under provisions of the Solid Waste Disposal Act, also known as RCRA, 42 U.S.C. §6901 et seq. Subtitle C of RCRA created a hazardous waste management program that, among other provisions, directs the Environmental Protection Agency (EPA) to develop criteria for identifying the characteristics of “hazardous” waste and to develop waste management criteria applicable to such waste. Subtitle D of RCRA established State and local governments as the primary planning, regulating, and implementing entities for the management of solid waste (i.e., household garbage (or municipal solid waste) and non-hazardous industrial solid waste).

The Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482) contained provisions – known as the Bevill Amendments – that prevented EPA from imposing hazardous waste regulatory requirements for fossil fuel combustion (FFC) waste until EPA studied the issue to determine whether regulation of FFC waste under Subtitle C was warranted. In its 1993 and 2000 regulatory determinations, EPA considered the requisite factors and determined that regulation of FFC wastes, generally, and coal combustion residuals (CCR), specifically, was not warranted under Subtitle C.

On June 21, 2010, EPA promulgated a proposed rule (75 FR 35128) setting out two regulatory options for management of CCRs. Under the first proposal, EPA would reverse the 2000 regulatory determination and regulate CCR as a hazardous waste under Subtitle C. Under the second proposal, EPA would continue to follow the findings of the 2000 regulatory determination, and CCR would remain classified as a non-hazardous waste regulated under Subtitle D.

Under the Subtitle D proposal, EPA would develop self-implementing national minimum standards for landfills and surface impoundments. The standards in the proposal largely were based on EPA's regulations for municipal solid waste in 40 CFR Part 258 and included restrictions on location, and provisions regarding design, operation, groundwater monitoring, closure, and post-closure care. Certain existing landfills and surface impoundments would have to be closed unless they could meet more stringent safety requirements. The standards under the Subtitle D proposal also would impose controls relating to run-off from the surface of facilities, discharges to surface waters, pollution caused by fugitive dust from landfills, and recordkeeping. The Subtitle D proposal would require that a system of monitoring wells be installed at all new and existing CCR landfills and surface impoundments. As under the proposed Subtitle C regulations, new landfills and surface impoundments would be required to install a composite liner and leachate collection and removal system.

Description of the Coal Residuals Reuse and Management Act of 2013

The bill would encourage recovery and beneficial use of coal combustion residuals by removing the option for EPA to regulate coal combustion residuals under Subtitle C of the Solid Waste Disposal Act. The bill also establishes requirements for the management and disposal of coal combustion residuals that are protective of human health and the environment. The bill would provide States with the option of establishing coal ash permit programs that meet the specific standards set out in the bill, or to choose to allow the EPA to administer a permit program for that State. States would be required to notify EPA within six months of enactment whether or not they intend to implement their own CCR permit program. Within 3 years, the States would be required to provide EPA details of the laws, regulations, and other features of their permit programs. If the State declines to implement its own permit program or, after notice and comment, EPA determines that the State's program falls short of the minimum standards in this bill, then EPA would take steps to implement a permit program for that State. If a State corrects a deficiency noted by EPA or chooses to take back its own permit program, the bill provides a mechanism by which a State may do so. The bill also sets out specific criteria for EPA to make a determination regarding whether a State permit program is deficient.

The bill requires an implementing agency to require owners or operators to apply for and obtain permits that incorporate the minimum requirements. The minimum requirements include certain criteria set out in Part 258 of Title 40 of the Code of Federal Regulations for managing municipal waste and other requirements that would apply specifically to the management and disposal of CCRs. The requirements include provisions for structural integrity, wind dispersal, public availability of information, design requirements, groundwater monitoring and corrective action, closure and post-closure, air quality, financial assurance, surface water, run-on and run-off for land based structures, run-off for surface impoundments, and location restrictions for structures established after enactment.

The bill contains specific requirements for unlined surface impoundments that do not meet the design criteria in Part 258 to meet a groundwater protection standard. The bill also requires that an independent registered professional engineer certify that the design of a structure be in accordance with the generally accepted good engineering practices for containment of the maximum volume of coal ash and liquids and certify that the construction and maintenance will ensure structural stability. The bill requires that a coal combustion residuals permit program require inspections at least annually and that structures be evaluated periodically for the appearance of structural weakness.

The bill provides a time frame for the issuance of permits and provides for interim compliance with certain minimum requirements between the time a State certifies its permit program and the time when permits are issued. The bill does contain backstop authority for EPA--if a State declines or fails to implement a permit program that meets the minimum requirements, then EPA must implement a permit program.

II. THE REDUCING EXCESSIVE DEADLINE OBLIGATIONS ACT OF 2013

Section 2002(b) of the Solid Waste Disposal Act requires EPA to review and, if necessary, revise, regulations every 3 years. EPA indicated in written testimony for the May 17, 2013, hearing that this provision could result in a significant burden on the Agency. This bill would replace that requirement with one that provides that the Administrator of EPA review and revise SWDA regulations as the Administrator determines appropriate.

The bill permits the President to promulgate, as appropriate, regulations identifying classes of facilities for which Federal financial assurance requirements will be first developed instead of by December 11, 1983 as the Comprehensive Response, Compensation, and Liability Act (CERCLA) currently provides. The bill also amends CERCLA to provide that requirements promulgated by the President related to financial responsibility under Section 108(b) of CERCLA not pre-empt the financial responsibility requirements of States or other Federal agencies. The bill requires that the President report to Congress on the facility or class of facilities and why the requirements are necessary prior to promulgating financial responsibility requirements.

III. THE FEDERAL AND STATE PARTNERSHIP FOR ENVIRONMENTAL PROTECTION ACT OF 2013

The purpose of this bill is to amend CERCLA provisions relating to State consultation on removal and remediation actions, State concurrence with listing on the National Priorities List, and State credit for contributions to the removal or remediation action.

The bill strengthens CERCLA section 104 (a)(2) by requiring that the President, or any other person undertaking a removal action, to consult with the affected State. Current law merely states that the President should consult with States.

The bill requires this consultation during the process of selecting remedial action. Current law only requires consultation with States before remedial actions are selected.

The bill also would permit States to include in their share of the costs of removal or remediation oversight costs and in-kind expenditures, including contributions of real property, equipment, goods, and services provided for removal or remediation, as well as amounts derived from materials recycled, recovered, or reclaimed from the facility.

The bill also provides the President may not add a facility to the National Priority List over a State's objection and, once every five years, a State may add a facility to the List if it meets the criteria in CERCLA Section 105(a)(8)(A).

IV. THE FEDERAL FACILITY ACCOUNTABILITY ACT OF 2013

The purpose of this bill is to amend CERCLA with respect to applicability to Federal facilities. The bill would require the United States to comply with State substantive and procedural requirements regarding response relating to hazardous substances at facilities that are currently or formerly owned or operated by the Federal government. The bill specifically states that the United States waives immunity with respect to State administrative orders, injunctive relief, civil and administrative penalties and fines, reasonable service charges and oversight costs, and laws and regulations regarding land use controls.

V. AMENDMENTS AT SUBCOMMITTEE

In keeping with Chairman Upton's announced policy, Members must submit amendments two hours before they are offered during this markup, except that amendments in the nature of a substitute must be circulated at least 24 hours before they are to be offered in a markup. Members may submit amendments by email to: peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

VI. STAFF CONTACTS

If you have questions, please contact Tina Richards or David McCarthy with the Committee staff at 5-2927.