

[DISCUSSION DRAFT]

111TH
CONGRESS
2D SESSION

H. R. ____

To amend the Solid Waste Disposal Act to provide the Environmental Protection Agency authority to regulate coal combustion byproduct disposal under subtitle D of such Act.

IN THE HOUSE OF REPRESENTATIVES

Mr. SHULER introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Solid Waste Disposal Act to provide the Environmental Protection Agency authority to regulate coal combustion byproduct disposal under subtitle D of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the [“____ Act”].

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Nearly half of the electric power used in the United States is generated by coal-fired power plants, which produced approximately 136,000,000 tons of coal combustion byproducts in 2008.

(2) According to the Environmental Protection Agency, coal combustion byproducts often contain potentially harmful constituents such as arsenic, chromium, lead, and mercury.

(3) As documented in the Environmental Protection Agency's July 9, 2007, report entitled "Coal Combustion Waste Damage Case Assessment", the leaching of potentially harmful chemicals from coal combustion byproduct depositories into groundwater and surface water can, depending on concentration and exposure, have an adverse impact on public health and the environment.

(4) In the report entitled "Coal Combustion Waste Damage Case Assessment", the Environmental Protection Agency acknowledges that the risk of leaching of chemicals from coal combustion byproducts can effectively be reduced to safe levels if a composite liner is used at a coal combustion byproduct landfill or surface impoundment.

(5) In 2000, the Environmental Protection Agency noted that while most States require new surface impoundments to implement groundwater monitoring to detect contaminants that may be leaching from the depository, roughly 62 percent of existing surface impoundments had no such monitoring of groundwater.

(6) In 2007, a report by the Environmental Protection Agency and the Department of Energy stated that there has been some improvement in the management of coal combustion byproducts in both landfills and surface impoundments.

(7) In a regulatory determination made in 2000, the Environmental Protection Agency concluded that coal combustion byproducts should be federally regulated under subtitle D of the Solid Waste Disposal Act, and not as a hazardous waste under subtitle C of that Act.

(8) Despite determining that coal combustion byproducts should be regulated under subtitle D of the Solid Waste Disposal Act, the Environmental Protection Agency has noted that current law provides limited authority to directly enforce subtitle D regulations for coal combustion byproducts. The Environmental Protection Agency believes that additional direct authority under subtitle D for coal combustion byproducts would be useful

for purposes of implementing subtitle D rules for such byproducts.

(9) Sustainable recycling of coal combustion byproducts which do not pose a threat to human health and the environment should be promoted.

(10) Since 2000, over 117,000,000 tons of carbon dioxide emissions have been avoided by replacing a certain percentage of Portland cement with fly ash in concrete.

(11) Certain beneficial uses that encapsulate coal combustion byproducts, such as fly ash replacement of Portland cement in concrete and synthetic gypsum usage in wallboard, greatly reduce if not eliminate the ability for contaminants to leach from the recycled product.

(12) The use of coal combustion byproducts currently has an annual impact of approximately \$9,000,000,000 on the economy of the United States.

(13) Enhanced Federal regulation should not impede or seek to regulate beneficial use of coal combustion byproducts in encapsulated applications that have been demonstrated to pose no risk to public health or the environment.

(14) Coal combustion byproducts can be used and disposed of in a variety of non-encapsulated ways, some of which have been shown, depending on the geologic settings, to have adverse impacts on human health and the environment, and therefore warrant the Environmental Protection Agency to establish certain minimum standards under subtitle D of the Solid Waste Disposal Act to ensure the beneficial use and disposal is protective of human health and the environment.

(15) Federal regulation under subtitle D of the Solid Waste Disposal Act of coal combustion byproduct disposal and certain beneficial uses of coal combustion byproducts should be increased for the protection of human health and the environment.

(b) PURPOSE.—The purpose of this Act is to amend the Solid Waste Disposal Act to provide the Administrator of the Environmental

Protection Agency the authority to promulgate and enforce non-hazardous waste regulations for the disposal of coal combustion byproducts to protect human health and the environment and maximize the beneficial use of coal combustion byproducts in a manner that is protective of human health and the environment.

**SEC. 3. COAL COMBUSTION BYPRODUCT DISPOSAL
REGULATION.**

(a) COAL COMBUSTION BYPRODUCT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

**“SEC. 4011. COAL COMBUSTION BYPRODUCT DISPOSAL
REGULATION.**

“(a) REGULATION.—Not later than 18 months after the date of enactment of this section, the Administrator shall promulgate regulations to—

“(1) prohibit the establishment of new uncontrolled coal combustion byproduct disposal units;

“(2) require that coal combustion byproducts be disposed of only at controlled coal combustion byproduct disposal units; and

“(3) provide for, by a date that is not earlier than 5 years and not later than 7 years after the promulgation of such regulations, that uncontrolled coal combustion byproduct disposal units shall no longer receive coal combustion byproducts or require the upgrade of such units so that such units may be classified as controlled coal combustion byproduct disposal units within the meaning of this section. The time period for ceasing the receipt of coal combustion wastes or upgrading units under this paragraph may be extended only if—

“(A) such an extension is approved by the permitting authority of the state in which the unit is located and is also approved by the Administrator.

“(B) extended compliance schedules include an enforceable sequence of actions or operations, leading

to compliance with the criteria applicable to controlled coal combustion byproduct disposal units.

“(4) ensure that final closure and capping of units that cease receiving coal combustion byproducts under this paragraph shall be initiated within 90 days of final receipt of coal combustion byproducts at such units.

“(b) CRITERIA FOR CONTROLLED COAL COMBUSTION BYPRODUCT DISPOSAL UNITS.—

“(1) CRITERIA FOR CONTROLLED COAL COMBUSTION BYPRODUCT DISPOSAL UNITS.—The regulations promulgated under subsection (a) shall contain criteria for determining which units shall be classified as controlled coal combustion byproduct disposal units and which shall be classified as uncontrolled coal combustion byproduct disposal units within the meaning of this section. At a minimum, such criteria shall provide that a unit may be classified as a controlled unit only—

“(A) if the structure, management, and operation of such unit is protective of human health and the environment;

“(B) if, for new controlled units and expansions of existing controlled units, such units and expansions employ liner systems, as necessary, sufficient to minimize ground water contamination;

“(C) if new and existing units employ ground water monitoring to detect contamination and measure compliance with applicable ground water protection criteria, and provide measures for implementing corrective action, when necessary, to ensure compliance with applicable ground water protection criteria.

“(2) CONSIDERATION.— In promulgating regulations under paragraph (1), the Administrator shall consider the varying regional, geologic, hydrologic, climatic conditions and other circumstances under which different coal combustion waste management practices are required in order to protect ground and surface waters from leachate

contamination, to protect surface waters from surface runoff contamination, and to protect ambient air quality.

“(c) INVENTORY.—Not later than 6 months after the promulgation of regulations under subsection (a), the Administrator, after consultation with the Energy Information Administration of the Department of Energy, shall publish a state by state inventory of all coal combustion byproduct disposal units in the United States that are classified as uncontrolled coal combustion byproduct disposal units within the meaning of this section.

“(d) CONTROL OF COAL COMBUSTION BYPRODUCT DISPOSAL.—

“(1) STATE PERMIT PROGRAM.—Not later than 12 months after promulgation of regulations under subsection (a), each State shall adopt or modify and implement a permit program or other system of prior approval and conditions to assure that each coal combustion byproduct disposal unit within such State that may receive coal combustion byproducts complies with such regulations, as applicable. Such permit program or other system of prior approval and conditions shall be updated to comply with the revision of such regulations.

“(2) DETERMINATION BY ADMINISTRATOR.—The Administrator shall determine whether each State has implemented an adequate program under this subsection.

“(3) ENFORCEMENT.—In any State that the Administrator determines has not implemented an adequate program for such units under this paragraph by the date provided in paragraph (1), the Administrator may use the authorities available under sections 3007 and 3008 of this title to enforce the regulations promulgated under subsection (a) with respect to such units. For purposes of this paragraph, the term ‘requirement of this subtitle’ in section 3008 of this title shall be deemed to include the regulations promulgated under subsection (a).

“(4) Administrative Expenses.—In order to pay for any administrative expenses incurred as a specific result of this Act, a State may charge a permitting fee to any and all permittees.

“(e) BENEFICIAL USE OF COAL COMBUSTION BYPRODUCTS.—

“(1) STUDY.—The Administrator shall conduct a study of the various unencapsulated and encapsulated applications for the beneficial use of coal combustion byproducts. Such study shall be updated not less than once every 4 years and shall include assessment of the following:

“(A) Any potentially harmful impacts on the environment and public health of each unencapsulated and encapsulated application for beneficial use of coal combustion byproducts.

“(B) Hydrogeologic evaluations and preventive engineering and monitoring measures required to ensure that an encapsulated and unencapsulated application for the beneficial use of coal combustion byproducts, including use as structural fill, waste stabilization, and soil modification and stabilization, will not create adverse effects on human health or the environment.

“(C) Potential methods to increase the amount of coal combustion byproducts that can be safely used in both encapsulated and unencapsulated applications for the beneficial use of such byproducts.

“(D) Potential challenges to the beneficial use of coal combustion byproducts if potentially harmful constituents in such byproducts become more concentrated due to increased restrictions on emissions under the Clean Air Act (42 U.S.C. 7401 et seq.).

“(2) REPORTS AND RECOMMENDATIONS.—Not later than 12 months after the date of enactment of this section, and every 4 years thereafter, the Administrator shall submit to Congress a report containing the findings of the study under paragraph (1), including recommendations—

“(A) for the prevention of environmental and public health threats associated with beneficial use of coal combustion byproducts; and

“(B) for increasing the beneficial use of coal combustion byproducts.

“(3) REGULATION.—The Administrator may promulgate regulations, as appropriate, in consultation with the Secretary of Energy, the Secretary of Transportation and Federal Highway Administrator, the Secretary of Interior and the Secretary of Agriculture, to achieve the results identified in paragraph (2).”.

“(4) EXEMPTION.—Encapsulated uses of coal combustion byproducts which the Administrator has determined do not pose a risk to human health and the environment, including but not limited to the production of Portland cement, concrete, wallboard, and other uses as raw material feed for incorporation into other commercially available products are exempt from regulation under this section.

(b) CONFORMING AMENDMENT.—Section 4001 of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941) is amended by striking “The objectives of this subtitle” and inserting “Except as provided in section 4011, the objectives of this subtitle”.

(c) TABLE OF CONTENTS.—The table of contents contained in section 1001 of the Solid Waste Disposal Act (42 U.S.C. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

“Sec. 4011. Coal combustion byproduct disposal regulation.”.