

House Bill Would Circumvent Federal Regulation of Coal Ash

Article By:

Environmental Practice Group

On Thursday, the U.S. House of Representatives passed legislation that would significantly alter the U.S. Environmental Protection Agency's (EPA) authority with respect to the regulation of coal combustion residuals (CCR) or coal ash under the Resource Conservation and Recovery Act (RCRA). If enacted, this legislation would allow states to develop, implement and administer permit programs for handling CCR. EPA would have permitting authority only in limited circumstances. Furthermore, the legislation provides that, except as provided in those subsections that authorize EPA to review state permit programs for consistency with the law and those providing for EPA implementation of the permit program, "[EPA] shall, with respect to the regulation of coal combustion residuals, defer to the States pursuant to this section." (The bill's further reference to RCRA § 6005 as an exception appears to be a mistake.)

Aside from creating an entirely new permitting regime for CCR, this legislation would add a new layer of uncertainty to the validity of EPA's pending rulemaking on the regulation of CCR under RCRA. The effect on EPA's proposed Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (proposed June 7, 2013; comments due September 20) pursuant to the Clean Water Act, which would impose new requirements on wastewater associated with fly and bottom ash and also may address ash pond closure issues, is uncertain.

The House bill, entitled the [Coal Residuals Reuse and Management Act of 2013](#), was passed by a 265-155 vote, including the support of 39 Democrats, and would be an amendment to the Solid Waste Disposal Act. The legislation authorizes states to create and manage permit programs for CCR. The proposed law would require states to notify the EPA Administrator within six months of the legislation's enactment whether they plan to implement such a permit program. States that choose to create such a program would need to comply with certain federal standards and requirements, including those addressing design, groundwater monitoring and corrective action, closure and post-closure of landfills, surface impoundments or other land based units that receive CCR.

Although House Democrats have argued that the legislation does not provide for enough federal authority to regulate CCR, citing groundwater pollution as a primary concern, Republicans and industry groups have supported the bill as protecting the market for beneficial uses of CCR. (For example, the legislation would not affect utilization, placement and storage of CCR at surface mining and reclamation operations.) The Obama administration indicated in a statement earlier this week that it is interested in working with Congress to address the issues raised in the legislation to develop standards for the management of CCR and to encourage the beneficial uses of coal combustion

byproducts, suggesting that a legislative compromise may be attainable.

The legislation, and its potential for enactment, further complicates the already uncertain status of federal regulation of CCR – specifically, EPA’s long-pending rulemaking concerning the handling of CCR under RCRA. In June 2010, EPA issued a proposed rule to reclassify CCR under RCRA. Under RCRA, CCR are currently considered exempt wastes. In the 2010 rulemaking, EPA proposed to instead consider CCR as either special wastes pursuant to RCRA Subtitle C or as nonhazardous wastes pursuant to RCRA Subtitle D. EPA’s last action with respect to this rulemaking was the issuance of a Notice of Data Availability in October 2011; the proposed rule has not been finalized.

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