

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 2273) TO AMEND SUBTITLE D OF THE SOLID WASTE DISPOSAL ACT TO FACILITATE RECOVERY AND BENEFICIAL USE, AND PROVIDE FOR THE PROPER MANAGEMENT AND DISPOSAL, OF MATERIALS GENERATED BY THE COMBUSTION OF COAL AND OTHER FOSSIL FUELS

OCTOBER 12, 2011.—Referred to the House Calendar and ordered to be printed

Mr. SCOTT of South Carolina, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 431]

The Committee on Rules, having had under consideration House Resolution 431, by a record vote of 5 to 2, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 2273, the Coal Residuals Reuse and Management Act, under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill. The resolution provides that the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The resolution waives all points of order against the committee amendment in the nature of a substitute. The resolution makes in order only those amendments printed in this report. Each such amendment may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against the amendments printed in this report are waived. Finally, the resolution provides one motion to recommit with or without instructions.

EXPLANATION OF WAIVERS

Although the resolution waives all points of order against consideration of the bill, the Committee is not aware of any points of order against its consideration. The waiver of all points of order is prophylactic in nature.

Although the resolution waives all points of order against the committee amendment in the nature of a substitute to H.R. 2273, the Committee is not aware of any points of order against the amendment in the nature of a substitute. The waiver of all points of order is prophylactic in nature.

Although the resolution waives all points of order against the amendments printed in this report, the Committee is not aware of any points of order against the amendments. The waiver of all points of order is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee Record Vote No. 138

Motion by Mr. McGovern to report an open rule. Defeated: 2–5

Majority Members	Vote	Minority Members	Vote
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Nugent	Nay	Mr. Hastings of Florida	Yea
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee Record Vote No. 139

Motion by Mr. Hastings to make in order and provide the appropriate waivers for amendment #14, offered by Rep. Castor (FL), which would ensure that coal combustion residuals that are beneficially reused may not be regulated as hazard material; amendment #2, offered by Rep. Cohen (TN), which would require the Administrator to revise the disposal criteria upon which the bill relies, to ensure that human health and the environment are protected from the risks posed by coal combustion residuals; amendment #16, offered by Rep. Ellison (MN), which would require that if section 4011 of the Solid Waste Disposal Act, as added by this bill, authorizes the appropriation of funds but does not comply with Cut-Go, then this section of the bill will no longer be effective; amendment #5, offered by Rep. Jackson Lee (TX), which would allow the Administrator to retain the authority to revise criteria for the disposal of coal combustion residuals; amendment #13, offered by Rep. Keating (MA), which would require structures to address groundwater monitoring and dust control according to the Environmental Protection Agency's proposed criteria; amendment #3, offered by Rep. Kissell (NC), which would require that materials used for addition to existing structures or construction of new structures (for coal combustion residuals) come from U.S. materials, except as specified in the amendment; and amendment #12, offered by Rep. Sewell (AL), which would require that the lead state agency responsible for implementing the coal combustion residuals permit

program receive from each permittee: (1) a description of how structure will protect against coal combustion residuals (2) a plan addressing spills of coal combustion residuals. Defeated: 2–5

Majority Members	Vote	Minority Members	Vote
Mr. Woodall	Nay	Mr. McGovern	Yea
Mr. Nugent	Nay	Mr. Hastings of Florida	Yea
Mr. Scott of South Carolina	Nay		
Mr. Webster	Nay		
Mr. Dreier, Chairman	Nay		

Rules Committee Record Vote No. 140

Motion by Mr. Woodall to report the rule. Adopted: 5–2

Majority Members	Vote	Minority Members	Vote
Mr. Woodall	Yea	Mr. McGovern	Nay
Mr. Nugent	Yea	Mr. Hastings of Florida	Nay
Mr. Scott of South Carolina	Yea		
Mr. Webster	Yea		
Mr. Dreier, Chairman	Yea		

SUMMARY OF AMENDMENTS MADE IN ORDER

1. Shimkus (IL): Manager's Amendment. Would provide additional detail to the certification requirements that States would provide to EPA; would add certain operating criteria from Part 258 of 40 CFR, would clarify that states may request technical assistance from EPA; would add a savings clause for citizen suits; would add additional constituents for groundwater monitoring; would reiterate in the definition of revised criteria that the criteria were promulgated to protect human health and the environment. The amendment would make other technical and clarifying changes to H.R. 2273. (10 minutes)

2. Waxman (CA): Would require state programs to meet a legal standard of protection to ensure that human health and the environment are protected. (10 minutes)

3. Carney (DE): Would establish a time frame for bringing existing surface impoundments into compliance with revised criteria for design, groundwater monitoring, and corrective action. Would maintain state flexibility to opt-out (with certification) and would provide up to 10-year compliance window. (10 minutes)

4. Markey, Edward (MA): Would require the States to notify the public and the EPA and offer the opportunity to comment before a State establishes a program to regulate coal combustion waste. (10 minutes)

5. Rush (IL): Would provide federal enforcement authority so that if the EPA Administrator determines that a structure is in violation of a State coal combustion residuals permit program, and the State has not taken appropriate action to enforce such permit program with respect to such structure, the Administrator may inspect such structure and enforce the requirements of such permit program with respect to such structure. (10 minutes)

6. Jackson Lee (TX): Would require the Administrator of the EPA to submit a report to Congress on the long-term impacts of State coal combustion residuals permit programs on human health and

the environment within five years of enactment of the legislation.
(10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE SHIMKUS
OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 5, line 2, strike the semicolon and insert the following: “, including a description of the State’s—

“(I) process to inspect or otherwise determine compliance with such permit program;

“(II) process to enforce the requirements of such permit program; and

“(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the issuance of permits under, such permit program;

Page 5, line 5, strike “, regulations, or guidance” and insert “or regulations”.

Page 5, beginning on line 9, strike “, regulations, and guidance” and insert “and regulations”.

Page 6, line 13, insert “according to a schedule determined by such agency” after “correct the deficiency”.

Page 6, line 14, insert “according to such schedule” after “is not corrected”.

Page 6, line 21, insert a comma after “assurance, closure”.

Beginning on page 7, line 1, strike subparagraph (D) and redesignate subparagraphs (E) through (G) as subparagraphs (D) through (F), respectively.

Page 7, line 17, insert “according to a schedule determined by such agency” before the period.

Page 7, line 18, insert “according to such schedule” before the comma.

Page 8, after line 5, insert the following new subparagraph:

“(G) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to address wind dispersal of dust from coal combustion residuals by requiring dust control measures, as determined appropriate by the head of the lead State agency responsible for implementing the coal combustion residuals permit program.

Page 8, line 21, insert “and corrective action” after “groundwater monitoring”.

Page 8, line 23, strike the semicolon and insert the following: “, except that, for the purposes of this paragraph, such revised criteria shall also include—

“(I) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

“(II) for the purposes of assessment monitoring, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids;

Page 9, line 16, strike “; and” and insert a semicolon.

Page 9, line 21, strike the period and insert a semicolon.

Page 9, after line 21, insert the following:

“(E) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations;

“(F) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations;

“(G) for landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-on and run-off control systems described in section 258.26 of title 40, Code of Federal Regulations; and

“(H) for surface impoundments that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

Page 17, line 23, strike “, in a schedule.”

Page 17, line 24, insert “that establishes a deadline for completion and” before “that takes into account”.

Page 18, after line 20, insert the following:

“(C) TECHNICAL AND ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon request from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide to such State agency only the technical or enforcement assistance requested.

“(3) CITIZEN SUITS.—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

Page 20, line 11, insert “in accordance with the requirement of such section that the criteria protect human health and the environment” after “4010(c)”.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WAXMAN OF CALIFORNIA OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, after line 5, insert the following new subparagraph:

“(H) The coal combustion residuals permit program contains criteria necessary to protect human health and the environment.

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CARNEY OF DELAWARE OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 8, after line 5, insert the following new subparagraph:

“(H)(i) The coal combustion residuals permit program shall require that—

“(I) each surface impoundment meet the requirements applicable to existing and new structures under

this section by a deadline of the date that is 5 years after the date of enactment of this section; and

“(II) each surface impoundment that does not meet all such requirements by such deadline close in accordance with the requirements of subsection (h).

“(ii) The head of the agency responsible for implementing the coal combustion residuals permit program may extend the deadline under clause (i) with respect to a surface impoundment in 1-year increments upon a showing of good cause, but in no case may the deadline be extended beyond the date that is 10 years after the date of enactment of this section.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MARKEY OF MASSACHUSETTS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 9, line 23, insert “, after providing notice and opportunity to comment to the public and the Administrator,” after “may”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE RUSH OF ILLINOIS OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 18, after line 20, insert the following new subparagraph:

“(C) ENFORCEMENT.—Notwithstanding subparagraph (A), if the Administrator determines that a structure is in violation of a State coal combustion residuals permit program under this section, and the State has not taken appropriate action to enforce such permit program with respect to such structure, the Administrator may inspect such structure and enforce the requirements of such permit program with respect to such structure.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE JACKSON LEE OF TEXAS OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of the bill, add the following new section:

SEC. 4. STUDY.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this section, the Administrator of the Environmental Protection Agency shall submit to Congress a report containing the results of a study to determine the long-term impacts of State coal combustion residuals permit programs on human health and the environment.

(b) DEFINITION.—For the purposes of this section, the term “State coal combustion residuals permit program” means a coal combustion residuals permit program implemented by a State under section 4011 of the Solid Waste Disposal Act (as added by this Act).