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113TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPT. 113–179
Part 1

REDUCING EXCESSIVE DEADLINE OBLIGATIONS ACT OF 2013

JULY 30, 2013.—Ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2279]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 2279) to amend the Solid Waste Disposal Act relating to review of regulations under such Act and to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 relating to financial responsibility for classes of facilities, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

29–006

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Reducing Excessive Deadline Obligations Act of 2013".

SEC. 2. REVIEW OF REGULATIONS UNDER THE SOLID WASTE DISPOSAL ACT.

Section 2002(b) of the Solid Waste Disposal Act (42 U.S.C. 6912(b)) is amended to read as follows:

"(b) REVIEW OF REGULATIONS.—The Administrator shall review, and revise, as the Administrator determines appropriate, regulations promulgated under this Act.".

SEC. 3. FINANCIAL RESPONSIBILITY FOR CLASSES OF FACILITIES UNDER CERCLA.

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)) is amended—

(1) in paragraph (1)—

(A) by striking "Not later than three years after the date of enactment of the Act, the President shall" and inserting "The President shall, as appropriate,"; and

(B) by striking "first" after "for which requirements will be"; and

(2) in paragraph (2)—

(A) by striking "Financial responsibility may be established" and inserting "Owners and operators may establish financial responsibility";

(B) by striking "any one, or any combination, of the following:" and inserting "forms of security, including"; and

(C) by striking "or qualification" and inserting "and qualification".

SEC. 4. REPORT TO CONGRESS REGARDING FINANCIAL RESPONSIBILITY REQUIREMENTS.

Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)) is further amended by adding at the end the following:

"(6) The President may not promulgate any financial responsibility requirement under this subsection without first submitting to Congress a report—

"(A) describing each facility or class of facilities to be covered by such requirement;

"(B) describing the development of such requirement, why the facility or class of facilities proposed to be covered by such requirement present the highest level of risk of injury, and why the facility or class of facilities is not already covered by adequate financial responsibility requirements;

"(C) describing the financial responsibility requirements promulgated by States or other Federal agencies for the facility or class of facilities to be covered by the financial responsibility requirement proposed under this subsection and explaining why the requirement proposed under this subsection is necessary;

"(D) describing the exposure to the Fund for response costs resulting from the facility or class of facilities proposed to be covered; and

"(E) describing the capacity of the financial and credit markets to provide instruments of financial responsibility necessary to meet such requirement.

The President shall update any report submitted under this paragraph to reflect any revision of the facilities or classes of facilities to be covered by a financial responsibility requirement that is the subject of such report.".

SEC. 5. PREEMPTION OF FINANCIAL RESPONSIBILITY REQUIREMENTS.

Section 114(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(d)) is amended to read as follows:

"(d) No owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility associated with the production, transportation, treatment, storage, or disposal of hazardous substances pursuant to financial responsibility requirements under any State law or regulation, or any other Federal law or regulation, shall be required to establish or maintain evidence of financial responsibility under this title, unless the President determines, after notice and opportunity for public comment, that in the event of a release of a hazardous substance that is not a federally permitted release or authorized by a State permit, such other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104. If the President determines that such

other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104 in the event of such a release, the President shall accept evidence of compliance with such other Federal or State financial responsibility requirements in lieu of compliance with any portion of the financial responsibility requirements promulgated under this title to which they correspond.".

SEC. 6. EXPLOSIVE RISKS PLANNING NOTIFICATION.

Not later than 180 days after the date of enactment of this Act, the owner or operator of each facility at which substances listed in appendix A to part 27 of title 6, Code of Federal Regulations, as flammables or explosives are present above the screening threshold listed therein shall notify the State emergency response commission for the State in which such facility is located that such substances are present at such facility and of the amount of such substances that are present at such facility.

PURPOSE AND SUMMARY

The legislation removes unnecessary and outdated deadlines for certain rulemaking activities to be conducted by the Environmental Protection Agency (EPA) under the Solid Waste Disposal Act (commonly referred to as the Resource Conservation and Recovery Act or RCRA) and the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). The legislation requires EPA, before promulgating financial responsibility requirements under CERCLA, to evaluate existing State or other Federal financial assurance requirements to determine whether additional requirements are necessary. Should EPA determine that additional financial assurance requirements are necessary to prevent the United States from incurring response costs under section 104 of CERCLA, the legislation protects the existing State or Federal requirements by requiring that EPA accept compliance with the existing requirements in lieu of compliance with the new EPA requirements. The legislation also requires that the owner or operator of a facility that stores chemicals on the Department of Homeland Security Chemicals of Interest that are flammables or explosives above the identified threshold, to report the presence of such chemicals to the State emergency response commission.

BACKGROUND AND NEED FOR LEGISLATION

RCRA and CERCLA both contain deadlines that were enacted over thirty years ago and now either are outdated or unnecessary. Section 2002(b) of RCRA was enacted as part of the 1976 Amendments to the Solid Waste Disposal Act at a time when the complexity and volume of regulations was significantly less. To require EPA to review and, if necessary, revise all current regulations under RCRA every three years would pose an unnecessary regulatory burden on the Agency. Section 108(b)(1) of CERCLA was enacted in 1980 and contains a deadline by which EPA was to identify the classes for which financial responsibility requirements would first be developed. EPA missed the deadline by almost thirty years, but has since completed the task of identifying the classes of facilities. These deadlines are no longer appropriate.

CERCLA section 108(b) gives EPA authority to establish Federal requirements for financial responsibility for various classes of facilities consistent with the degree and duration of risk associated with the facilities' production, transportation, treatment, storage, or disposal of hazardous substances. The intent of section 108(b) was to reduce future reliance on the Hazardous Substances Super-

fund and to assure the availability of funds to address the release of hazardous substances. When CERCLA was enacted in 1980, Congress directed the President to identify the classes of facilities that presented the highest risk of injury no later than three years after the date of enactment, and Congress likely intended that the process of establishing financial responsibility requirements would be done quickly. However, for almost thirty years, EPA did not start the process of establishing requirements under section 108(b), leaving States or other Federal agencies to promulgate financial responsibility requirements. A significant body of State and other Federal law currently exists that requires facilities to provide evidence of financial responsibility. It is important that EPA understand the existing financial responsibility requirements under State or other Federal law because it is unnecessary for EPA to establish financial responsibility requirements under section 108(b) for facilities or classes of facilities that are already sufficiently covered by State or other Federal law or regulations. It also is important that the existing State or other Federal requirements be protected and that compliance with these requirements be counted towards compliance with any new requirements determined to be necessary by EPA.

HEARINGS

The Subcommittee on Environment and the Economy held a hearing entitled "Discussion Draft, the Reducing Excessive Deadline Obligations Act of 2013" on May 17 and 22, 2013. The Subcommittee received testimony from:

- Carolyn Hanson, Deputy Executive Director, Environmental Council of States;
- Jeffery Steers, Director Central Office Division of Land Protection and Revitalization Virginia Department of Environmental Quality;
- Dan Miller, Senior Assistant Attorney General, Natural Resources and Environment Division, Colorado Department of Law;
- Abigail Dillen, Coal Program Director, Earthjustice;
- Thomas Duch, City Manager, City of Garfield, New Jersey;
- David Bearden, Specialist in Environmental Policy, Congressional Research Service; and,
- David Trimble, Director, Natural Resources and Environment, Government Accountability Office.

COMMITTEE CONSIDERATION

On June 5 and 6, 2013, the Subcommittee on Environment and the Economy met in open markup session and approved the Committee Print entitled "Reducing Excessive Deadline Obligations Act of 2013" for full Committee consideration, without amendment, by a voice vote.

On June 18 and 19, 2013, the full Committee on Energy and Commerce met in open markup session and considered H.R. 2279. During the markup, four amendments were offered and two were adopted. An amendment offered by Mr. Gardner was adopted by voice vote, and an amendment offered by Mr. Waxman was adopted by voice vote. On June 19, 2013, the Committee ordered H.R. 2279

favorably reported to the House, as amended, by a recorded vote of 25 ayes and 18 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were three record votes taken in connection with ordering H.R. 2279 reported. A motion by Mr. Upton to order H.R. 2279 reported to the House, as amended, was agreed to by a recorded vote of 25 ayes and 18 nays. The following reflects the recorded votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 21

BILL: H.R. 2279, the "Reducing Excessive Deadline Obligations Act of 2013"

AMENDMENT: A amendment offered by Ms. Capps, No. 3, to provide that the Administrator of the Environmental Protection Agency shall, after consultation with the States, the Secretary of Homeland Security, and other appropriate entities, promulgate regulations establishing financial responsibility requirements for owners and operators of facilities that manufacture, store, distribute, or sell fertilizer in quantities that would pose significant risk in the event of an accident or explosion, and to provide that such financial responsibility requirements shall require sufficient provision to be made by the owner or operator of any such facility to fully compensate affected communities in the event of such an accident or explosion.

DISPOSITION: NOT AGREED TO, by a roll call vote of 17 yeas and 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell			
Mr. Barton		X		Mr. Markey			
Mr. Whitfield				Mr. Pallone			
Mr. Shimkus		X		Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green			
Mr. Rogers		X		Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers				Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen			
Mr. Lance		X		Ms. Castor			
Mr. Cassidy		X		Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

06/19/2013

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 22

BILL: H.R. 2279, the "Reducing Excessive Deadline Obligations Act of 2013"

AMENDMENT: An amendment offered by Ms. Schakowsky, No. 4, to provide that section 2002(b) of the Solid Waste Disposal Act does not affect any law suit filed on or before June 19, 2013.

DISPOSITION: NOT AGREED TO, by a roll call vote of 18 yeas and 25 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Hall		X		Mr. Dingell			
Mr. Barton				Mr. Markey			
Mr. Whitfield				Mr. Pallone			
Mr. Shimkus		X		Mr. Rush			
Mr. Pitts		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green			
Mr. Rogers		X		Ms. DeGette	X		
Mr. Murphy		X		Mrs. Capps	X		
Mr. Burgess				Mr. Doyle	X		
Mrs. Blackburn				Ms. Schakowsky	X		
Mr. Gingrey		X		Mr. Matheson	X		
Mr. Scalise		X		Mr. Butterfield	X		
Mr. Latta		X		Mr. Barrow	X		
Mrs. McMorris Rodgers		X		Ms. Matsui	X		
Mr. Harper		X		Ms. Christensen			
Mr. Lance		X		Ms. Castor	X		
Mr. Cassidy				Mr. Sarbanes	X		
Mr. Guthrie		X		Mr. McNerney	X		
Mr. Olson		X		Mr. Braley	X		
Mr. McKinley		X		Mr. Welch	X		
Mr. Gardner		X		Mr. Lujan	X		
Mr. Pompeo		X		Mr. Tonko	X		
Mr. Kinzinger		X					
Mr. Griffith		X					
Mr. Bilirakis		X					
Mr. Johnson		X					
Mr. Long		X					
Mrs. Ellmers		X					

06/19/2013

COMMITTEE ON ENERGY AND COMMERCE -- 113TH CONGRESS
ROLL CALL VOTE # 23

BILL: H.R. 2279, the "Reducing Excessive Deadline Obligations Act of 2013"

AMENDMENT: A motion by Mr. Upton to order H.R. 2279 favorably reported to the House, as amended. (Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 25 yeas and 18 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Hall	X			Mr. Dingell			
Mr. Barton				Mr. Markey			
Mr. Whitfield				Mr. Pallone			
Mr. Shimkus	X			Mr. Rush			
Mr. Pitts	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green			
Mr. Rogers	X			Ms. DeGette		X	
Mr. Murphy	X			Mrs. Capps		X	
Mr. Burgess				Mr. Doyle		X	
Mrs. Blackburn				Ms. Schakowsky		X	
Mr. Gingrey	X			Mr. Matheson		X	
Mr. Scalise	X			Mr. Butterfield		X	
Mr. Latta	X			Mr. Barrow		X	
Mrs. McMorris Rodgers	X			Ms. Matsui		X	
Mr. Harper	X			Ms. Christensen			
Mr. Lance	X			Ms. Castor		X	
Mr. Cassidy				Mr. Sarbanes		X	
Mr. Guthrie	X			Mr. McNerney		X	
Mr. Olson	X			Mr. Braley		X	
Mr. McKinley	X			Mr. Welch		X	
Mr. Gardner	X			Mr. Lujan		X	
Mr. Pompeo	X			Mr. Tonko		X	
Mr. Kinzinger	X						
Mr. Griffith	X						
Mr. Bilirakis	X						
Mr. Johnson	X						
Mr. Long	X						
Mrs. Ellmers	X						

06/19/2013

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goals and objectives of H.R. 2279 are to remove unnecessary deadlines from the Solid Waste Disposal Act and the Comprehensive Environmental Response Compensation and Liability Act and to preserve existing financial responsibility requirements.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2279, the "Reducing Excessive Deadline Obligations Act of 2013," would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that H.R. 2279, the "Reducing Excessive Deadline Obligations Act of 2013," contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 26, 2013.

Hon. FRED UPTON,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2279, the Reducing Excessive Deadline Obligations Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 2279—Reducing Excessive Deadline Obligations Act of 2013

H.R. 2279 would amend laws concerning the Environmental Protection Agency's (EPA's) oversight of hazardous substances. The bill would authorize EPA to review regulations related to solid waste disposal only when necessary instead of every three years as required under current law. The legislation also would remove a long-expired deadline, which EPA has already met, regarding regulations for the owners and operators of certain types of facilities that produce, transport, treat, store, and dispose of hazardous substances. In addition, the bill would direct that any financial requirements established by EPA for such owners and operators do not preempt state or other federal agency requirements.

The bill also would require EPA to report to the Congress any financial responsibility requirements it intends to establish under the Comprehensive Environmental Response, Compensation, and Liability Act. Finally, H.R. 2279 would require certain facilities holding flammable or explosive materials to report on those holdings to state and local officials.

Based on information from EPA, CBO expects that removing the current requirement to review certain regulations every three years would reduce administrative costs. However, some of those savings in administrative expenses would be offset by spending on the new requirement to report to the Congress any financial responsibility requirements. CBO estimates that, on balance, implementing this legislation would not have a significant net impact on spending that is subject to appropriation over the 2014–2018 period. Enacting H.R. 2279 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2279 contains an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). The bill would require some owners or operators of facilities that store flammable or explosive substances to provide information about the amount of such substances at the facility to state emergency response commissions. Because those owners and operators submit similar information to federal agencies, CBO estimates that the cost to submit information to state commissions would be minimal. Consequently, CBO estimates that the costs of the mandate would fall well below the annual thresholds established in UMRA for intergovernmental and private-sector mandates ($75 million and $150 million in 2013, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), J'nell Blanco (for the state and local impact), and Amy Petz (for the private-sector impact). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2279 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2279 does not specifically direct to be completed any specific rule makings within the meaning of 5 U.S.C. 551.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Short title

This section entitles the Act the "Reducing Excessive Deadline Obligations Act of 2013."

Section 2—Review of regulations under the Solid Waste Disposal Act

This section amends section 2002(b) of the Solid Waste Disposal Act to allow EPA to review and revise regulations promulgated under the Solid Waste Disposal Act as the Administrator determines to be appropriate. The Committee intends that this section reduce the regulatory and resource burden on EPA, while preserving the Agency's ability to review and revise regulations as necessary.

Section 3—Financial responsibility for classes of facilities under CERCLA

Paragraph (1) of this section amends section 108(b)(1) of CERCLA by striking the deadline that three years after the date of enactment the President identify classes of facilities for which to develop financial assurance regulations.

Paragraph (2) of this section amends section 108(b)(2) of CERCLA by adding the provision that owners or operators may establish financial responsibility through the forms of security identified in the statute: insurance, guarantee, surety bond, letter of credit, and qualification as a self-insurer. The Committee intends that the owner or operator of a facility, rather than EPA, identify the appropriate mechanism to establish evidence of financial responsibility for requirements promulgated under section 108(b).

The Committee also intends that insurance, guarantee, surety bond, letter of credit, and qualification as a self-insurer all be accepted as evidence of financial responsibility.

Section 4—Report to Congress regarding financial responsibility requirements

This section amends section 108(b) of CERCLA by adding a new paragraph (6), which requires that the President, prior to promulgating any financial responsibility requirement under this subsection, submit a report to Congress describing: (1) the facilities or classes of facilities for which financial responsibility requirements are being developed; (2) the development of the financial responsibility requirement and why the facility or class of facility is not already covered by adequate financial responsibility requirements; (3) the financial responsibility requirements promulgated by States or other Federal agencies for the facility or class of facilities and explaining why the regulations by EPA are necessary; (4) the exposure to the United States for response costs resulting from the facility or class of facilities; and (5) the capacity of the financial markets to provide instruments of financial responsibility necessary to meet the new EPA requirement. The Committee acknowledges that the purpose of section 108(b) of CERCLA was to prevent the United States from incurring response costs under section 104 of CERCLA for the cleanup of hazardous substances. The Committee recognizes that the President has not yet promulgated financial responsibility requirements under section 108(b), and in the more than thirty years since CERCLA was enacted, States and other Federal agencies have developed financial responsibility requirements for many of the facilities or classes of facilities that the President has identified as the priorities for development of financial responsibility requirements. The Committee intends that prior to promulgating requirements under section 108(b), EPA must determine whether additional financial responsibility requirements are necessary. The Committee expects EPA to make the determination based on the existing financial responsibility requirements for a facility or class of facilities and an assessment of whether there is likely to be a cost to the Federal government for remediation despite the existing financial responsibility requirements.

Section 5—Preemption of financial responsibility requirements

This section amends section 114(d) of CERCLA by replacing the existing language with language that provides that if an owner or operator of a facility or vessel already has established evidence of financial responsibility under State law or under any other Federal law, they are not required to establish evidence of financial responsibility under this title unless the President determines that, in the event of a non-permitted release of hazardous substances, the existing financial responsibility requirements will not be sufficient to cover likely response costs under section 104 of CERCLA. This section also provides that if the President determines that such other Federal or State financial responsibility requirements are sufficient to cover likely response costs under section 104 then the President shall accept evidence of compliance with such other Federal or State financial responsibility requirements in lieu of compliance with the financial responsibility requirements. The Committee ex-

pects that requirements promulgated by EPA under section 108(b) will not duplicate existing financial responsibility requirements. The Committee intends that, to the extent that existing State or other Federal financial responsibility requirements protect the United States from incurring response costs under section 104, that evidence of compliance with the State or other Federal agency financial responsibility requirements be sufficient to establish compliance with requirements promulgated under section 108(b).

Section 6—Explosive risks planning notification

This section requires that, not later than 180 days after the date of enactment, owners or operators of facilities that store substances listed in Appendix A to part 27 of title 6, Code of Federal Regulations that are flammables or explosives and stored in amounts above the screening threshold, must notify the State emergency response commission in the State in which the facility is located.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SOLID WASTE DISPOSAL ACT

* * * * * * *

TITLE II—SOLID WASTE DISPOSAL

* * * * * * *

Subtitle B—Office of Solid Waste; Authorities of the Administrator

* * * * * * *

AUTHORITIES OF ADMINISTRATOR

SEC. 2002. (a) * * *

[(b) REVISION OF REGULATIONS.—Each regulation promulgated under this Act shall be reviewed and, where necessary, revised not less frequently than every three years.]

(b) REVIEW OF REGULATIONS.—The Administrator shall review, and revise, as the Administrator determines appropriate, regulations promulgated under this Act.

* * * * * * *

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980

* * * * * * *

TITLE I—HAZARDOUS SUBSTANCES RELEASES, LIABILITY, COMPENSATION

* * * * * * *

FINANCIAL RESPONSIBILITY

SEC. 108. (a) * * *

(b)(1) Beginning not earlier than five years after the date of enactment of this Act, the President shall promulgate requirements (for facilities in addition to those under subtitle C of the Solid Waste Disposal Act and other Federal law) that classes of facilities establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. [Not later than three years after the date of enactment of the Act, the President shall] *The President shall, as appropriate,* identify those classes for which requirements will be [first] developed and publish notice of such identification in the Federal Register. Priority in the development of such requirements shall be accorded to those classes of facilities, owners, and operators which the President determines present the highest level of risk of injury.

(2) The level of financial responsibility shall be initially established, and, when necessary, adjusted to protect against the level of risk which the President in his discretion believes is appropriate based on the payment experience of the Fund, commercial insurers, courts settlements and judgments, and voluntary claims satisfaction. To the maximum extent practicable, the President shall cooperate with and seek the advice of the commercial insurance industry in developing financial responsibility requirements. [Financial responsibility may be established] *Owners and operators may establish financial responsibility* by [any one, or any combination, of the following:] *forms of security, including* insurance, guarantee, surety bond, letter of credit, [or qualification] *and qualification* as a self-insurer. In promulgating requirements under this section, the President is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary, or which are unacceptable, in establishing such evidence of financial responsibility in order to effectuate the purposes of this Act.

* * * * * * *

(6) The President may not promulgate any financial responsibility requirement under this subsection without first submitting to Congress a report—

(A) describing each facility or class of facilities to be covered by such requirement;

(B) describing the development of such requirement, why the facility or class of facilities proposed to be covered by such requirement present the highest level of risk of injury, and why the facility or class of facilities is not already covered by adequate financial responsibility requirements;

(C) describing the financial responsibility requirements promulgated by States or other Federal agencies for the facility or class of facilities to be covered by the financial responsibility requirement proposed under this subsection and explaining why the requirement proposed under this subsection is necessary;

(D) describing the exposure to the Fund for response costs resulting from the facility or class of facilities proposed to be covered; and

(E) describing the capacity of the financial and credit markets to provide instruments of financial responsibility necessary to meet such requirement.

The President shall update any report submitted under this paragraph to reflect any revision of the facilities or classes of facilities to be covered by a financial responsibility requirement that is the subject of such report.

* * * * * * *

RELATIONSHIP TO OTHER LAW

SEC. 114. (a) * * *

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[(d) Except as provided in this title, no owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility in accordance with this title shall be required under any State or local law, rule, or regulation to establish or maintain any other evidence of financial responsibility in connection with liability for the release of a hazardous substance from such vessel or facility. Evidence of compliance with the financial responsibility requirements of this title shall be accepted by a State in lieu of any other requirement of financial responsibility imposed by such State in connection with liability for the release of a hazardous substance from such vessel or facility.]

(d) No owner or operator of a vessel or facility who establishes and maintains evidence of financial responsibility associated with the production, transportation, treatment, storage, or disposal of hazardous substances pursuant to financial responsibility requirements under any State law or regulation, or any other Federal law or regulation, shall be required to establish or maintain evidence of financial responsibility under this title, unless the President determines, after notice and opportunity for public comment, that in the event of a release of a hazardous substance that is not a federally permitted release or authorized by a State permit, such other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104. If the President determines that such other Federal or State financial responsibility requirements are insufficient to cover likely response costs under section 104 in the event of such a release, the President shall accept evidence of compliance with such other Federal or State financial responsibility requirements in lieu of compliance with any portion of the financial responsibility requirements promulgated under this title to which they correspond.

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DISSENTING VIEWS

As introduced, H.R. 2279 was comprised of unrelated amendments to the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The legislation is not based on an oversight record before the Committee, and has not been publicly endorsed by any stakeholders. The legislation would amend RCRA to repeal a requirement that regulations be reviewed every three years, with the primary effect of blocking ongoing litigation brought by industry and environmental groups. The legislation would also complicate the process for establishing federal financial responsibility requirements for the most polluting industries, and prevent those requirements from going into effect in some states, potentially leaving cleanup costs to taxpayers. H.R. 2279 was amended during Committee consideration to require facilities holding dangerous quantities of flammable and explosive chemicals to report those holdings to state emergency planners within 180 days of the bill's enactment into law. These provisions are described more fully below.

THE RCRA AMENDMENT

RCRA requires the Environmental Protection Agency (EPA) to review, and where necessary, revise, regulations promulgated under RCRA every three years.[1] H.R. 2279 would repeal this requirement and replace it with discretionary authority to review regulations.

Although the majority report states that the requirement to review and, if necessary, revise RCRA regulations every three years "would pose an unnecessary regulatory burden on the Agency" that requirement is longstanding and there is no evidence before the Committee that it has imposed a burden on the Agency. Democratic members submitted questions to EPA for the record of the hearing on this bill, seeking information about the time spent by staff carrying out this requirement. According to EPA, no staff time (0 FTEs) is used to carry out this requirement.[2]

The majority report also says that the review requirement was put in place in 1976, "when the complexity and volume of regulations was significantly less." This suggests that recent increases in the complexity or volume of regulations under RCRA have made this legislation necessary. However, the Committee has received no evidence to support this claim. According to the Congressional Research Service, EPA has only finalized two actions designated as

[1] Resource Conservation and Recovery Act § 2002(b), 42 U.S.C. § 6912(b).
[2] E-mail from U.S. Environmental Protection Agency staff to Committee on Energy and Commerce, Democratic Staff (Jul. 3, 2013).

major under RCRA since 2000, and both reduced regulatory requirements.[3]

The primary effect of this provision appears to be to pick winners and losers in pending litigation. The Subcommittee on Environment and the Economy heard at the May 17, 2013, legislative hearing on this bill that only three lawsuits have ever been brought to enforce this deadline, and all have been brought in the last year because of significant delays in EPA's coal ash rulemaking. An attorney bringing one of those suits, Abigail Dillen of EarthJustice, testified that the discussion draft would threaten that ongoing lawsuit.[4] At the request of Democratic staff, the American Law Division of the Congressional Research Service (CRS) examined the ongoing proceedings and court precedent and determined that the bill as proposed would likely lead to the dismissal of the lawsuits.

EPA has been engaged in a rulemaking process to regulate disposal of coal ash for several years.[5] EPA held eight public hearings on the proposed rule and received more than 450,000 public comments.[6] EPA is in the process of reviewing those comments and has not finalized the rule. Coal ash therefore remains unregulated at the federal level. It has now been three years since the new rule was proposed.

According to motions filed with the Court by Headwaters, the firm has "experienced a significant adverse market downturn as a result of the uncertainty and stigma created by EPA's failure to comply with Section 2002(b)" and "an order requiring completion of its section 2002(b) review will redress that injury."[7] These cases do not suggest that the deadline is excessive or outdated—instead, they suggest that it is necessary.

This bill would likely prevent the issuance of such a court order, delaying resolution of this issue and extending this economic injury. It would also extend the status quo of coal ash regulation, which has proven insufficient to protect human health and the environment.[8]

THE CERCLA AMENDMENT

The CERCLA deadline

H.R. 2279 amends CERCLA section 108(b) to repeal a deadline that EPA has already satisfied. CERCLA requires EPA to identify, by December 11, 1983, those classes of facilities for which financial

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[3] Congressional Research Service, Correspondence with Committee Democratic Staff, (Jul. 8, 2013).

[4] House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, Testimony of Abigail Dillen, Coal Program Director, EarthJustice, *Legislative Hearing on H.R. ____ the "Federal and State Partnership for Environmental Protection Act of 2013;" H.R. ____, the "Reducing Excessive Deadline Obligations Act of 2013;" and H.R. ____*, the "*Federal Facility Accountability Act of 2013.*" 113th Cong. (May 17, 2013).

[5] U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities,* 75 Fed. Reg. 35127 (June 21, 2010) (proposed rule).

[6] U.S. Environmental Protection Agency, Docket EPA–HQ–RCRA–2009–0640.

[7] Case 1:12–cv–005230RBW, *Appalachian Voices et al. v. Lisa P. Jackson, Plaintiffs Headwaters Resources, Inc. and Boral Material Technologies Inc.'s Combined Opposition to Defendant EPA's and Intervenor-Defendants' Motion for Summary Judgment and Reply,* Filed Nov. 20, 2012.

[8] For more information on the inadequacies of current coal ash regulation, see past memoranda prepared by the Democratic Staff of the Committee, including the memorandum prepared for the Apr. 11, 2013 hearing entitled, H.R. ____, the "Coal Ash Recycling and Oversight Act of 2013."

responsibility requirements should first be developed.[9] The requirement was put in place as part of the 1980 amendments to Superfund in response to significant taxpayer cleanup costs.

EPA satisfied this requirement in July 2009. EPA published a notice in the Federal Register designating hardrock mining as the first class of facilities to be the subject of financial responsibility requirements.[10] The issuance of the actual requirements is still pending and is not affected by the deadline in section 108(b). In January 2010, EPA published an additional notice identifying the next classes of facilities that should be subject to such requirements. These classes were the chemical manufacturing industry, the petroleum and coal products manufacturing industry, and the electric power generation, transmission, and distribution industry.

Hardrock mining refers to the process of extracting, beneficiating, or processing metals and non-metallic, non-fuel minerals. In 2011, the metal mining sector reported releasing or disposing of 1.89 billion pounds of toxic chemicals, more than any other industry sector and representing 46% the total disposal or other releases for all industries.[11] EPA estimates that releases from hardrock mining have contaminated at least 3,400 miles of streams and 440,000 acres of land.[12] According to the U.S. Forest Service, acid mine drainage from metal mining has contaminated 10,000 miles of rivers and streams.[13]

Many hardrock mining sites are listed under CERCLA, with many on the National Priority List (NPL). As of August 2012, over 130 hardrock mining sites had been listed or proposed for listing on the NPL, or designated for cleanups under Superfund Alternative Approaches.[14] That number will continue to grow, as the Government Accountability Office (GAO) estimates that there are 161,000 abandoned hardrock mines in the western United States, of which 33,000 have degraded the environment.[15]

Because many of these sites have been abandoned, much of the cleanup cost has been borne by the government. According to the GAO, in the 10 fiscal years between 1998 and 2007, the federal government spent at least $2.6 billion (in 2008 dollars) to clean up these hardrock sites. The largest portion of that spending came from the Superfund program.[16] GAO also examined financial assurance requirements in place for hardrock mines on public lands. GAO found that bond requirements imposed by the Bureau of Land Management were insufficient to cover expected cleanup costs, identifying an expected shortfall of $61 million for 52 mining operations.[17] Similarly, the EPA Inspector General predicts that clean-

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[9] Comprehensive Environmental Response, Compensation, and Liability Act § 108(b).

[10] U.S. Environmental Protection Agency, *Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements,* 74 Fed. Reg. 37213 (Jul. 28, 2009) (notice).

[11] U.S. Environmental Protection Agency, 2011 *Toxic Release Inventory National Analysis Overview* (Jan. 16, 2013).

[12] U.S. Environmental Protection Agency, *Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements,* 74 Fed. Reg. 37213 (Jul. 28, 2009).

[13] *Id.* at 32715.

[14] U.S. Environmental Protection Agency, *NPL Mining Sites* (online at *www.epa.gov/aml/amlsite/npl.htm*).

[15] U.S. Government Accountability Office, *Hardrock Mining: Information on Abandoned Mines and Value and Coverage of Financial Assurances on BLM Land* (Mar. 12, 2008)(GAO–08–574T).

[16] *Id.*

[17] *Id.*

up costs for the evaluated hardrock mining sites are likely to reach $24 billion, far exceeding appropriations for the Superfund program.[18] These costs are likely to fall on the taxpayer unless EPA successfully pursues repayment from the responsible parties.

Based on those costs, and recommendations from GAO, EPA began the process in 2009 of establishing financial assurance requirements for the hardrock mining sector. EPA identified hardrock mining as the class of facilities for which it would develop regulations and published notice in the Federal Register on July 28, 2009.[19] The agency has received public comment on the notice and is working on a proposed regulation.

Now that the CERCLA deadline in section 108(b) has been satisfied and has no legal effect, it is unclear why the provision is being repealed. The majority report states that this deadline is now outdated and "no longer appropriate." However, CERCLA contains numerous deadlines that have been satisfied, and yet the majority is not proposing to repeal them. For example, section 102 of CERCLA contains three deadlines that have all been met and are no longer in effect.[20]

The CERCLA Preemption Amendment

The question of preemption of state requirements was raised by EPA in the Federal Register notice listing hardrock mining as the class of facilities for which requirements would first be established. EPA is still reviewing comments submitted on that question, with a focus on the sufficiency of state requirements. It is important to distinguish financial responsibility requirements for reclamation of mining sites, which cover the costs to restore vegetation and reshape the land, and requirements for potential releases of contaminants from mining activities. The most significant costs associated with hardrock mining relate to contaminant releases from waste piles, and are not covered by reclamation cost bonds. H.R. 2279 does not distinguish between these types of requirements.

The majority report claims that a "significant body of State and other Federal law currently exists that requires facilities to provide evidence of financial responsibility." There is no information about that body of laws in the record before the Committee. At the May 17, 2013, legislative hearing, the Subcommittee heard from Carolyn Hanson, the Deputy Executive Director of the Environmental Council of the States (ECOS). In order to understand the need for and impact of this amendment, Democratic members asked for information on what requirements states have in place relating to financial responsibility. Democratic members again requested detailed information on those financial responsibility requirements by letter on May 28, 2013. In response, ECOS informed Committee staff that they do not have the requested information.

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[18] U.S. Environmental Protection Agency, Office of the Inspector General, *Nationwide Identification of Hardrock Mining Sites* (Mar. 31, 2004).

[19] U.S. Environmental Protection Agency, *Identification of Priority Classes of Facilities for Development of CERCLA Section 108(b) Financial Responsibility Requirements,* 74 Fed. Reg. 37213 (July 28, 2009).

[20] Comprehensive Environmental Response, Compensation, and Liability Act § 102, 42 U.S.C. § 9602. Those requirements were satisfied with the publication of reportable released quantities of hazardous substances on September 29, 1986 and May 24, 1989 (51 Fed. Reg. 34547; 54 Fed. Reg. 22538).

After several additional weeks, ECOS provided the Committee with a list of states that have adopted financial responsibility requirements, but no information about what costs those requirements cover. The letter cites Colorado as an example of a state with existing financial responsibility requirements. In a letter sent to EPA to provide preliminary input into the process of proposing financial responsibility requirements for hardrock mining, the Colorado Attorney General's office wrote that the state's requirements under its Mined Land Reclamation Act "can co-exist with CERCLA financial assurance requirements and are not the type of financial assurances that require preemption." [21]

The letter also cites Alaska as an example of a state with existing financial responsibility requirements. According to a letter sent to EPA by the Alaska Attorney General to provide preliminary input on the financial responsibility requirements, Alaska's Department of Natural Resources "does not require financial assurance (often referred to colloquially as 'bonding') to cover unplanned releases, or 'worst-case' scenarios." [22] The requirements therefore do not cover the cleanup costs that would be covered by federal requirements under Superfund.

Despite the lack of a record before the Committee, this bill would erect barriers to EPA issuing financial responsibility requirements under CERCLA for the hardrock mining industry, the chemical manufacturing industry, the petroleum and coal products manufacturing industry, and the electric power generation, transmission, and distribution industry and prohibit the application of any federal financial responsibility requirement when an owner or operator is satisfying a state financial responsibility requirement.

The reporting requirement for explosive chemicals

An amendment to H.R. 2279 offered by Mr. Waxman during full Committee consideration was adopted by voice vote. This amendment addresses the serious problem of chemical facilities failing to adequately inform emergency responders about the flammable and explosive chemicals stored at facilities throughout the United States. This amendment requires that owners or operators of facilities storing flammable and explosive chemicals over threshold amounts inform state emergency response personnel about the types and amounts of chemicals being stored. This amendment was informed by the recent tragic explosion in West, Texas.

On April 17, 2013, the West Fertilizer Company storage and distribution facility exploded. In a community of 2,600 people, nearly 200 were injured and 15 killed. The nearby nursing home, a school, and several hundred houses were badly damaged. The chemical that caused the explosion, ammonium nitrate, is the same substance that was used in the Oklahoma City bombing in 1995. Although this chemical may be safe when stored and handled correctly, its risks are undeniable.

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[21] Letter from Steven M. Nagy, on behalf of the Attorney General of Colorado, to Jim Berlow, U.S. Environmental Protection Agency (Feb. 28, 2011) U.S. Environmental Protection Agency Docket EPA–HQ–SFUND–2009–0834–0136.

[22] Letter from Cameron M. Leonard, on behalf of the Attorney General of Alaska, to Jim Berlow, U.S. Environmental Protection Agency (Feb. 11, 2011) U.S. Environmental Protection Agency Docket EPA–HQ–SFUND–2009–0834–0134.

Twelve first responders and volunteer firefighters died in the West, Texas explosion. The U.S. Chemical Safety Board reported in the preliminary findings from their investigation of the explosion that "the volunteer firefighters were not made aware of the explosion hazard from the [ammonium nitrate] stored at West Fertilizer, and were caught in harm's way when the blast occurred."[23]

Rafael Moure-Eraso, Chairperson of the U.S. Chemical Safety Board, stated in his testimony before the Senate Committee on Environment and Public Works on June 27, 2013, that the storage of ammonium nitrate fertilizer "falls under a patchwork of U.S. safety standards and guidance—a patchwork that has many large holes."[24] This provision will address one of those holes, and provide important information to emergency responders.

For the reasons stated above, we dissent from the views expressed in the Committee's report.

HENRY A. WAXMAN.
PAUL D. TONKO.

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[23] Senate Committee on Environment and Public Works, Testimony of the Honorable Rafael Moure-Eraso, Chairperson of the U.S. Chemical Safety Board, *Hearing on Oversight of Federal Risk Management and Emergency Planning Programs to Prevent and Address Chemical Threats, Including the Events Leading Up to the Explosions in West, TX and Geismar, LA,* 113th Cong. (Jun. 27, 2013) (online at *www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=b3617917-9853-4128-ad83-7f305f58fcb1*).

[24] *Id.*