

SATISFYING ENERGY NEEDS AND SAVING THE ENVIRONMENT ACT

JANUARY 12, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1119]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1119) to establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations and allocations for existing electric utility steam generating units that convert coal refuse into energy, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	3
Background and Need for Legislation .....	3
Committee Action .....	4
Committee Votes .....	5
Oversight Findings and Recommendations .....	7
New Budget Authority, Entitlement Authority, and Tax Expenditures .....	7
Congressional Budget Office Estimate .....	7
Federal Mandates Statement .....	8
Statement of General Performance Goals and Objectives .....	8
Duplication of Federal Programs .....	8
Committee Cost Estimate .....	8
Earmark, Limited Tax Benefits, and Limited Tariff Benefits .....	8
Disclosure of Directed Rule Makings .....	8

Advisory Committee Statement .....	8
Applicability to Legislative Branch .....	8
Section-by-Section Analysis of the Legislation .....	9
Changes in Existing Law Made by the Bill, as Reported .....	9
Dissenting Views .....	10

The amendments are as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Satisfying Energy Needs and Saving the Environment Act” or the “SENSE Act”.

**SEC. 2. STANDARDS FOR COAL REFUSE POWER PLANTS.**

(a) **DEFINITIONS.**—In this Act:

(1) **ADMINISTRATOR.**—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) **BOILER OPERATING DAY.**—The term “boiler operating day” has the meaning given such term in section 63.10042 of title 40, Code of Federal Regulations, or any successor regulation.

(3) **COAL REFUSE.**—The term “coal refuse” means any byproduct of coal mining, physical coal cleaning, or coal preparation operation that contains coal, matrix material, clay, and other organic and inorganic material.

(4) **COAL REFUSE ELECTRIC UTILITY STEAM GENERATING UNIT.**—The term “coal refuse electric utility steam generating unit” means an electric utility steam generating unit that—

(A) is in operation as of the date of enactment of this Act;

(B) uses fluidized bed combustion technology to convert coal refuse into energy; and

(C) uses coal refuse as at least 75 percent of the annual fuel consumed, by heat input, of the unit.

(5) **COAL REFUSE-FIRED FACILITY.**—The term “coal refuse-fired facility” means all coal refuse electric utility steam generating units that are—

(A) located on one or more contiguous or adjacent properties;

(B) specified within the same Major Group (2-digit code), as described in the Standard Industrial Classification Manual (1987); and

(C) under common control of the same person (or persons under common control).

(6) **ELECTRIC UTILITY STEAM GENERATING UNIT.**—The term “electric utility steam generating unit” means an electric utility steam generating unit, as such term is defined in section 63.10042 of title 40, Code of Federal Regulations, or any successor regulation.

(b) **EMISSION LIMITATIONS TO ADDRESS HYDROGEN CHLORIDE AND SULFUR DIOXIDE AS HAZARDOUS AIR POLLUTANTS.**—

(1) **APPLICABILITY.**—For purposes of regulating emissions of hydrogen chloride or sulfur dioxide from a coal refuse electric utility steam generating unit under section 112 of the Clean Air Act (42 U.S.C. 7412), the Administrator—

(A) shall authorize the operator of such unit to elect that such unit comply with either—

(i) an emissions standard for emissions of hydrogen chloride that meets the requirements of paragraph (2); or

(ii) an emission standard for emissions of sulfur dioxide that meets the requirements of paragraph (2); and

(B) may not require that such unit comply with both an emission standard for emissions of hydrogen chloride and an emission standard for emissions of sulfur dioxide.

(2) **RULES FOR EMISSION LIMITATIONS.**—

(A) **IN GENERAL.**—The Administrator shall require an operator of a coal refuse electric utility steam generating unit to comply, at the election of the operator, with no more than one of the following emission standards:

(i) An emission standard for emissions of hydrogen chloride from such unit that is no more stringent than an emission rate of 0.002 pounds per million British thermal units of heat input.

(ii) An emission standard for emissions of hydrogen chloride from such unit that is no more stringent than an emission rate of 0.02 pounds per megawatt-hour.

(iii) An emission standard for emissions of sulfur dioxide from such unit that is no more stringent than an emission rate of 0.20 pounds per million British thermal units of heat input.

(iv) An emission standard for emissions of sulfur dioxide from such unit that is no more stringent than an emission rate of 1.5 pounds per megawatt-hour.

(v) An emission standard for emissions of sulfur dioxide from such unit that is no more stringent than capture and control of 93 percent of sulfur dioxide across the generating unit or group of generating units, as determined by comparing—

(I) the expected sulfur dioxide generated from combustion of fuels emissions calculated based upon as-fired fuel samples, to

(II) the actual sulfur dioxide emissions as measured by a sulfur dioxide continuous emission monitoring system.

(B) MEASUREMENT.—An emission standard described in subparagraph (A) shall be measured as a 30 boiler operating day rolling average per coal refuse electric utility steam generating unit or group of coal refuse electric utility steam generating units located at a single coal refuse-fired facility.

Amend the title so as to read:

A bill to establish the bases by which the Administrator of the Environmental Protection Agency shall issue, implement, and enforce certain emission limitations for existing electric utility steam generating units that convert coal refuse into energy.

#### PURPOSE AND SUMMARY

H.R. 1119, Satisfying Energy Needs and Saving the Environment (SENSE) Act, was introduced by Representative Keith Rothfus (R-PA) on February 16, 2017. The legislation addresses the application of the Environmental Protection Agency's (EPA), issued pursuant to section 112 of the Clean Air Act, to electric generating units that utilize coal refuse to generate electricity and serve critical environmental cleanup and remediation purposes. The bill would provide for limited modifications with respect to the Mercury and Air Toxics Rule for these coal refuse facilities by providing for alternative compliance options with respect to sulfur dioxide and hydrogen chloride emissions standards.

#### BACKGROUND AND NEED FOR LEGISLATION

This legislation seeks to ensure that innovative, environmentally beneficial facilities that use coal refuse as fuel can continue to operate and will not be forced to shut down, due to unachievable requirements included in the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS).<sup>1</sup>

Coal refuse is the aboveground waste product of coal mining found near many abandoned mines. Coal refuse piles pose a number of environmental and safety threats and create significant costs for government and industry. Coal refuse-to-energy facilities are specialized power plants developed to recycle the coal refuse by using it as an energy source to generate affordable, reliable electricity. There are 19 coal refuse-to-energy facilities, including 14 in Pennsylvania.<sup>2</sup> In addition to creating an estimated 3,600 jobs, many of which are in economically distressed communities, these

<sup>1</sup>On February 16, 2012, EPA finalized the MATS rule. This rule was promulgated pursuant to section 112 of the Clean Air Act and requires reductions in emissions of mercury and other air toxics, as well as certain acid gases from power plants. On June 29, 2015, the U.S. Supreme Court ruled that EPA erred when the agency concluded that costs did not need to be considered in the MATS rule.

<sup>2</sup>See Econsult Solutions report prepared for the Anthracite Region Independent Power Producers Association (ARIPPA), Economic and Environmental Analysis of Pennsylvania's Coal Refuse Industry (2016). In Pennsylvania, coal refuse-to-energy facilities are recognized in the Pennsylvania Alternative Energy Portfolio Standards Act.

facilities create an average of \$26 million per year in environmental value for the State of Pennsylvania alone.<sup>3</sup>

Some have suggested that coal refuse-to-energy facilities can meet the requirements of the MATS rule, citing the District of Columbia Court of Appeals decision in *White Stallion v. Environmental Protection Agency*.<sup>4</sup> In that case, the agency had the authority to create a separate subcategory for coal refuse plants, but declined to do so in part because there were some such plants that could achieve the HCL and SO<sub>2</sub> standards in the MATS rule. Notwithstanding the court's holding that EPA had acted within its discretion, Mr. Vincent Brisini testified earlier this year on behalf of the Anthracite Region Independent Power Producers Association (ARIPPA) at the Subcommittee on Energy's September 13, 2017 hearing that a number of bituminous coal refuse fired units cannot meet the MATS rule's acid gas limits and face a threat of imminent closure absent passage of H.R. 1119.<sup>5</sup>

Despite the extraordinary environmental benefits of these facilities, the EPA has included certain emissions limits in the MATS regulations that are not achievable for all coal refuse-to-energy plants. If these facilities shut down, the communities served by them will lose the electricity, jobs, and environmental cleanup provided by these coal refuse-to-energy plants.

#### *What the Legislation Would Do*

The bill includes limited provisions that would allow these innovative coal refuse-to-energy facilities to generate affordable, reliable energy and continue their essential environmental remediation work in a responsible manner.

Specifically, the bill would, with respect to MATS, create an alternative means of demonstrating compliance with the hydrochloric acid (HCl) standard by using SO<sub>2</sub> as a proxy and assuming that a 93 percent reduction in SO<sub>2</sub> demonstrates compliance with the HCl standard.

#### COMMITTEE ACTION

On September 13, 2017, the Subcommittee on Environment held a hearing on H.R. 1119. The Subcommittee received testimony from:

- Ryan Parker, President and CEO, Endicott Clay Products;
- Vincent Brisini, Director of Environmental Affairs, Olympus Power, LLC, *on behalf of* Anthracite Region Independent Power Producers Association (ARIPPA);
- Frank Moore, President, Hardy Manufacturing Company, Inc.;
- Steve Page, President and General Manager, Sonoma Raceway;
- Alexandra E. Teitz, Principal, AT Strategies, LLC, *on behalf of* Sierra Club; and

<sup>3</sup>See written testimony of Vincent Brisini, Director of Environmental Affairs for Olympus Power, LLC, testifying on behalf of ARIPPA, at September 2017 Energy Subcommittee hearing.

<sup>4</sup>See *White Stallion Energy Center, LLC v. Environmental Protection Agency*, Case No. 12-1100, U.S. Court of Appeals for the District of Columbia Circuit (April 15, 2014).

<sup>5</sup>See written testimony of Vincent Brisini, Director of Environmental Affairs for Olympus Power, LLC, testifying on behalf of ARIPPA, at September 2017 Energy Subcommittee hearing.

- Rebecca Bascom, Professor, Penn State College of Medicine, *on behalf of* American Thoracic Society.

On November 15, 2017, the Subcommittee on Environment met in open markup session and forwarded H.R. 1119, as amended, to the full Committee by a record vote of 13 yeas and 10 nays. On December 6, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1119, as amended, favorably reported to the House by a record vote of 31 yeas and 23 nays.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS  
ROLL CALL VOTE # 63**

**BILL:** H.R. 1119, Satisfying Energy Needs and Saving the Environment Act (SENSE Act)

**AMENDMENT:** A motion by Mr. Walden to order H.R. 1119 favorably reported to the House, as amended. (Final Passage)

**DISPOSITION:** AGREED TO, by a roll call vote of 31 yeas and 23 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone		X	
Mr. Barton	X			Mr. Rush		X	
Mr. Upton	X			Ms. Eshoo		X	
Mr. Shimkus	X			Mr. Engel		X	
Mr. Burgess	X			Mr. Green		X	
Mrs. Blackburn	X			Ms. DeGette		X	
Mr. Scalise	X			Mr. Doyle		X	
Mr. Latta	X			Ms. Schakowsky		X	
Mrs. McMorris Rodgers	X			Mr. Butterfield		X	
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Castor		X	
Mr. Guthrie	X			Mr. Sarbanes		X	
Mr. Olson	X			Mr. McNerney		X	
Mr. McKinley	X			Mr. Welch		X	
Mr. Kinzinger	X			Mr. Lujan		X	
Mr. Griffith	X			Mr. Tonko		X	
Mr. Bilirakis	X			Ms. Clarke		X	
Mr. Johnson	X			Mr. Loeb sack		X	
Mr. Long	X			Mr. Schrader		X	
Mr. Bueshon	X			Mr. Kennedy			
Mr. Flores	X			Mr. Cardenas		X	
Mrs. Brooks	X			Mr. Ruiz		X	
Mr. Mullin	X			Mr. Peters		X	
Mr. Hudson	X			Ms. Dingell		X	
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						
Mr. Duncan	X						

12/06/2017

## OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1119 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, January 11, 2018.*

Hon. GREG WALDEN,  
*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. 1119, the Satisfying Energy Needs and Saving the Environment Act.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 1119—Satisfying Energy Needs and Saving the Environment Act*

H.R. 1119 would require the Environmental Protection Agency (EPA) to amend an air emissions standard for certain power plants that are subject to emissions limitations under the agency's Mercury and Air Toxics Standards (MATS). The bill would affect power plants that generate electricity by burning coal refuse (a waste by-product of coal) as their primary fuel source. Specifically, the bill would require the EPA to permit operators of such plants to comply with an alternative emissions standard for controlling acid gases that is less stringent than the current MATS.

Using information from the EPA about current regulation of hazardous air pollutants, CBO estimates that the costs of modifying existing regulations to comply with H.R. 1119 would be minimal and would not have a significant effect on the agency's workload or spending.

Enacting H.R. 1119 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 1119 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1119 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jon Sperl. The estimate was approved by H. Samuel Papenfuss, 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.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to provide for limited modifications to the EPA's Mercury and Air Toxics Standards (MATS) to allow alternative compliance options for coal refuse to energy facilities.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1119 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

#### COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, 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.

#### earmark, limited tax benefits, and limited tariff benefits

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1119 contains no earmarks, limited tax benefits, or limited tariff benefits.

#### DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 1119 contains no directed rule makings.

#### 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*

Section 1 provides the short title of “Satisfying Energy Needs and Saving the Environment Act” or the “SENSE Act”.

*Section 2. Standards for coal refuse power plants*

Section 2(a) provides definitions for the following terms: administrator, boiler operating day, coal refuse, coal refuse electric utility steam generating unit, coal refuse-fired facility, and electric utility steam generating unit.

Section 2(b) provides an alternative compliance means for Hydrogen Chloride and Sulfur Dioxide under the Mercury and Air Toxics Standard for coal refuse electric utility steam generating units.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

## DISSENTING VIEWS

We oppose H.R. 1119, the “Satisfying Energy Needs and Saving the Environment (SENSE) Act,” which gives special breaks and preferences under the Clean Air Act (CAA) to power plants that use waste coal to generate electricity. These preferences would allow them to emit more pollution than other power plants, including other coal-fired facilities. The Mercury and Air Toxics Standards (MATS) rule is one of the most important rules for protecting public health from toxic air pollutants like mercury and sulfur dioxide (SO<sub>2</sub>). H.R. 1119 directly undermines this important public health regulation. The legislation would also prevent the Environmental Protection Agency (EPA) from strengthening emission standards for these plants, even if future technology could achieve lower emissions, or if clear evidence of harm to public health or the environment is present.

### BACKGROUND

Section 112 of the CAA requires the EPA to set technology-based standards to reduce air toxics. These hazardous air pollutants (HAPs) are known or suspected to cause cancer and other serious health effects, such as reproductive or birth defects or neurological effects, as well as adverse environmental effects. EPA rulemakings aim to reduce the release of 187 HAPs including mercury, cadmium, lead, benzene, and dioxin.<sup>1</sup> EPA takes a technology-based approach to regulating HAPs in order to achieve substantial reductions in air toxics relatively quickly using readily available technology.

Section 112 requires EPA to develop regulations for distinct source categories—like power plants—that set specific emission limits based on levels already being achieved by similar facilities. These regulations are known as Maximum Achievable Control Technology (MACT) standards, and the CAA required EPA to complete them for all source categories by 2000. EPA sets minimum emissions levels, known as the MACT floor, based on the best-performing sources in a category.

Power plants are by far the largest U.S. source of mercury air pollution. They also release other heavy metals, such as arsenic, chromium, and nickel, which can cause cancer and other serious health effects. In 2012, EPA issued the MATS rule, which established the first national standards to address power plant emissions of mercury and toxic air pollution.<sup>2</sup> The MATS rule estab-

<sup>1</sup> Environmental Protection Agency, *About Air Toxics* (<https://www.epa.gov/urban-air-toxics/about-urban-air-toxics>) (accessed Jan. 9, 2018).

<sup>2</sup> Environmental Protection Agency, *National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 77 Fed. Reg. 9304 (Feb. 16, 2012) (final rule) ([www.gpo.gov/fdsys/pkg/FR-2012-02-16/pdf/2012-806.pdf](http://www.gpo.gov/fdsys/pkg/FR-2012-02-16/pdf/2012-806.pdf)) (hereinafter “MATS Final Rule”).

lished MACT standards for HAPs emitted from coal- and oil-fired power plants, limiting the emissions of heavy metals and acid gases<sup>3</sup> from these sources. To achieve these reductions, the MATS rule set numeric emissions limits for mercury, particulate matter (as a surrogate for other heavy metals), and acid gases for all existing and new coal-fired and oil-fired units. Existing sources had three years with the possibility for a one year extension—or until April 2015 and 2016 respectively—to comply with the rules.<sup>4</sup>

A number of groups submitted comments on the MATS rule urging EPA to create a separate subcategory for waste coal units.<sup>5</sup> In the final MATS rule, EPA noted that HAP emissions from waste coal units are not sufficiently different from emissions from coal-fired power plants to warrant further subcategorization.<sup>6</sup> But in fact, waste coal facilities are some of the best-performing units, and were used in setting the MACT floor for the MATS rule.

A subset of U.S. power plants burn waste coal as their primary fuel source. This waste coal is a byproduct of coal mining, physical coal cleaning, and other coal preparation operations, containing matrix materials, clay and other organic and inorganic materials.<sup>7</sup> Waste coal is primarily found in large piles near abandoned mines, and once burned the resulting ashes are used in mine reclamation projects.<sup>8</sup> The majority of these power plants are in Pennsylvania; however, a few are located in other states, including West Virginia and Utah.

After EPA denied its petition to change the MATS rule for waste coal burning plants, the Anthracite Region Independent Power Producers Association challenged the agency's decision in the D.C. Circuit. The case is still pending. In April the court granted the Trump Administration's request for additional time to consider the appeal so that EPA could reconsider its position on the MATS rule.<sup>9</sup>

#### SUMMARY OF THE SENSE ACT

Section 2(b) of the SENSE Act relates to the treatment of waste coal facilities under MATS. This section provides an additional compliance option for the hydrogen chloride (HCl) and SO<sub>2</sub> standard, allowing waste coal facilities to capture and control 93 percent of SO<sub>2</sub> emissions. This standard is weaker than the standard required of other power plants.

Proponents argue that waste coal plants are unable to meet the current HCl and SO<sub>2</sub> limits and need an alternative pathway to comply with the MATS rule. However, existing technology is capable of meeting the standard.<sup>10</sup> The D.C. Circuit already rendered a decision on this argument, rejecting the assertion that waste coal

<sup>3</sup> Acid gases include compounds such as hydrochloric acid and hydrofluoric acid.

<sup>4</sup> Environmental Protection Agency, *Mercury and Air Toxics Standards (MATS) Basic Information* ([www.epa.gov/mats/basic-information-about-mercury-and-air-toxics-standards](http://www.epa.gov/mats/basic-information-about-mercury-and-air-toxics-standards)).

<sup>5</sup> See note 2, at 9396–9397.

<sup>6</sup> *Id.* at 9395.

<sup>7</sup> *Id.* at 9484.

<sup>8</sup> *White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222, at 1250 (D.C. Cir. Apr. 15, 2014).

<sup>9</sup> *D.C. Circuit sides with Trump EPA, delays mercury litigation*, Greenwire (Apr. 28, 2017) ([www.eenews.net/greenwire/stories/1060053772/](http://www.eenews.net/greenwire/stories/1060053772/)).

<sup>10</sup> Environmental Protection Agency, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*, at 2–8–2–9 (Dec. 2011) ([www3.epa.gov/ttn/ecas/regdata/RIAs/matsriafinal.pdf](http://www3.epa.gov/ttn/ecas/regdata/RIAs/matsriafinal.pdf)).

plants are incapable of achieving these MATS requirements.<sup>11</sup> Contrary to what is alluded to in the majority's report, the CAA is not designed to merely maintain the status quo. In setting up this program, Congress intended for the law to push all facilities within an industrial sector to make the necessary upgrades to reduce their pollution in line with the best performing units.

It is not known how many facilities would opt for the new compliance option envisioned in this bill, but the end result is likely to be additional air pollution. The SENSE Act also picks winners and losers. By giving waste coal facilities license to pollute more than they should, it shifts the burden of reducing emissions to other sources in the state, most likely coal-fired units. Furthermore, the bill would lock in this weaker standard for the foreseeable future. A small number of waste coal units would be allowed to avoid controlling harmful pollution in perpetuity, regardless of any subsequent developments in control technologies or new information on the health and environmental effects of their pollution.

#### CONCLUSION

We oppose H.R. 1119 and the legislative remedy offered by this bill. It comes as no surprise that the majority is once again offering legislation to undermine CAA regulations to benefit coal-fired power plants at the expense of public health. What is surprising is that the SENSE Act puts major coal-fired plants at a disadvantage relative to waste coal plants by granting them unnecessary and unwarranted regulatory relief.

All of this is being done for no other reason than to benefit approximately 20 waste coal plants that exist in a handful of states. While these plants address one of coal's major legacy problems—dangerous, polluting piles of coal mine tailings from abandoned coal mining operations—cleanup of these piles can and should be done without undue transfer of mercury, SO<sub>2</sub> and other pollutants from the land to the air.

---

<sup>11</sup>In response to questions during the February 3, 2016 hearing, John Walke from the Natural Resources Defense Council explained “when the D.C. Circuit in its decision heard the full legal arguments from the trade association for waste coal operators and looked at all the evidence they presented and the evidence in the administrative record that EPA had compiled, they squarely rejected those claims in a three to nothing decision and that decision was left untouched by the Supreme Court in that relevant Respect.” House Committee on Energy and Commerce, Subcommittee on Energy and Power, *Hearing on H.R. 3797, the SENSE Act and H.R. 1119, the BRICK Act*, 114th Cong (Feb. 3, 2016) ([democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-hr-3797-the-satisfying-energy-needs-and-saving-the-0](https://democrats-energycommerce.house.gov/committee-activity/hearings/hearing-on-hr-3797-the-satisfying-energy-needs-and-saving-the-0)).

None of this is necessary. There are waste coal plants that meet the MATS requirements today, and there is technology available to enable waste coal plants to comply with the requirements of this rule. There is no justification for treating them differently from other coal-fired generation facilities.

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

FRANK PALLONE, JR.,  
*Ranking Member, Committee  
on Energy and Commerce.*  
PAUL D. TONKO,  
*Ranking Member, Sub-  
committee on Environ-  
ment.*

○