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Summary of H.R. 3797

SATISFYING ENERGY NEEDS AND SAVING THE ENVIRONMENT ACT

Committee on Energy and Commerce, Democratic Staff

H.R. 3797, also known as the SENSE Act, represents an effort by the Republicans to give special breaks under the Clean Air Act (CAA) to power plants that use waste coal to generate electricity. Waste coal – or coal refuse – is a byproduct of coal mining, physical coal cleaning, and other coal preparation operations. A small subset of power plants in the U.S. burn waste coal as their fuel source. The CAA rules undermined by the bill – the Cross State Air Pollution Rule (CSAPR) and the Mercury and Air Toxics Standards (MATS) rule – are two of the most important rules for protecting public health from toxic air pollutants like mercury and sulfur dioxide (SO₂). If this bill were to become law, waste coal facilities would be able to emit more than their fair share of pollution. The Committee on Energy and Commerce reported H.R. 3797 on a party line vote of 29-22 with all Democrats voting against the bill.

CSAPR and MATS. EPA issued CSAPR using its authority under CAA section 110, known as the “good neighbor provision.” CSAPR requires upwind states to reduce power plant emissions of SO₂ and nitrogen oxides (NO_x) that cause air quality problems in downwind states. A key feature of CSAPR is a trading program that gives states and sources flexibility in how to meet the rule’s requirements. EPA issued the MATS rule in 2011 under CAA section 112, which sets maximum achievable control technology, or MACT, standards for distinct source categories. EPA’s MATS rule represents the first national standards to address power plant emissions of mercury and other toxic air pollutants like hydrochloric acid (HCl). Existing sources had three years – or until April 16, 2015 – to comply with the rule. Many sources were granted an additional year for compliance – until April 16, 2016 – to install pollution controls.

H.R. 3797 Needlessly Amends CSAPR To Take Away States’ Rights. Under CSAPR, a state can either use EPA’s allowance trading program, or develop their own program to meet the rule’s required emissions reductions. The SENSE Act would eliminate the flexibilities afforded to states in order to give special treatment to waste coal plants. For the first time in the 39-year history of the CAA’s interstate air pollution program, H.R. 3797 would override a state’s right to determine the best and most cost-effective way to reduce pollution, putting those decisions in the hands of the EPA Administrator. These changes to CSAPR are also unnecessary because a state that wishes to give a break to waste coal units can already do so under the rule.

H.R. 3797 Picks Winners and Losers. The bill tips the scales in favor of waste coal units at the expense of other power plants in a state. The SENSE Act alters the efficiency of the CSAPR trading system and creates inequities in the market by reserving emissions credits for waste coal units that cannot be traded. Such a change would remove the economic value of these credits, and would eliminate the financial incentive to reduce emissions. Ultimately, the SENSE Act would make compliance with CSAPR less flexible and more costly for non-waste coal plants.

EPA And The Courts Have Already Said “No” To Weakening MATS. H.R. 3797 provides an additional compliance option for the MATS standards for HCl and SO₂ emissions that would give waste coal facilities license to pollute more than they should. In the final MATS rule EPA determined that emissions from waste coal units are no different from emissions from other coal-fired power plants, and don’t justify special treatment. The D.C. Circuit Court of Appeals agreed, and concluded that “... EPA reasonably decided that separate standards for coal-refuse-fired [power plants] were not warranted.” A weaker compliance pathway is also unnecessary, since technology to meet the MATS standards already exists.