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H.R. 1734 WOULD ENDANGER HUMAN HEALTH AND THE ENVIRONMENT

Committee on Energy and Commerce, Democratic Staff

H.R. 1734, the “Improving Coal Combustion Residuals Regulation Act of 2015” is unnecessary and dangerous legislation that would undermine important health protections in EPA’s final coal ash rule. Below is a brief summary of the issue.

What Is Coal Ash And What Risks Does It Pose?

Coal ash is the waste from burning coal in power plants or industrial facilities. It contains high concentrations of toxic chemicals including arsenic, lead, and mercury.

The unsafe disposal of coal ash presents serious risks to human health and the environment. Contaminants can leach into groundwater and drinking water supplies, or become airborne as toxic dust. Aging or deficient coal ash impoundments can fail structurally, resulting in catastrophic floods of toxic sludge entering neighboring communities. Examples of these harms are numerous and well-documented.

How Is EPA Addressing These Risks?

EPA published a final rule governing coal ash disposal in the Federal Register in April, after decades of work, a robust public process, and consideration of over 450,000 public comments.¹ The rule sets out minimum national criteria for the disposal of coal ash carefully designed to ensure “no reasonable probability of adverse effects on health or the environment.” The rule explicitly protects beneficial reuse, or recycling, of coal ash.

I’ve Heard That H.R. 1734 Would Merely Codify EPA’s Rule, Is That True?

No. H.R. 1734 would endanger human health and the environment by eliminating or changing crucial requirements in EPA’s rule. The following are key examples of protective requirements in EPA’s final rule that would be eliminated by the bill:

- **Location Restrictions** - The bill eliminates restrictions for existing wet impoundments, allowing them to remain in contact with aquifers, in wetlands, in fault areas, and in seismic impact zones.²
- **Liner Requirements for Existing Surface Impoundments** - The bill eliminates requirements for existing wet surface impoundments to be lined, allowing unlined or insufficiently lined surface impoundments to continue to receive waste.³
- **Closure Requirements for Deficient Structures** – Under the rule, any surface impoundments that fails to meet EPA’s standards is required to cease receiving waste within six months and close. This includes, for example, those that (1) are unlined and violate groundwater protection standards, (2) fail to meet location restrictions, or (3) fail to meet minimum structural stability requirements.⁴ The bill

¹ U.S. Environmental Protection Agency, *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*, Federal Register, Vol. 80, No. 74, 21302-21501 (Apr. 17, 2015)(online at www2.epa.gov/coalash/coal-ash-rule).

² H.R. 1734, Subsection (c)(2)(E).

³ H.R. 1734, Subsection (l)(5).

⁴ *EPA Final Rule*, at 21489-21496.

lacks such closure requirements for deficient structures, and would permit continued operations for years or even indefinitely.⁵

Other safeguards in the rule would be undermined by the bill's addition of significant discretion to determine how and if requirements should be met:

- **Groundwater Protection Standards** - The bill eliminates the minimum requirements for groundwater monitoring and groundwater protection included in EPA's rule, allowing states to alter monitoring parameters, choose alternative points of compliance, or choose lower groundwater protection standards.⁶
- **Cleanup Requirements** - The bill allows states to decide that groundwater contamination and other pollution need not be cleaned up.⁷
- **Scope of Requirements** - The bill gives states broad discretion to redefine major terms, including terms that set the scope of permit requirements.⁸
- **Transparency** - The bill undermines transparency requirements in EPA's rule including specific requirements to make information publicly available online and introduces new exceptions to publication requirements.⁹

Would H.R. 1734 Delay Important Health Protections?

Yes. The EPA rule requires coal ash disposal sites to quickly come into compliance with the rule's requirements, with many requirements effective this October. The bill establishes much longer timeframes for some requirements, with full compliance not required until 6-7 years after enactment.¹⁰

Even where the timeframes in the bill are close to those in the rule, they would be counted from the bill's date of enactment, leading to significant delays compared to the rule.

Is Legislation Needed?

No. In the past, some argued that legislation was needed to prevent EPA from regulating coal ash as hazardous waste and to protect beneficial reuse. EPA's final rule regulates coal ash as non-hazardous and specifically protects beneficial reuse. The Agency has no plans to reconsider this decision.

Some also suggest that legislation is needed to prevent dual enforcement of state and federal requirements. EPA's final rule includes a mechanism for EPA approval of state requirements specifically to address this concern.

Who Opposes H.R. 1734?

H.R. 1734 is opposed by the Administration and environmental, public health, and civil rights groups including the Sierra Club, League of Conservation Voters, NRDC, NAACP, Physicians for Social Responsibility, EarthJustice, and Greenpeace. In North Carolina, where a recent coal ash spill devastated the Dan River, 25 state legislators have signed a letter of opposition.

⁵ H.R. 1734, Subsection (c)(2)(C).

⁶ *EPA Final Rule*, at 21484-21487; H.R. 1734, Subsection (c)(2)(B)(ii)(I) and (II).

⁷ H.R. 1734, Subsection (c)(2)(B)(ii)(III) and (IV).

⁸ H.R. 1734, Subsection (m); *EPA Final Rule*, at 21469-21471.

⁹ *EPA Final Rule*, for a full discussion of the treatment of requirement to post information that may be considered confidential, see 21338-21339, H.R. 1734, Subsection (c)(1)(B) and (I)(5).

¹⁰ H.R. 1734 at Subsection (c)(3).