



July 21, 2015

The Honorable Fred Upton  
Chairman

The Honorable Frank Pallone  
Ranking Member

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton and Representative Pallone:

The Environmental Council of the States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) write to express support for H.R. 1734, the *Improving Coal Combustion Residuals Regulation Act of 2015*. Our organizations represent state officials charged with environmental statutory and regulatory implementation responsibilities to advance environmental and human health protection, as well as an efficient and effective system of environmental governance.

We believe H.R. 1734 is needed to effectively resolve problematic issues for state implementation that we have identified with the final Coal Combustion Residuals (CCR) rule promulgated by the U.S. Environmental Protection Agency (EPA) (80 Fed. Reg. 21,302 (April 17, 2015)). These issues derive from the constraints of EPA's existing statutory authority under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

In expressing our support for this legislation, we note we are in full agreement with EPA's decision in the final rule to regulate CCR as a non-hazardous waste under RCRA Subtitle D. EPA's determination to regulate CCR as a non-hazardous waste is important to the continued beneficial use of CCR. We also appreciate EPA's work in developing comprehensive federal technical requirements for CCR landfills and surface impoundments, many of which are modeled on existing effective and stringent state programs. However, due to existing statutory authority under RCRA to establish federal minimum criteria for CCR, EPA issued the rule under 40 CFR Part 257, which is self-implementing. This means that owners/operators of facilities can comply with the federal minimum criteria "without the need to interact with a regulatory authority" as EPA states in the final rule preamble.

The implementation concerns that ECOS and ASTSWMO have identified stem from this self-implementing construct. Our concerns are that the self-implementing rule: 1) creates a dual state

and federal regulatory regime in which the owner or operator of a CCR disposal facility would need to fully comply with the self-implementing national minimum standards and existing state requirements, even if the state requirements meet or exceed the national minimums; 2) does not provide for state oversight and enforcement, thus making citizen suits under RCRA the primary enforcement mechanism for the rule; and 3) does not allow for regionally appropriate technical requirements. We recognize EPA's efforts, working within the confines of 40 Part 257, to provide a mechanism through the state solid waste management plan (SWMP) to address our concerns regarding dual regulatory authority. However, the SWMP does not fully eliminate dual implementation of CCR regulatory programs, because even after EPA review and approval of the state plans, as stated in the final rule preamble, "EPA approval of a State SWMP does not mean that the state program operates 'in lieu of' the federal program." Thus, the plans would not fully alleviate dual implementation of state and federal standards.

ECOS and ASTSWMO believe that H.R. 1734 successfully captures the essential parts of the EPA rule that are germane to the protection of the environment and public health, and addresses our implementation concerns with the self-implementing aspect of the rule. By amending Subtitle D of RCRA to allow states to adopt, implement and enforce the CCR rule through a state permit program, similar to the authority that exists under RCRA Subtitle D for municipal solid waste landfills, the legislation would:

- Eliminate dual state and federal regulatory authority. For states that choose to adopt and implement the permit program, it assures state primacy through the single permit program provision that is enforceable by the state. If a state does not choose to adopt a CCR permit program, or is found not to have a sufficient permit program for CCR, then EPA would have authority to adopt, implement and enforce a CCR permit program in that state. The establishment of a CCR permit program recognizes that the states are in the best position to implement the rule and to regulate CCR units, but also properly empowers EPA to serve as a backstop and administer the rule where states are not. There thus would be a clear and consistent understanding of state and federal implementation and enforcement roles, along with preserving the citizen suit provisions of RCRA.
- Eliminate the ambiguity and uncertainty of the use of the SWMP as the mechanism for state-only implementation of the EPA rule.
- Allow flexibility for states to have regionally appropriate standards that would allow modification of the rule's groundwater and corrective action requirements based on site-specific, risk-based factors with state regulatory oversight. States are not looking to this flexibility in order to undermine the safeguards built into the rule. Rather, this flexibility is critical to the successful implementation of the rule due to the wide variety of climatic, geographical and geological conditions present across the nation.

In addition, the legislation would include a provision for financial assurance that is not in the EPA rule due to its self-implementing construct; this provision includes financial assurance for post-closure care of inactive surface impoundments to ensure long term compliance with environmental and public health requirements. We believe that financial assurance is an important program element in a CCR rule.

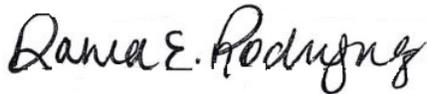
In conclusion, we believe that H.R. 1734 would address problematic state implementation issues within the final EPA rule and produce a viable, workable and protective result in regulating and responding to the environmental impacts of CCR facilities.

We thank you for your consideration of our views.

Sincerely,

A handwritten signature in blue ink that reads "Alexandra Dapolito Dunn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alexandra Dapolito Dunn  
Executive Director and General Counsel, ECOS

A handwritten signature in black ink that reads "Dania E. Rodriguez". The signature is cursive and includes a stylized flourish at the end.

Dania E. Rodriguez  
Executive Director, ASTSWMO