

1. Request that Congress restate its position that CWA doesn't regulate groundwater, even as a conduit, and that RCRA is the federal law regulating coal ash impoundments.

*“The Committee is concerned with recent court actions involving coal ash storage and disposal, particularly the assertion by certain federal district courts that groundwater impacts are regulated by the Clean Water Act. It was never Congress’s intention to regulate impacts to, through or from groundwater in the Clean Water Act. Since enactment in 1972, the Clean Water Act has governed impacts to navigable surface waters only and Congress specifically rejected amendments that would have extended jurisdiction to groundwater, even though Congress was well aware of the inextricable connection between groundwater and surface water. Instead, authority over groundwater impacts is a matter solely for the states, which retain exclusive control over the establishment of standards and controls for groundwater pollution. Despite Congress’s clear intent, recent court decisions have suggested that impacts to groundwater with a direct hydrologic connection to surface water are regulated by the Clean Water Act. This is inconsistent with the plain text of the statute and would defeat the clearly established jurisdictional authorities of RCRA and CWA as designed by Congress and implemented by EPA. In the specific context of coal ash, the CCR Rule specifically and comprehensively regulates groundwater impacts associated with coal ash storage and disposal, regardless of whether there is a direct hydrologic connection to navigable surface waters. However, the recent court decisions would render these impacts illegal — either as unpermitted discharges or as discharges that violate NPDES permit conditions — such an outcome was never intended by Congress.”*

2. Request that EPA enter into a rulemaking to address this issue quickly.

*“To rectify this situation, the Committee directs the Administrator to promulgate a rule clarifying and confirming that (1) groundwater impacts from solid waste units are regulated exclusively under RCRA, and (2) impacts to, through or from groundwater are not “point sources” subject to the NPDES permit program, regardless of whether there is a direct hydrologic connection to navigable surface waters.”*