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RPTS CALHOUN

DCMN HERZFELD

MARKUP OF H.R. 2218, THE COAL RESIDUALS REUSE AND MANAGEMENT ACT OF 2013; H.R. 2226, THE FEDERAL AND STATE PARTNERSHIP FOR ENVIRONMENTAL PROTECTION ACT OF 2013; H.R. 2279, THE REDUCING EXCESSIVE DEADLINE OBLIGATIONS ACT OF 2013; AND H.R. 2318, THE FEDERAL FACILITY ACCOUNTABILITY ACT OF 2013

WEDNESDAY, JUNE 19, 2013

House of Representatives,
Committee on Energy and Commerce,
Washington, D.C.

The committee met, pursuant to call, at 10:09 a.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Hall, Barton, Whitfield, Shimkus, Pitts, Walden, Terry, Rogers, Murphy, Gingrey, Scalise, Latta, McMorris Rodgers, Harper, Lance, Cassidy, Guthrie, Olson,

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McKinley, Gardner, Pompeo, Kinzinger, Griffith, Bilirakis, Johnson, Long, Ellmers, Waxman, Dingell, Rush, Eshoo, Engel, Green, DeGette, Capps, Doyle, Schakowsky, Matheson, Butterfield, Barrow, Matsui, Christensen, Castor, Sarbanes, McNerney, Braley, Welch, Lujan and Tonko.

Staff Present: Nick Abraham, Legislative Clerk; Gary Andres, Staff Director; Charlotte Baker, Press Secretary; David Bell, Staff Assistant; Mike Bloomquist, General Counsel; Sean Bonyun, Communications Director; Matt Bravo, Professional Staff Member; Megan Capiak, Staff Assistant; Jerry Couri, Senior Environmental Policy Advisor; Sydne Harwick, Legislative Clerk; Kirby Howard, Legislative Clerk; Peter Kielty, Deputy General Counsel; David McCarthy, Chief Counsel, Environment/Economy; David Redl, Counsel, Telecom; Tina Richards, Counsel, Environment; Chris Sarley, Policy Coordinator, Environment & Economy; Charlotte Savercool, Executive Assistant, Legislative Clerk; Tom Wilbur, Digital Media Advisor; Phil Barnett, Minority Staff Director; Jacqueline Cohen, Minority Senior Counsel; Greg Dotson, Minority Staff Director, Energy and Environment; Caitlin Haberman, Minority Policy Analyst; Elizabeth Letter, Minority Assistant Press Secretary; and Roger Sherman, Minority Chief Counsel.

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The Chairman. The committee will come to order. I would note that at the conclusion of opening statements yesterday, the chair called up H.R. 2218. The bill was open for amendment at any point. Are there any bipartisan amendments to the bill?

Seeing none, are there any amendments?

The chair would recognize the gentleman from Illinois, Mr. Shimkus, for what purpose?

Mr. Shimkus. Thank you, Mr. Chairman. Not officially bipartisan, but I think we have shared the language with the minority side on a drafting error. So I would like to call up the amendment, 008, Mr. Chairman.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2218 offered by Mr. Shimkus of Illinois.

The Chairman. The amendment will be considered as read.

[The amendment of Mr. Shimkus follows:]

***** INSERT 1-1 *****

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The Chairman. The staff will pass out the amendment, and the gentleman from Illinois is recognized for 5 minutes in support of his amendment.

Mr. Shimkus. Thank you, Mr. Chairman.

Just briefly, as I said, it is essentially a drafting error. The interim compliance period should have included inspections under -- I can't say the legal term -- (c)(1)(B)(iii).

With that, I yield back my time.

Mr. Waxman. Will the gentleman yield to me, Mr. Shimkus?

Mr. Shimkus. I would.

Mr. Waxman. We have no objection. This is a drafting error -- to correct a drafting error -- and we support your amendment.

Mr. Shimkus. I thank the ranking member and yield back my time.

The Chairman. Other Members wishing to speak? Seeing none, the vote is on the amendment offered by Mr. Shimkus. Those in favor, say aye.

Those opposed, say no.

In the opinion of the chair, the ayes have it. The amendment is adopted.

Are there further amendments to the bill?

The chair recognizes the gentleman from Texas Mr. Green.

Mr. Green. Thank you, Mr. Chairman. I have an amendment at the desk. I think it is denoted D1.

The Chairman. The clerk will report the title of the amendment.

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The Clerk. Amendment to H.R. 2218 offered by Mr. Green of Texas.

The Chairman. The amendment will be considered as read.

[The amendment of Mr. Green follows:]

***** INSERT 1-2 *****

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The Chairman. The staff will distribute the amendment, and the gentleman from Texas is recognized for 5 minutes in support of his amendment.

Mr. Green. Thank you, Mr. Chairman.

Having been involved in the coal ash legislation during the last Congress -- and this an amendment we actually had last time before it came out of our committee. And the statutory objective, the Resource Conservation and Recovery Act, what we call RCRA, is very simple: promote the protection of health and environment, and conserve valuable material and energy resources.

Like all major environmental statutes, RCRA sets a legal standard of protectiveness for the State-delegated programs. This amendment would provide such a legal standard of protection that would ensure RCRA's original intent is reflected in the legislation.

I believe as a lawyer I can probably argue in court that this may already be part of what EPA does and our State agencies do, but I think just because RCRA includes it, and we are doing this as an amendment to RCRA, we probably need to reiterate it. It would provide a yardstick by which it is determined whether a State's efforts measure up and ensure a consistent level of effort protection throughout all 50 States.

It is important that our committee continue this set standard for environmental legislation and continue the regulatory consistency this clause has provided States, and local governments, and industry and

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affected stakeholders over the last four decades.

In the case of municipal solid waste, under subsection D of RCRA, the legal standard is set. The program must protect human health and the environment from the risks associated with municipal solid waste. But under this bill the set standard does not apply to coal ash. That is why we need this amendment. If we want to hold State coal ash permits to that standard, the same standard to which State municipal solid waste permit programs are held, this amendment is a way to do it.

This is a commonsense amendment. It actually conforms to what typically current environmental law, and it would simply spell out the basic underlying purpose of the legislation, and I urge my colleagues to vote yes on this amendment.

If there are any questions, I would be glad to try and answer them. If not, I know I can't reserve my time, but I will yield back.

The Chairman. The gentleman yields back his time.

The chair would recognize the gentleman from Illinois Mr. Shimkus.

Mr. Shimkus. Thank you, Mr. Chairman.

I appreciate my colleague's amendment. We debated this language in the last Congress, the last bill that moved over. But this amendment brings us back to where we were the same time 2 years ago and would insert, as he stated, "protect human health and the environment" as a subjective standard into the objective minimal requirements that serve as Federal baseline for protection of the legislation. So short

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term, it sets up subjective, which is interpretive, which could involve more litigation versus less litigation.

The amendment requirements are crafted in such a way that they set a Federal baseline of protection by allowing States to interpret and implement the requirements in a manner that also protect human health and the environment. States are perfectly capable of achieving this, and the State regulators have appeared before us on many occasions to express their eagerness to get started.

Again, I appreciate my colleague's intent, but the minimum requirement in the bill is merely an intent to set a subjective yardstick for EPA to judge State programs and for litigants to sue EPA if they don't like the State program that meets the statutory standards. If EPA thinks the State permit program is failing to meet the minimum requirements in the bill, at EPA's request and our legislative hearing, the legislation now gives EPA specific criteria to assess whether a State permit program is protective. So that was a change in which we made, based upon the hearing.

This bill takes a new approach to Federal environment regulation and does not and will not contain an open-ended, undefined invitation to EPA to measure the States' coal ash permit programs against the, quote/unquote, "protective health and human" -- "human health and environment" or the sufficient to ensure protection yardstick for EPA's choosing. And I encourage my colleagues to oppose the amendment, and I yield back my time.

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The Chairman. The chair would recognize the gentleman from California for 5 minutes.

Mr. Waxman. Mr. Chairman, the way environmental laws often work, including the Resource Conservation Recovery Act, or what we call RCRA, the basic premise of the law is to protect public health and the environment from unsafe disposal of waste, solid waste. It created duties for EPA and then delegated to the States to run the program.

Like all other environmental statutes, State delegation under RCRA has been held to a Federal standard. So you meet a Federal standard, but the State carries it out. And they have a lot of flexibility to carry it out.

This bill removes the Federal standard, except it spells out certain things in the bill, presumably, if it were law. But the Federal standard set by EPA is a yardstick by which it would be determined whether a State's effort measures up, and whether the State is actually ensuring the level of effort and protection needed to protect public health and the environment in that State.

This approach has worked well because every American enjoys the same level of protection. It prevents a race to the bottom. If a State has the ability to set and run its own program and doesn't have to meet any Federal standard but whatever standard it sets for itself, a State is going to be able to say, oh, come on, locate in this State. We have a lower environmental standard than other States. This is a good State to do business. Well, what does that do? It sets up a race to the

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bottom. The other State will have to say, well, we have got even less requirements for you. And we don't have to meet any Federal standard of protecting the public health and the environment.

Now, the proponents of the legislation have been fierce in their opposition to requiring that State programs protect public health and the environment. In fact, they refuse to include any standard of protection for coal ash disposal. So what we have is every State on its own.

Representative Tonko and I asked the Congressional Research Service to confirm that the version of the bill we are considering today does not address this fundamental flaw. According to the CRS, they said, quote, "Nothing that is in this bill requires agencies implementing the permit program to establish criteria applicable to coal ash structures that will be those necessary to achieve a specific Federal standard of protection," end quote.

In other words, CRS is saying this bill doesn't require any State to establish coal ash programs that will be necessary to achieve a Federal standard of protection. That means a State can comply with the requirements of this bill, and people can still get sick from air pollution and water pollution. There is no consistent national standard to protect against the risks of coal ash, and no guarantee that State programs will be protected. So the Green amendment would provide that guarantee and that consistent national standard.

During opening statements yesterday in the subcommittee,

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advocates of this legislation argued that we need to pass this legislation in order to protect the public health and the environment. Well, let's be clear. This bill does not guarantee protections for public health and the environment. It gives a guarantee to States to do whatever they want to do, except they have to do all the things spelled out in the statute. Well, if they do all the things that are spelled out in the statute, and it is not enough, they have to come back to Congress and amend the statute; otherwise the people in the State may well see that the efforts are not going to be sufficient.

This is not a hypothetical problem. EPA documented groundwater contamination from coal ash disposal in Virginia, South Carolina, Michigan, New York, Massachusetts, Indiana, North Dakota, and the list goes on. I expect Pennsylvania may be on that list pretty soon.

Risks from uncontrolled dust have also been documented. In Gambrills, Maryland, toxic dust from coal ash disposal sites blew into the neighboring homes, posing threats to the communities' respiratory health. Of course, coal ash impoundments can catastrophically fail, as it happened in Kingston, Tennessee.

When EPA issued its proposed rule in June 2010, they cited more than two dozen cases of damage. These are coal ash disposal sites where poor disposal practices are contaminating groundwater, polluting surface water, and harming property values. In fact, three of those sites are now on the national priority for cleanup under Superfund.

These risks are real. They are significant. We should be

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working to address them, not insisting on legislation that we know will not protect the public's health. This amendment is a good start, and I urge its support.

The Chairman. The gentleman's time has expired.

Other Members wishing to speak on the amendment?

The gentlelady from California is recognized for 5 minutes.

Mrs. Capps. Thank you, Mr. Chairman. I would like to yield to my colleague from Texas Mr. Green.

Mr. Green. Mr. Chairman, Members, I wasn't here in 1969. I know Congressman Waxman -- no. Chairman Emeritus Dingell was here. Every environmental law, even in the State of Texas, I think starts with that you protect human health and the environment. That is the original. So that is why this amendment is important.

But I want to ask our counsel. The amendment-implementing agency shall apply health and -- protect human health and the environment. The overall EPA statute has that requirement in it; is that correct?

The Counsel. That is correct.

Mr. Green. Would that statute, if we amend the statute now under this and do not put this in, would it still be considered as part of the EPA requirement under their original enactment in 1969, human health and safety?

The Counsel. Is your question if we amend -- this amendment would not change any other existing authority for EPA or any other directive to EPA to protect human health and the environment or any

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other parts of RCRA.

Mr. Green. You are almost getting to where I want you to say. If this amendment doesn't go on, will EPA still have to use their original intent, to protect human health and the environment, in interpretation of this bill? Is it necessary for us to reiterate it in this, since it is an amendment, to EPA's authority?

The Counsel. No, I don't believe so. I mean, I believe EPA would use -- interpret its directive in RCRA to --

Mr. Green. I know what we are doing. If we don't put this in here, there will be a lot of litigation. And I know some of my colleagues on the Republican side somehow don't like litigation. But the original EPA statute, which I know we have some philosophical differences with, but require the EPA, in 1969, human health and the environment. That is their charge. And we are amending that law now without this phrase in here. But maybe an amendment -- if you say that the law is going to apply to current law from 1969, maybe we don't need the amendment. But I would like to make that clear, that the intent of this House, that we want EPA to be able to deal with -- just like I want my State agency to be able to protect human health and the environment.

The Counsel. This amendment would not alter any other directive to EPA in RCRA to protect human health and the environment. EPA has been directed in the organic statute to protect human health and the environment, and this amendment does not remove that directive to EPA.

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Mr. Waxman. Will the gentleman yield?

Mr. Green. I am a little frustrated.

Mr. Waxman. Well, if we talked about coal ash itself, could you answer Mr. Green's question? Can EPA set a national standard for coal ash to protect public health and the environment that every State would have to meet?

The Counsel. Not for coal ash.

Mr. Waxman. So not for coal ash.

The Counsel. But I understood his question to be about RCRA in general, not specific to coal ash.

Mr. Green. Well, that makes the case of why we need it here, because the original intent of EPA was to protect human health and environment. If we are not putting it in RCRA -- but I think we can still deal with coal ash. This bill is a little better than the one we did last session. It is not quite to the point, though, and I think it will probably be changed in the Senate. But I think that this is so important, it ought to be basic on what we should do. No matter how we may disagree sometimes with EPA on what their job, what they are doing their job, but their original reason for the EPA is to protect, you know, human health and the environment. And why would we not do it in a bill that actually sets up a different criteria?

And I appreciate my colleague yielding to me.

Mr. Waxman. Will the gentleman yield?

Mr. Green. I yield back to -- I would be glad to yield.

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Mr. Waxman. This underscores the reason to have the Green amendment, because we are taking coal ash and treating it differently. And what we should have is a Federal standard for protecting public health and the environment, with the States having the flexibility to achieve that standard, but not repealing the standard and telling the States, do your best. But their best may not be good enough because they don't meet the standard. We ought to help them do their best and accomplish the goal, not remove the goal under Federal law.

Mr. Green. That is what I was trying to get to; the original law. And again, I know philosophically we have some differences. Some people want EPA to look at the economic impact, but that is not what their job is. We have other agencies that deal with that. EPA is required for the human health and safety and environment, which is what they were created for.

Thank you.

The Chairman. The gentlelady's time is expired. Other Members wishing to speak?

Seeing none, the vote occurs on the amendment. All those in favor will say aye.

Those opposed, say no.

A roll call is asked. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. No.

The Clerk. Mr. Hall votes no.

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Mr. Barton?

[No response.]

The Clerk. Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

[No response.]

The Clerk. Mr. Terry?

[No response.]

The Clerk. Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

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The Clerk. Mr. Gingrey?

Dr. Gingrey. No.

The Clerk. Mr. Gingrey votes no.

Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

[No response.]

The Clerk. Mr. Harper?

[No response.]

The Clerk. Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

Dr. Cassidy. No.

The Clerk. Mr. Cassidy votes no.

Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Olson?

Mr. Olson. No.

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The Clerk. Mr. Olson votes no.

Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Gardner?

[No response.]

The Clerk. Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith?

Mr. Griffith. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long?

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers?

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Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

Mr. Dingell. Aye.

The Clerk. Mr. Dingell votes aye.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

Mr. Green?

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

Ms. DeGette?

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[No response.]

The Clerk. Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle vote aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

Mr. Barrow?

[No response.]

The Clerk. Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mrs. Christensen?

Dr. Christensen. Aye.

The Clerk. Ms. Christensen votes aye.

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Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes?

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Braley?

[No response.]

The Clerk. Mr. Welch?

[No response.]

The Clerk. Mr. Lujan?

[No response.]

The Clerk. Mr. Tonko?

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Members wishing to cast a vote?

Mr. Whitfield?

Mr. Whitfield. No.

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The Clerk. Mr. Whitfield votes no.

The Chairman. Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

The Chairman. Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

The Chairman. Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

The Chairman. Mr. Rush?

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

The Chairman. Other Members wishing to cast a vote?

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

The Chairman. Other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

Mr. Barrow?

The Clerk. Mr. Barrow is not recorded.

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

Mr. Chairman, on that vote there were 19 ayes and 25 nays.

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The Chairman. Nineteen ayes, twenty-five nays. The vote -- the amendment is not agreed to.

Are there other amendments to the bill?

The gentleman from Illinois has an amendment at the desk.

Mr. Rush. Mr. Chairman, I have an amendment at the desk.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2218 offered by Mr. Rush of Illinois.

The Chairman. The amendment will be considered as read.

[The amendment of Mr. Rush follows:]

***** INSERT 1-3 *****

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The Chairman. The staff will distribute the amendment, and the gentleman is recognized for 5 minutes in support of his amendment.

Mr. Rush. Thank you, Mr. Chairman.

Mr. Chairman, my amendment is straightforward and simply provides Federal enforcement authority that if the EPA Administrator determines that a structure is in violation of a State coal combustion residuals permit program, and the State has not taken appropriate action to enforce such permit program with respect to that structure, the Administrator may inspect the structure and enforce the requirements of the State permit program.

Mr. Chairman, as written, the current bill will put EPA in the position of even having to -- either having to withdraw an entire State program or else do absolutely nothing if a company has been found to be in violation of the, quote, "open dumping," end of quote, laws that were enacted over 30 years ago. Currently many coal ash sites that violate this law still continue to receive waste because States have not enforced these standards. Due to a case in my district in Crestwood, Illinois, where contaminated drinking water was piped into the homes of my constituents for over 20 years, between 1986 and 2007, without intervention from either State or Federal EPA agencies, I am particularly sensitive to this issue.

Mr. Chairman, my amendment will allow the Federal Government to intervene to do precisely that which I just stated. So I urge all my colleagues to support my amendment, and I yield back the balance of

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my time.

The Chairman. The gentleman yields back.

The chair recognizes Mr. McKinley from West Virginia for 5 minutes.

Mr. McKinley. Mr. Chairman, thank you.

Just reading this carefully when I saw this this morning, the amendment, it says, if the Administrator determines that a structure is in violation. A structure is in violation. What we are talking about is a dam, and under the bill and under State law, those dams are to be inspected by a professional engineer. Under our bill we called for an independent. So it is not a company engineer doing this report, but it is an independent structural engineer.

You can't view a dam, a structure and determine that it is in violation, but that is what this language, this amendment says. If the Administrator of the EPA determines that a structure is in violation, then they can do a study, it says, later on. It says that if it determines a structure is in violation, and the State hasn't taken appropriate action. Well, under the bill it says that they shall, but let's assume they haven't. Then the Administrator may inspect such structure.

It is backwards. You can't look at a dam and tell it is not in compliance. A professional engineer has signed off on that dam. Under the code of ethics for engineers, any other engineer will have to consult with the previous engineer that designed the dam and signed

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off on it.

So this is an effort, I believe, that may be well intended, but it doesn't work because you can't determine that a structure is in violation until a report has been done. And there has been a report done. It has been done by a professional independent structural engineer.

So I am afraid that this amendment, as well intended as it may be from the Congressman from Illinois, it doesn't work; and if nothing else, it adds to confusion in the matter. You can't look at a dam and say that it is not in compliance. The only way you can do that is do a report. And there is a report by an independent structural engineer. So I would ask that the Members reject this amendment.

The Chairman. The gentleman yields back.

Other Members wishing to speak on the amendment?

The gentleman from California is recognized.

Mr. Waxman. I look at this amendment in the way that Mr. Rush described it. If American families don't think their State is carrying out its responsibilities to protect their health, what recourse do they have? Under this bill, if a State fails to do an adequate job of enforcing its program -- set up a program; he has to enforce it -- there is only one remedy. This family would have to go to the EPA and say, well, we don't think the State is doing a good enough job, and so EPA should take over the State program. Well, that is not a good solution. It is highly unlikely it would happen. It is highly undesirable that

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EPA would come over and take a State program on and run it itself. We want the States to run it.

So unlike last year, the legislation spells out under what circumstances EPA can take over a State program. The legislation appears to clarify that EPA cannot take over a State coal ash disposal program on the basis of the State program is allowing public health to be harmed. Well, that doesn't make any sense. That is saying EPA cannot take it over if people are being harmed.

The Rush amendment creates an additional remedy for inadequate State enforcement that is more measured than taking over a State's program. It allows EPA to enforce State requirements if a coal ash disposal structure is in violation and the State isn't doing anything about it. Without this amendment a State could fail to implement their program for coal ash disposal in a way that puts human health and the environment at risk, and there would be no discrete way for the EPA to intervene to provide the necessary safeguards.

So this amendment would simply allow the EPA to serve as a protective backstop. It doesn't empower EPA to impose new requirements; it just allows EPA to enforce the ones put in place by the States. And this amendment would assure the communities near coal ash disposal sites can be sure that their well-being will be protected.

Now, some might argue that this Federal backstop authority is not necessary, and it is different than other approaches in Federal law, but when Representative Tonko and I released our analysis from CRS,

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CRS examined this provision and confirmed that while EPA could theoretically take over a State program for failure to meet certain statutory requirements, it cannot do so for a failure to protect public health or the environment. So EPA, under this bill, could take over a program theoretically for failure to meet the statutory requirements, but if they didn't ever meet the requirement to protect the public health, EPA can't take it over. So there is nothing that anybody can do if the State is not doing its job.

I think it is completely backwards. Why would we want to emphasize bureaucratic requirements over how a program is actually affecting the health of the families who live near coal ash disposal sites?

Mr. Rush. Will the gentleman yield?

Mr. Waxman. I would be happy to yield to Mr. Rush.

Mr. Rush. I want to thank the gentleman for yielding.

The people in Crestwood thank God for the EPA, because here you have a situation where a mayor and the whole city administration for 20 years were piping polluted water, toxins, into the homes of the citizens and lying about it. The EPA came and told the State, you got a problem here, and for years the State would not even do anything about it.

And then there was a citizen in Crestwood who became alarmed because of the high incidence of cancer, and she contacted my office, and we got the EPA to come in again. And the EPA found that the water

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had been contaminated.

The local government had been lying to its citizens for over 20 years, and as a result of that, then there are some right now who have been convicted of criminal charges, some of them city officials, because they lied to the EPA, lied to the State, and also lied to the citizens.

So without the backdrop, the backstop, as my friend from California indicated, then these citizens and other citizens have no other option. They will have to accept what the State does, what the local administrator does, and I don't think the American people need to be forced to not have the EPA as an entity, as an agency that can give them some resolution. The people of Crestwood now are drinking clean water because the EPA was able to come in and enforce the State and the local government to clean up their water, contaminated water.

I yield back.

The Chairman. The gentleman's time has expired.

The chair recognizes the gentleman from West Virginia.

Mr. Griffith. I am from Virginia. I am from western Virginia, but I appreciate it.

The Chairman. I have been there. I know it is in southwest Virginia.

Mr. Griffith. Yes, sir. I appreciate that.

Striking the last word, Mr. Chairman, and if I might ask counsel a question. And that question would be, has, in fact, any State

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abolished the writ of mandamus, which is a classic legal writ that says:
Do your job?

The Counsel. Not to my knowledge.

Mr. Griffith. So, then, it would be correct, would it not, that legally there is recourse? I have heard some people say that if we don't adopt this amendment, there would be no other course; people couldn't do anything. But, in fact, they could file a writ of mandamus that would tell the State to do their job, and if the State didn't do it, the court would take action. Is that not correct?

The Counsel. I believe that is correct.

Mr. Griffith. You believe that is correct. I believe that is correct as well.

Thank you. I yield back --

Mr. Shimkus. Will the gentleman yield his time?

Mr. Griffith. I yield my time to the gentleman from Illinois.

Mr. Shimkus. Thank you.

You know, just to put this all in perspective of the bill from the last Congress and how we are moving this time, yeah, it is different. We have Federal standards, State enforcement, and that is the whole premise. We think the States are up to it. And they are clamoring for this, because we have none right now. So I would think even in a process that folks would like to have some standard with State enforcement than the current status.

But this amendment would seek to allow EPA to have direct

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enforcement when States are implementing a coal ash permit program, and that is what the States have asked us to do because the EPA hasn't moved. This is an aspect of 30 years of the EPA not being involved, and we are trying to get some certainty to this process.

Giving EPA independent inspection or enforcement authority for individual facilities at the same time the State is trying to do the same thing would undermine the entire premise of the bill, to allow States to develop and run their own permit programs. And I think that if a citizen is being harmed locally, they have another recourse: They could throw out their elected officials. They could defeat the State rep, they could defeat the State senator. They could go after the Governor if they feel that the State is so abusive to the public health and welfare of their individual citizens.

So we don't always have to, you know, appeal to the great and all-powerful EPA to do this. I believe that the States they are up for it, they have asked for this, and I think they are up for the task.

Some will say because of this that there will be a race to the bottom -- we have heard that today -- with respect to regulating coal ash, and say they don't trust their own States to adequately protect the environment. But the bill sets a high bar for the States to meet with respect to regulating coal ash, and the States have repeatedly indicated, as I have said, that they are ready and up to the task of creating protective permit programs or risk having EPA take over.

The bill contains strong enforcement provisions without setting

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up a scenario that results in Federal and State officials tripping over each other, and that it preserves EPA's existing imminent hazard authority under section 7003. The bill also has a savings clause which assures the ability of citizen suits against any part in violation of the action. These suits could be brought by any person, including the Administrator of the EPA.

Finally, EPA has broad authority under sections 104(e) and 106 of CERCLA, the Comprehensive Environmental Response, Compensation, and Liability Act, the Superfund, to inspect, test, compel cleanup if EPA has a, quote/unquote, "reasonable" basis to believe there may be a release or threat, a release of hazardous substance or pollutant or contaminant. So based upon all that and the premise of the original bill, which I know some people disagree with, I urge the disapproval or a no vote on the amendment.

Mr. Waxman. Will the gentleman from Virginia yield to me?

Mr. Griffith. With trepidation, I yield, Mr. Chairman.

Mr. Waxman. Thank you for yielding to me.

You pointed out that they could sue for writ of mandamus. Sure. That means more litigation.

What Mr. Shimkus said is that you will have a Federal standard, and the States will meet it. That is what we want. But we fear that this bill does not have a Federal standard because the standard is going to be set in the statute, but it doesn't have to protect public health. And then the State will implement it.

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But Mr. Rush's amendment addresses the situation where -- well, he pointed out there was a collusion between the people doing the structure for contamination of coal ash and the government, which amounted to criminality. Now, if you have something like that, sure, they can go to the DA and ask them to prosecute. They can hire a lawyer and get a writ of mandamus. They can fire the public officials in the next election. Tell me how realistic that is going to be for a citizen who is near a coal ash disposal facility that is not going to be protective of that person's health.

The Rush amendment says if we are going to let the States run this program, they ought to run it in a way that is going to meet their own standards and give some ability to go to EPA and have the EPA tell the State, you are not doing what you are supposed to do, you are not doing what you said you would do, and make sure there is somebody with a backstop at EPA, if you have got a local government, God forbid it should happen, that is not doing its job.

The Chairman. The gentleman's time has expired.

Are there other Members wishing to speak on this amendment?

Seeing none, the vote is on the amendment offered by the gentleman from Illinois. Those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the noes have it.

Roll call is requested. The clerk will call the roll.

The Clerk. Mr. Hall?

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Mr. Hall. No.

The Clerk. Mr. Hall votes no.

Mr. Barton?

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

[No response.]

The Clerk. Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

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Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

[No response.]

The Clerk. Mr. Scalise?

[No response.]

The Clerk. Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

[No response.]

The Clerk. Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

Dr. Cassidy. No.

The Clerk. Mr. Cassidy votes no.

Mr. Guthrie?

Mr. Guthrie. No.

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The Clerk. Mr. Guthrie votes no.

Mr. Olson?

Mr. Olson. No.

The Clerk. Mr. Olson votes no.

Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Gardner?

[No response.]

The Clerk. Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

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Mr. Long?

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers?

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

Mr. Dingell. Votes aye.

The Clerk. Mr. Dingell votes aye.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

Mr. Rush. Aye.

The Clerk. Mr. Rush votes aye.

Ms. Eshoo?

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

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The Clerk. Mr. Engel votes aye.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle votes aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

Mr. Barrow?

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

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Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Ms. Christensen?

Dr. Christensen. Aye.

The Clerk. Ms. Christensen votes aye.

Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes?

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

Mr. Welch?

[No response.]

The Clerk. Mr. Lujan?

[No response.]

The Clerk. Mr. Tonko?

Mr. Tonko. Aye.

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The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

The Chairman. Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

The Chairman. Other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 19 ayes and 24 nays.

The Chairman. Nineteen ayes, twenty-four nays. The amendment is not agreed to.

Are there further amendments to the bill?

The gentleman from California.

Mr. Waxman. Mr. Chairman, I have an amendment at the desk. I would ask unanimous consent it be considered as read.

The Chairman. Without objection, the amendment is considered as read.

[The amendment of Mr. Waxman follows:]

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***** INSERT 1-4 *****

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The Chairman. The staff will distribute the amendment, and the gentleman is recognized for 5 minutes in support of his amendment.

Mr. Waxman. Mr. Chairman, this debate is not about a war on coal or putting a stigma on coal ash. It is not about whether State governments are inherently better than the Federal Government. This debate is about whether or not we are going to allow coal ash disposal sites to contaminate our water supplies and threaten public health.

And proponents of the bill claim that we need this legislation in order to allow the States to regulate coal ash disposal. Well, the States can regulate coal ash disposal today, and, in fact, many do. The problem is that many States are not doing a good job. For example, in Ohio, four coal ash disposal sites have serious groundwater contamination problems: the Cardinal plant, the Gavin Power Plant, the Muskingum River plant, and the Industrial Excess Landfill. The coal ash at these disposal sites have contaminated groundwater with arsenic, mercury, and radioactive materials at levels higher than allowed under the Safe Drinking Water Act.

But even though we know some State programs have allowed groundwater and surface water to be contaminated, the bill we are considering today portends that all the States, every State, would be doing an equally wonderful job. The bill does not require additional measures to prevent contamination of the groundwater. Even worse, once contamination is confirmed, this bill allows further groundwater contamination to continue for an extended period of time.

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This bill provides a structure that is contaminating groundwater 10 years to get their pollution under control, even if cost-effective action could be taken faster. And during that decade which would be allowed under this bill, more waste can be dumped at the structure and more contamination can seep into the groundwater.

Now, I know the local people affected by it could try to just vote out people in office, but they are not going to be able to vote out everybody in the State. And if the owners of a polluting structure can't control their contamination within 10 years, this bill offers them an easily obtained extension for more time. All they have to do is show that there isn't another disposal facility on site where the coal ash can be dumped. Only after a decade or more of additional contamination with a dangerous leaking impoundment be addressed under this bill.

Well, my amendment fixes this problem by directing the States to include measures to prevent groundwater contamination in their coal ash program. My amendment reflects what we all know: Preventing groundwater contamination is more effective and cheaper than cleaning it up.

This amendment should not be controversial. It doesn't change the structure of the bill. It doesn't change the relationship EPA would have with the States under this legislation. It doesn't undermine beneficial reuse of the coal ash. All it says is let us prevent pollution to the extent we can, rather than allowing pollution

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to go unchecked for a decade or more and then cleaning it up after the fact.

So if you want the States to run it, they can run it. If you want the States to set up their program, they can do that. But we want the States, in setting up their program, to have prevention of contamination as part of their goal, not just cleaning up later. I don't know why that should be controversial. The amendment says, "The implementing agency" -- and I will say, parenthetically, at the State level -- "shall require that all wet disposal structures meet criteria for design, construction, operation, and maintenance efficient to prevent groundwater contamination." I think that is the least we can ask of the States and certainly makes a lot of sense. I would hope my colleagues will support this amendment.

I yield back my time.

The Chairman. The gentleman yields back.

The chair recognizes the gentleman from Ohio Mr. Latta.

Mr. Latta. Thank you, Mr. Chairman.

I oppose the amendment, as this amendment adds the subjective standard, "sufficient to prevent groundwater contamination," into the requirement that a coal combustion residuals permit program ensures structural integrity. The effect of the amendment is to add a subjective standard similar to the "protect human health and the environment" debate we had last Congress into a minimum criteria.

The minimum criteria, including the structural stability

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provision that would be changed by this amendment, are crafted in such a way to allow States to interpret and implement in a manner that protects human health and the environment. States are perfectly capable of achieving this. If the EPA thinks a State permit program is failing to meet the minimum requirements in the bill, the legislation now gives EPA specific criteria to assess whether a State permit program is protective. Adding a subjective standard into such a minimum requirements is merely an attempt to set up a subjective yardstick for the EPA to judge State programs and for litigants to sue EPA if they don't like a State program that meets the statutory standards.

The bill takes a new approach to Federal environmental regulations, does not and will not contain an open-ended, ill-defined invitation for EPA to measure the State's coal ash permit programs against an elastic "protect human health and the environment" or "sufficient to prevent groundwater contamination" yardstick of EPA's choosing. Furthermore, the amendment offers new, undefined terms, such as "wet disposal," that are not used elsewhere in the bill, which would lead to unnecessary confusion.

With that, Mr. Chairman, I would urge opposition to the amendment.

Thank you. And I yield back.

The Chairman. The gentleman yields back.

Other Members wishing to speak on the amendment?

The gentleman from New York Mr. Tonko.

Mr. Tonko. Thank you, Mr. Chair.

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I support the amendment. This amendment simply says that wet disposal structures should meet the criteria for design, construction, operation, and maintenance sufficient to prevent -- prevent -- groundwater contamination.

Preventing contamination is a much more prudent and cost-effective policy than allowing it to go on unchecked for a decade or more and then trying to clean it up. And the States are not all doing a good job in this area. Let me give you an example that we learned of in the Environment and Economy Subcommittee.

The Tennessee Valley Authority runs a power plant in Memphis called the Allen Fossil Plant. This plant dumps its ash in a wet impoundment. According to pollution monitoring conducted voluntarily by TVA, the groundwater has been polluted. It shows higher levels of arsenic contamination than allowed under the Safe Drinking Water Act. Levels in the groundwater are above the child health advisory level. Manganese levels have exceeded the lifetime health advisory level. This monitoring is already done. We know that this contamination has occurred.

The commissioner of the Tennessee Department of Environment and Conservation testified at the hearing on this bill. He was asked whether his department would take action to contain this known contamination. His response was far from reassuring. He said that at some unknown point in the future, the State will require the development of a coal ash pond closure plan which will include

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requirements for groundwater monitoring. So rather than taking action to prevent ongoing pollution or cleaning up existing pollution, the State solution was simply to conduct additional monitoring.

Monitoring on top of monitoring will not clean up the groundwater or protect public health. Let us adopt this amendment and help focus some attention on where it needs to be. This amendment will protect human health and the environment also by requiring prevention, not just detection, of groundwater contamination.

With that, I urge --

Mr. Waxman. Will the gentleman from New York yield me some of your time?

Mr. Tonko. I will.

Mr. Waxman. Thank you.

Our colleague Mr. Latta made the argument that this is a subjective standard, a subjective standard that says we want them to prevent maintenance sufficient to prevent groundwater contamination. I don't know if that is subjective or not, but it is not going to be up to EPA. It is going to be up to the State to decide that standard. All we are asking the State to do is to live up to a standard, however they interpret it, that would prevent groundwater contamination. Otherwise what the law is all about is cleaning up afterwards.

This business of subjective standards and litigation, people aren't going to sue EPA. They are going to go to their State, and they are going to tell their State officials, Federal law requires you to

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prevent groundwater contamination. Why are you letting this facility continue to pollute our groundwater and tell us we can't do anything for 10 years to stop it?

In approving it up front, one of the criteria for approving the disposal site ought to be that it is going to prevent future groundwater contamination. And it is not the EPA, it is not Washington knows best -- although sometimes Washington knows best -- it is the States, which also sometimes know best. And under these circumstances, the States would be required to put in a way to prevent this contamination. I think this makes sense, and I just wanted to respond to the gentleman from Ohio's points in opposition.

Thank you for yielding to me.

The Chairman. The gentleman yields back. Other Members wishing to speak?

Seeing none, the vote occurs on the amendment. Those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the noes have it.

Mr. Waxman. I ask for a roll call vote.

The Chairman. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. No.

The Clerk. Mr. Hall votes no.

Mr. Barton?

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Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

Mr. Burgess?

[No response.]

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The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

[No response.]

The Clerk. Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. No.

The Clerk. Mrs. McMorris Rodgers votes no.

Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

Dr. Cassidy. No.

The Clerk. Mr. Cassidy votes no.

Mr. Guthrie?

Mr. Guthrie. No.

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The Clerk. Mr. Guthrie votes no.

Mr. Olson?

Mr. Olson. No.

The Clerk. Mr. Olson votes no.

Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Gardner?

Mr. Gardner. No.

The Clerk. Mr. Gardner votes no.

Mr. Pompeo.

[No response.]

The Clerk. Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

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Mr. Long?

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers?

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

Mr. Dingell. Votes aye.

The Clerk. Mr. Dingell votes aye.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

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Mr. Green?

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

Ms. DeGette?

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle votes aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

Mr. Barrow?

Mr. Barrow. No.

The Clerk. Mr. Barrow votes no.

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Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mrs. Christensen?

Dr. Christensen. Aye.

The Clerk. Mrs. Christensen votes aye.

Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes?

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

Mr. Welch?

[No response.]

The Clerk. Mr. Lujan?

Mr. Lujan. Aye.

The Clerk. Mr. Lujan votes aye.

Mr. Tonko?

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Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Other Members wishing to cast a vote?

Mr. Whitfield?

Mr. Whitfield. No.

The Clerk. Mr. Whitfield votes no.

The Chairman. Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

The Chairman. Other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 19 ayes and 28 nays.

The Chairman. Nineteen ayes, twenty-eight nays. The amendment is not agreed to.

Are there further amendments to the bill?

The gentlelady from the Virgin Islands.

Dr. Christensen. Thank you, Mr. Chairman. I have an amendment at the desk.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2218 offered by Mrs. Christensen

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of the Virgin Islands.

The Chairman. The amendment will be considered as read.

[The amendment of Dr. Christensen follows:]

***** INSERT 1-5 *****

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The Chairman. The staff will distribute the amendment, and the gentlelady is recognized for 5 minutes.

Dr. Christensen. Thank you, Mr. Chairman.

This is similar to Mr. Green's amendment, but it goes a bit further. Coal ash contains toxic chemicals, including arsenic, lead, hexavalent chromium, and mercury. These and other chemicals pose a particular risk to certain vulnerable populations. It is now common knowledge that pregnant women must be particularly careful to limit mercury exposure. We use fish advisories to help pregnant women protect themselves from dangerous exposures just from fish.

We know that lead is a particular risk for infants and children because of the impacts it has on development. We have put considerable resources into testing kids to find those who are being poisoned with lead and to remove lead from our water and our homes.

We know that workers already experience significant exposure to contaminants like hexavalent chromium. Employers are required to take serious safety measures to limit workplace exposures and protect their workers.

And we know that some communities, particularly low-income communities and communities of color, shoulder far more than their share of national chemical exposure.

Coal ash exposures puts all of these groups at risk, despite our best efforts to limit exposure from other sources. We should not allow children, women, workers, or low-income communities to be hurt by coal

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ash disposable programs in any State or territory. My amendment defines those groups and would ensure that these groups are protected by requiring any State or territory that chooses to implement a coal ash program ensure that it does not adversely impact these vulnerable populations. It may seem like a small amendment to some, but it could be huge for these groups that it would protect, and I urge my colleagues to support this amendment.

The Chairman. The gentlelady yields back.

The chair would recognize the gentleman from Virginia.

Mr. Griffith. Thank you, Mr. Chairman.

This amendment seeks to add new requirements that State permit programs protect vulnerable populations. While this may sound good, the effect of this amendment is to add a subjective standard into the minimum requirements for coal combustion residuals permit programs similar to the "protect human health and the environment" debate we had in the last Congress. In fact, the definition of who the vulnerable populations are is so broad, if you read carefully, it appears to me that it would apply to everyone except possibly the man of steel. But even Superman could be covered if the Administrator were to determine that there were small traces of kryptonite in the coal ash.

The minimum requirements in this bill are crafted to allow States to interpret and implement them in a manner that protects human health and the environment. States are perfectly capable of achieving this. Adding words like "prevent adverse impacts" or "protect human health

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and the environment" have the same effect. These are not magic words that, when interpreted by the EPA, automatically make environmental programs protective. Rather, protecting human health and the environment or preventing adverse effects are tasks State environmental agencies are charged with every day.

We have repeatedly heard testimony from State regulators that they welcome the task of developing protective programs that meet the minimum requirements. It is the State regulators who live in these potentially impacted communities and who interact with the so-called vulnerable populations. They are motivated to protect their communities. That is why State programs based on the new minimum Federal criteria will likely be more protective than anything the EPA would come up with based on a vague directive from Congress to not adversely affect vulnerable populations. Accordingly, I urge my colleagues to oppose the amendment.

And I yield back, Mr. Chairman.

The Chairman. The gentleman yields back.

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RPTS COCHRAN

DCMN HERZFELD

[11:07 a.m.]

The Chairman. The gentleman yields back.

Are there other Members wish to speak on the amendment?

The gentleman from North Carolina.

Mr. Butterfield. I move to strike the last word, Mr. Chairman.

The Chairman. The gentleman is recognized for 5 minutes.

Mr. Butterfield. Thank you, Mr. Chairman.

Mr. Chairman, I agree with many of my colleague that coal ash has a positive impact on industry and helps support jobs. Coal ash can be reused effectively in highway applications and in concrete and wallboard, just to name a few.

For utility companies and other industries which use coal in their operations, it is important to be able to store the ash temporarily before reselling it to other companies for reuse. Under current law, Mr. Chairman, States are responsible for permitting coal ash storage facilities and implementing standards to prevent the ash from contaminating the environment and threatening public health. Industry is responsible for meeting those standards and can voluntarily implement additional safeguards. This has resulted in a patchwork of State policies and uncertainty regulating coal ash, which would be perpetuated by H.R. 2218.

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This legislation would also eliminate any possibility of establishing minimum national standards for the handling and prevent the EPA from stepping in during emergencies like the 2008 breach of a coal ash surface impoundment pond in Tennessee. That spill damaged homes and property across 300 acres and is still being cleaned. The total cost of cleanup will be \$1.2 billion or more.

We can all agree that no one wants to have a catastrophe of that magnitude occur in their community; however, coal ash contamination is still occurring. More recently a coal ash containment site fell off of a cliff in Wisconsin into Lake Michigan.

H.R. 2218 fails to address issues important to my constituents throughout North Carolina. North Carolina is the ninth highest producer of coal ash in the entire country. Seventy percent -- I repeat, seventy percent -- of the impoundment areas for coal ash in my State are located in poverty-stricken communities. In fact, on average 70 percent of coal ash impoundment areas in the top 15 coal ash-producing States are located in poverty-stricken communities. Many of those are minority communities who have limited health care options and rely solely on groundwater.

It is important, Mr. Chairman, to protect those communities from being disproportionately affected by coal ash storage facilities. We must also be certain that coal ash storage facilities found in those communities do not pose threats to public health. This amendment offered by my friend from the Virgin Islands simply would ensure that

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the implementing agency takes into consideration the impact of any coal ash permitting program on populations located near where coal ash storage infrastructure most commonly exists. It is a commonsense addition to this bill because it ensures that public health is considered before moving forward with permitting.

We can all agree that it is important to consider public health when dealing with the storage of potentially harmful materials. We must continue to find ways where the local, State and Federal Governments can work together to promote public health and safety. I look forward to working together with industry to find cost-effective solutions to manage coal ash residuals. I encourage my colleagues to support this amendment. I urge the committee to seek an alternative approach to H.R. 2218 which takes into account all stakeholders and can be addressed in a truly bipartisan manner.

Thank you for your patience. I yield back.

The Chairman. The gentleman yields back.

Are there other Members wishing to speak on the amendment?

Seeing none, the vote occurs on the amendment offered by the gentlelady from the Virgin Islands. All those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the noes have it.

Dr. Christensen. Roll call.

The Chairman. A roll call is requested. The clerk will call the roll.

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The Clerk. Mr. Hall?

Mr. Hall. No.

The Clerk. Mr. Hall votes no.

Mr. Barton?

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

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Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

Dr. Gingrey. No.

The Clerk. Mr. Gingrey votes no.

Mr. Scalise?

[No response.]

The Clerk. Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. No.

The Clerk. Mrs. McMorris Rodgers votes no.

Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

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Dr. Cassidy. No.

The Clerk. Mr. Cassidy votes no.

Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Olson?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Gardner?

Mr. Gardner. No.

The Clerk. Mr. Gardner votes no.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

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The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long?

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers?

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

Mr. Dingell. Aye.

The Clerk. Mr. Dingell votes aye.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. Aye.

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The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

Mr. Green?

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

Ms. DeGette?

[No response.]

The Clerk. Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle votes aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

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Mr. Barrow?

Mr. Barrow. Votes aye.

The Clerk. Mr. Barrow votes aye.

Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mrs. Christensen?

Dr. Christensen. Aye.

The Clerk. Mrs. Christensen votes aye.

Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes?

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

Mr. Welch?

Mr. Welch. Aye.

The Clerk. Mr. Welch votes aye.

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Mr. Lujan?

Mr. Lujan. Aye.

The Clerk. Mr. Lujan votes aye.

Mr. Tonko?

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Are there other Members wishing to vote?

Mr. Whitfield?

Mr. Whitfield. No.

The Clerk. Mr. Whitfield votes no.

The Chairman. Other Members wishing to vote?

Ms. DeGette?

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

The Chairman. Are there other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

The Chairman. Any other Members?

Go ahead.

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The Clerk. Mr. Chairman, on that vote there were 21 ayes and 27 nays.

The Chairman. Twenty-one ayes, twenty-seven nays. The amendment is not agreed to.

For what purpose does the gentlelady from Florida wish recognition?

Ms. Castor. I have an amendment at the desk.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2218 offered by Ms. Castor of Florida.

The Chairman. The amendment will be considered as read.

[The amendment of Ms. Castor follows:]

***** INSERT 2-1 *****

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The Chairman. The staff will distribute the amendment. The gentlelady is recognized for 5 minutes in support of her amendment.

Ms. Castor. Thank you Mr. Chairman.

Members, I intend to offer the amendment but withdraw it. It really is to make a point here. You know, the Congress has been dealing with the issue of coal ash now for a number of years, particularly since the disaster in Tennessee by the TVA, which was a real wake-up call, and since that time there have been a number of congressional oversight hearings, investigations. The EPA has proceeded, but the Congress just hasn't risen to the challenge.

We have passed bills here, passed something in the Senate, but I do not believe that we will be successful in getting something done until we all work together on a real solution. In the meantime, the EPA is going to proceed. So I think it is in everyone's best interests to work in a more bipartisan fashion, and my amendment, which was drawn last year and, I think, continues to be an incentive to the industry to beneficially reuse fly ash and take it out of the landfills, take it out of any category of hazardous if it is being beneficially reused. I think that could be a pathway, a basis for a bipartisan bill in the future.

If we don't work together, I think we are going to wind up the same place. Maybe we will pass a bill out of the House. It will be not strong enough to get Senate support. The EPA will continue down its path, and we will be left with these dangerous and dirty fly ash

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impoundments around the country with no standards. It is not going to make anyone happy. It is not going to protect the public health.

I just don't think this bill gets it done, and I would like just to make the point that I think we could tackle this problem if we do so together.

I am going to withdraw the amendment, but --

Mr. Waxman. Before the you do, would you yield to me?

Ms. Castor. I yield to Mr. Waxman.

Mr. Waxman. I just want to commend you for raising this very important issue. I think Members should realize that when coal ash is reused, it can serve a very worthwhile purpose, a beneficial one. I thank you for pursuing it, at least to put it out there so everybody can think about it further as this legislation moves on.

I just wanted to express those views to you and yield back my time.

Mr. Shimkus. Will the gentlelady yield also?

Ms. Castor. I am happy to yield.

Mr. Shimkus. I do appreciate that same point. Part of this movement has been to address the recycling and pulling coal ash out for cement, for shingles, for countertops and the like, and part of the emphasis was to make sure the stigma is relieved on those issues.

I don't share in your pessimism. I am more optimistic about our opportunities. And there is no national standards, but I understand yours, and I appreciate the amendment, and I appreciate your withdrawing it, and I yield back to you.

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Ms. Castor. Mr. Chairman, I withdraw the amendment.

The Chairman. The gentlelady withdraws her amendment. The amendment is withdrawn.

The chair would recognize the gentleman from Pennsylvania to strike the last word.

Mr. Doyle. Thank you, Mr. Chairman.

I just want to make a comment on the bill before we vote on it. You know, ever since the EPA has proposed this rule, I have been publicly supportive of regulating coal ash as a nonhazardous waste under subtitle D. That was 4 years ago, and EPA has still failed to act.

The bill before us today is not a perfect bill, but there has been some improvements made to this bill from the one that we voted on last year. We have added the addition of a deadline for issuance of permits, and a requirement that owners and operators comply with certain requirements in the interim.

Secondly, we have added specific criteria that the EPA can use to determine whether the State permit program is deficient.

Thirdly, we put additional requirements regarding structural stability that requires that if a potentially hazardous condition is identified, that action has to be taken immediately, and it requires the creation of an emergency action plan for high hazardous structures.

Now, there are some things that weren't in this bill. We didn't address legacy sites, and that still needs to be done. My vote today is going to be yes because I would like to see this legislation move

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forward. My hope is that we can get some of the changes that we weren't able to get in this bill in the Senate and get a bipartisan bill eventually passed and put this issue behind us once and for all, because right now what we have is no regulation.

So I am going to support the bill today. Even though it is not a perfect bill, I think it made three steps in the right direction, and my hope is that in the Senate we can get some more changes.

I yield back.

The Chairman. The gentleman yields back.

Are there further amendment to the bill?

Seeing none, the question now occurs on favorably reporting H.R. 2218, as amended, to the House. All those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the ayes have it.

Mr. Waxman. Roll call vote.

The Chairman. A roll call is requested. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. Aye.

The Clerk. Mr. Hall votes aye.

Mr. Barton?

Mr. Barton. Aye.

The Clerk. Mr. Barton votes aye.

Mr. Whitfield?

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[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. Aye.

The Clerk. Mr. Shimkus votes aye.

Mr. Pitts?

Mr. Pitts. Aye.

The Clerk. Mr. Pitts votes aye.

Mr. Walden?

Mr. Walden. Aye.

The Clerk. Mr. Walden votes aye.

Mr. Terry?

Mr. Terry. Aye.

The Clerk. Mr. Terry votes aye.

Mr. Rogers?

Mr. Rogers. Aye.

The Clerk. Mr. Rogers votes aye.

Mr. Murphy?

Mr. Murphy. Aye.

The Clerk. Mr. Murphy votes aye.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

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Dr. Gingrey. Aye.

The Clerk. Mr. Gingrey votes aye.

Mr. Scalise?

Mr. Scalise. Aye.

The Clerk. Mr. Scalise votes aye.

Mr. Latta?

Mr. Latta. Aye.

The Clerk. Mr. Latta votes aye.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. Aye.

The Clerk. Mrs. McMorris Rodgers votes aye.

Mr. Harper?

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Mr. Lance?

Mr. Lance. Aye.

The Clerk. Mr. Lance votes aye.

Mr. Cassidy?

Dr. Cassidy. Aye.

The Clerk. Mr. Cassidy votes aye.

Mr. Guthrie?

Mr. Guthrie. Aye.

The Clerk. Mr. Guthrie votes aye.

Mr. Olson?

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[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Gardner?

Mr. Gardner. Aye.

The Clerk. Mr. Gardner votes aye.

Mr. Pompeo?

Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo votes aye.

Mr. Kinzinger?

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Griffith?

Mr. Griffith. Aye.

The Clerk. Mr. Griffith votes aye.

Mr. Bilirakis?

[No response.]

The Clerk. Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Long?

Mr. Long. Aye.

The Clerk. Mr. Long votes aye.

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Mrs. Ellmers?

Mrs. Ellmers. Aye.

The Clerk. Mrs. Ellmers votes aye.

Mr. Waxman?

Mr. Waxman. No.

The Clerk. Mr. Waxman votes no.

Mr. Dingell?

Mr. Dingell. No.

The Clerk. Mr. Dingell votes no.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. No.

The Clerk. Ms. Eshoo votes no.

Mr. Engel?

Mr. Engel. No.

The Clerk. Mr. Engel votes no.

Mr. Green?

Mr. Green. Aye.

The Clerk. Mr. Green votes aye.

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Ms. DeGette?

Ms. DeGette. No.

The Clerk. Ms. DeGette votes no.

Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle votes aye.

Ms. Schakowsky?

Ms. Schakowsky. No.

The Clerk. Ms. Schakowsky votes no.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. No.

The Clerk. Mr. Butterfield votes no.

Mr. Barrow?

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

Ms. Matsui?

Ms. Matsui. No.

The Clerk. Ms. Matsui votes no.

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Mrs. Christensen?

[No response.]

The Clerk. Ms. Castor?

Ms. Castor. No.

The Clerk. Ms. Castor votes no.

Mr. Sarbanes?

Mr. Sarbanes. No.

The Clerk. Mr. Sarbanes votes no.

Mr. McNerney?

Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Braley?

Mr. Braley. No.

The Clerk. Mr. Braley votes no.

Mr. Welch?

Mr. Welch. No.

The Clerk. Mr. Welch votes no.

Mr. Lujan?

Mr. Lujan. No.

The Clerk. Mr. Lujan votes no.

Mr. Tonko?

Mr. Tonko. No.

The Clerk. Mr. Tonko votes no.

Chairman Upton?

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The Chairman. Votes aye.

The Clerk. Chairman Upton votes aye.

The Chairman. Are there other Members who wish to vote?

Mr. Whitfield?

Mr. Whitfield. Aye.

The Clerk. Mr. Whitfield votes aye.

The Chairman. Mr. Bilirakis?

Mr. Bilirakis. Aye.

The Clerk. Mr. Bilirakis votes aye.

The Chairman. Any other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 31 ayes and 16 nays.

The Chairman. Thirty-one ayes, sixteen nays, the bill is favorably reported.

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The Chairman. The chair now calls up H.R. 2226 and asks the clerk to report.

The Clerk. H.R. 2226, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 relating to State consultation on removal and remedial actions, State concurrence with listing on the National Priorities List, and State credit for contributions to the removal or remedial action, and for other purposes.

The Chairman. Without objection, the first reading of the bill is dispensed with. The bill will be open for amendment at any point. So ordered.

[The information follows:]

***** INSERT 2-2 *****

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The Chairman. Are there any bipartisan amendments to the bill?

Seeing none, are there any other amendments to the bill?

Mr. Johnson. Mr. Chairman, I have an amendment at the desk.

The Chairman. The gentleman from Ohio has an amendment at the desk. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2226 offered by Mr. Johnson of Ohio.

The Chairman. The amendment will be considered as read, and the staff will distribute the amendment.

[The amendment of Mr. Johnson follows:]

***** INSERT 2-3 *****

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The Chairman. The gentleman from Ohio is recognized for 5 minutes in support of his amendment.

Mr. Johnson. Thank you, Mr. Chairman.

Land use controls, institutional controls and engineering controls are intended to restrict or prohibit human activity and property use to prevent or reduce exposures to contamination. Some examples of environmental use controls include preventing disturbance of soil caps and covers, prohibiting the drilling of water wells for domestic or other purposes, restricting and providing notification during utility excavation of an area, restricting use of a property for residential purposes, and restricting access to the property.

The EPA and States utilize land-use controls to prevent unacceptable exposures to contamination left in place at the completion of removal or remedial actions. This enables the use of risk-based remedies that are less costly to implement, but which ensure current and future protection of human health and the environment.

To ensure the maintenance of required land-use controls and thus the future protectiveness of risk-based remedies, many States have adopted environmental covenant laws and other land-use control requirements which provide enforceable legal assurances that these controls will remain in place and enforceable for as long as they are required to protect human health and the environment.

A review of testimony from the legislative hearing and discussions with stakeholders makes it clear that the issue of

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applicability and compliance with State environmental covenant and land-use control laws and regulations is a significant issue for the States.

EPA does not interpret CERCLA as it is currently written to require compliance with State environmental covenant or land-use control law. This amendment would ensure that State environmental covenant because or land-use control laws are considered applicable or relevant and appropriate requirements when land-use controls are used as components of CERCLA cleanups.

I urge my colleagues to support this amendment, and I yield back.

The Chairman. The gentleman yields back.

The gentleman from California is recognized.

Mr. Waxman. Thank you, Mr. Chairman.

I oppose this amendment and this bill. The legislation before us has been presented as correcting a problem where States are not sufficiently consulted in the decisions to clean up contaminated sites through the Superfund program. But I don't think this bill is thought out. This amendment does not address that problem.

The argument underlying the bill appears to be that although Superfund is a Federal program carried out by Federal employees using Federal resources, a State should be able to slate sites for cleanup, veto sites being slated for cleanup, have a greater say in cleanup decisions, and even collect their attorneys' fees from the U.S. taxpayer when they sue the Federal Government. I don't think this

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approach strikes the right balance.

As we heard at the beginning -- at the hearing last month, States have a great deal of opportunity to be involved in cleanup decisions under current law, and, in fact, if a State wants complete control over the cleanup of a contaminated site, the State can simply conduct its own cleanup under State law and retain full control of all decisions. But sometimes States want Federal resources and expertise brought to bear to get sites cleaned up faster. The States often request that EPA come in and conduct expensive removal actions and response actions.

Now, under Superfund, existing law, there is a cost share in place between the States and the Federal Government for response actions. The Federal Government pays 90 percent of the cost, and the State pays just 10 percent. For short-term removal actions, the law is even more generous for the States. When the Federal Government carries out a removal action, it is paid for completely with Federal funds.

Even though Superfund is a Federal program, the law provides for significant State involvement. Under the statute as it currently stands, EPA is required to provide, quote, "substantial and meaningful participation," unquote, to the States. Under that provision States are already involved in suggesting sites for cleanup under Superfund. The EPA already seeks concurrence from the States before slating a site for cleanup on the national priority list, and States can already block EPA from carrying out a selected response action by not agreeing to pay the cost share of that response action. And if a State wants to

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take a leadership role at a Superfund site, under current law they already have the ability to assume the lead under cooperative agreements with EPA.

Now, Representative Johnson is offering an amendment that says that State engineering and land-use control requirements should be mandatory cleanup standards under section D of section 121 of Superfund, but these requirements already apply under subsection F with clear and well-understood processes. It is unclear how this new language would interact with the existing language, whether it is necessary, or what it is trying to achieve.

In short, the amendment suffers from the same problem as the bill it amends. It is natural that a State would want to be able to tell EPA what to focus on, what to spend money on, what not to spend money on. It is natural that a State would want Federal resources available for use at their discretion. But this is a national program and must be available to clean up the most contaminated sites in every State, and it is our job to ensure a balanced approach, and this bill misses the mark. This is also an essential public health program, and it is our job to act deliberatively and carefully in amending it, and, again, this bill and the amendment misses the mark.

So I urge my colleagues to vote no on this amendment and, more importantly, to vote no on the bill, and I yield back my time.

The Chairman. The gentleman yields back.

Are there other Members wishing to speak on the amendment?

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The gentleman from Illinois.

Mr. Shimkus. I strike the last word, Mr. Chairman.

Just the intent of the bill is to keep the State involved throughout the process. Yes, there is consultation at the beginning, but there is no requirement for that consultation to continue throughout the process. And the States have asked for that, and they want it codified, they want it in law, not just a presumption that it will happen. They just want it in the law that they will be consulted.

On the other aspect is what happens at the end of the remediation is the operation and maintenance of the Superfund site in perpetuity, which is borne by the State. So they bear the cost of the -- the legacy costs after the site has been cleaned up, and that is why the States feel that they should have some say in the remediation.

Now, what my colleague from Ohio is doing is just perfecting the language to bring in land-use controls, institutional controls and engineering controls in that process. Again, this has been requested by the States to help end this whole debate.

I support the amendment, and it is no surprise I support the underlying bill, and I yield back my time.

The Chairman. The gentleman yields back.

Are there other Members wishing to speak?

Seeing none, the vote occurs on the amendment offered by the gentleman from Ohio. All those in favor will say aye.

Those opposed will say no.

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In the opinion of the chair, the ayes have it. The ayes have it.
The amendment is agreed to.

Are there further amendments to the bill?

Seeing none, the vote occurs on the bill, as amended. All those
in favor will signify by saying aye.

Those opposed, say no.

In the opinion of the chair, the ayes have it.

Mr. Waxman. Roll call.

The Chairman. A roll call is requested. The clerk will call the
roll.

The Clerk. Mr. Hall?

Mr. Hall. Aye.

The Clerk. Mr. Hall votes aye.

Mr. Barton?

Mr. Barton. Aye.

The Clerk. Mr. Barton votes aye.

Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. Aye.

The Clerk. Mr. Shimkus votes aye.

Mr. Pitts?

Mr. Pitts. Aye.

The Clerk. Mr. Pitts votes aye.

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Mr. Walden?

Mr. Walden. Aye.

The Clerk. Mr. Walden votes aye.

Mr. Terry?

Mr. Terry. Aye.

The Clerk. Mr. Terry votes aye.

Mr. Rogers?

Mr. Rogers. Aye.

The Clerk. Mr. Rogers votes aye.

Mr. Murphy?

Mr. Murphy. Aye.

The Clerk. Mr. Murphy votes aye.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

Dr. Gingrey. Aye.

The Clerk. Mr. Gingrey votes aye.

Mr. Scalise?

Mr. Scalise. Aye.

The Clerk. Mr. Scalise votes aye.

Mr. Latta?

Mr. Latta. Aye.

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The Clerk. Mr. Latta votes aye.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. Aye.

The Clerk. Mrs. McMorris Rodgers votes aye.

Mr. Harper?

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Mr. Lance?

Mr. Lance. Aye.

The Clerk. Mr. Lance votes aye.

Mr. Cassidy?

[No response.]

The Clerk. Mr. Guthrie?

Mr. Guthrie. Aye.

The Clerk. Mr. Guthrie votes aye.

Mr. Olson?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Gardner?

Mr. Gardner. Aye.

The Clerk. Mr. Gardner votes aye.

Mr. Pompeo?

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Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo votes aye.

Mr. Kinzinger?

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Griffith?

Mr. Griffith. Aye.

The Clerk. Mr. Griffith votes aye.

Mr. Bilirakis?

Mr. Bilirakis. Aye.

The Clerk. Mr. Bilirakis votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Long?

[No response.]

The Clerk. Mrs. Ellmers?

Mrs. Ellmers. Aye.

The Clerk. Mrs. Ellmers votes aye.

Mr. Waxman?

Mr. Waxman. No.

The Clerk. Mr. Waxman votes no.

Mr. Dingell?

Mr. Dingell. No.

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The Clerk. Mr. Dingell votes no.

Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. No.

The Clerk. Ms. Eshoo votes no.

Mr. Engel?

Mr. Engel. No.

The Clerk. Mr. Engel votes no.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

Ms. DeGette. No.

The Clerk. Ms. DeGette votes no.

Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. Doyle?

Mr. Doyle. No.

The Clerk. Mr. Doyle votes no.

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Ms. Schakowsky?

Ms. Schakowsky. No.

The Clerk. Ms. Schakowsky votes no.

Mr. Matheson?

Mr. Matheson. No.

The Clerk. Mr. Matheson votes no.

Mr. Butterfield?

Mr. Butterfield. No.

The Clerk. Mr. Butterfield votes no.

Mr. Barrow?

Mr. Barrow. No.

The Clerk. Mr. Barrow votes no.

Ms. Matsui?

Ms. Matsui. No.

The Clerk. Ms. Matsui votes no.

Mrs. Christensen?

[No response.]

The Clerk. Ms. Castor?

Ms. Castor. No.

The Clerk. Ms. Castor votes no.

Mr. Sarbanes?

Mr. Sarbanes. No.

The Clerk. Mr. Sarbanes votes no.

Mr. McNerney?

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Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Braley?

Mr. Braley. No.

The Clerk. Mr. Braley votes no.

Mr. Welch?

Mr. Welch. No.

The Clerk. Mr. Welch votes no.

Mr. Lujan?

Mr. Lujan. No.

The Clerk. Mr. Lujan votes no.

Mr. Tonko?

Mr. Tonko. No.

The Clerk. Mr. Tonko votes no.

Chairman Upton?

The Chairman. Votes aye.

The Clerk. Chairman Upton votes aye.

The Chairman. The gentleman from Kentucky Mr. Whitfield?

Mr. Whitfield. Aye.

The Clerk. Mr. Whitfield votes aye.

The Chairman. Mr. Long?

Mr. Long. Aye.

The Clerk. Mr. Long votes aye.

The Chairman. Mr. Olson?

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Mr. Olson. Aye.

The Clerk. Mr. Olson votes aye.

The Chairman. Other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there are 27 ayes and 19 nays.

The Chairman. Twenty-seven ayes, 19 nays, the bill is favorably reported, as amended.

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The Chairman. The chair now would call up H.R. 2279 and ask the clerk to report.

The Clerk. H.R. 2279, to amend the Solid Waste Disposal Act relating to review of regulations under such act and to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 relating to financial responsibility for classes of facilities.

The Chairman. Without objection, the first reading of the bill is dispensed with. The bill will be open for amendment at any point. So ordered.

[The information follows:]

***** INSERT 2-4 *****

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The Chairman. Are there amendments?

The gentleman from California is recognized for 5 minutes.

Mr. Waxman. Mr. Chairman, I have amendment at the desk. It is amendment number 7.

The Chairman. Amendment number 7. The amendment will be considered as read -- the clerk will first report the amendment.

The Clerk. Amendment to H.R. 2279 offered by Mr. Waxman of California.

The Chairman. Now the amendment will be considered as read.

[The amendment of Mr. Waxman follows:]

***** INSERT 2-5 *****

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Chairman Waxman. The staff will distribute the amendment, and the gentleman is recognized for 5 minutes in support of his amendment.

Mr. Waxman. Mr. Chairman, I think what the clerk reported was amendment number 6, because that is what it says on amendment number 6.

I am just kidding.

To get back to serious work, Mr. Chairman, that is just a lame joke of mine.

The Chairman. It was lame.

Mr. Waxman. Mr. Chairman and my colleagues, we don't have a compelling legislative record that explains why we are considering this legislation, and except for a vague letter from the Environmental Council of the States saying they support some unspecified concepts in some of the bills we are considering today, no organization has expressed any support for this legislation.

It also isn't clear why these legislative changes have been grouped together. The RCRA amendment in section 2 of the bill is unrelated to the Superfund amendments in sections 3 and 4 of the bill.

So the amendment I am offering is also unrelated to the provisions in this bill; however, it is a germane amendment, and it is an important one. My amendment would address the type of terrible tragedy that occurred a little over 2 months ago in the tight-knit community of West, Texas. On April 17th, 2013, The West Fertilizer Company storage and distribution facility exploded. In a small community of 2,600 people,

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nearly 200 were injured and 15 killed. The nearby nursing home, a school and several hundred houses were badly damaged.

Assistant State Fire Marshal Kelly Kistner described the explosion and its aftermath as one of if not the worst disasters they have seen in the State of Texas. The Texas Department of Safety spokesman D.L. Wilson stated an apartment complex after the explosion was, quote, "just a skeleton standing up," end quote.

The chemical that caused the explosion was ammonium nitrate. This fertilizer is the same substance that was used in the Oklahoma City bombing in 1995. Although this chemical may be safe when stored and used correctly, its risks are known. It is clear after what happened in West that information about dangerous chemicals is not being communicated the way it needs to be. Twelve first responders and volunteer firefighters died in that explosion.

We need to do more to inform and prepare local communities about risks in their communities, so my amendment would ensure that facilities holding dangerous amounts of explosive chemicals are informing their State emergency planning officials of the risks they pose, and doing so as soon as possible. It requires owners or operators of facilities with flammable or explosive chemicals in quantities of concern to provide information on those chemicals to the State Emergency Response Commission within 180 days. Local fire departments should have this information to prepare for accidents and disasters. Local planners should have this information so that schools and nursing

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homes are not built in harm's way.

This tragedy brought to light serious risks faced by communities nationwide. It is our responsibility to begin to address those risks, and I hope my colleagues will join me in supporting this amendment to better protect communities.

The Chairman. Will the gentleman yield?

Mr. Waxman. I would be happy to yield to the chairman.

The Chairman. We are prepared to accept the amendment.

Mr. Waxman. Mr. Chairman, I am prepared to accept your acceptance of this amendment. I thank you so much. I should have offered this amendment as a bipartisan amendment. I hope it will now have bipartisan support. I hope our colleagues on both sides of the aisle will follow your leadership and mine in urging an aye vote.

The Chairman. The gentleman yields back?

Mr. Waxman. Yes.

The Chairman. The chair would recognize the gentleman from Texas
Mr. Barton.

Mr. Barton. Thank you, Mr. Chairman.

I would also support the amendment. The facility that Chairman Waxman referred to is not in my district, it is about 20 miles from my district, but the explosion was heard and felt at my home in Ennis, Texas, which is 50 miles away. That is how destructive it was.

I think this amendment is useful, but I would say as the investigation has proceeded at West, it is apparent that the operator

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at the facility was not in compliance with numerous local, State and Federal laws, and that all the regulatory bodies, Federal, State and local, were in some sense if not negligent, at least neglectful in monitoring that particular facility. Nothing we do here in Washington can prevent these types of accidents if those that own the facilities and those that oversee the facilities are not observant of existing regulations and do the best that they can to try to monitor and comply with it.

So I think this is a good amendment, but what happened in West is a wake-up call that everybody needs to be more diligent. That particular facility had been in the community for 20, 25 years, and the nursing home and the school had been built near that facility after the facility itself was built.

With that, I support the amendment and yield back.

The Chairman. The gentleman yields back.

Other Members wishing to speak on the amendment?

The gentlelady from California Ms. Eshoo.

Ms. Eshoo. Thank you, Mr. Chairman.

I think that this is good news that this will be bipartisan because I think it is important that it is.

After the explosion in West, Texas, it became clear that the regulatory process we have in place for chemical security is really in need of reform, and the amendment addresses the one weakness in that system because it ensures that that information about dangerous

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chemicals and the holding of these dangerous chemicals gets to emergency planning officials and gets to them soon.

That information was never provided to the department. So I appreciate what Mr. Barton said, but whether they went to inspect the facility and didn't is a failure, but to just simply report what their holdings are so that first responders know, and in this case the ammonium -- 2,000 pounds of ammonium nitrate, well, we saw what happened.

So I support it. I hope that this is truly bipartisan, because I think that it is needed.

With that, I yield back. Thank you, Mr. Chairman.

The Chairman. The gentlelady yields back.

The chair would recognize the gentleman from Texas Mr. Hall.

Mr. Hall. Mr. Chairman, I have always had the highest regard for Mr. Waxman. His word has always been good to me, and I am really pleased to be here today on the very first time I have been able to support one of his amendments.

I yield back.

The Chairman. I was ready to hit the mute button.

Okay. Seeing no other Member wishing to speak, the vote occurs on the amendment offered by the gentleman from California Mr. Waxman. All those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the ayes have it. The ayes have it,

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the amendment is agreed to.

Are there further amendments to the bill?

The chair recognizes the gentleman from Colorado Mr. Gardner.

Mr. Gardner. Thank you, Mr. Chairman. I have an amendment to the bill.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2279 offered by Mr. Gardner of Colorado.

The Chairman. The amendment will be considered as read.

[The amendment of Mr. Gardner follows:]

***** INSERT 2-6 *****

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The Chairman. The staff will distribute the amendment, and the gentleman from Colorado is recognized for 5 minutes in support of his amendment.

Mr. Gardner. Thank you, Mr. Chairman.

H.R. 2279 is the bill before the committee as a result of some testimony we heard from EPA just a couple of weeks ago. Section 108(b) of CERCLA ensures that the Federal Government isn't left to foot the bill for expensive cleanups and to protect against the risk that a responsible party no longer has the financial wherewithal to do a cleanup. This bill makes sure that if the EPA is going to promulgate a rule for financial responsibility, that there is a need for additional regulation.

States and other Federal agencies have already created robust financial responsibilities for various industries and classes of industries over the years. If the Environmental Protection Agency determines that there is a need for additional requirements, either because none exists for a particular industry or class of industry or because the State or other Federal requirements aren't stringent enough, then the bill does allow compliance with State or other Federal financial assistance requirements to count towards any additional requirements imposed by the EPA.

This amendment makes three changes to the bill. The first change is that it clarifies who will identify the appropriate form of financial assurance. CERCLA provides for a list of possible options that may

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be used to demonstrate financial responsibility. This amendment ensures that owners and operators of the Federal Government choose the appropriate instrument to establish financial responsibility.

The second change clarifies that because CERCLA only addresses a release of a hazardous substance that is not a permitted release, that when determining whether additional requirements for financial responsibility are necessary, that only unpermitted releases of hazardous substances are considered.

The last change through the amendment ensures that where States or other Federal agencies have established financial assurance requirements adequate to cover the Federal Government's exposure for a CERCLA cleanup, that those requirements are preserved. It specifically clarifies that if the EPA finds there is an insufficiency of financial authority under the existing State or Federal program, that the EPA may only seek the insufficient amount.

And I would ask for support of the Gardner amendment, and I yield back my time.

The Chairman. The gentleman yields back.

Other Members wishing to speak on the amendment?

Seeing none, the vote occurs on the amendment offered by the gentleman from Colorado. All those in favor will say aye.

Opposed will say no.

In the opinion of the chair, the ayes have it. The ayes have it, the amendment is agreed to.

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Are there further amendments to the bill?

The gentlelady from California.

Mrs. Capps. Thank you, Mr. Chairman. I have an amendment at the desk.

The Chairman. The clerk will report the title of the amendment.

The Clerk. Which number is it, ma'am?

Mrs. Capps. I think it is REDO-D-05, number 5.

The Clerk. Amendment to H.R. 2279, offered by Mrs. Capps of California.

The Chairman. And the amendment will be considered as read.

[The amendment of Mrs. Capps follows:]

***** INSERT 2-7 *****

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The Chairman. The staff will distribute the amendment, and the gentlelady is recognized for 5 minutes in support of her amendment.

Mrs. Capps. Thank you, Mr. Chairman.

Financial responsibility requirements protect taxpayers and innocent victims by ensuring that companies engaging in hazardous activity have the financial resources to pay for the damage they cause.

The need for financial responsibility requirements has clearly been demonstrated in recent weeks in the town of West, Texas. The West Fertilizer Company had insurance, but only \$1 million in liability insurance coverage. That will not begin to cover the damage from the April explosion. Current estimates place the figure at \$100 million in property damage to homes, to businesses and schools. That includes an apartment complex, a nursing home and a school that were all destroyed along with several hundred homes and businesses. These costs are going to be borne by private homeowners, and business owners, and the State and the local government.

Some of those homeowners have filed negligence suits against West Fertilizer Company, but the lawyer for those homeowners says that the insurance policy the company had was, quote, "deeply inadequate." These costs should be the responsibility of the company that created the unsafe condition and caused the damage. My amendment would ensure that companies like the West Fertilizer Company will have -- in the future will have the financial resources to make right the damage that they may cause.

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So, in sum, the amendment ensures the promulgation of financial responsibility requirements for owners and operators of facilities that manufacture, store, distribute or sell fertilizer in quantities that would pose significant risk to the surrounding community in the event of an accident or explosion. I urge my colleagues to support this amendment, and I am prepared either to yield back or to yield to a colleague.

I am happy to yield to Mr. Waxman.

Mr. Waxman. Thank you very much for yielding to me.

I support this amendment, and I think it goes well with the one we just adopted. The people of West, Texas, suffered a significant tragedy. In the middle of their town there is now a crater 93 feet deep. One resident, Barry Murray, said, and I quote, "It was like a bomb went off. There were emergency vehicles everywhere. It has been overwhelming," unquote.

Communities shouldn't have to live in fear of such explosions, and if one occurs, they should not have to pay for the damage out of taxpayer funds. So your amendment could protect the communities from the costs of such an explosion and from the risks of the explosion itself.

Just yesterday an article in the Washington Post noted that facilities like the one in West are not currently required to have strong insurance coverage. Importantly, as the Post pointed out, strong insurance policies often bring with them strong oversight from

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the insurance industry so that risks and liabilities are managed. Insurance companies often require the use of certified equipment, the use of basic safeguards like sprinklers, which we know were missing in Texas.

So your amendment would make dangerous facilities safer and protect communities financially, and I want to lend my voice in support of the amendment and urge our colleagues to vote for it.

I yield back my time to you.

The Chairman. The gentlelady yields back her time.

Do other Members wishing to speak?

The gentleman from Colorado.

Mr. Gardner. Thank you, Mr. Chairman, and I speak in opposition to the amendment.

One of the concerns I have with the amendment, of course, is that trying to rush a final rule within 1 year that applies to all 50 States is not the best approach, and I doubt very seriously the EPA could actually come up with a regulation within 1 year of enactment and do so in a way that provides notice and comment that is fair and gets to the point. So, to our knowledge, EPA hasn't even started on this process yet. And I think there is a question of whether or not -- what the first step would be. Would that be to discover financial responsibility rules that are already in place in the States?

We have been told, the committee has been, that there are State insurance commissioners already hard at work revisiting these

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questions in the wake of the explosion in West, Texas. In fact, in my hometown, we are obviously a large agricultural community with large fertilizer facilities around the town. I talked to the emergency management manager of the county, who is already immediately reaching out to the officials of those plants, talking about what is happening, making sure they are right with the regulatory framework in Colorado.

But I think that we -- in order to get the financial security requirements right, it is going to take time. It is complex work, and that is something that is being done by State agencies today. I am concerned that if we have too little of a requirement or too light of a requirement, then claimants could be unsatisfied, but also if we go the other way, we could end up driving a critical small business -- critical to many areas of our country -- drive them out of business and drive them to close down. And I think we all recognize the importance of fertilizer in our Nation, to our economies, to our agricultural communities.

This amendment, the other problem that I would address is it doesn't really amend any current law. It is simply a free-standing amendment that is not clear which entities it would govern. Owners and operators of the facilities, there is language in the amendment, but it has different meanings in CFATS, Clean Air Act, CERCLA. I am not quite sure whether or not EPA would be able to use this to come up with a new definition for owners and operators of facilities.

So I have got personal experience from people who are working hard

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to make sure that this doesn't ever happen again. I think everybody on this committee is fully aware of the necessity to make sure this never happens again. But rushing to a final rule within 1 year that doesn't do it right is a major concern, and that is why I would have to oppose this amendments.

The Chairman. The gentleman yields back his time.

Other Members wishing to speak?

Seeing none, a vote -- the gentleman from Texas.

Mr. Olson. I thank the chair.

I want to echo the comments of opposition to the amendment that my colleague from Colorado has. I am from Texas. West, Texas, affected our State dramatically. That explosion, as my colleague Joe Barton said, was felt in the Dallas-Fort Worth area, almost 60 miles from the explosion site. And this wasn't the first time in Texas we have had the type of explosion with that fertilizer. In 1947, in Texas City, right south of my district, almost 600 Texans were killed from an explosion from a ship at port; 1947, same thing.

The amendment is well-intentioned, but it is premature. Let the Texas investigators, the State insurance committees who are hard at work revisiting these questions in the wake of this explosion, let them do their job first before we pass any Federal initiative to take away their responsibility as State regulators.

I oppose the amendment, urge my colleagues to do so, and yield back.

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The Chairman. The gentleman yields back.

Other Members wishing to speak?

Seeing none, the vote occurs on the amendment offered by the gentlelady from California. All those in favor will say aye.

Those opposed, say no.

In the opinion of the chair, the noes have it.

Mrs. Capps. I ask for a recorded vote.

The Chairman. The gentlelady asks for a recorded vote. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. No.

The Clerk. Mr. Hall votes no.

Mr. Barton?

[No response.]

The Clerk. Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

[No response.]

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The Clerk. Mr. Terry?

[No response.]

The Clerk. Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

Dr. Gingrey. No.

The Clerk. Mr. Gingrey votes no.

Mr. Scalise?

Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

[No response.]

The Clerk. Mr. Harper?

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Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

Dr. Cassidy. No.

The Clerk. Mr. Cassidy votes no.

Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Olson?

Mr. Olson. No.

The Clerk. Mr. Olson votes no.

Mr. McKinley?

Mr. McKinley. No.

The Clerk. Mr. McKinley votes no.

Mr. Gardner?

Mr. Gardner. No.

The Clerk. Mr. Gardner votes no.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger?

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[No response.]

The Clerk. Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long?

Mr. Long. No.

The Clerk. Mr. Long votes no.

Mrs. Ellmers?

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

[No response.]

The Clerk. Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

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[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mrs. Capps?

Mrs. Capps. Aye.

The Clerk. Mrs. Capps votes aye.

Mr. Doyle?

Mr. Doyle. Aye.

The Clerk. Mr. Doyle votes aye.

Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

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Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

Mr. Barrow?

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Mrs. Christensen?

[No response.]

The Clerk. Ms. Castor?

[No response.]

The Clerk. Mr. Sarbanes?

Mr. Sarbanes. Aye.

The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. Aye.

The Clerk. Mr. McNerney votes aye.

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

This is an unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker.

Mr. Welch?

Mr. Welch. Aye.

The Clerk. Mr. Welch votes aye.

Mr. Lujan?

Mr. Lujan. Aye.

The Clerk. Mr. Lujan votes aye.

Mr. Tonko?

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Other Members wishing to vote?

Mr. Barton?

Mr. Barton. No.

The Clerk. Mr. Barton votes no.

The Chairman. Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

The Chairman. Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

The Chairman. Mr. Terry?

Mr. Terry. No.

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The Clerk. Mr. Terry votes no.

The Chairman. Are there other Members wishing to cast a vote?

Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there are 17 ayes and 26 nays.

The Chairman. Seventeen ayes, twenty-six nays, the amendment is not agreed to.

Are there other amendments to the bill?

Mr. Waxman. Mr. Chairman?

The Chairman. The gentleman from California.

Mr. Waxman. There is another amendment. Ms. Schakowsky.

The Chairman. The gentlelady from Illinois has an amendment at the desk. The clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2279 offered by Ms. Schakowsky.

The Chairman. The amendment will be considered as read.

[The amendment of Ms. Schakowsky follows:]

***** INSERT 2-8 *****

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The Chairman. The staff will distribute amendment, and the gentlelady is recognized for 5 minutes in support of her amendment.

Ms. Schakowsky. Thank you, Mr. Chairman.

When this bill was marked up in subcommittee 2 weeks ago, there were a number of questions raised and a number of concerns about this legislation. Section 2002(b) of RCRA states that each regulation promulgated under RCRA shall be reviewed and, where necessary, revised not less frequently than every 3 years.

The sponsors of the bill have said they are concerned that section 2002(b) is a significant and needless drain on EPA resources, so they have included section 2 in this legislation to repeal the requirement that regulations be revised when necessary every 3 years.

Unfortunately, there is almost no evidence in the record to evaluate whether this is true. EPA has apparently told the courts that they see the obligation imposed by 2002(b) as merely discretion and not requiring significant resources. To help get to the facts of the matter, we asked the EPA to tell us how many resources are used to satisfy 2002(b), but we haven't heard back yet.

But there is one well-understood impact of section 2 of this legislation. The bill would target ongoing court cases, effectively extinguishing the rights of citizens and businesses who are pursuing their rights in the court. According to witness testimony at the hearing on this legislation, pending lawsuits would be thrown out if this legislation were to be enacted.

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In order to confirm whether this was true, we contacted the American Law Division of the Congressional Research Service. According to the American Law Division, and this is a quote, "There is substantial possibility that plaintiff claims for injunctive relief will be rendered moot if REDO were enacted," end quote. And if that happens, the Law Division says, quoting again, "It seems unlikely that plaintiffs would have standing to maintain their claim for other relief."

My amendment is consistent with the majority's policy goal, even though I disagree. It will discontinue the mandatory periodic review of regulations, as the sponsors of this legislation say they want to do. However, it will ensure that the -- my amendment will ensure that the legislation does not interfere with any pending litigation. The amendment simply says that this legislation does not interfere with any lawsuit filed on or before June 19, 2013.

This committee shouldn't play the role of picking winners and losers in court battles. We should allow these suits to run their course, and my amendment would do just that and nothing more than that. I urge my colleagues to vote yes on this amendment to avoid unintended impacts on the ongoing lawsuits.

I yield back.

The Chairman. The gentlelady yields back.

The gentleman from Illinois Mr. Shimkus.

Mr. Shimkus. Strike the last word, Mr. Chairman.

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Mr. Chairman, you know, the arbitrary date established when the law was first passed was when there was no regulations on the book, so they said, let us set a 3-year standard to review the regulations. Well, obviously decades later we have got more regulations than we could ever dream that would ever be drafted. And the intent of the REDO Act is to not limit litigation or the debate, it is just to limit the arbitrary aspect of a 3-year evaluation, which the EPA says they can't do anyway.

So the case that my colleague is talking about was brought because of no other reason than it didn't make the 3-year statutory timeline, that is the reason, versus any other aspect of debate on the aspects of the bill.

So that is why I oppose the amendment, because this bill does not preclude entities that have legitimate claims, one, other than an EPA missed, arbitrary, archaic statutory deadline, from seeking to compel the Agency to act. Section 7004 of the Solid Waste Disposal Act provides a mechanism for interested parties to prompt EPA to take regulatory action, and for that reason I urge the opposition to the amendment.

Again, just to put this all in context, in 2007, one study showed there was 138 public laws enacted while Federal agencies finalized 2,926 rules, including 61 major regulations. So that is why there is a concern of, you know, a large Federal bureaucracy arbitrarily rolling through our country and our government without legislative authority.

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And can't we at least say that an arbitrary timeline when there is thousands of regulations should be abolished, and cases should just be brought on the merit of the case based upon an arbitrary deadline?

With that, I ask my colleagues to reject the amendment. Yield back my time.

The Chairman. Gentleman yields back.

Are there other Members wishing to speak?

The gentleman from California is recognized for 5 minutes.

Mr. Waxman. Mr. Chairman, I don't see why the Congress of the United States should resolve pending lawsuits through legislation. But the bill, if you look at it, appears to be an effort to prevent citizen groups and the coal ash recycling industry from protecting their legal rights in court. The bill would toss out pending litigation, even though there is no record justifying such action, and I think the bill also takes other extreme steps.

But for too long in the history of this country, polluters were never held accountable, and therefore communities had to simply either endure toxic contamination or foot the bill for expensive cleanups. The Superfund law changed that. It established a comprehensive cleanup program with the "polluter pay" principle.

The law requires EPA to establish financial responsibility requirements for the dirtiest and most dangerous facilities. These financial responsibility requirements protected taxpayers by ensuring that companies that are responsible for the contamination have the

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financial resources to clean up their anticipated damage.

So EPA is in the process of establishing these requirements for the hard rock mining industry. According to EPA and the Government Accountability Office, the hard rock mining industry is responsible for some of the Nation's most serious contaminated sites. But this bill undermines the EPA's ability to establish financial responsibility requirements. The bill sets up a procedural hurdle for issuing the regulations by requiring a report to Congress before action can be taken.

And even if EPA is able to adopt the requirements, they will not go into effect in States that have their own financial responsibility requirements. So this assumes that all the State requirements are sufficient. However, in States where mining interests are politically powerful, experience suggests that State requirements may not be sufficient.

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RPTS CALHOUN

DCMN CRYSTAL

[12:07 p.m.]

Mr. Waxman. Without these requirements, there will likely be more contaminated sites with fewer solvent responsible parties. In other words, there is going to be more demand on the Superfund. And the Superfund is made up of taxpayers' contribution. It is already severely under funded. And those funds are coming from taxpayers' pockets. We should not protect a special interest at taxpayers' expense.

The Schakowsky amendment fixes one of the problems with the bill. It simply ensures that legislation does not interfere with lawsuits filed on or before today, June 19, 2013. We have no business getting involved in those lawsuits. We shouldn't be picking winners and losers in pending litigation by legislative fiat. We shouldn't be doing that. Let the litigation go forward. Let the courts decide it. Let them hear the merits. Let them weigh the arguments. We haven't heard all the merits of these arguments.

The Schakowsky amendment will allow the courts to resolve the pending litigation on the merits. This is the way our country is supposed to work. We aren't supposed to have Congress come in and say, oh, these lawsuits are no longer going to be pursued because we are making them moot by legislative fiat.

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So I would urge my colleagues to vote yes on this amendment and no on the underlying legislation we offer here. We don't want to pick winners and losers. If we go forward without adopting the Schakowsky amendment, we are going to be picking the winners and the losers, and the losers are going to be the taxpayers and the winners are going to be the special interests, especially the hard rock mining interests, which have a lot of clout at the local level. And I would urge that we stand up for the taxpayers and the people and public health and vote for the Schakowsky amendment.

The Chairman. Gentleman yields back.

Other members wishing to speak?

Seeing none, the vote occurs on the amendment offered by the gentlelady from Illinois.

Those in favor say aye.

Those opposed say no.

In the opinion of the chair, the noes have it. Noes have it.

Roll call is requested. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. No.

The Clerk. Mr. Hall votes no.

Mr. Barton?

[No response.]

The Clerk. Mr. Whitfield?

[No response.]

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The Clerk. Mr. Shimkus?

Mr. Shimkus. No.

The Clerk. Mr. Shimkus votes no.

Mr. Pitts?

Mr. Pitts. No.

The Clerk. Mr. Pitts votes no.

Mr. Walden?

[No response.]

The Clerk. Mr. Terry?

[No response.]

The Clerk. Mr. Rogers?

Mr. Rogers. No.

The Clerk. Mr. Rogers votes no.

Mr. Murphy?

Mr. Murphy. No.

The Clerk. Mr. Murphy votes no.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

Dr. Gingrey. No.

The Clerk. Mr. Gingrey votes no.

Mr. Scalise?

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Mr. Scalise. No.

The Clerk. Mr. Scalise votes no.

Mr. Latta?

Mr. Latta. No.

The Clerk. Mr. Latta votes no.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. No.

The Clerk. Mrs. McMorris Rodgers votes no.

Mr. Harper?

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Mr. Lance?

Mr. Lance. No.

The Clerk. Mr. Lance votes no.

Mr. Cassidy?

[No response.]

The Clerk. Mr. Guthrie?

Mr. Guthrie. No.

The Clerk. Mr. Guthrie votes no.

Mr. Olson?

Mr. Olson. No.

The Clerk. Mr. Olson votes no.

Mr. McKinley?

Mr. McKinley. No.

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The Clerk. Mr. McKinley votes no.

Mr. Gardner?

Mr. Gardner. No.

The Clerk. Mr. Gardner votes no.

Mr. Pompeo?

Mr. Pompeo. No.

The Clerk. Mr. Pompeo votes no.

Mr. Kinzinger?

Mr. Kinzinger. No.

The Clerk. Mr. Kinzinger votes no.

Mr. Griffith?

Mr. Griffith. No.

The Clerk. Mr. Griffith votes no.

Mr. Bilirakis?

Mr. Bilirakis. No.

The Clerk. Mr. Bilirakis votes no.

Mr. Johnson?

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Long?

Mr. Long. Mr. Long votes no.

Mrs. Ellmers?

Mrs. Ellmers. No.

The Clerk. Mrs. Ellmers votes no.

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Mr. Waxman?

Mr. Waxman. Aye.

The Clerk. Mr. Waxman votes aye.

Mr. Dingell?

[No response.]

The Clerk. Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Mr. Eshoo. Aye.

The Clerk. Ms. Eshoo votes aye.

Mr. Engel?

Mr. Engel. Aye.

The Clerk. Mr. Engel votes aye.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

Ms. DeGette. Aye.

The Clerk. Ms. DeGette votes aye.

Mrs. Capps?

The Clerk. Mrs. Capps votes aye.

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Mr. Doyle?

[No response.]

The Clerk. Ms. Schakowsky?

Ms. Schakowsky. Aye.

The Clerk. Ms. Schakowsky votes aye.

Mr. Matheson?

Mr. Matheson. Aye.

The Clerk. Mr. Matheson votes aye.

Mr. Butterfield?

Mr. Butterfield. Aye.

The Clerk. Mr. Butterfield votes aye.

Mr. Barrow?

Mr. Barrow. Aye.

The Clerk. Mr. Barrow votes aye.

Ms. Matsui?

Ms. Matsui. Aye.

The Clerk. Ms. Matsui votes aye.

Ms. Christensen?

[No response.]

The Clerk. Ms. Castor?

Ms. Castor. Aye.

The Clerk. Ms. Castor votes aye.

Mr. Sarbanes?

Mr. Sarbanes. Aye.

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The Clerk. Mr. Sarbanes votes aye.

Mr. McNerney?

Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Braley?

Mr. Braley. Aye.

The Clerk. Mr. Braley votes aye.

Mr. Welch?

Mr. Welch. Aye.

The Clerk. Mr. Welch votes aye.

Mr. Lujan?

Mr. Lujan. Aye.

The Clerk. Mr. Lujan votes aye.

Mr. Tonko?

Mr. Tonko. Aye.

The Clerk. Mr. Tonko votes aye.

Chairman Upton?

The Chairman. Votes no.

The Clerk. Chairman Upton votes no.

The Chairman. Other members wishing to vote?

Mr. Doyle?

The Chairman. Not recorded.

The Clerk. Mr. Doyle is not recorded.

Mr. Doyle. Aye.

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The Clerk. Mr. Doyle votes aye.

The Chairman. Mr. Terry?

Mr. Terry. No.

The Clerk. Mr. Terry votes no.

The Chairman. Mr. Walden?

Mr. Walden. No.

The Clerk. Mr. Walden votes no.

The Chairman. Other members wishing to cast a vote? Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 18 ayes and 25 nays.

The Chairman. Eighteen ayes, 25 nays. The amendment is not agreed to.

Are there further amendments to the bill? Seeing none, the question now occurs on favorably reporting H.R. 2279, as amended, to the House.

All those in favor say aye.

Those opposed say no.

Roll call is requested. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. Aye.

The Clerk. Mr. Hall votes aye.

Mr. Barton?

[No response.]

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The Clerk. Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. Aye.

The Clerk. Mr. Shimkus votes aye.

Mr. Pitts?

Mr. Pitts. Aye.

The Clerk. Mr. Pitts votes aye.

Mr. Walden?

Mr. Walden. Aye.

The Clerk. Mr. Walden votes aye.

Mr. Terry?

Mr. Terry. Aye.

The Clerk. Mr. Terry votes aye.

Mr. Rogers?

[No response.]

The Clerk. Mr. Murphy?

Mr. Murphy. Aye.

The Clerk. Mr. Murphy votes aye.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

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Dr. Gingrey. Aye.

The Clerk. Mr. Gingrey votes aye.

Mr. Scalise?

Mr. Scalise. Aye.

The Clerk. Mr. Scalise votes aye.

Mr. Latta?

Mr. Latta. Aye.

The Clerk. Mr. Latta votes aye.

Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. Aye.

The Clerk. Mrs. McMorris Rodgers votes aye.

Mr. Harper?

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Mr. Lance?

Mr. Lance. Aye.

The Clerk. Mr. Lance votes aye.

Mr. Cassidy?

[No response.]

The Clerk. Mr. Guthrie?

Mr. Guthrie. Aye.

The Clerk. Mr. Guthrie votes aye.

Mr. Olson?

Mr. Olson. Aye.

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The Clerk. Mr. Olson votes aye.

Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Gardner?

Mr. Gardner. Aye.

The Clerk. Mr. Gardner votes aye.

Mr. Pompeo?

Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo votes aye.

Mr. Kinzinger?

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Griffith?

Mr. Griffith. Aye.

The Clerk. Mr. Griffith votes aye.

Mr. Bilirakis?

Mr. Bilirakis. Aye.

The Clerk. Mr. Bilirakis votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Long?

Mr. Long. Aye.

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The Clerk. Mr. Long votes aye.

Mrs. Ellmers?

Mrs. Ellmers. Aye.

The Clerk. Mrs. Ellmers votes aye.

Mr. Waxman?

Mr. Waxman. No.

The Clerk. Mr. Waxman votes no.

Mr. Dingell?

[No response.]

The Clerk. Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. No.

The Clerk. Ms. Eshoo votes no.

Mr. Engel?

Mr. Engel. No.

The Clerk. Mr. Engel votes no.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

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Ms. DeGette. No.

The Clerk. Ms. DeGette votes no.

Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. Doyle?

Mr. Doyle. No.

The Clerk. Mr. Doyle votes no.

Ms. Schakowsky?

Ms. Schakowsky. No.

The Clerk. Ms. Schakowsky votes no.

Mr. Matheson?

Mr. Matheson. No.

The Clerk. Mr. Matheson votes no.

Mr. Butterfield?

Mr. Butterfield. No.

The Clerk. Mr. Butterfield votes no.

Mr. Barrow?

Mr. Barrow. No.

The Clerk. Mr. Barrow votes no.

Ms. Matsui?

Ms. Matsui. No.

The Clerk. Ms. Matsui votes no.

Ms. Christensen?

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[No response.]

The Clerk. Ms. Castor?

Ms. Castor. No.

The Clerk. Ms. Castor votes no.

Mr. Sarbanes?

Mr. Sarbanes. No.

The Clerk. Mr. Sarbanes votes no.

Mr. McNerney?

Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Braley?

Mr. Braley. No.

The Clerk. Mr. Braley votes no.

Mr. Welch?

Mr. Welch. No.

The Clerk. Mr. Welch votes no.

Mr. Lujan?

Mr. Lujan. No.

The Clerk. Mr. Lujan votes no.

Mr. Tonko?

Mr. Tonko. No.

The Clerk. Mr. Tonko votes no.

Chairman Upton?

The Chairman. Votes Aye.

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The Clerk. Chairman Upton votes aye.

The Chairman. Other members wishing to cast a vote?

Mr. Rogers?

Mr. Rogers. Aye.

The Clerk. Mr. Rogers votes aye.

The Chairman. Other members wishing to cast a vote? Seeing none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 25 ayes and 18 nays.

The Chairman. Twenty-five ayes, 18 nays. The bill, H.R. 2279, as amended, is favorably reported.

The chair now calls up H.R. 2318 and asks the clerk to report.

The Clerk. H.R. 2318, to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the applicability of the act to Federal facilities, and for other purposes.

The Chairman. Without objection, the first reading of the bill is dispensed with. The bill will be open for amendment at any point. So ordered. Is there any bipartisan amendments to the bill? Any amendments to the bill?

Mr. Latta. Mr. Chairman, I have an amendment.

The Chairman. Mr. Latta has an amendment; probably the only amendment to the bill.

So the clerk will report the title of the amendment.

The Clerk. Amendment to H.R. 2318 offered by Mr. Latta of Ohio.

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The Chairman. The amendment will be considered as read.

[The information follows:]

***** INSERT 3-1 *****

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The Chairman. The staff will distribute the amendment.

The gentleman from Ohio is recognized for 5 minutes.

Mr. Latta. Thank you very much, Mr. Chairman. The amendment is rather simple. What it does, it strikes the language on page 4, line 7 through 17, under the criminal sanctions under the bill. After consulting with the majority and minority staffs, we believe this would be a good idea in the bill to delete those sections at this time. And again, what the bill does, again, it ensures that Federal facilities are held to the same level of accountability as private facilities. And in the last several days we have received correspondence from different States, and one in particular being Alaska, that support the legislation. I would urge support of not only the amendment, but also the bill.

The Chairman. The gentleman yields back.

Other members wishing to speak on the amendment? Seeing none, the vote occurs on the amendment offered by the gentleman from Ohio.

Those in favor say aye.

Those opposed say no.

In the opinion of the chair, the ayes have it. The ayes have it. The amendment is agreed.

The chair recognizes the gentleman from California to strike the last word.

Mr. Waxman. Thank you, Mr. Chairman. I have some comment about the bill.

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The bill is not based on a clear oversight record, and we are still lacking basic information about whether it is needed and what its impact would be.

On Monday, my staff and Chairman Upton's staff met with the Department of Defense and the Department of Justice on the Federal Facility Accountability Act. Amazingly, even though the bill imposes new obligations on the Defense Department, the majority had never consulted with them during the development of this legislation.

The objective of the bill to those currently implementing Superfund cleanups at Federal facilities was unclear. The effects of the bill, however, are clear to them. According to the Department lawyers, the bill would disrupt the national priority scheme in which the most contaminated Federal sites are cleaned up first, increase litigation and incentivize hostility between States and Federal facilities, delay cleanups by redirecting funds and creating procedural hurdles, waste limited resources that should be going to cleanups, hold Federal facilities to different cleanup and procedural requirements than private parties, contrary to what some have claimed about the bill, and expose Federal employees to criminal penalties for doing their jobs.

If a State can disrupt the national priority scheme to put its sites to the head of the line, ahead of more dangerous sites, public health and the environment will suffer. If States see incentives to litigate and dispute cleanup decisions and procedures that have worked

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well to get cleanups completed, public health and the environment will suffer. If resources are wasted and cleanups delayed, public health and the environment will suffer. And although some had claimed that this bill is necessary to hold Federal facilities to the same standards as private parties, we heard from the Department of Justice that Federal facilities are already held to the same standards as private parties and that this bill would actually single them out for different treatment.

This bill was simply not thoroughly understood. The Department of Defense and the Department of Justice offered to work with this committee on legislation if we could identify the objective we are trying to achieve. I think we should take them up on that offer rather than voting to report a bill out that is not ready, in my view, for consideration.

The amendment that was offered was fine. We supported it. But it doesn't make the bill ready to be voted on because we still have such important questions about what this bill would do, and it seems like we haven't even taken the basic steps of consulting with the lawyers for the departments of the Federal Government that are going to be affected. That is just a basic thing to do before we pass a bill. I would like to know more about how this bill will work, what we are actually trying to accomplish, whether it is necessary, or whether we are going to do a lot of harm.

And for those reasons I will oppose the bill and urge my colleagues

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to oppose the bill. In fact, if the author of the bill wanted to withdraw it and continue to work on it with us, we would be happy to do that. But I don't think the bill is ready to be approved, and I would urge a no vote on the bill.

The Chairman. The gentleman yields back.

The chair would recognize the gentleman from Illinois, Mr. Shimkus.

Mr. Shimkus. Yeah, just in a brief just rebuttal. A lot of us have government facilities around our districts, whether Air Force bases, Army bases. We know the horror stories. And I am a military guy, so don't get me wrong.

But here is an Air Force base that closed its landfill in 1977. And of all the bills that we have gone through, this is the one that surprised me the most by the opposition by my friends on the other side. Because if I think back a couple years ago, you all were moving to the issue of let's get the Federal Government to comply with the Superfund laws or the Solid Waste Disposal Act.

So it is amazing, and I don't understand it, but I do think that the Federal Government should live up to the same requirements as the rest of the Nation, regardless of what. And all this does is, this sovereign immunity for the national government is just an excuse for them to delay cleanup in all our areas, in many of our districts around this country. So I have an opposite view of my colleague and friend from California.

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I will yield to Mr. Latta real quick.

Mr. Latta. Thanks very much. I appreciate the gentleman for yielding.

If I could, I just want to make sure, ask unanimous consent to include in the record the letter dated June 17 from the State of Alaska, the Department of Environmental Conservation.

[The information follows:]

***** COMMITTEE INSERT *****

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Mr. Latta. And if I could, just briefly, they point out two examples right off the bat that they have had problems with in Alaska. And it is also pointed out that Alaska is 69 percent owned by the Federal Government, as they state in their letter. They have had a problem with the Bureau of Land Management and the National Park Service.

But if I could just read about the last couple of lines in their letter. It says, "The proposed Federal Facility Accountability Act of 2013 would greatly assist Alaska in making sure the Federal Government is accountable for cleaning up their contamination, just as any other responsible party in Alaska. This legislation is long overdue and will ensure that Federal agency environmental work be done adequately and to the same standard as other responsible parties."

And I thank the gentleman, and I yield back.

Mr. Waxman. Mr. Shimkus yield to me --

Mr. Shimkus. I will yield to you.

Mr. Waxman. I expect this bill will get a majority support to move forward. I would urge you to meet with the lawyers from the Department of Justice and DOD to hear what they have to say. And I just want to also express to you, as this bill moves further along, I welcome the opportunity to try to make a bill work the way we both want it to work. So I offer my cooperation to you. I am just not ready to support it.

Mr. Shimkus. Yeah, and reclaiming my time, I appreciate that. And staff will help me arrange a time when I will meet with those

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attorneys as you suggest, Mr. Waxman. I would be happy to do that. And I will bring my counsel there. And if there is something we can do to perfect this as it moves forward, I would be happy to do that.

And I will yield back my time.

The Chairman. The gentleman yields back.

No more amendments are sought. Therefore, the question occurs on favorably reporting H.R. 2318, as amended.

All those in favor will say aye.

Those opposed will say no.

In the opinion of the chair the ayes have it.

Roll call is requested. The clerk will call the roll.

The Clerk. Mr. Hall?

Mr. Hall. Aye.

The Clerk. Mr. Hall votes aye.

Mr. Barton?

[No response.]

The Clerk. Mr. Whitfield?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. Aye.

The Clerk. Mr. Shimkus votes aye.

Mr. Pitts?

[No response.]

The Clerk. Mr. Walden?

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Mr. Walden. Aye.

The Clerk. Mr. Walden votes aye.

Mr. Terry?

Mr. Terry. Aye.

The Clerk. Mr. Terry votes aye.

Mr. Rogers?

Mr. Rogers. Aye.

The Clerk. Mr. Rogers votes aye.

Mr. Murphy?

Mr. Murphy. Aye.

The Clerk. Mr. Murphy votes aye.

Mr. Burgess?

[No response.]

The Clerk. Mrs. Blackburn?

[No response.]

The Clerk. Mr. Gingrey?

Dr. Gingrey. Aye.

The Clerk. Mr. Gingrey votes aye.

Mr. Scalise?

Mr. Scalise. Aye.

The Clerk. Mr. Scalise votes aye.

Mr. Latta?

Mr. Latta. Aye.

The Clerk. Mr. Latta votes aye.

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Mrs. McMorris Rodgers?

Mrs. McMorris Rodgers. Aye.

The Clerk. Mrs. McMorris Rodgers votes aye.

Mr. Harper?

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Mr. Lance?

Mr. Lance. Aye.

The Clerk. Mr. Lance votes aye.

Mr. Cassidy?

Dr. Cassidy. Aye.

The Clerk. Mr. Cassidy votes aye.

Mr. Guthrie?

Mr. Guthrie. Aye.

The Clerk. Mr. Guthrie votes aye.

Mr. Olson?

Mr. Olson. Aye.

The Clerk. Mr. Olson votes aye.

Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Gardner?

[No response.]

The Clerk. Mr. Pompeo?

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Mr. Pompeo. Aye.

The Clerk. Mr. Pompeo votes aye.

Mr. Kinzinger?

Mr. Kinzinger. Aye.

The Clerk. Mr. Kinzinger votes aye.

Mr. Griffith?

Mr. Griffith. Aye.

The Clerk. Mr. Griffith votes aye.

Mr. Bilirakis?

Mr. Bilirakis. Aye.

The Clerk. Mr. Bilirakis votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Long?

Mr. Long. Aye.

The Clerk. Mr. Long votes aye.

Mrs. Ellmers?

Mrs. Ellmers. Aye.

The Clerk. Mrs. Ellmers votes aye.

Mr. Waxman?

Mr. Waxman. No.

The Clerk. Mr. Waxman votes no.

Mr. Dingell?

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[No response.]

The Clerk. Mr. Markey?

[No response.]

The Clerk. Mr. Pallone?

[No response.]

The Clerk. Mr. Rush?

[No response.]

The Clerk. Ms. Eshoo?

Ms. Eshoo. No.

The Clerk. Ms. Eshoo votes no.

Mr. Engel?

Mr. Engel. No.

The Clerk. Mr. Engel votes no.

Mr. Green?

[No response.]

The Clerk. Ms. DeGette?

Ms. DeGette. No.

The Clerk. Ms. DeGette votes no.

Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. Doyle?

Mr. Doyle. No.

The Clerk. Mr. Doyle votes no.

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Ms. Schakowsky?

Ms. Schakowsky. No.

The Clerk. Ms. Schakowsky votes no.

Mr. Matheson?

Mr. Matheson. No.

The Clerk. Mr. Matheson votes no.

Mr. Butterfield?

Mr. Butterfield. No.

The Clerk. Mr. Butterfield votes no.

Mr. Barrow?

Mr. Barrow. No.

The Clerk. Mr. Barrow votes no.

Ms. Matsui?

Ms. Matsui. No.

The Clerk. Ms. Matsui votes no.

Ms. Christensen?

[No response.]

The Clerk. Ms. Castor?

Ms. Castor. No.

The Clerk. Ms. Castor votes no.

Mr. Sarbanes?

Mr. Sarbanes. No.

The Clerk. Mr. Sarbanes votes no.

Mr. McNerney?

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Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Braley?

Mr. Braley. No.

The Clerk. Mr. Braley votes no.

Mr. Welch?

Mr. Welch. No.

The Clerk. Mr. Welch votes no.

Mr. Lujan?

Mr. Lujan. No.

The Clerk. Mr. Lujan votes no.

Mr. Tonko?

Mr. Tonko. No.

The Clerk. Mr. Tonko votes no.

Chairman Upton?

The Chairman. Votes aye.

The Clerk. Chairman Upton votes aye.

The Chairman. Mr. Barton?

Mr. Barton. Aye.

The Clerk. Mr. Barton votes aye.

The Chairman. Mr. Gardner?

Mr. Gardner. Aye.

The Clerk. Mr. Gardner votes aye.

The Chairman. Other members wishing to cast a vote? Seeing

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none, the clerk will report the tally.

The Clerk. Mr. Chairman, on that vote there were 26 ayes and 18 nays.

The Chairman. Twenty-six ayes, 18 nays. The bill, as amended, is approved. Without objection, staff is authorized to make technical and conforming changes to the four bills reported by the committee today. So ordered.

And without objection, the committee stands adjourned. Thank you all.

[Whereupon, at 12:27 p.m., the committee was adjourned.]