



## ***The Committee on Energy and Commerce***

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### Memorandum

April 8, 2013

To: Members, Subcommittee on Environment and the Economy

From: Committee Staff

Subject: April 11, 2013, Hearing on H.R. \_\_\_\_, the Coal Ash Recycling and Oversight Act of 2013

On Thursday, April 11, 2013, at 10:30 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Environment and the Economy will have a legislative hearing on H.R. \_\_\_\_, the Coal Ash Recycling and Oversight Act of 2013 (Discussion Draft), a bill to amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels. Witnesses are by invitation only.

#### **I. Witnesses**

##### **Panel 1:**

The Honorable Mathy Stanislaus  
Assistant Administrator for Office of Solid Waste and Emergency Response  
U.S. Environmental Protection Agency (EPA)

##### **Panel 2:**

Robert J. Martineau, Jr.  
Commissioner  
Tennessee Department of Environment and Conservation

Stephen A. Cobb, P.E.  
Chief, Governmental Hazardous Waste Branch Land Division  
Alabama Department of Environmental Management

Susan Parker Bodine  
Partner  
Barnes & Thornburg LLP

Ms. Lisa Evans  
Senior Administrative Counsel  
EarthJustice

Jack Spadaro  
Mine Safety & Health and Environmental Consultant

## **II. Background**

### **A. Coal Combustion Residuals**

EPA defines fossil fuel combustion wastes as “the wastes produced from the burning of fossil fuels (i.e., coal, oil, natural gas).<sup>1</sup> One subset of fossil fuel combustion wastes is coal combustion wastes generated at electricity production facilities, also known as coal combustion residuals (CCR) or coal ash.<sup>2</sup> CCR has been defined by EPA as “byproducts of burning coal for electricity” and consists of inorganic residues that remain after pulverized coal is burned.

Fossil fuel combustion wastes are categorized by EPA as "special waste" but Congress, in the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), enacted provisions – known as the Bevill Amendment – that prevented EPA from imposing hazardous waste regulatory requirements for fossil fuel combustion wastes until EPA studied the issue and submitted a report to Congress regarding whether regulation of such waste under Subtitle C was warranted.

To date, EPA has completed two regulatory determinations, one in 1993 and the other in 2000. In both regulatory determinations, EPA considered the requisite factors and determined that regulation of fossil fuel combustion wastes and CCR, specifically, was not warranted under Subtitle C.

### **B. Current Status: Regulation of Coal Combustion Residuals**

CCR is currently regulated by individual States under existing State authorities. There is no Federal minimum standard or criteria which instructs the States regarding implementation of State programs.

On June 21, 2010, EPA proposed a Federal regulatory standard for CCR<sup>3</sup> in the wake of the structural failure of a surface impoundment at the Tennessee Valley Authority’s plant in Kingston, Tennessee in December 2008. EPA set out two possible regulatory options. Under the first proposal, EPA suggested that the proposed rule could reverse the 2000 regulatory determination and allow regulation of CCR as a hazardous waste under Subtitle C. The second proposal suggested regulation of CCR as a non-hazardous waste regulated under Subtitle D through self-implementing regulations that would be enforced only through citizen suits. Key objectives noted by EPA for both options were to require first-ever national standards including: liners and siting restrictions for new CCR land disposal units; dam safety and structural stability assessment of CCR disposal units; groundwater monitoring for disposal units that receive CCRs; run-on and run-off controls, fugitive dust controls, financial assurance, corrective action, closure of units, and post-closure care.

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<sup>1</sup> See <http://www.epa.gov/wastes/nonhaz/industrial/special/fossil/>

<sup>2</sup> See <http://www.epa.gov/wastes/nonhaz/industrial/special/fossil/coalashletter.htm>

<sup>3</sup> See 75 FR 35128 (June 21, 2010).

### **III. Description of the Legislation**

The Discussion Draft is an outgrowth of H.R. 2273, which passed the House in the 112<sup>th</sup> Congress with broad bipartisan support. The text of H.R. 2273 was added as an amendment to H.R. 4348, the Surface Transportation Extension Act of 2012. The text of the Discussion Draft was introduced in the Senate in the last Congress as S. 3512 with 12 Republican and 12 Democrat co-sponsors. The Discussion Draft adopts the same approach as H.R. 2273 but it contains several significant changes, particularly in the details of the minimum requirements set out in the bill.

Both bills would establish a new approach to environmental regulation by amending the Solid Waste Disposal Act (SWDA) to authorize States to adopt and implement coal combustion residuals permit programs that include the minimum requirements set out in the legislation. The minimum requirements, a checklist of criteria that State programs must meet, establish a Federal standard of protection. The Discussion Draft requires inspection and certification of the stability of structures by an independent, professional engineer and compels States to require action to correct structural deficiencies according to a schedule, and to close structures if such deficiencies are not corrected according to such schedule.

The Discussion Draft also requires that structures be built with a base located at least two feet above the upper limit of the water table and directs States to require structures to address wind dispersal of dust. The Discussion Draft details criteria for structures with respect to: (1) design, groundwater monitoring, corrective action, closure, and post-closure; (2) location restrictions in floodplains, wetlands, fault areas, seismic impact zones, and unstable areas; (3) air quality; (4) financial assurance; (5) surface water; (6) record keeping; and (7) run-on and run-off control systems for landfills.

Within one year after a State certifies its permit program, the Discussion Draft requires installation of groundwater monitoring at all structures that receive CCR after the date of enactment. The Discussion Draft also includes deadlines for compliance with the groundwater protection standard for structures subject to corrective action and for operator or owner implementation of interim measures; and establishes requirements for closure of a structure that fails to satisfy such deadlines or to meet other specified conditions.

### **IV. Issues**

The purpose of the legislative hearing is to:

- Analyze the Discussion Draft and how it would be implemented by the States and EPA;
- Hear from EPA and the States about whether the policy of the legislation would meet the objectives EPA sought to accomplish with the Proposed Rule;
- Consider whether Congress setting a Federal standard of protection in statute that will be implemented by the States, would be consistent with RCRA; and
- Compare the Discussion Draft to H.R. 2273, which passed the House in the 112<sup>th</sup> Congress by a vote of 267-144.

**V. Staff Contacts**

If you have any questions, please contact Tina Richards at 225-2927.