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4 ``H.R. _____, THE COAL ASH RECYCLING AND OVERSIGHT ACT OF

5 2013''

6 THURSDAY, APRIL 11, 2013

7 House of Representatives,

8 Subcommittee on Environment and the Economy

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 10:34 a.m.,
12 in Room 2123 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Gingrey, Hall,
15 Murphy, Latta, Harper, Cassidy, McKinley, Bilirakis, Johnson,
16 Barton, Upton (ex officio), Tonko, Green, Capps, McNerney,

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17 Dingell, Barrow, and Waxman (ex officio).

18 Staff present: Nick Abraham, Legislative Clerk;

19 Charlotte Baker, Press Secretary; Matt Bravo, Professional

20 Staff Member; Karen Christian, Chief Counsel, Oversight;

21 Jerry Couri, Senior Environmental Policy Advisor; David

22 McCarthy, Chief Counsel, Environment and the Economy; Brandon

23 Mooney, Professional Staff Member; Andrew Powaleny, Deputy

24 Press Secretary; Tina Richards, Counsel, Environment and the

25 Economy; Chris Sarley, Policy Coordinator, Environment and

26 the Economy; Jacqueline Cohen, Democratic Senior Counsel;

27 Greg Dotson, Democratic Staff Director, Environment and the

28 Economy; Caitlin Haberman, Democratic Policy Analyst; and

29 Elizabeth Letter, Democratic Assistant Press Secretary.

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|
30 Mr. {Shimkus.} I would like to call the hearing to
31 order, and ask folks to maybe get the ante room doors, so
32 that we can start. We want to welcome you here to this
33 legislative hearing, and I would like to recognize myself for
34 a 5-minute opening statement.

35 In our first hearing this Congress, we heard about the
36 great work states are doing when it comes to environmental
37 regulation and how well equipped and qualified they are to
38 take on that mission. Today we will focus directly on coal
39 ash and legislation designed to give states the framework to
40 build off their successes in the past handling waste streams
41 under the Resource Conservation Recovery Act, commonly known
42 as RCRA.

43 Most people think of federal law when it comes to
44 environmental protection and we have passed many important
45 environmental laws over the years. However, states also pass
46 environmental laws. States have the same concerns about
47 protecting the environment and contrary to some of the things
48 you might hear today, states establish and carry out a
49 standard of protection through their environmental permitting

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50 programs. In fact, in our last hearing we kind of
51 highlighted that most of the inspections are done through the
52 state agencies, and my example, the state IEPA, Illinois
53 Environmental Protection Agency, do a lot of the legwork, and
54 it is obviously a partnership that is very important. That
55 is actually what my notes say, too. Regulators are directed
56 to establish programs to restore, protect and enhance the
57 quality of the environment, and to assure that adverse
58 effects upon the environment are fully considered and borne
59 by those who cause them, and that is in my home State of
60 Illinois.

61 While it may not use the same words Congress has used to
62 direct EPA, the effect is exactly the same. The legislation
63 we consider today sets out a new approach. It does not
64 follow the same path as we have traveled with the RCRA
65 before, which is for Congress to set a subjective standard
66 that EPA must interpret and implement through regulations and
67 enforcement. Instead, we are setting the standard in statute
68 and charging the states with implementation. Just because it
69 is different does not mean ineffective or not protective of
70 human health and the environment.

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71 We heard the comments and concerns about the bill we
72 passed in the last Congress and we worked both across the
73 aisle and across the Capitol to develop the text of this
74 discussion draft. The legislation makes several key
75 improvements. In particular, it establishes additional
76 requirements for surface impoundments that aren't meeting a
77 groundwater protection standard and requires impoundments
78 that can't meet the standards within a certain time period to
79 close.

80 The discussion draft requires groundwater monitoring for
81 all disposal units that are receiving coal ash and tightens
82 the dust requirements. The bill also improves on the dam
83 stability standards by requiring an annual inspection of the
84 design, construction, and maintenance of the structures by an
85 independent professional engineer.

86 The long and short of it is Congress is perfectly
87 capable of establishing a standard of protection for coal
88 ash. The states are perfectly capable, and in the best
89 position, to implement robust permit programs for coal ash.

90 I have brought with me, as I have in different hearings,
91 actually coal ash as we have talked before, beneficial reuse,

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92 which is in concrete, which is in kind of a brick-like
93 material. Obviously, we have drywall as part of the
94 production. We have countertops. We have shingles. And
95 part of this debate for us for a long time is ensuring that
96 we properly define this waste that is part of this debate so
97 that this stuff that has beneficial uses is not eventually
98 labeled as toxic and then we can't use it in the building of
99 roads and bridges and schools and the like, which is what we
100 have been doing now for many, many years. So that is part of
101 the concern in which we bring this legislation forward, and
102 we are excited at the opportunity to--as a former teacher in
103 high school, you know, the whole debate of how a bill becomes
104 a law sometimes gets lost here because we, you know, we push
105 things through. We had a bill, as I said in the opening
106 statement. There were concerns. The Senate started moving
107 legislation. We have taken a lesson from both of those
108 processes. We are adjusting and amending those
109 opportunities. There is some optimism, I think, that there
110 is some common ground that can be found, and we look forward
111 to moving this process forward and this is just the first
112 start of, I think, a couple different opportunities of

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113 negotiations in this process, which I hope will end in a
114 successful conclusion.

115 [The prepared statement of Mr. Shimkus follows:]

116 ***** COMMITTEE INSERT *****

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|

117 [H.R. ____ follows:]

118 ***** INSERT 7 *****

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|
119 Mr. {Shimkus.} So with that, I want to thank all our
120 witnesses for being with us today, and I will recognize
121 Ranking Member Tonko for 5 minutes for the purposes of an
122 opening statement.

123 Mr. {Tonko.} Thank you, Mr. Chair. Good morning,
124 everyone, and I thank our chair for holding this hearing on
125 the discussion draft of the Coal Ash Recycling and Oversight
126 Act. Thank you to our witnesses for participating in the
127 hearing, and offering your thoughts on this legislation
128 today.

129 We have dealt with coal ash as long as we have been
130 burning coal, a very long time. Coal ash can be beneficially
131 reused. Recycling of coal ash is a well-established
132 practice, but not all coal ash can be safely recycled, and
133 when it is improperly used or disposed of, coal ash creates
134 significant problems.

135 The Environmental Protection Agency, the EPA, was
136 charged with studying coal combustion residuals back in 1980
137 when the Resource, Reuse, and Recovery Act, RCRA, became law.
138 It has been over 30 years, and communities in many states

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139 have experienced many problems from improper handling and
140 disposal of coal ash. Spills from wet impoundments,
141 windborne ash, and groundwater contamination have caused
142 serious health and environmental problems, and required
143 expensive clean up efforts. Five years after the
144 catastrophic spill in Tennessee, we are still without
145 reasonable regulations to safeguard communities and ensure
146 proper treatment of this waste.

147 It is long past time to resolve these issues and indeed
148 move forward. We need a policy that ensures safe disposal of
149 coal ash, provides clear guidance to state agencies, and the
150 regulated industry, and an appropriate federal oversight
151 role. Perhaps EPA can achieve that with regulation under the
152 current law. If not, I believe we can develop a law that
153 balances the concerns of all involved. The discussion draft
154 does not meet these goals in its current form, so we have
155 more work to do.

156 I look forward to the testimony of our witnesses today,
157 and their thoughts on this issue. I am willing to work with
158 you, Mr. Chair, and our other colleagues to improve this
159 legislation. Working together, I am convinced that we can

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160 move a bill forward that finally can provide a sound policy
161 to deal with coal ash.

162 And with that, I yield back.

163 [The prepared statement of Mr. Tonko follows:]

164 ***** COMMITTEE INSERT *****

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|
165 Mr. {Shimkus.} Gentleman yields back his time. Chair
166 now recognizes the chairman of the full committee, Mr. Upton,
167 for 5 minutes.

168 The {Chairman.} Well thank you.

169 You know, our efforts to solve the coal ash certainly do
170 continue with this hearing. We began the last Congress by
171 asking should we allow EPA to write rules that would bind
172 every state regardless of geography, hydrology, history, and
173 economics, or should we allow the states to build and operate
174 their own permitting systems?

175 The answer that this committee reported, and which the
176 House passed, both with bipartisan support, was a compromise.
177 It gave the choice to the states to apply minimum federal
178 standards specified in the legislation itself, or a state
179 could vacate the field and let EPA step in and run that
180 state's program directly.

181 Mr. McKinley's bill, H.R. 2273 passed the House with
182 bipartisan support in October 2011. Building on the House-
183 passed bill, Senators Hoeven and Baucus and a bi-partisan
184 Senate group wrote S. 3512. It preserved the approach of our

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185 House bill, but added more detail to the minimum federal
186 standards. For example, it added a requirement that leaking
187 surface impoundments meet a groundwater protection standard
188 within a certain time period or they are required to close.
189 That bill also included a requirement that all structures
190 that receive coal ash after enactment install groundwater
191 monitoring within one year after a state certifies its
192 program. The bill was introduced on August 2 of last year
193 with Senators Hoeven and Baucus and 12 Republicans and 12
194 Democrats as original co-sponsors, and the text of today's
195 discussion draft is actually the text of that bill, S. 3512.

196 Now, we are eager to hear from our witnesses today as
197 they focus on the details of the legislation before us. We
198 welcome suggestions to improve the text for sure, however, we
199 do prefer to preserve the signature approach of the bill:
200 minimum statutory standards implemented by the states.

201 We welcome our first witness, Mr. Stanislaus, and thank
202 him for sure for testimony that is quite useful as it
203 directly addresses the legislation. That is what this
204 legislative hearing is intended to do. We know that he would
205 like to resolve the coal ash issue as well, and we appreciate

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206 that good will.

207 The dispute about how to regulate coal ash ties up EPA
208 in court and prevents all parties from moving forward. This
209 legislation aims to help settle that litigation.

210 We also welcome our state environmental officials. We
211 look forward to learning from them how they will develop
212 certified programs that EPA can approve, and whether the nuts
213 and bolts of the bill are tight enough to make the vehicle
214 work in the real world.

215 I also expect the witnesses to answer questions about
216 details of the legislation. Are the minimum federal
217 standards the right ones? How do they compare with what the
218 EPA proposed? Should we consider some type of timeline for
219 state implementation? Do the states welcome the approach set
220 out in the discussion draft?

221 I appreciate the good work by Chairman Shimkus, and
222 yield the balance of my time to Mr. McKinley from West
223 Virginia.

224 [The prepared statement of Mr. Upton follows:]

225 ***** COMMITTEE INSERT *****

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|
226 Mr. {McKinley.} Thank you, Mr. Chairman, for the time
227 that you have given me on this.

228 Let me just kind of paraphrase again much of what you
229 have heard so far on this, is that the creation of fly ash,
230 it is an unavoidable byproduct of burning coal. You get this
231 product, this little dust. It is just an unavoidable
232 byproduct. So I guess the fight here would be if we don't
233 want to have this product, then we don't burn coal, but that
234 is not realistic.

235 So what has happened over here is we have developed
236 about 140 million tons of this fly ash annually. Forty
237 percent of it is recycled, and 60 percent goes to landfills.
238 But the 40 percent that has been recycled, it has been
239 blessed by the EPA as a nonhazardous material and should be
240 used. As a matter of fact, under Bill Clinton, the '93 and
241 the 2000 reports both came out and supported it. So the 40
242 percent issue should be moot.

243 The real issue, then, is the disposal. How do you
244 dispose of this product? Perhaps the argument, when it
245 really comes down to it, do we want to have the Federal

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246 Government have primacy or should the states have primacy?
247 The groups that recycle, labor unions, utilities, coal
248 operators, state environmental groups, all the stakeholders
249 in this think that the best way to do it is to have the state
250 have primacy, but what I like about in this bill is that we
251 actually begin with the federal standard. There is a minimum
252 standard that is going to be set forth, and the states have
253 to apply that. If they don't adhere to that, then the
254 Federal Government does take primacy. So let's make sure
255 that we understand that if this bill doesn't pass, then what
256 we are going to do is we are going to be back to, once again,
257 what has been talked about for the last 30-some years,
258 arguing over this while we have fly ash that is created every
259 day all across America, is going to landfills that are not
260 approved. Some of them, some states have no certified
261 landfill requirements. Do we want to continue that or not?

262 It is time this bill gets passed, and I am particularly
263 pleased, from what I am hearing from the other side and from
264 the EPA is that this may very well be the year to do it, that
265 we can find a compromise, and I appreciate very much the
266 testimony that you are about to give and how we can work

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267 together to make this resolve, because this is not right for
268 people to fear this is being disposed of in their backyard
269 and they don't--there are no standards. It is time that we
270 have standards and adhere to them, and we can do that.

271 So this legislation is important and I think it is going
272 to resolve. I hope, after 30-some years, we are finally
273 going to resolve this problem.

274 So with that, Mr. Chairman, I yield back my time.

275 [The prepared statement of Mr. McKinley follows:]

276 ***** COMMITTEE INSERT *****

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|
277 Mr. {Shimkus.} Gentleman's time is expired. Chair now
278 recognizes the ranking member of the full committee, Mr.
279 Waxman, for 5 minutes.

280 Mr. {Waxman.} Thank you, Mr. Chairman. Today, the
281 subcommittee examines the discussion draft that would govern
282 the disposal of coal ash, the toxic-laden residual waste from
283 burning coal.

284 The language isn't new. It is almost identical to the
285 bill reported by this committee in the last Congress without
286 ever being examined in a legislative hearing. It is
287 identical to the language that 90 percent of Democrats
288 opposed when it was considered on the House Floor in
289 September of last year. It is the same language that has
290 been exhaustively analyzed by the Congressional Research
291 Service and found severely wanting, and it is the same
292 language that has failed to get sufficient support in the
293 United States Senate.

294 Over the years, Congress and the states have developed a
295 proven model for environmental protection that has
296 successfully reduced pollution and enhanced the protection of

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297 the public health. We had a hearing on that matter of
298 environmental federalism just 2 months ago, and heard from
299 stakeholders that it continues to work well. States have
300 received delegation for just over 96 percent of the
301 environmental programs that can be delegated. This is an
302 impressive track record that has protected the American
303 people from pollution-induced respiratory diseases, from
304 contaminants in their drinking water, from toxic
305 environmental exposures that can cause cancers and other
306 diseases.

307 Despite these successes, the discussion draft we
308 consider today would abandon the proven models of
309 environmental protection and adopt an approach that we have
310 every reason to believe would fail if enacted. This proposal
311 will not ensure the safe disposal of coal ash. It will not
312 prevent groundwater contamination from unlined ash ponds or
313 prevent coal ash impoundments from failing catastrophically.
314 It will not allow EPA to complete its rulemaking to identify
315 the disposal criteria necessary to protect human health and
316 the environment.

317 I continue to oppose such an approach and believe that

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318 there is simply not the support for this proposal to become
319 law. But as I have said for 2 years now, I am willing to
320 work with the Majority on this issue to get a law, if the
321 chairman wants a law. That would require rethinking this
322 legislation and listening to the expert views available to
323 us. EPA, the Congressional Budget Office, the Congressional
324 Research Service all have relevant expertise on this
325 legislation. Their views must not be dismissed and, in fact,
326 relying on their expertise will only help us craft a much
327 better piece of legislation.

328 I believe this is an issue we should be able to resolve.
329 We can provide certainty and reasonable standards that would
330 work for industry, and at the same time, we can ensure that
331 health and the environment are protected. But what we should
332 avoid is remaining gridlocked on a stale proposal that won't
333 stop dangerous coal ash dumping. It won't prevent toxic
334 contamination from leaking into the groundwater and surface
335 water, and it won't promote beneficial reuse of coal ash.
336 Whether it is by administrative or legislative action, it is
337 time to resolve this issue and ensure the safe disposal of
338 coal ash. Environmental groups and the biggest recycler of

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339 coal ash in the country have sued EPA to complete their
340 regulatory process and get a rule finalized.

341 Mr. Chairman, I hope we can work together on this issue,
342 and if not, I hope EPA will move expeditiously to establish
343 strong standards that ensure the safe disposal of coal ash.

344 I yield back my time.

345 [The prepared statement of Mr. Waxman follows:]

346 ***** COMMITTEE INSERT *****

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|
347 Mr. {Shimkus.} Gentleman yields back his time.

348 Now we would like to welcome our first witness, the
349 Honorable Mathy Stanislaus, who is the Assistant
350 Administrator for the Office of Solid Waste and Emergency
351 Response with the U.S. EPA. Sir, welcome. Your full
352 statement is in the record. You will have 5 minutes. We
353 have, obviously, a newer time system there with the green,
354 the yellow, and the red, and--but we are going to be very
355 generous, and based upon the comments in the opening
356 statements, we really look forward to hearing your opening
357 statement because we are going to get input from the EPA
358 here.

359 You are recognized.

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|
360 ^STATEMENT OF THE HONORABLE MATHY STANISLAUS, ASSISTANT
361 ADMINISTRATOR FOR OFFICE OF SOLID WASTE AND EMERGENCY
362 RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

363 } Mr. {Stanislaus.} Good morning, Mr. Chairman and
364 members of the subcommittee. I am Mathy Stanislaus,
365 Assistant Administrator for the Office of Solid Waste and
366 Emergency Response at the United States Environmental
367 Protection Agency. Thank you for the opportunity to testify
368 today on the committee's legislative discussion draft, the
369 Coal Ash Recycling and Oversight Act.

370 Coal combustion residuals, or CCRs, are one of the
371 largest waste streams generated in the United States, with
372 approximately 136 million tons generated in 2008. CCRs
373 contain constituents, such as arsenic, cadmium, and mercury,
374 which can pose threats to public health and the environment,
375 if improperly managed.

376 At the time, EPA issued its proposed coal ash rule, EPA
377 had documented evidence of damages to groundwater or surface
378 water in 27 cases, 17 cases of damage to groundwater, and ten

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379 cases of damage to surface water. In addition, EPA
380 identified 40 cases of potential damage to groundwater or
381 surface water. In the majority of cases, damages to
382 groundwater or surface water were associated with the lack of
383 standards necessary to protect the environment, particularly
384 the use of unlined impoundments and units and the failure to
385 monitor these impoundments and other associated units. EPA
386 also had documented evidence of a number of damage cases due
387 to the catastrophic structural failure of the coal ash
388 impoundments, such as at the Martins Creek Power Plant in
389 Pennsylvania, the TVA Kingston facility, Harriman, Tennessee.
390 The sudden failure of a surface impoundment retaining wall at
391 the TVA Kingston facility in December 2008, and the resulting
392 catastrophic spill of coal ash and their impacts on the
393 community highlight the issue of impoundment stability.

394 Since EPA's proposed rule was issued, a number of
395 additional reports have been submitted to EPA by several
396 organizations that identified dozens of additional damage
397 cases. In addition, for states that have begun to require
398 groundwater monitoring of surface impoundments, in almost all
399 cases, groundwater contamination has been identified. Thus,

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400 it appears, based on all of EPA's information, improper
401 management of coal ash in landfills and surface impoundments
402 will continue to pose a threat to human health and the
403 environment.

404 Regarding beneficial use, coal ash can provide
405 environmental benefits and new applications may provide even
406 greater benefits, based on current studies. Some of the
407 information confirms or strengthens EPA's views on the
408 benefits of coal ash reuse. However, some information
409 indicates that certain uses may raise concerns and merit
410 additional attention.

411 Some beneficial uses are in an encapsulated form, while
412 other are in an unencapsulated form. EPA believes that the
413 great bulk of beneficial uses, particularly in an
414 encapsulated form, such as concrete and wallboard, do not
415 raise concerns and offer important environmental benefits.
416 However, some questions have been raised regarding the lack
417 of clear methodology to evaluate reuse of coal ash. Thus,
418 EPA's proposal sought additional information and requested
419 specific comment on certain aspects of beneficial use of coal
420 ash.

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421 To help resolve questions regarding the environmental
422 consequences of beneficially using coal ash, EPA has
423 developed a draft methodology, which can be used to determine
424 whether encapsulated products containing coal ash are
425 comparable to analogous non-coal combustion residual
426 products. It will also develop a draft application report
427 for the use of coal fly ash in concrete and the use of FGD
428 gypsum in wallboard as replacement materials. The draft
429 application report is currently undergoing formal internal
430 peer review. EPA is also developing a draft methodology for
431 evaluating current unencapsulated beneficial uses of coal
432 ash. We expect to issue both of them in the fall.

433 Now turning to the committee's legislative discussion
434 draft, establishing a framework for the management of coal
435 ash, recognizing the documented damages associated with the
436 mismanagement of coal ash support the need for action to
437 address those risks. EPA believes that the proper management
438 of coal ash requires national consistent standards necessary
439 to protect human health and the environment. These standards
440 should address the installation and use of liners for new
441 units and allow expansions of existing units, provide

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442 standards that control airborne dust and particulate matter,
443 address the phase out of unlined surface impoundments within
444 a reasonable period of time, require groundwater monitoring
445 for new and existing facilities, include location criteria,
446 provide for corrective action where contamination or releases
447 to the environment have been identified, including criteria
448 for maintenance and structure stability of dams, address
449 standards for closure and post-closure, and address the
450 issues of financial assurance. The discussion draft
451 addresses many of the areas I have just discussed. However,
452 the discussion draft could be clarified in some important
453 areas, including timelines for the development and
454 implementation of state programs, criteria to help EPA
455 determine when a state program is deficient, criteria for
456 coal ash unit structural stability, deadlines for closure of
457 unlined or leaking units, including inactive or abandoned
458 units, and the universe of units subject to the permit
459 program.

460 Mr. Chairman, should Congress decide to address the
461 regulation of coal ash through legislation, EPA stands ready
462 to assist in that effort to help ensure that legislation

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463 establishes a regulatory framework to regulate the management
464 of coal ash in a nationally consistent manner that fully
465 protects human health and the environment.

466 Thank you, and this concludes my prepared remarks.

467 [The prepared statement of Mr. Stanislaus follows:]

468 ***** INSERT 1 *****

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|
469 Mr. {Shimkus.} Thank you very much, and I think your
470 opening statement and your submission is very helpful in us
471 moving forward, and I appreciate that.

472 So I will recognize myself for the first 5 minutes of
473 opening questions.

474 Mr. Stanislaus, doesn't the legislation in the
475 discussion draft give EPA continuing watchdog role to ensure
476 that state permit programs meet the minimum federal
477 requirements?

478 Mr. {Stanislaus.} Thank you, Congressman. As I noted
479 in my oral statements, there is a role for EPA to oversee the
480 implementation of a state program, and in my oral statement I
481 noted that for the clarity as to how EPA would execute that
482 function is something that we could provide technical
483 assistance regarding that.

484 Mr. {Shimkus.} Great, thank you. And you could, based
485 upon the discussion draft, take over a state permit program
486 if the state fails to correct identified deficiencies, based
487 upon the discussion draft, is that correct?

488 Mr. {Stanislaus.} Yeah, and thank you, Congressman.

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489 Again, referring back to my oral statement, there is a
490 provision, as I understand the intent of that, for EPA to
491 review and take over in certain circumstances. As noted in
492 my oral statement, for the clarity as to those circumstances
493 for EPA to conduct that function would be beneficial.

494 Mr. {Shimkus.} Yeah, and I think the discussion draft
495 basically identifies a base standard, and I think it is
496 pretty clear, and I think you are alluding to that cautiously
497 that based upon that language, as presented, if passed and
498 signed into law, if it is deficient in those base standards,
499 you would have the authority.

500 So let me go to didn't the EPA state in the proposed
501 rule that 40 C.F.R. part 258, the revised criteria for
502 municipal solid waste landfills would be a framework for
503 regulating coal ash?

504 Mr. {Stanislaus.} In the proposed rule?

505 Mr. {Shimkus.} That the revised criteria that you all
506 have are proposed that using the municipal solid waste as a
507 guideline would be a proper way of evaluating and moving CCR
508 materials into, obviously, sites?

509 Mr. {Stanislaus.} Congressman, I am not familiar with

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510 the specific reference. Let me check that and--

511 Mr. {Shimkus.} Well, and I would just obviously--the
512 preamble of the proposed rule basically says that, does it
513 not?

514 Mr. {Stanislaus.} Again, I don't have that in front of
515 me but I will check and put that into the record.

516 Mr. {Shimkus.} I think if you read the preamble, the
517 answer will be yes, it does. And so our point is, this is
518 not new. We are pretty close on how we need to get to where
519 we need to get to, and we just want to continue to work with
520 you and clean up some stuff. But EPA is pretty much on the
521 record on at least four provisions of this legislation and
522 the ability to have a guideline, the ability of you all to
523 preempt if the states don't meet the guidelines, but the
524 ability of the states to actually--to operate this, and that
525 is what the legislation intends on doing.

526 Consensus seems to be emerging in support of coal
527 combustion residuals being dealt with under a nonhazardous
528 regulatory framework. Do you agree?

529 Mr. {Stanislaus.} Well, again I mean with respect to--
530 regarding the legislation, I mean, so again, I think there

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531 are areas of further clarification regarding how the coal ash
532 management should be executed.

533 Mr. {Shimkus.} Are you prepared to give us any--in this
534 legislative hearing any words and clarifications that might
535 be acceptable, or are we prepared to do this after the
536 hearing and in discussions with you all and committee staff?
537 I mean, how--if we are not asking these questions and not
538 going to glean from you what areas and language that would be
539 helpful in perfecting the language, when do we have a chance
540 to do that, especially in an open forum?

541 Mr. {Stanislaus.} Sure. Well again, we will provide
542 specific details in our technical assistance role, and so
543 there are areas, as I noted in my oral statement, that could
544 be improved and so I think it will be helpful for me and my
545 staff to work with your staff providing details regarding
546 potential areas of--

547 Mr. {Shimkus.} Okay, let me--my time is running out.
548 EPA cannot issue enforceable permits under Subtitle D, is
549 that correct?

550 Mr. {Stanislaus.} That is right.

551 Mr. {Shimkus.} And from an enforcement standpoint,

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552 isn't it better for facilities to operate under an
553 enforceable permit instead of a self-implementing regulation
554 or regulations that are only enforceable through citizen
555 suits?

556 Mr. {Stanislaus.} Well as I understand the legislation,
557 it does provide that the states would issue a permit and
558 oversee that, and--

559 Mr. {Shimkus.} Isn't that preferable than fighting
560 through the courts and having citizen suits across the
561 country trying to delineate this, clearing this up, and
562 putting a responsible party involved? And this, as we will
563 hear from the state regulators, they are willing, ready, and
564 capable, and do, in fact, all states except for Florida and
565 South Dakota, are part of ECOS, even New York and California
566 and Massachusetts, and they all agree with this approach.

567 Mr. {Stanislaus.} Yeah, EPA, under Subtitle D, the
568 states do, in fact, go forward and implement in sum through a
569 permit program. Even under the other titles, EPA delegates
570 that authority, so there are many circumstances where states
571 do--in fact, we rely on the states to implement the solid
572 waste programs. In many cases, that is done through a permit

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573 program and enforced by the states.

574 Mr. {Shimkus.} Perfect. Thank you.

575 Now I would like to yield to the ranking member, Mr.

576 Tonko, for 5 minutes.

577 Mr. {Tonko.} Thank you, Mr. Chair, and thank you,

578 Assistant Administrator Stanislaus for testifying today.

579 EPA has proposed two alternative regulatory approaches

580 to address the risks posed by unsafe disposal of coal ash.

581 Both approaches include requirements to address failures of

582 wet impoundments, dust from ash landfills, groundwater

583 contamination, and other potential risks. The Subtitle D

584 proposed rule includes detailed technical criteria developed

585 by EPA to protect human health and the environment from the

586 risks associated with CCR disposal. Getting these technical

587 criteria right is critically important because they ensure

588 that coal ash disposal sites are structurally sound and don't

589 pollute the air or pollute the water. Proponents of the

590 discussion draft that we are considering today have said that

591 the draft contains many of the appropriate criteria, but I

592 have concerns that significant safeguards are missing.

593 In the last Congress, EPA provided this committee with

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594 technical assistance on whether legislation similar to the
595 draft we are considering today included all of the elements
596 necessary to protect human health and the environment. So I
597 would like to ask a few questions to understand whether the
598 new draft addresses those concerns.

599 First, EPA's technical assistance states that under the
600 language we considered in the last Congress, EPA would not be
601 authorized to develop criteria tailored to the specific risks
602 of coal ash disposal. Does the discussion draft we are
603 considering today address that shortcoming?

604 Mr. {Stanislaus.} So are you referring to the technical
605 assistance for last year's House bill or the Senate bill?

606 Mr. {Tonko.} The House bill.

607 Mr. {Stanislaus.} My understanding the draft discussion
608 is based on the Senate bill. Is that not correct? So let me
609 get back to you in terms--I mean, if you are asking a
610 comparison of technical assistance on the Senate bill I can
611 get back to you regarding what we provided on the Senate
612 bill. I can provide that to you, but generally as noted in
613 my oral statement, there are areas that we are willing to
614 work with you and the committee in terms of areas of further

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615 clarification in the areas I have articulated.

616 Mr. {Tonko.} Okay, and EPA's technical assistance
617 states that the structural integrity requirements in the
618 previous language were deficient because they did not address
619 the full volume of liquid to be stored? Did the changes in
620 this discussion draft address those deficiencies?

621 Mr. {Stanislaus.} Yes, speaking to the discussion
622 draft, it does address liquids and what we have said is that-
623 -further clarification as to the standard for which
624 structural integrity would be judged against. The further
625 clarification would be beneficial.

626 Mr. {Tonko.} And EPA's technical assistance states that
627 the previous language did not include the longstanding
628 operating criteria for wet impoundments developed by the Mine
629 Safety and Health Administration. Does this discussion draft
630 apply these criteria?

631 Mr. {Stanislaus.} My understanding that it does not,
632 that there is a provision requiring good engineering
633 practices as the basis of structural integrity.

634 Mr. {Tonko.} And EPA's technical assistance states that
635 under the previous language, dry landfills would not be

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636 required to comply with many of the operating criteria that
637 currently apply to municipal solid waste and would be applied
638 to coal ash under EPA's proposed rule. Does this discussion
639 draft fix that flaw with the previous proposal?

640 Mr. {Stanislaus.} I am not sure about that.

641 Mr. {Tonko.} Okay, is there a way that you can get back
642 to us?

643 Mr. {Stanislaus.} Yeah, I can review that and get back
644 to you.

645 Mr. {Tonko.} Okay. That would be most appreciated.

646 Thank you for your response, Mr. Stanislaus. Let me
647 just indicate, this proposal eliminates EPA's rulemaking
648 authority and replace's the agency's expertise with that of
649 this panel, so it is essential that we get these disposal
650 criteria correct. I hope that the committee will engage with
651 you as we move forward to address these and other
652 deficiencies in this legislation. I believe it is absolutely
653 critical that as we assist those in the industries involved
654 with the guidelines, with the certainty, and with the policy
655 initiated here that we can get things done to work in the
656 best order possible.

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657 So with that, I see my time is almost expired and I
658 yield back. Thank you, Mr. Chair.

659 Mr. {Shimkus.} Gentleman yields back his time. Chair
660 now recognizes the gentleman from Texas, Mr. Barton, for 5
661 minutes.

662 Mr. {Barton.} I am not going to use 5 minutes. I am
663 going to ask one question and then I will yield to Mr.
664 McKinley or Mr. Johnson or back to the chairman.

665 I missed most of your verbal statement, but my question
666 is pretty straightforward. Does the EPA have an official
667 position on the discussion draft, and if they do, what is it?

668 Mr. {Stanislaus.} We do not have an official position.
669 In my oral statement, I have noted there are areas that the
670 bill does, in fact, advance the basic requirements we believe
671 are necessary for safe coal ash disposal and areas of further
672 clarification that we are willing to work with the committee
673 to expand upon.

674 Mr. {Barton.} Could you characterize the EPA's position
675 is wishing to cooperate with the committee on this bill, or
676 wanting to be confrontational?

677 Mr. {Stanislaus.} We are absolutely willing to

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678 cooperate.

679 Mr. {Barton.} All right. Thank you, sir, and I would
680 yield to whoever you want me to.

681 Mr. {Shimkus.} I would claim your time.

682 Mr. {Barton.} Okay, I yield back to the chairman.

683 Mr. {Shimkus.} Thank you, and I would just like to
684 follow up in that question. So EPA is not taking a position
685 of opposition to the language--to the bill?

686 Mr. {Stanislaus.} That is right.

687 Mr. {Shimkus.} Okay, and I think that is important.

688 I will just continue. Let me ask, on the legislation,
689 doesn't the legislation require issuance of enforceable
690 permits to all coal ash disposal facilities?

691 Mr. {Stanislaus.} My understanding of the legislation
692 is that the states would be--would implement the program to
693 issue permits, so the area of further clarification is kind
694 of--clarification regarding timeline of that.

695 Mr. {Shimkus.} And I think that is something we could--
696 I mean, my understanding of your testimony is that there are
697 four things you kind of like. There are six provisions that
698 you think we could--we need to look at, one of those being

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699 establishing a timeline. But--and so I think that is
700 something I think we can be helpful and work on, but it is my
701 understanding on the issue of the question that it--the way
702 the language is drafted is that we do require enforced--now
703 you might question the standard of enforcement--not even
704 standards, because we believe the states can enforce it. We
705 may have a question of what are the standards, right?

706 Mr. {Stanislaus.} Yes.

707 Mr. {Shimkus.} But I don't think there is any dispute
708 in the language that there would be--and I am just making
709 sure I say it properly--that there is an issuance requirement
710 and enforceable permits that--in this draft language.

711 Mr. {Stanislaus.} I believe the language or the
712 intended language is to put in place a permit program, an
713 implemented permit program, and again, assuming we could
714 address the timing question is also the--what universe it
715 would apply to, so--people are giving me notes.

716 Mr. {Shimkus.} Me too.

717 Mr. {Stanislaus.} I think one of the areas is the
718 definition of what is covered, yes.

719 Mr. {Shimkus.} Okay. Let me ask, is a Subtitle C rule

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720 still on the table?

721 Mr. {Stanislaus.} Well again, as Congressman, we have
722 noted in my testimony, we are evaluating a number of
723 comments, about 430,000 comments and data, and also there is
724 additional data which will inform the risk and the
725 management--the preferred management mechanism to address
726 that. You know, so the additional data which we would want
727 the public to review before we make a decision, we want to
728 get that out to the public and then that will inform which is
729 the best technique, given all the considerations.

730 Mr. {Shimkus.} So for the public, moving on legislation
731 could actually create a quicker standard of protection versus
732 waiting for a process going through your due diligence?

733 Mr. {Stanislaus.} It could. I won't comment.

734 Mr. {Shimkus.} All right. What is the agency's--do you
735 have any timing? I guess that is a follow-up to legislation
736 could be quicker when you have timing?

737 Mr. {Stanislaus.} I don't have a specific timeframe in
738 mind, and we have laid out in filings that we will have some
739 idea in about 6 months in terms of--based on the ability to
740 get public input on this data, but we will--it is not that we

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741 will be able to act in 6 months, but in 6 months, based on
742 the data being submitted to the public for review and
743 comment.

744 Mr. {Shimkus.} So I guess--again, let me just follow
745 up. We believe that legislation would help you all deal with
746 the pending CCR deadline. You are currently in litigation.
747 You are involving--and I can answer that question, but I
748 think that is a thing that we can debate and discuss.

749 So with that, Mr. Barton's time is expired, which I was
750 able to use, and I now yield to the chairman emeritus of the
751 full committee, Mr. Dingell for 5 minutes.

752 Mr. {Dingell.} Mr. Chairman, I thank you for your
753 courtesy. This is a very useful hearing. It reminds me,
754 however, of a Greek tragedy. I see us sitting here like the
755 chorus and anticipating that terrible calamities are about to
756 come and we don't know what to do about it. Well, there is a
757 way out of this thicket, and I want to commend you for having
758 the hearing, because I think this might just be a beginning.

759 Having said this, I have got a bunch of yes or no
760 questions and I hope that you will respond, referring to the
761 witness.

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762 On other waste issues, states create their plans within
763 a certain timeframe and with certain federal requirements
764 that they are obligated to meet, is that right?

765 Mr. {Stanislaus.} I am sorry, could you repeat that
766 question?

767 Mr. {Dingell.} I will dispense with that question. Do
768 you believe this draft bill has the timelines and minimum
769 legal standards of protection to ensure that proper program
770 plans are implemented in the states? Yes or no.

771 Mr. {Stanislaus.} Well, that is one of the areas that I
772 noted in my oral statement--

773 Mr. {Dingell.} Yes or no.

774 Mr. {Stanislaus.} --that could be clarified.

775 Mr. {Dingell.} Okay. Could you submit additional
776 records or information for the record?

777 Mr. {Stanislaus.} Sure.

778 Mr. {Dingell.} And I don't want to see you toe dancing
779 around. Take a firm stance here, because the situation
780 stinks and quite honestly, the legislation is not good.

781 This bill would legislatively create regulatory
782 requirements. Under a normal regulatory process, if these

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783 requirements such as a legal standard for protection, needed
784 to be updated or to better address the issue, there would be
785 a comment period to obtain input from industry, stakeholders,
786 and the public, isn't that right?

787 Mr. {Stanislaus.} Yes, my understanding of the draft
788 legislation--

789 Mr. {Dingell.} Yes or no.

790 Mr. {Stanislaus.} My understanding of the draft
791 legislation is that the--

792 Mr. {Dingell.} I have limited time. Please say yes or
793 no. There is no requirement in this bill that any future
794 changes should go through a public comment process, is that
795 right?

796 Mr. {Stanislaus.} Again, my understanding of the
797 legislation is that in implementing the program by the state,
798 it is subject to public input and comment. However--

799 Mr. {Dingell.} You are not being helpful, sir. Under
800 EPA's proposed rule to establish requirements to address this
801 issue, in your testimony you said that EPA received nearly a
802 half million public comments, solicited public data, started
803 drafting a methodology to evaluate the beneficial uses.

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804 Under the legislative proposal before us, would EPA have the
805 authority to gather public comments, technical data, or
806 develop methodologies in the future to improve the
807 implementation of the program proposed in the bill? Yes or
808 no?

809 Mr. {Stanislaus.} My understanding of the legislation
810 is that the legislation would prescribe to the states to
811 implement a program and a permit thereafter.

812 Mr. {Dingell.} All right. Submit additional
813 information for the record.

814 What four or five national standards do you believe
815 should be specifically addressed and added to this
816 legislation to ensure that there is national conformity
817 amongst several states?

818 Mr. {Stanislaus.} Yes, as I noted in my--

819 Mr. {Dingell.} Would you submit that for the record?

820 Mr. {Stanislaus.} Sure, absolutely.

821 Mr. {Dingell.} Now do you believe this legislation as
822 currently written would require these standards to be
823 included in state program plans? Yes or no? Would you
824 please submit that for the record?

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825 Mr. {Stanislaus.} Sure.

826 Mr. {Dingell.} Mr. Chairman, from what I am seeing
827 today it appears there is much we need to do to prevent
828 spells like that experienced in Tennessee and more recently
829 in Wisconsin when we had a tremendous--of nastiness flowing
830 into Lake Michigan. I am just a poor Polish lawyer from
831 Detroit, but I would remind members of the subcommittee that
832 we are not engineers and we must give EPA the flexibility to
833 implement appropriate performance standards without having to
834 come back to Congress for approval. Traditionally, Congress
835 and this committee have given EPA authority to develop
836 regulations and to address particular issues, but this bill
837 jumps straight to the regulations without knowing whether the
838 regulations are sound or not. And I am concerned that we may
839 be setting, quite frankly, a most disturbing precedent, one
840 which is inconsistent with the Administrative Procedures Act,
841 and it allows regulations to be set without the extensive
842 public comments and technical data that are needed from
843 industry and from stakeholders. I hope my friends on the
844 other side will recognize that we are imposing a
845 congressional straight jacket on the EPA and the

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846 administrators of this program. The end result will be, if
847 we are right, it might be fine. That is most unlikely. The
848 probabilities are we are going to find we are wrong. We have
849 no flexibility here that I can discern. EPA can't find any,
850 and we are not getting much help from the witness, but it is
851 urgently necessary that we consider these facts and that we
852 do these things intelligently.

853 The industry has got a legitimate complaint. We ought
854 to hear it. We ought to do something about it. But we ought
855 not jump blindly in and set a bunch of standards about which
856 we know nothing and simply prolong the problem and increase
857 litigation that is going to curse us if we pass the bill as
858 it now is.

859 I look forward to working with you, and I hope you will
860 cooperate with me in trying to get a bill that makes some
861 sense. Thank you.

862 Mr. {Shimkus.} I thank my colleague. Every time I hear
863 from the poor Polish lawyer, I check my wallet.

864 So with that, I would like to recognize the author of
865 last Congress' legislation, and the member who is intimately
866 involved with this, Mr. McKinley for 5 minutes.

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867 Mr. {McKinley.} Thank you, Mr. Chairman, and again,
868 thank you for appearing before the committee.

869 You are right. This thing has been hanging for 30-some
870 years, and we passed a bill 2 years ago, we passed a bill a
871 year ago, we are back at it again. If we continue with this,
872 with being stonewalled, I guess, that argument of making
873 perfect the enemy of good and we do not pass a bill, can you
874 help paint the picture of what happens? Won't we continue to
875 be disposing of fly ash in the way they did it in the '40s
876 and the '50s, because there are some states that have no
877 regulations whatsoever on this? So if we don't do something,
878 aren't we really challenging people as a result?

879 Mr. {Stanislaus.} I agree, Congressman. As I noted in
880 my oral statement, the ongoing damages that are occurring and
881 past damages from, particularly, the unlined impoundment kind
882 of scenario and the particular--the requirements that I have
883 articulated in my oral statement, things like lining, things
884 like monitoring are things that will be necessary to protect
885 against those risks. So I think we do need some action.

886 Mr. {McKinley.} What about the--are you--I think I
887 heard you make some remarks earlier in your opening statement

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888 that the 40 percent that we recycle, the beneficial
889 recycling, you are still of an opinion that we should be able
890 to continue to beneficially recycle about 40 percent of the
891 product?

892 Mr. {Stanislaus.} Yeah, I believe it is 37, but yeah,
893 close to 40. Yes.

894 Mr. {McKinley.} So if this legislation doesn't go
895 through--and I want to paint probably the worst picture would
896 be--I believe isn't there litigation now?

897 Mr. {Stanislaus.} There is litigation now.

898 Mr. {McKinley.} Okay, and that litigation wants you to
899 call this a hazardous material?

900 Mr. {Stanislaus.} My understanding of the litigation is
901 to--for EPA to move forward on a timeline for regulating the
902 disposal of coal ash, yes.

903 Mr. {McKinley.} Under a hazardous waste landfill?

904 Mr. {Stanislaus.} Let me get back to you. I don't
905 believe it is prescriptive in that way.

906 Mr. {McKinley.} I thought there was something to that
907 effect that would label it, and I just know that if something
908 were hazardous, then none of us should be using that. We

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909 shouldn't use it in drywall; we shouldn't use it in concrete
910 if it is hazardous. We do?

911 Mr. {Stanislaus.} If it is hazardous, no.

912 Mr. {McKinley.} But I think EPA has already determined
913 that it is not a hazardous material. We just need to make
914 sure that we dispose of it and recycle it in a way that is
915 appropriate. So I have watched now over 2 years--it is my
916 second term here--how it has matured in this conversation
917 with the EPA a relationship that we can probably work this
918 thing through, because it does us no good if we continue with
919 the other side, I suppose it would be, not to work with us to
920 come up with a piece of legislation because that was my
921 earlier comment. If we don't do it, we are going to have
922 areas that people could feel threatened. Their homes could
923 be challenged, I suppose, a whole series of things, unless we
924 get something approved. I am hoping that we get some good
925 cooperation and compromise and work together to come up with
926 a piece of legislation. I am very encouraged from your
927 remarks earlier today and what we have heard over the last
928 few months, that there is some chance we are going to get
929 something accomplished this year, and we won't continue this

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930 30 years of uncertainty.

931 So you are telling me that you think we will be able to
932 come up with something this year?

933 Mr. {Stanislaus.} I am not in the prediction business,
934 but my commitment is that we will work with you, Congressman
935 and the committee, in terms of the areas that I have
936 articulated in my oral statement.

937 Mr. {McKinley.} Some of the recommendations I hope that
938 we will take into consideration. That is what we did last
939 time. We had a hearing like this on the original bill and
940 then we modified it after we heard from people. I don't
941 think any of us are afraid to make changes to a piece of
942 legislation. We are trying to get it right. I want to get
943 this resolved, and I like the history and the ideology that
944 people are putting out there about that they would rather
945 have nothing than have something that moves in the right
946 direction.

947 So I thank you very much and I yield back the balance of
948 my time.

949 Mr. {Shimkus.} Gentleman yields back his time. Chair
950 now recognizes the gentelady from California, Ms. Capps, for

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951 5 minutes.

952 Mrs. {Capps.} Thank you, Mr. Chairman, for calling this
953 hearing. I thank you, Mr. Stanislaus, for your testimony.

954 As you know, this proposal passed the House in the last
955 Congress, despite serious concerns about whether it would
956 sufficiently protect the health of people living near coal
957 ash disposal sites. In technical assistance you provided to
958 the committee last Congress, you identified multiple
959 principal contaminants of concern in coal ash, including
960 arsenic, cadmium, lead, mercury, and many others. These
961 heavy metals pose very serious threats to human health.
962 Would you, for our hearing today, please identify briefly
963 some of the health effects of these contaminants?

964 Mr. {Stanislaus.} Well, let me commit to get back to
965 you on the record in terms of all the contaminants we have
966 identified in the bill in terms of the specific health
967 impacts.

968 Mrs. {Capps.} Just generally, the ones that I have
969 mentioned came from the list you provided last time, arsenic,
970 cadmium, lead, mercury. Can you just identify a few of those
971 health--

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972 Mr. {Stanislaus.} Well, not getting into the specifics
973 of each of the contaminants, so--

974 Mrs. {Capps.} Right.

975 Mr. {Stanislaus.} --generally, you could have--
976 depending on the contaminant and the contaminant level, you
977 could have some developmental issues, sometimes non-cancerous
978 and cancerous. It all depends on the particular contaminant
979 you are talking about. So what I can do is after the hearing
980 provide a breakdown of each of the contaminants and the
981 various health impacts, based on the level of exposure.

982 Mrs. {Capps.} I would appreciate that for the record,
983 but I kind of--I think that is a--to the previous questioners
984 urgent sense of urgency that we need to get something done,
985 because these are very serious health threats, and we need to
986 do it in a way that, you know, is a good piece of legislation
987 because the lives of people in the area--surrounding areas
988 depends upon it.

989 I will just turn to a little bit different way of asking
990 a similar question. In your proposed rule for coal ash
991 disposal, EPA identified three main pathways of exposure to
992 these contaminants. One, leaching from unlined units,

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993 second, direct uncontrolled discharges in the case of a
994 structural failure of an impoundment, and third, fugitive
995 dust emissions. So the question further to the record, would
996 you discuss, please, some of the primary public health and
997 environmental impacts that these three types of coal ash
998 exposure can create?

999 Mr. {Stanislaus.} Well, those are the exposure
1000 pathways, so those are--those identify how a person would be
1001 exposed.

1002 Mrs. {Capps.} Right.

1003 Mr. {Stanislaus.} And so the various categories of
1004 health consequence would occur from that exposure, be it
1005 developmental, non-cancer, or cancer. So you can have
1006 different kinds of health impacts, but depending on whether
1007 it is inhalation, whether it is ingestion.

1008 Mrs. {Capps.} Right.

1009 Mr. {Stanislaus.} So I don't have that breakdown, but I
1010 can provide it. Depending on the pathway of exposure, the
1011 particular contaminant and the kinds of health impacts, I can
1012 provide that for the record.

1013 Mrs. {Capps.} So am I right then in drawing the

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1014 conclusion that there are multiple kinds of exposure with
1015 kinds of multiple serious health effects, because some of it
1016 is from the dust, some of it is from the discharge, some of
1017 it is from leaching. I mean, different ways that it can
1018 enter the environment that a person's health can be directly
1019 affected by it, would that be a fair assessment?

1020 Mr. {Stanislaus.} That is correct. If it is improperly
1021 managed, you can be exposed in multiple different ways, you
1022 know, so if you don't have effective controls of dust, you
1023 could inhale it. If you don't have effective controls of
1024 leaching, it could get into the groundwater and you could
1025 drink that. So it could be multiple different, depending on
1026 whether it is managed well or not.

1027 Mrs. {Capps.} Thank you.

1028 And finally, I want to follow up on the storage liners
1029 issue. My question is, will any kind of liner work to
1030 prevent leaching, or are there certain technical
1031 specifications that must be met?

1032 Mr. {Stanislaus.} Well clearly, it depends on the type
1033 of liner and then also ensuring that the liner is within a
1034 management framework, meaning a monitoring program and

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1035 oversight program.

1036 Mrs. {Capps.} So it is not--and first of all, not any
1037 kind of liner will work, it has got to be some specified kind
1038 of liner. You don't have to go into the details here if you
1039 don't have that information, but there has been work to
1040 uncover and figure out what that kind of liner is? Am I
1041 correct?

1042 Mr. {Stanislaus.} There are industry standards in terms
1043 of--

1044 Mrs. {Capps.} There are industry standards.

1045 Mr. {Stanislaus.} --the nature and particular materials
1046 for that liner.

1047 Mrs. {Capps.} Okay, so there has already been research
1048 done?

1049 Mr. {Stanislaus.} And implemented in certain parts of
1050 the country.

1051 Mrs. {Capps.} And implemented already, and studied to
1052 see if it is effective?

1053 Mr. {Stanislaus.} Yes, yes.

1054 Mrs. {Capps.} Okay. Well, the conclusion that I draw
1055 is that there are some robust specifications already and I am

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1056 led to conclude that these are very serious concerns, and I
1057 hope that my colleagues will work with these technical
1058 experts at EPA--I hope we all will--to ensure that we address
1059 each of these exposure pathways appropriately and
1060 sufficiently and have that be part of the legislation that
1061 comes so that the bill will have some teeth in it and it will
1062 be effective in finally addressing this particular challenge.
1063 And I am looking across the aisle, because this is going to
1064 take the efforts of all of us to make sure that these
1065 standards are met.

1066 I yield back the balance of my time.

1067 Mr. {Shimkus.} Gentlelady's time is expired.

1068 I would just say that in this draft is really the Senate
1069 bill from last year, which is changed from ours, so it does
1070 have the groundwater, it does have the dust, it does have the
1071 levy issues and standards. It also--and Mr. Stanislaus
1072 mentioned previously that the technical considerations--this
1073 is part of the Senate bill, so some of the observations is
1074 based on the old house bill, not this draft bill which is
1075 part of the Senate language. That is safe to say, I think.

1076 So I would like to yield, and I apologize to the

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1077 gentleman from Ohio. He should have went previous to the
1078 gentleman from West Virginia, but I am just scared of the guy
1079 from West Virginia, so to recognize Mr. Latta for 5 minutes.

1080 Mr. {Latta.} Thank you very much, Mr. Chairman. I
1081 appreciate it, and I greatly appreciate your testimony today
1082 and welcome you before the committee.

1083 You know, having served in the Ohio General Assembly, I
1084 truly believe that the states really know their citizens need
1085 better than the Federal Government, and also the states also
1086 believe that we have got to protect not only our citizens'
1087 health, but also the environment, while at the same time
1088 ensuring job creation and growth, not only in Ohio, but
1089 across the country.

1090 Ohio currently requires permits for both coal ash
1091 landfills and surface impoundments, and have continuously
1092 worked to improve the requirements, including those for
1093 liners and groundwater monitoring. Additionally, the Ohio
1094 Department of Natural Resources has its own program to
1095 monitor and prevent impoundment failure. Because of the
1096 quality of the program, Ohio EPA considers the risk of
1097 catastrophic failure of Ohio coal ash surface impoundments to

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1098 be low. As you can see, Ohio, like many other states, has
1099 quality coal ash management measures already in place, and I
1100 believe that the Coal Ash Recycling and Oversight Act of 2013
1101 will allow them to continue this ability.

1102 If I could ask you this first question, given the
1103 measures that Ohio and other states have or are working on
1104 right now and are currently putting into place, do you
1105 believe the states have that ability to ensure proper
1106 management and disposal of coal ash under the proposed
1107 legislation?

1108 Mr. {Stanislaus.} Oh, absolutely. I mean, there are
1109 many examples. I don't know-- I can't tell you at this
1110 moment specifically about Ohio's program. There are many
1111 examples of states doing a really good job on coal ash
1112 management. There are also other situations where even the
1113 states would acknowledge that there are places where it has
1114 not been effectively managed. Even a state--survey among
1115 state waste managers has concluded that there are areas that
1116 are not managed well. I can't talk specifically about Ohio's
1117 program.

1118 Mr. {Latta.} Okay, well thank you.

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1119 And to ask kind of a follow-up and as to other questions
1120 that the gentlelady from California was mentioning a little
1121 bit earlier about liners, and if I could ask a couple
1122 questions in regards of the EPA would like to discuss. Do
1123 you agree that the bill contains a provision for requiring
1124 liners?

1125 Mr. {Stanislaus.} Yes, my understanding that the bill
1126 does require a provision for liners, and again, my oral
1127 statement is that there are particular--one of them is where
1128 additional clarity as to how that will be implemented would
1129 be helpful.

1130 Mr. {Latta.} Okay, and do you also agree that the bill
1131 contains a provision requiring groundwater monitoring?

1132 Mr. {Stanislaus.} Congressman, my understanding is that
1133 the bill would require groundwater monitoring.

1134 Mr. {Latta.} Okay. Do you agree that the bill has a
1135 deadline for the installation of the groundwater monitoring?

1136 Mr. {Stanislaus.} Congressman, my understanding that
1137 there is a deadline for installing groundwater monitoring.

1138 Mr. {Latta.} Okay, thank you. Do you agree that the
1139 bill includes all of the constituents identified by the EPA

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1140 as being of concern for coal ash?

1141 Mr. {Stanislaus.} I believe that is correct. Let me
1142 verify, but I believe that is correct. Let me verify it and
1143 place a statement on the record.

1144 Mr. {Latta.} Okay, thank you. Doesn't the bill set a
1145 timeline for meeting the groundwater protection standards for
1146 surface impoundments that are incorrective?

1147 Mr. {Stanislaus.} That is something I am not sure is
1148 clear, but let me--

1149 Mr. {Latta.} If you could get with us on that, it would
1150 be great.

1151 Mr. {Stanislaus.} Yes.

1152 Mr. {Latta.} Do you agree that the bill requires
1153 control of fugitive dust?

1154 Mr. {Stanislaus.} It does have a provision for fugitive
1155 dust control, and again, it could be another area where
1156 further clarification of how it would be implemented could be
1157 beneficial.

1158 Mr. {Latta.} Okay. Does the bill require financial
1159 assurance?

1160 Mr. {Stanislaus.} That is something I am not sure.

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1161 Mr. {Latta.} Okay, if you want to get back with us on
1162 that, we would appreciate it.

1163 And doesn't the bill contain location restriction for
1164 coal ash management and disposal units?

1165 Mr. {Stanislaus.} I think that is another area where I
1166 think it could be further clarified. It is a bit ambiguous
1167 to us.

1168 Mr. {Latta.} Okay, and then with my remaining time, in
1169 your opinion, has the EPA developed a risk assessment that
1170 supports a determination that coal ash should be regulated
1171 under Subchapter C or Subtitle D--excuse me, Subtitle C or
1172 Subtitle D?

1173 Mr. {Stanislaus.} Yes, as noted earlier, there is
1174 substantial additional data that has been provided to us by
1175 multiple stakeholders that will inform our risk assessment,
1176 and so we are now in a position to move soon--will be,
1177 hopefully, to make that judgment. So based on that, it will
1178 inform the best management regime to safely address the risks
1179 that we have identified.

1180 Mr. {Latta.} Well thank you very much, and Mr.
1181 Chairman, I will yield back the balance of my time. If the

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1182 witness could provide us with those answers, I would
1183 appreciate it.

1184 Mr. {Stanislaus.} Sure.

1185 Mr. {Shimkus.} Gentleman yields back his time. The
1186 chair now recognizes the gentleman from California, Mr.
1187 McNerney, for 5 minutes.

1188 Mr. {McNerney.} Thank you, Mr. Chairman. I certainly
1189 wouldn't want to live downstream of a coal ash waste disposal
1190 site, but the conflict seems to be between federal authority
1191 and state authority, and the question I have is some states
1192 are going to do a good job. Some states may not do as good a
1193 job. If a site is leaking and poses a danger to the people
1194 in the groundwater, et cetera, does the EPA have sufficient
1195 authority in this bill to go in and take steps to remediate
1196 the situation?

1197 Mr. {Stanislaus.} Well as I understand, the program
1198 would require of the states to set forth a permit program and
1199 then implement the permit program to oversee that. In terms
1200 of EPA as well, that is one of the areas I noted earlier that
1201 can be further clarified as to under what circumstances it
1202 could play a role in the oversight.

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1203 Mr. {McNerney.} So basically you are saying that there
1204 is not--it is not sufficiently clear in the proposal what is--
1205 --when the EPA should and can step in?

1206 Mr. {Stanislaus.} Yes, it can be further clarified, and
1207 we are willing to provide technical assistance on potential
1208 areas of clarification and some analogies to other programs
1209 that we have had that role and where we work in partnership
1210 with the states to do that.

1211 Mr. {McNerney.} Is that something that the EPA is
1212 working with this committee to try and clarify the language?

1213 Mr. {Stanislaus.} We can, absolutely.

1214 Mr. {McNerney.} Mr. Chairman, is that something that
1215 you are looking forward to doing?

1216 Mr. {Shimkus.} If the gentleman would yield, I would
1217 say that the discussion draft addresses ponds that are
1218 unlined and leaking, and the bill requires unlined leaking
1219 impoundments to meet groundwater protection standards within
1220 a certain time period, or close. Is that correct?

1221 Mr. {Stanislaus.} Yes, there are closure requirements,
1222 and again, they could be further clarified as to the timeline
1223 and what is the trigger for closure.

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1224 Mr. {McNerney.} So regaining my time then, in an
1225 emergency situation, would the EPA have the authority to go
1226 in and take the steps that are necessary to remediate the
1227 danger?

1228 Mr. {Stanislaus.} Yes, again, under the legislation
1229 that is an area that could be further clarified in terms of
1230 EPA's role, and clearly, there are situations where if there
1231 is imminent substantial endangerment, under other of our
1232 authorities that we can and we have gotten involved to
1233 address those emergencies.

1234 Mr. {Shimkus.} So the answer is yes is what he is
1235 saying.

1236 Mr. {McNerney.} It didn't sound like yes to me, Mr.
1237 Chairman.

1238 Now, the EPA doesn't have the authority--moving to the
1239 planning and design stage, to impose design standards, is
1240 that correct?

1241 Mr. {Stanislaus.} My understanding of the draft
1242 framework is that that will be up to the states to determine
1243 the details regarding that through their permit program.

1244 Mr. {McNerney.} Do you--you used the word

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1245 ``encapsulated'' several times in your oral testimony. Could
1246 you explain what that means?

1247 Mr. {Stanislaus.} Sure. It simply means in the
1248 beneficial use world, coal ash can be beneficially used in
1249 circumstances where essentially it is fixed, like in wall
1250 board, like in concrete, and there are other areas where it
1251 is not fixed, fill operations as an example, agricultural
1252 use. So there are a variety of areas of its utilization, so
1253 in terms of developing methodology, addressing how it is
1254 safely used, we have to look at how it is used and not just
1255 the methodology currently developed, and with the first set
1256 of methodologies to be encapsulated, and we anticipate that
1257 to be issued in the fall.

1258 Mr. {McNerney.} Well then encapsulated means
1259 commercially viable encapsulation. It doesn't mean
1260 encapsulated specifically for the purpose of disposing it
1261 safely?

1262 Mr. {Stanislaus.} Yeah, I use that terminology not
1263 relating to the disposal regime, as it relates to just
1264 beneficial use.

1265 Mr. {McNerney.} Now some toxic wastes are encapsulated,

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1266 say, in a glass container that won't leak for many thousands
1267 of years. Is that prohibitive in this case for coal ash
1268 because the volume is too big, or is there some way to
1269 encapsulate it so that it can be disposed of safely for
1270 generations?

1271 Mr. {Stanislaus.} Well, the framework for safe disposal
1272 is a combination of a lining system and a monitoring program,
1273 and we believe that can effectively address the risks that we
1274 have identified. Obviously, you have to look at also
1275 addressing fugitive dust or fugitive dust control systems as
1276 well.

1277 Mr. {McNerney.} So is that what you described, the
1278 lining, the groundwater monitoring, was that the 2000
1279 proposal with the EPA? Was that included in that 2000
1280 proposal?

1281 Mr. {Stanislaus.} Those elements were included in that.

1282 Mr. {McNerney.} Okay. Thank you, Mr. Chairman.

1283 Mr. {Shimkus.} Thank you. Chair now recognizes the
1284 gentleman from Ohio, Mr. Johnson, for 5 minutes.

1285 Mr. {Johnson.} Thank you, Mr. Chairman. Mr.
1286 Stanislaus, thanks for being with us today.

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1287 Does CRCLA give EPA's authority the authority to address
1288 inactive or abandoned impoundments or units?

1289 Mr. {Stanislaus.} Generally CRCLA provides that if
1290 there's a threat from hazardous waste, its authorities can be
1291 used. I am not sure specifically where we used that in an
1292 impoundment scenario, but I can check and get back to you.

1293 Mr. {Johnson.} Inactive or abandoned? Not active ones,
1294 but inactive or abandoned.

1295 Mr. {Stanislaus.} Yes, let me check and determine
1296 whether we used that and whether we can use that.

1297 Mr. {Johnson.} If you could respond back in writing,
1298 that would be great.

1299 Mr. {Stanislaus.} Sure.

1300 Mr. {Johnson.} Also, Mr. Stanislaus, following
1301 Kingston, EPA inspected coal ash impoundments, some 600 of
1302 them, in fact, to make sure that they are structurally sound.
1303 You hired independent contractors who in the agency's own
1304 words are experts in the area of dam integrity. Do you agree
1305 with the findings of your staff that not a single coal ash
1306 impoundment was rated unsatisfactory and poses an immediate
1307 safety threat?

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1308 Mr. {Stanislaus.} You know, I have to go back and look
1309 cumulatively of our postings, but we have done an assessment
1310 and we didn't believe there was a scenario where there was a
1311 threat of imminent failure, and it is a combination of
1312 looking at how it is designed, an inspection, and there was
1313 some recommendation to do some additional enhancements to
1314 prevent risk.

1315 Mr. {Johnson.} But none was rated unsatisfactory and
1316 none posed an immediate safety threat? Do you agree?

1317 Mr. {Stanislaus.} Let me check and put it on the
1318 record.

1319 Mr. {Johnson.} Okay, if you could check and get back to
1320 us on that also.

1321 Do you agree with the findings of your professional
1322 staff as well that the owners and operators of impoundments
1323 with identified deficiencies have responded responsibly by
1324 submitting response action plans?

1325 Mr. {Stanislaus.} Yeah, I will go verify that and place
1326 it on the record.

1327 Mr. {Johnson.} Okay, so you can get back to us with all
1328 of that?

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1329 Mr. {Stanislaus.} Sure.

1330 Mr. {Johnson.} Mr. Chairman, with that, that is all my
1331 questions. I yield back.

1332 Mr. {Shimkus.} Gentleman yields back his time. Chair
1333 now recognizes gentleman from Mississippi, Mr. Harper, for 5
1334 minutes.

1335 Mr. {Harper.} Thank you, Mr. Chairman, and thank you
1336 for being here. I know this always fun, but we appreciate
1337 your time and expertise. These are important issues and we
1338 need to make sure we stay on top of this.

1339 You know, EPA has direct enforcement authority for
1340 municipal solid waste only when the agency determines that a
1341 state program is inadequate. The bill adopts essentially the
1342 same approach. Why is the approach not acceptable for coal
1343 ash?

1344 Mr. {Stanislaus.} Well, as I noted earlier, there is--
1345 there are provisions for EPA to review a state program, the
1346 state's implementation program. Further clarity as to how it
1347 will conduct its review and under what circumstance it could
1348 engage a state's improvement of that or take it over, that is
1349 where there is some ambiguity.

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1350 Mr. {Harper.} Okay. You know, EPA has suggested that
1351 it would measure the adequacy of existing state programs
1352 based on whether groundwater monitoring was required. The
1353 bill requires groundwater monitoring, as you were asked and
1354 affirmed earlier, for all structures that receive coal ash.
1355 That is correct, isn't it?

1356 Mr. {Stanislaus.} Well, I think what the bill states
1357 that it requires groundwater monitoring for facilities that
1358 receive coal ash after the effective date of the legislation.
1359 So one of the areas of clarification as to what are the
1360 universe that will be subject to the groundwater
1361 requirements?

1362 Mr. {Harper.} You know, EPA's proposed rule suggests
1363 the importance of having state coal ash permit programs
1364 address surface impoundments and require liners. The bill
1365 requires regulation of surface impoundments and liners for
1366 all new and expanded land disposal units, doesn't it?

1367 Mr. {Stanislaus.} I believe for those units that
1368 receive waste after the enactment date.

1369 Mr. {Harper.} Okay.

1370 Mr. {Stanislaus.} That is correct.

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1371 Mr. {Harper.} All right. Mr. Chairman, I yield back
1372 the balance of my time.

1373 Mr. {Shimkus.} Chair thanks the gentleman, and then the
1374 chair recognizes the gentleman from Louisiana, Mr. Cassidy,
1375 for 5 minutes.

1376 Dr. {Cassidy.} I yield back.

1377 Mr. {Shimkus.} That is the quickest 5 minutes I have
1378 ever had as chairman, and the chair thanks you.

1379 Seeing no other members, Mr. Stanislaus, thank you for
1380 your testimony. We are going to try to get you to yes a
1381 little bit clearer. I think we have made great progress
1382 since the last Congress, and we look forward to working with
1383 you and we thank you for your time.

1384 I would like to ask the second panel to join us.

1385 Mr. {Stanislaus.} Thank you, Mr. Chairman, and thank
1386 you, members.

1387 Mr. {Shimkus.} We would like to get started as promptly
1388 as possible, so we would like to thank the second panel for
1389 joining us. Many of you have been here before and seen the
1390 process. I will recognize you in order from left to right.
1391 I will do it, you will be given 5 minutes for an opening

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1392 statement, and your full statement has been submitted for the
1393 record. We will begin.

1394 First I would like to recognize Mr. Robert Martineau,
1395 Jr., Commissioner from the Tennessee Department of
1396 Environment and Conservation. Sir, you are recognized for 5
1397 minutes, and welcome.

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1398 ^STATEMENTS OF ROBERT J. MARTINEAU, JR., COMMISSIONER,
1399 TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION; STEPHEN
1400 A. COBB, P.E., CHIEF, GOVERNMENTAL HAZARDOUS WASTE BRANCH
1401 LAND DIVISION, ALABAMA DEPARTMENT OF ENVIRONMENTAL
1402 MANAGEMENT; SUSAN PARKER BODINE, PARTNER, BARNES & THORNBURG,
1403 LLP; LISA EVANS, SENIOR ADMINISTRATIVE COUNSEL, EARTHJUSTICE;
1404 AND JACK SPADARO, MINE SAFETY & HEALTH AND ENVIRONMENTAL
1405 CONSULTANT

|
1406 ^STATEMENT OF ROBERT J. MARTINEAU, JR.

1407 } Mr. {Martineau.} Thank you, Mr. Chairman, and thank you
1408 to the committee for the invitation to be here today to
1409 discuss the issues about coal ash combustion and the
1410 legislation.

1411 I am here today representing the Environmental Council
1412 of State, or ECOS, whose members are the leaders of state and
1413 territorial environmental protection agencies, and my own
1414 State of Tennessee. Currently I serve as the--on the
1415 executive council of ECOS as secretary/treasurer.

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1416 The incident that occurred in Kingston, Tennessee, in
1417 2008 obviously made coal ash management an issue of national
1418 attention. I am here today to talk about the position that
1419 the states have on collectively--on how to best move forward
1420 with regulation of coal ash.

1421 ECOS adopted a formal resolution on this issue, first
1422 passed in 2008, and reaffirmed last month at our spring
1423 meeting. I have attached that to my written testimony and
1424 ask that it be made part of the record.

1425 In short, our ECOS resolution agrees with the multiple
1426 studies that EPA has conducted over many years and three
1427 administrations, that coal ash is not a hazardous waste and
1428 should not be regulated as such. ECOS also agrees with EPA's
1429 2005 finding that the states should continue to be the
1430 principal regulatory authority for regulation of coal ash.
1431 We recognize that there are some significant beneficial
1432 reuses for coal ash, and we support those. While some may
1433 suggest otherwise, regulation of coal ash as a hazardous
1434 waste would have an extreme chilling effect on the beneficial
1435 reuse of coal ash in concrete road bed material and other
1436 uses.

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1437 While we believe the states are the appropriate
1438 regulatory authority for coal ash, we also recognize there is
1439 some benefit for a national consistency approach. Therefore,
1440 ECOS has supported the bipartisan efforts of the House and
1441 Senate in the last Congress to create a federal program that
1442 allows states to regulate coal ash management and disposal
1443 under a set of federal standards created directly by Congress
1444 and implemented by the states. This is a new and thoughtful
1445 approach in regulation.

1446 ECOS sees this approach in this bill as a new path
1447 forward for federal involvement in some of the environmental
1448 challenges we face. We live in an era of constrained
1449 resources in government at both the federal, state, and local
1450 level. Challenges like coal ash would benefit from a new
1451 partnership model between the state and the Federal
1452 Government.

1453 The discussion bill today sets standards that protect
1454 human health and the environment, and provides the states the
1455 opportunity to implement, enforce, and supplement the
1456 standards that are most applicable for each state. If a
1457 state chooses not to implement the CCR program, then EPA can

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1458 and will. States can ask for technical assistance from EPA,
1459 should they need it, and EPA is required periodically to
1460 assess and evaluate the states' implementation of those
1461 programs. If necessary, EPA can assume control of any state
1462 program if the state is unsuccessful in implementing those
1463 standards. Because the bill does not require EPA to
1464 promulgate the rules, but creates the standards directly in
1465 the legislation, there are fewer delays in the program's
1466 startup, and there is an additional savings to the Federal
1467 Government.

1468 Obviously, any new proposed partnership in management of
1469 coal ash is subject to constructive criticism. I would like
1470 to briefly address a couple of the criticisms identified in
1471 the Congressional Research Service report.

1472 First, the report noted that last year's bill lacked a
1473 time table for implementation and other deadlines. While
1474 there are a number of time tables for closure and groundwater
1475 monitoring upgrades in the statute, there are a reasonable
1476 well-defined schedule for the states to actually adopt the
1477 rules as necessary and develop the permit programs. It would
1478 certainly be reasonable. States are used to dealing with

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1479 that as they implement other federal programs. This time
1480 table would allow states to pass state rules, set up their
1481 regulatory programs, or supplement the ones they already have
1482 to get the permit program up and running to the extent they
1483 don't have one.

1484 Second, the CRS report also implied that a lack of
1485 direct EPA enforcement authority would make it less likely
1486 for the states to implement a program. I think that is
1487 simply contradicted by the record. ECOS has gone on record
1488 saying that they desire to run the--regulate coal ash at the
1489 state level. It is certainly not the case for Tennessee, and
1490 I don't think it would be the case for any other states.

1491 A third criticism in the standards is that you can only
1492 set these kinds of standards through promulgation of rules.
1493 We believe Congress can create the basic standards for coal
1494 residual management, and the references to some of the
1495 existing regulatory requirements under part 258 are already
1496 set forth in the standard and would be encompassed in setting
1497 forth the basic criteria that states would have to implement.
1498 Obviously, states can choose to do more if they need to do so
1499 to address particular geographic or other conditions in the

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1500 state.

1501 Lastly, there is skepticism that EPA will be able to
1502 judge the states' performance on coal ash programs that would
1503 be created by this bill. EPA has been judging state air,
1504 water, and waste programs for 40 years through the delegation
1505 of programs. ECOS continues and the state agencies continue
1506 to interact with EPA every single day on the adequacy of
1507 their programs, and I don't think this program would be any
1508 different. The key is not to judge whether a state would
1509 implement the program exactly as EPA would, but whether the
1510 state has created an effective program for regulation that is
1511 consistent with the statute. A state must certify in detail
1512 to EPA that it has the equivalent statutory and regulatory
1513 authority to operate its CCR management and disposal program,
1514 including permitting, inspections, monitoring, review of site
1515 data, and enforcement. If the state falters, EPA can warn
1516 it. If the state fails, then EPA can take the program. This
1517 is the same authority that EPA has with all other delegated
1518 state programs.

1519 I will close with a quotation from the March CRS report
1520 that I think is accurate and appropriate here. ``That a coal

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1521 ash regulatory program would be created using a new approach
1522 does not mean that it cannot achieve its intended purpose.
1523 The bills would establish a framework that could be used to
1524 create programs to regulate CCR disposal, allow states
1525 flexibility to develop and implement the CCR management and
1526 disposal programs, and specify some level of EPA oversight
1527 after states are implementing the program.' ' We concur with
1528 that view, that this is a new approach, and that we think
1529 will work well to serve the public.

1530 Thank you.

1531 [The prepared statement of Mr. Martineau follows:]

1532 ***** INSERT 2 *****

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|
1533 Mr. {Shimkus.} Gentleman yields back his time. I want
1534 to thank you for your testimony.

1535 Now I would like to recognize Mr. Stephen A. Cobb,
1536 Professional Engineer, Chief, Governmental Hazardous Waste
1537 Branch Land Division of the Alabama Department of
1538 Environmental Management. Sir, welcome, and you have 5
1539 minutes.

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|

1540 ^STATEMENT OF STEPHEN A. COBB

1541 } Mr. {Cobb.} Thank you, Mr. Chairman. Chairman Shimkus,
1542 Ranking Member Tonko, honorable subcommittee members, my name
1543 is Stephen Cobb and I represent the Alabama Department of
1544 Environmental Management, or ADEM, which is the environmental
1545 regulatory agency in the State of Alabama. Thank you for the
1546 opportunity to address the subcommittee this morning. My
1547 remarks are based on ADEM's more than 30 years of
1548 implementing programs for the management of solid and
1549 hazardous waste in the state, including my personal
1550 experience in this area over the last 25 years. I have also
1551 submitted a more detailed statement for the committee's
1552 consideration.

1553 Alabama is home to one of the largest hazardous waste
1554 disposal facilities in the Nation, and we have extensive
1555 experience managing higher risk waste. We clearly understand
1556 that a massive influx of lower risk solid waste such as coal
1557 combustion residuals into the hazardous waste classification
1558 would pose a threat to the level of attention needed for the

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1559 safe management of all materials classified as hazardous
1560 waste, and also understand the challenges and resources
1561 required to permit and inspect such facilities. Alabama is
1562 also home to 29 medium to large municipal solid waste, or
1563 MSW, landfills, so we also have a very good understanding of
1564 the protections that are provided by the MSW landfills under
1565 40 C.F.R. part 258, to ensure safe waste management, to
1566 prevent future releases, and to require corrective action to
1567 address past releases where needed.

1568 As a result of having both types of facilities, we have
1569 a unique perspective on the issues which should be taken into
1570 account in considering how best to regulate materials such as
1571 CCRs. EPA has attempted to resolve the regulatory status of
1572 CCRs since the early '80s, but its difficulty in doing so may
1573 be attributed to two facts. First, CCRs generally do not
1574 meet the established criteria for classification of hazardous
1575 waste under Subtitle C, and second, there is no provision
1576 under Subtitle D for a national permitting program for these
1577 materials as nonhazardous solid wastes. The enactment of new
1578 Section 4011 as described in the discussion draft will solve
1579 this problem by requiring the CCR structures be designed and

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1580 permitted pursuant to national standards under Subtitle D,
1581 the same standards used for MSW facilities.

1582 We must be aware of the tiered method by which waste has
1583 been regulated and controlled for the last 5 decades, which
1584 imposes restrictions commensurate with the risk of permanent
1585 harm to human health and the environment posed by
1586 mismanagement. Looking at this system from the highest risk
1587 materials down, we see nuclear rated electrical waste at the
1588 top, followed by hazardous waste, municipal solid waste,
1589 industrial waste, construction demolition, and other wastes
1590 such as yard trimmings at the bottom. Of these categories,
1591 only municipal, hazardous, and nuclear radiological waste are
1592 currently subject to federally mandating permitting and
1593 management requirements, with the remainder addressed
1594 effectively through the jurisdiction and authority of the
1595 individual states.

1596 To include CCRs in the hazardous waste category would
1597 pose a risk of neglecting the wastes that are currently
1598 classified as hazardous, due to the massive expansion of
1599 waste quantities caused by including CCRs in the category.
1600 For example, about 120,000 tons of hazardous waste are land

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1601 disposed in Alabama each year, compared to approximately 4
1602 million tons of CCRs that are generated within our state
1603 annually.

1604 Congress can look to the fact that Alabama and other
1605 states have routinely adopted and implemented those programs
1606 that are required and authorized by federal law as clear
1607 evidence that we will appropriately implement the national
1608 CCR program. In fact, in anticipation of first national
1609 standards for these materials, our legislature in 2011
1610 authorized our agency to develop and adopt rules as necessary
1611 to implement a state regulatory program consistent with the
1612 federal requirements. As a safeguard, there is a role for
1613 EPA to evaluate our implementation of the permitting program,
1614 and to demand changes if the state program is not meeting the
1615 national requirements, as well as for EPA to take over
1616 implementation of the permitting program if the state does
1617 not do so.

1618 In conclusion, Mr. Chairman, ADEM stands ready to
1619 implement a comprehensive permitting program for CCRs in
1620 Alabama, based on national standards, so as to ensure that
1621 these materials are properly managed now and into the future,

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1622 but we must do so in a manner that provides the needed
1623 protections, can be implemented quickly and efficiently by
1624 the states, does not disrupt the established tiered system of
1625 waste management in this country, and does not result in
1626 needless duplication and proliferation of regulations and
1627 regulatory programs.

1628 Thank you again for the opportunity to address the
1629 committee this morning. I will be glad to answer any
1630 questions you might have.

1631 [The prepared statement of Mr. Cobb follows:]

1632 ***** INSERT 3 *****

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|
1633 Mr. {Shimkus.} Thank you, Mr. Cobb, and I would like to
1634 recognize Ms. Susan Parker Bodine, who is a partner with the
1635 law firm of Barnes & Thornburg. You are recognized for 5
1636 minutes. Your full statement is in the record.

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|
1637 ^STATEMENT OF SUSAN PARKER BODINE

1638 } Ms. {Bodine.} Thank you, Chairman Shimkus--

1639 Mr. {Shimkus.} I think there should be a button

1640 underneath--there you go.

1641 Ms. {Bodine.} I think I would remember that.

1642 Chairman Shimkus, Ranking Member Tonko, members of the
1643 subcommittee, thank you for inviting me here today to testify
1644 on the Coal Ash Recycling and Oversight Act of 2013. As the
1645 chairman said, I am a partner in the firm Barnes & Thornburg.
1646 I am here to testify based on my understanding of RCRA,
1647 Research Conservation Recovery Act, and its implementation,
1648 and that is from my past experience as being the Assistant
1649 Administrator for the Office of Solid Waste and Emergency
1650 Response from January, 2006 to January, 2009. So I can
1651 understand the situation that the agency is in, but I also
1652 understand the prerogatives of Congress and certainly the
1653 role of Congress in developing regulatory programs, because
1654 before I was at EPA, I was working in this building for 11
1655 years over on the Transportation and Infrastructure Committee

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1656 staff. So I can bring both perspectives to bear here.

1657 But first, I want to talk about EPA and development of
1658 regulations. As I think some have already noted, EPA has
1659 been looking at coal ash management issues, and any risks
1660 that might be associated with that for, you know, let's just
1661 say 30 years, a long time. And in that time period, EPA has
1662 not developed a record that supports federal regulation of
1663 coal ash. I will go into--that is not the agency's fault,
1664 but they simply have not developed a risk assessment and the
1665 record to support it. They have acknowledged that back in
1666 1998. This risk assessment was done before the report to
1667 Congress in 1999 and the 2000 regulatory determination. EPA
1668 said that--this is a quote--`EPA found that modeling
1669 uncertainty and error may have led to substantial
1670 overestimation of risks.' That was in the '98 risk
1671 assessment. Again, if they didn't stop work on this issue,
1672 and continued to work on the risk assessment, continued to
1673 make changes to it, sent it out for peer review in 2008.
1674 Again, didn't--the agency still did not fix the problems that
1675 had been identified, and the peer reviewers pointed out many
1676 of the same problems and EPA acknowledged those issues. And

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1677 there is a 2009 response to the peer review that is in the
1678 docket for the rulemaking that is pending, and that 2009
1679 response says--and this is a quote--'EPA acknowledges that
1680 the leaching profile described by Dr. Basta may be more
1681 realistic, however, the agency does not have the data to use
1682 time variant leaching concentrations.' And what that means
1683 is that EPA assumed that whatever--that there is no
1684 attenuation of any hazardous constituents if anything leaches
1685 out of a landfill. One hundred percent of the constituents
1686 they say would leak out at 100 percent level. Same issue,
1687 again, a quote from the peer review, 'EPA acknowledges there
1688 may be insoluble or otherwise unleachable contaminant mass
1689 that remains in a waste management unit, however, EPA has no
1690 data available, again, to support a different approach.'
1691 They are assuming 100 percent moves out of a landfill or a
1692 surface impoundment, because they have no data to assume
1693 otherwise.

1694 The agency is now--they are saying that they still want
1695 to fix the risk assessment. We do have a proposal out there,
1696 but the agency is saying they do still want to fix it. They
1697 are now pointing to data that was collected by the Office of

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1698 Water when they were looking at revising Clean Water Act
1699 regulations, and in filings before the District Court for the
1700 District of Columbia, the agency has said that this new data
1701 may change the assessment of risk by an order of magnitude.
1702 You heard Mr. Stanislaus say just a few minutes ago that they
1703 are not in a position to make a judgment on risk, and yes,
1704 that is right. The risk assessment hasn't changed and has
1705 the assumptions that are very conservative.

1706 The bill takes an approach that takes the EPA out of its
1707 box. They are in a box. They don't have a record to support
1708 regulation. By prescribing the standards in the legislation
1709 directly, they don't have to justify a rule, they don't have
1710 to justify standards based on risk. I heard Mr. Stanislaus
1711 say to you that they would like to provide technical
1712 assistance for criteria tailored to specific risks. Again,
1713 they don't have a risk assessment that can do that kind of
1714 tailoring, but the bill allows them to then go ahead and
1715 implement the program without creating those justifications.
1716 As I think you pointed out, Mr. Chairman, the provisions of
1717 the legislation are based on provisions that the agency has
1718 already said are protective. You were asking Mr. Stanislaus

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1719 to quote from his Federal Register preamble, and it does say
1720 that the part 258 criteria present a reasonable balance
1721 between ensuring protection of the human health and the
1722 environment, and the practical realities of facilities'
1723 ability to implement the criteria. So they have endorsed
1724 that and you have also picked up the structural integrity
1725 issues and the fugitive dust issues.

1726 So what my message to you is that--and actually, my
1727 message to the agency is they should embrace this because it
1728 gets them out of a regulatory box and allows you to move
1729 forward, which we have heard from other members saying let's
1730 move forward and address these issues, and let's do it.

1731 Thank you.

1732 [The prepared statement of Ms. Parker Bodine follows:]

1733 ***** INSERT 4 *****

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|

1734 Mr. {Shimkus.} Thank you very much. Time is expired.

1735 Now I would like to recognize Ms. Lisa Evans, Senior

1736 Administrative Counsel from EarthJustice. Thank you, and

1737 your full statement is in the record. You are recognized for

1738 5 minutes.

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|

1739 ^STATEMENT OF LISA EVANS

1740 } Ms. {Evans.} Thank you very much. Chairman Shimkus and
1741 members of the committee, I thank you for having me here to
1742 testify on this very important and very controversial draft
1743 discussion bill from Representative McKinley. I am Lisa
1744 Evans, Senior Administrative Counsel for EarthJustice, a
1745 national nonprofit public interest law firm dedicated to
1746 defending the right of all people to a healthy environment.

1747 On behalf of many public interest groups, thank you for
1748 holding the first legislative hearing on this complex bill.
1749 I am hopeful that his hearing will clarify the discussion
1750 draft's contents, including the very significant criticisms
1751 and questions by two recent CRS reports.

1752 I am also hopeful that we can find common ground on this
1753 critical public health issue, as well as common ground on the
1754 objectives of any coal ash legislation.

1755 Without a doubt, when mismanaged, coal ash harms
1756 Americans nationwide by poisoning water and air and by
1757 threatening the very existence of communities living near

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1758 high hazard dams. We must work together to establish
1759 regulations that, foremost, prevent injury to health, and
1760 ensure the safety of all communities, but which also allow
1761 for safer use of coal ash that improves our economy,
1762 environment, and again, our health.

1763 I trust that all in this room share this goal. In that
1764 spirit, I offer these comments.

1765 While the bill at issue raises many important questions,
1766 the following four are among the most critical to
1767 understanding the problems with the bill. First, does the
1768 bill establish a national protective standard and federal
1769 minimum requirements? In other words, will the bill require
1770 every state to implement coal ash programs that protect the
1771 health of all the residents? The CRS report twice says no.
1772 The bill cannot guarantee consistent national protection, and
1773 we agree. CRS points to the absence of a national protective
1774 standard, which is unique among federal environmental laws.
1775 This approach is not just new and unprecedented, it is
1776 inadequate. According to CRS, the failure of the bill to
1777 require the protection of human health and the environment,
1778 and to define key terms renders it impossible for the bill to

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1779 guarantee that all states will implement consistent and
1780 health protective programs.

1781 Why is this so important? Currently, our Nation is a
1782 patchwork of widely different state programs, as
1783 Representative McKinley has pointed out. Tennessee and
1784 Alabama, for example, lack many basic and needed safeguards
1785 for the management of coal ash dams. To ensure full
1786 protection for the citizens of those states where there is
1787 considerable disproportionate impact on communities of color
1788 and low income communities, the bill must contain a national
1789 protective standard and minimum federal requirements. We
1790 agree with CRS that this bill has neither.

1791 Secondly, does the bill provide EPA with backstop
1792 authority? In other words, does the bill provide EPA with
1793 clear and effective oversight to ensure that all state
1794 programs protect Americans from mismanaged coal ash? Again,
1795 the CRS reports twice say no, and we agree. According to
1796 CRS, the bill contains no backstop authority as that term is
1797 commonly understood. Pursuant to this bill, backstop
1798 authority can only be exercised when states fail to implement
1799 the co-called minimum requirements, but as CRS pointed out in

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1800 two reports, the bill's requirements are so vague that there
1801 are, in fact, no minimum federal standards. In other words,
1802 backstop authority is meaningless without a clear set of
1803 standards and deadlines that EPA can use to determine whether
1804 a state program is deficient. The CRS reports clearly say
1805 that the bill doesn't provide that criteria. Further, this
1806 bill deliberately and effectively removes most of EPA's
1807 authority over coal ash. EPA cannot take immediate
1808 enforcement action if a state fails to act. EPA cannot
1809 evaluate the adequacy of state programs before their
1810 implementation, and EPA cannot promulgate regulations where
1811 they are needed to protect health and the environment to
1812 reflect the increasing toxicity and changing nature of ash.

1813 Third, will the bill protect the Nation's drinking
1814 water? No, it will not. The bill's failure to phase out
1815 unlined ponds, its failure to set deadline for the permitting
1816 of dumps, its failure to require closure of polluting sites
1817 by a date certain, and its failure to ensure that all
1818 dangerous dumps are monitored will leave our water at risk of
1819 continued poisoning by arsenic, hexavalent chromium, lead,
1820 mercury, and more.

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1821 Fourth and finally, will the bill prevent another
1822 catastrophic disaster? No, and yet I think all would agree
1823 that any bill must ensure that the earth and dams holding
1824 back millions of tons of toxic waste be made safe for all the
1825 communities unfortunate enough to live beneath them.

1826 I speak for many in the public interest community when I
1827 say that we, too, want an immediate end to the delay of the
1828 EPA's rulemaking, but any rule or any bill foremost must
1829 protect public health and safety. Together, we can and must
1830 end the longstanding serious threat thousands of communities
1831 living near unsafe, unstable, and leaking coal ash dumps,
1832 because every person in this room, every family in your
1833 districts, every citizen in this country deserves water free
1834 from ash contamination, air free of dust, and a safe and
1835 secure community.

1836 I appreciate the opportunity to comment, and I look
1837 forward to questions. Thank you.

1838 [The prepared statement of Ms. Evans follows:]

1839 ***** INSERT 5 *****

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1840 |
 Mr. {Shimkus.} Thank you.

1841 The last testimony we will receive is from Mr. Spadaro,
1842 who is a mine safety and health environmental consultant.

1843 Mr. Spadaro, I understand you are going to show some slides
1844 in your testimony, is that correct?

1845 Mr. {Spadaro.} Yes, I am.

1846 Mr. {Shimkus.} We would just on the record, as we have
1847 submissions, you know, in a certain amount of time, when you
1848 have slides if we could see those in the same timely manner
1849 on the submission, that just makes it easier for us, too. So
1850 that is actually part of your testimony and we should have
1851 received that 48 hours in advance, too, but we are happy to,
1852 with asking for unanimous consent, to allow you to have the
1853 slides shown. So with that, I recognize you for 5 minutes.

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|

1854 ^STATEMENT OF JACK SPADARO

1855 } Mr. {Spadaro.} Thank you. I will try to show these as
1856 I go so we will save time.

1857 I just want to thank you for inviting me here today, and
1858 for allowing me to make these comments. I have been involved
1859 in the regulation of dams related to coal mine waste since
1860 1972, when I went down to southern West Virginia as a young
1861 engineer to investigate the Buffalo Creek dam failure, where
1862 125 people died and about 4,000 people ended up having their
1863 homes destroyed by the failure of a dam that had not been
1864 engineered properly. Then after that time, I have worked for
1865 really in the past 40 years in regulating both the
1866 environmental effects of mining, and the mine health and
1867 safety regulations at both the federal and state levels.

1868 The management and disposal of coal ash is an issue with
1869 serious health and safety implications that warrant federal
1870 action to protect the communities living with this waste,
1871 particularly to ensure the structural integrity of more than
1872 1,000 coal ash dams across the country.

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1873 In the draft discussion, there is just a mere mention,
1874 really, of the standards necessary to address these threats.
1875 The language is something vague, like good engineering
1876 practices. Well--and I am going to show here in a minute the
1877 after-effects of the dam failure at Buffalo Creek, and
1878 several others.

1879 So when I went to Buffalo Creek and spent almost a year
1880 there, I was there--I went in about a week after the dam
1881 failed and then I worked with a committee that was appointed
1882 by the governor of West Virginia and their very first
1883 conclusion read this way, ``The lack of definitive, clear-
1884 cut, and enforceable laws with regard to the safety of mine
1885 refuse banks and impounding structures, both at the federal
1886 and state levels, was a major shortcoming that contributed to
1887 the disaster.'' Now I want to show, if we can, the first
1888 photographs of the Buffalo Creek dam failure.

1889 [Slide]

1890 This is how destructive one dam failure can be. In this
1891 failure, the structure was about 60 feet high, contained 125
1892 million gallons of coal slurry, and it failed in a matter of
1893 15 minutes because there were no engineering standards in

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1894 place.

1895 So after that, I was honored to work with the--we can go
1896 on to the next slides.

1897 [Slide]

1898 I was honored to work both at the state and federal
1899 level in writing regulations that could govern these
1900 structures, and so we, over time, developed under the Code of
1901 Federal Regulations under the Surface Lining Act, under 30
1902 C.F.R. 816.49, 816.81, 816.83, and 816.84 standards that have
1903 been in place since 1977. That was for the Federal Office of
1904 Surface Mining, and states then implemented those
1905 regulations. We also have, since 1977, federal standards
1906 that are enforced by the Mine Safety and Health
1907 Administration, and that is under 30 C.F.R. 77.214 through
1908 77.216.

1909 Unlike the discussion draft, the OSM and MSHA
1910 regulations require specific recognized engineering standards
1911 to be applied to the planning, construction, and maintenance
1912 of coal refuse dams and do not merely leave the design and
1913 maintenance criteria to an independent contractor.

1914 [Slide]

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1915 The failure that you see now on the screen was the
1916 Martin County dam failure that occurred in October, 2000.
1917 That was a failure where a dam had been repeatedly certified
1918 by an engineer who was a contract engineer for the company
1919 who owned the dam, and then there is a similar failure that
1920 occurred as recently as past December, 2012. The engineer
1921 who had repeatedly certified that dam was safe was standing
1922 on top of the dam when it failed.

1923 So the EPA's studies have shown that there are--the
1924 structures study, there are at least 25 percent of them were
1925 in poor conditions. They did recommend urgent action to
1926 stabilize those dams. Fifty-four of the significant hazard
1927 dams were rated poor, and less than half of all the dams
1928 received a satisfactory rating.

1929 I want to say to you, I have seen, as you have seen
1930 here, the result of inadequate and irresponsible regulation
1931 of coal refuse dams, and these catastrophes that I hope never
1932 to see again, and I shall never forget the bodies of the
1933 people that I saw wrapped in the coal slurry in the weeks
1934 following the Buffalo Creek dam failure, and hearing the
1935 voices of the survivors who had lost their families forever.

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1936 Thank you.

1937 [The prepared statement of Mr. Spadaro follows:]

1938 ***** INSERT 6 *****

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1939 Mr. {Shimkus.} Thank you, sir, for your testimony.

1940 I am going to ask unanimous consent that Mr. Hall be
1941 recognized for the first 5 minutes.

1942 Mr. {Hall.} Thank you, Mr. Chairman.

1943 Mr. {Shimkus.} Without objection, the gentleman is
1944 recognized.

1945 Mr. {Hall.} Thank you very much, and it is very
1946 important to take--I thank you for it. It is--you make your
1947 usual request that we can submit letters in the future?

1948 Mr. {Shimkus.} I have not made that statement yet, but
1949 without--with unanimous consent, people are--we will keep the
1950 record open for 5 days to receive questions and responses as
1951 per--10 days? Ten days. Without objection, so ordered.

1952 Mr. {Hall.} Thank you. I yield back.

1953 Mr. {Shimkus.} Shoot, I could have done that, Ralph.

1954 Now I would like to recognize Mr. Tonko for 5 minutes.

1955 Mr. {Tonko.} Thank you, Mr. Chair, and let me thank the
1956 witnesses for their testimony.

1957 The proposal before us would establish an unprecedented
1958 regulatory structure wherein the specific technical

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1959 requirements for coal ash disposal would be set in statute.
1960 I have serious concerns about that approach, not the least of
1961 which is the burden it puts on this committee to determine
1962 the appropriate technical specs for safe disposal.

1963 In order to better inform the subcommittee, I would now
1964 like to ask some of the same questions of this panel. Mr.
1965 Spadaro, you are an engineer with very compelling evidence
1966 that you offered with the photos that you have displayed. In
1967 your experience in determining what criteria are necessary to
1968 assure the structural integrity of waste impoundments is
1969 telling, I am concerned that this proposal will not require
1970 impoundments to be designed for the full volume of liquid
1971 they will hold, and will not require the operating criteria
1972 currently applied to coal waste impoundments. So are those
1973 concerns justified?

1974 Mr. {Spadaro.} Yes, sir.

1975 Mr. {Tonko.} And do you agree that the proposal before
1976 us is deficient on structural integrity?

1977 Mr. {Spadaro.} Yes, it is remarkably deficient. I
1978 can't believe that 40 years after the Buffalo Creek dam I am
1979 reading legislation that basically foregoes standard

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1980 geotechnical practice that has been applied to dam
1981 construction for the past, really, 50 years. And so this
1982 bill is deficient in applying those standards.

1983 Mr. {Tonko.} Now you have shared some very telling
1984 photos, but can you give a few brief examples of those
1985 deficiencies?

1986 Mr. {Spadaro.} Yes. As I said, the rate--both the
1987 Surface Mining Control and Reclamation Act, and the Mine
1988 Safety and Health Act of 1977 were very specific in stating
1989 that standards should be established in the federal
1990 regulations through the regulation process, so I, as I said,
1991 I worked on the team of engineers and hydrologists who put
1992 together those regulations. We had input from the Corps of
1993 Engineers, the Soil Conservation Service, the engineers from
1994 within the specific agencies, and those people had the
1995 knowledge to determine what needed to be put into the
1996 regulations.

1997 One of the main things is the requirements for
1998 foundation investigation, engineering analysis of the
1999 foundationaries of dams, engineering analysis of the seepage
2000 patterns that the dams might create, and the geologic

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2001 conditions in the areas where the dams are being constructed.
2002 Also, standards for compaction of the material, and daily
2003 inspection standards under the MSHA standards, and quarterly
2004 inspections by federal inspectors, as well as the
2005 certification by the corporate engineer. So you have a
2006 checks and balance system where not just one person is saying
2007 the dam is safe. And that has worked by and large very
2008 successfully. There are 650 coal refuse dams in the United
2009 States. We know of several failures, but I can assure you,
2010 without these standards, there would have been many more.

2011 Mr. {Tonko.} Well, I think this is something that could
2012 be addressed by delegating rulemaking authority to the EPA to
2013 establish criteria that would meet a standard of protection,
2014 and rather than rescuing EPA as an agency, as has been
2015 suggested, it seems as though the concern should be with
2016 individuals, families, and communities that could be severely
2017 impacted.

2018 Mr. Spadaro, if we had to lay it out in statutory terms,
2019 what are the minimum requirements in your view that should be
2020 included here to prevent another spill like that which
2021 happened in Kingston?

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2022 Mr. {Spadaro.} Well, I do recommend that the
2023 regulations be developed by EPA, and not just EPA, but a team
2024 of agencies with the expertise, as well as with input from
2025 industry. So I think the minimum standard would be that the
2026 dams be built using initially, and requiring initially, an
2027 evaluation of the stability of the foundation, the stability
2028 of the dam as it is being constructed, instrumentation of the
2029 dam with piezometers and slope inclinometers that can detect
2030 movement, minimum standards for compaction material, and
2031 minimum hydrologic standards, for instance, establishing
2032 design storms. We found in West Virginia we had to design
2033 many of the dams for the probable hydrologic consequences,
2034 the probable maximum storm, because there were large
2035 populated areas downstream. So you have to account for very
2036 large storms, as well as the structural integrity of the
2037 dams. Those things, at a minimum, should be included in any
2038 proposed regulations or legislation.

2039 Mr. {Tonko.} Thank you, Mr. Spadaro. Thank you, Mr.
2040 Chair. I yield back.

2041 Mr. {Shimkus.} Gentleman yields back his time.

2042 Mr. Spadaro, not a question, but a comment. I was 12 in

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2043 1972, and I would hope engineering qualifications and
2044 standards have improved so much in the multiple decades, and
2045 that is why we trust the states to be able to figure that
2046 out. The other issue was, you are talking about a coal waste
2047 dam. We are talking about coal ash impoundments. They are
2048 two different issues, and I just want to put that on the
2049 record.

2050 I want to start with Mr. Martineau. ECOS is who?

2051 Mr. {Martineau.} ECOS is the Environmental Council of
2052 State. We are essentially an organization of all my
2053 counterpart agencies. I am the commissioner of the
2054 Department of Environment and Conservation for Tennessee.
2055 The titles vary slightly, but we have 48 of the 50 States are
2056 members--

2057 Mr. {Shimkus.} And the two who aren't, was I correct,
2058 Florida and South Dakota?

2059 Mr. {Martineau.} Florida and South Dakota.

2060 Mr. {Shimkus.} So New York and Massachusetts--

2061 Mr. {Martineau.} Are all members.

2062 Mr. {Shimkus.} --California, and they all went on
2063 record with this resolution twice, is that correct?

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2064 Mr. {Martineau.} Yes.

2065 Mr. {Shimkus.} Without objection?

2066 Mr. {Martineau.} I believe it was unanimous. Yes, it
2067 was unanimous.

2068 Mr. {Shimkus.} Unanimous? California, Massachusetts,
2069 which I think is telling, and I think that is the importance
2070 of your organization, and I just wanted to make sure we have
2071 that on record.

2072 The other thing--and I am--what is important, part of
2073 this whole debate came about because of this, beneficial
2074 reuse. And in the state of California, there were adds about
2075 concrete use that had fly ash, and they were targeting that
2076 reuse, and the whole reclassification. And for my
2077 colleagues, some of whom are new on this subcommittee, the
2078 importance is if we then turn this all into a toxic waste
2079 dump, you have got--and Mr. Cobb, I think your testimony
2080 talks about where do we put it and how do you manage it? So
2081 I just want to tie that into this debate, because we are now
2082 getting into the nitty gritty, but there are some macro parts
2083 of this debate, and that is why many of us think this is a
2084 great, actually, environmental response to get beneficial

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2085 reuse and ensure that that occurs, which keeps our ability to
2086 place things in landfills in a limited amount.

2087 Mr. Martineau, as an experience state regulator, do you
2088 think states are able to interpret the minimum program
2089 requirements in the bill to provide a permit program that is
2090 protective of human health and the environment?

2091 Mr. {Martineau.} Yes, I do.

2092 Mr. {Shimkus.} What about this dam debate that we just
2093 had?

2094 Mr. {Martineau.} I think dams are obviously in context
2095 well beyond coal ash disposal sites, but the structural
2096 integrity of dams, I am not a dam expert--d-a-m--but those
2097 things are evaluated by states. I mean, EPA you heard
2098 earlier, they themselves went and looked at the 300 coal ash
2099 disposal sites and saw no immediate hazard, so I think--

2100 Mr. {Shimkus.} No immediate hazard, and the EPA went on
2101 record as saying that?

2102 Mr. {Martineau.} Yeah, I believe that was--

2103 Mr. {Shimkus.} That was the testimony, yes, sir.

2104 Mr. Cobb, as an experienced--I mean, back to you, Mr.
2105 Martineau. The draft legislation sets forth detailed federal

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2106 requirements that would establish a baseline for coal ash
2107 management across the country. Do you believe the
2108 requirements set forth in the legislation will ensure that
2109 states develop effective environmental protective permit
2110 programs for coal ash management?

2111 Mr. {Martineau.} Yes, I believe they do. I think the
2112 discussion draft, the Senate version from last year covers
2113 the key elements of program for groundwater protection, for
2114 closure requirements, for structural integrity, and other
2115 requirements. And the thing it adds, which the Subtitle D
2116 program does not have, is that permitting program, and then
2117 it provides that states have to certify the completion of
2118 those requirements to EPA, and they can evaluate those.

2119 Mr. {Shimkus.} Thank you, and Mr. Cobb, I wanted to
2120 ask, as another experienced state regulator, do you think
2121 states are able to interpret the minimum program requirements
2122 in the bill to develop a permit program that is protective of
2123 human health and the environment?

2124 Mr. {Cobb.} Absolutely, Mr. Chairman. Quite frankly,
2125 that is what we do. We implement regulatory programs. We
2126 interpret--

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2127 Mr. {Shimkus.} You mean, you can do it without the EPA
2128 coming in?

2129 Mr. {Cobb.} I have confidence that we can, yes.

2130 Mr. {Shimkus.} You are not so diligent--I mean, you are
2131 concerned about your state's citizens, and that is the job
2132 that you have, is that correct?

2133 Mr. {Cobb.} That is correct, because in addition to
2134 having the job of protecting human health and the
2135 environment, we also have the added incentive that we and our
2136 families and our friends live in these communities, so we
2137 have a vested interest.

2138 Mr. {Shimkus.} And if there is, obviously, abuse, which
2139 I think some people fear, don't you think that the public
2140 would be aghast and may want to take retribution on
2141 politicians and those who have been appointed as
2142 commissioners of the environmental activities and throw them
2143 out of office? That is a political question. The answer is
2144 I would hope that response would be much better and the
2145 public would be outraged.

2146 Ms. Bodine, when you were at the EPA, what was the
2147 prevailing view about coal ash regulation?

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2148 Ms. {Bodine.} As I talked about in my testimony, EPA
2149 didn't stop looking at coal ash with the 2000 regulatory
2150 determination, because, in fact, the determination said that
2151 Subtitle D regulations were warranted. But as I pointed out
2152 in my written and in my oral statement, the agency didn't
2153 have a risk assessment to support regulation. So the agency-
2154 -we continued to work on the risk assessment and we continue
2155 to gather information, and did a report, an updated report on
2156 practices in the industry with Department of Energy, and also
2157 received a petition from environmental groups, received a
2158 voluntary plan from the industry. And we had a lot of
2159 information and so we put out a notice of date availability
2160 in 2007 to make sure that the public and everyone knew what
2161 information the agency had.

2162 In preparing to release that, the staff briefed me on
2163 all the information that we had and that the agency had, and
2164 recommending that it all be put into the public record, which
2165 is what we did. But in that briefing, the consensus of the
2166 staff was that certainly not Subtitle C regulation was
2167 warranted, and the question being raised was given, you know,
2168 the information that was being developed, whether even

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2169 Subtitle D regulation was warranted.

2170 Mr. {Shimkus.} Great, thank you.

2171 Now I am going to get this correct. I would like to
2172 recognize the new vice chairman sitting in, Mr. Green, for 5
2173 minutes.

2174 Mr. {Green.} Thank you, Mr. Chairman. I am not vice
2175 chairman, in fact, this year--well, I am now because for the
2176 first time I can run the Democratic side. But last year I
2177 was ranking member on the subcommittee and learned much more
2178 about coal ash than I ever thought I would ever know. One of
2179 the--we drafted a similar bill that--and we got bipartisan
2180 support out of the House for--that said something similar to
2181 what this bill does, and I am hoping to be able to support it
2182 again, but I have some questions of each of you.

2183 For our state regulators, Mr. Cobb and Mr. Martineau,
2184 given your position, what do you think would be the
2185 consequences of having CCR program run through the EPA
2186 instead of the state-led program designed in the Majority
2187 discussion draft?

2188 Mr. {Martineau.} Well one, I think as Ms. Bodine has
2189 said, EPA has grappled with this for 30 years and not come up

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2190 with any solution, and they are still grappling with it.
2191 They don't know if it belongs in Subtitle D. If it is a
2192 Subtitle C regulation, that would be a disaster. We will
2193 have chaos. We think the appropriate mechanism is, as the
2194 statute sets up for, that the states control, much like they
2195 do regulating landfills under Subtitle D. And the thing
2196 about the legislation is, we can move forward once it is
2197 passed, just begin that implementation at the state level.

2198 Mr. {Green.} Mr. Cobb?

2199 Mr. {Cobb.} Yes, and I would agree with Mr. Martineau's
2200 assessment there that one of the key differences is with the
2201 legislation, it addresses the policy issues, the other issues
2202 that have balled this whole issue up for 30 years. It
2203 charges the states with going forward with implementing a
2204 program, based on experience programs, so we get it
2205 implemented faster, we get the protections in place faster.
2206 It was mentioned earlier that it has been almost 5 years
2207 since Kingston. We still don't have a program in place.

2208 Mr. {Green.} Yes. I think, you know, one of my
2209 concerns is that--and again, I realize we had testimony last
2210 Congress that, for example, Wisconsin recycles 97 percent of

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2211 their coal ash, and now-Senator Tammy Baldwin actually
2212 supported the bill in the subcommittee and the full committee
2213 and on the Floor because of that, but we know we have some
2214 problems with coal ash. The issue of an old permit disposal
2215 in the Great Lakes I think needs to be dealt with, and the--
2216 but Mr. Martineau, one of the issues that brought coal ash up
2217 originally was the issue of the wet storage, and Tennessee
2218 had that disaster. Has there been anything Tennessee has
2219 done under current Tennessee law that would deal with the
2220 problems of the weak dams and so we wouldn't see that? Now
2221 we don't have that in Texas, but I know a lot of states still
2222 do have wet storage.

2223 Mr. {Martineau.} Well yes, and I think first to put it
2224 in context, that surface impoundment that was the main part
2225 of the issue at Kingston, you know, had been storing coal ash
2226 since the 1950s, so you know, there were no regulations,
2227 federal, state, local, any of those environmental statutes
2228 across the board, so there was a landfill. And we have gone
2229 back, obviously, after Kingston, and that was before my term
2230 as commissioner, but the regulations were upgraded after that
2231 to basically design would require new landfills to meet

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2232 basically the Class II industrial landfill sites, which
2233 require--collection, closure--cap closure like a traditional
2234 landfill. So yes, we definitely have upgraded the
2235 requirements--

2236 Mr. {Green.} So Tennessee has done that since that
2237 disaster?

2238 Mr. {Martineau.} Yes.

2239 Mr. {Green.} Were you able to deal with any of the
2240 previously impoundments? Do you have any authority to deal
2241 with, you know, a dam that may end up being weak and you get
2242 folks downstream to be concerned about it? Do you have the
2243 authority to be able to deal with that?

2244 Mr. {Martineau.} Yes, we did, and we ordered TVA to do
2245 assessments of all the other coal ash disposal sites at their
2246 various power plants, and with EPA we looked at those and
2247 certainly would have the authority to upgrade those. And as
2248 you said, now going forward, for the landfill they basically
2249 have to meet the Class II industrial landfill closure
2250 standards.

2251 Mr. {Green.} Ms. Evans, I know you may have an opinion
2252 on that. You know, I would like to see--you know, coming

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2253 from Texas it seems like it is in our blood that the states
2254 ought to deal with it, but if we are not dealing with it,
2255 then you know, it becomes a national issue and in this case,
2256 EPA I think has the authority, unless we set up a different
2257 structure, and that is what this legislation is about. What
2258 is your opinion?

2259 Ms. {Evans.} Well, I think the states have the ability
2260 to deal with this, but they don't always have the will. I
2261 think Tennessee and Alabama are lessons to us. Of course, we
2262 had the disaster in Tennessee in 2008, but following that,
2263 the Tennessee legislature did not change their statutes to
2264 address the structural stability of dams, and so it remains
2265 that structural stability requirements are not specifically
2266 applied to coal ash dams. And this is after the biggest
2267 toxic waste spill in the Nation.

2268 Also, I would like to correct the record regarding the
2269 inspection of dams, specifically in Tennessee with TVA. When
2270 TVA inspected its dams, it found that half of them required
2271 repairs to ensure structural stability, and those repairs are
2272 underway or completed now. As far as the EPA inspections,
2273 there were urgent repairs that were noted in the inspection

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2274 records. And in West Virginia, the West Virginia DEP
2275 inspected one dam where it was deemed unsatisfactory and
2276 needed urgent repair.

2277 So the longer I sit next to Mr. Spadaro and hear him
2278 talk about his experience and what is needed, and knowing
2279 what is not out there regarding coal ash dams, it certainly
2280 scares me about what the states have not done.

2281 Lastly, in the case of Alabama, Alabama did--the
2282 legislature did address coal ash in 2011; however, they did
2283 not institute any regulations for coal ash ponds. Most of
2284 the waste in Alabama, I believe, is disposed in coal ash
2285 ponds, not landfills. Alabama legislature made their
2286 landfill regulations stronger. They did not change
2287 regulations applicable to dams. So what we have got here are
2288 states that are not ready to jump on this problem, solve the
2289 issue of disposal, and we may have a delay at EPA, but I am
2290 convinced that we are going to have a delay in state
2291 legislatures. And being from the very liberal State of
2292 Massachusetts, we can't even get our gaps closed in the State
2293 of Massachusetts, which we have been trying literally for 10
2294 years with the bill and the legislature.

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2295 Mr. {Green.} I have to talk to our colleague, Mr.
2296 Markey, about that.

2297 Mr. {Shimkus.} That is right.

2298 Mr. {Green.} Thank you.

2299 Mr. {Shimkus.} And I would just note, Massachusetts is
2300 a member of ECOS. I would like to recognize Mr. Latta for 5
2301 minutes.

2302 Mr. {Latta.} Thank you very much, Mr. Chairman, and
2303 again, thanks to our panel for coming in today. We
2304 appreciate your testimony.

2305 If I could start with Ms. Bodine. Could I ask this
2306 question first? In your experience, what constitutes a
2307 standard of protection?

2308 Ms. {Bodine.} Thank you. This is a question that has
2309 been raised by CRS in the evaluation of legislation, and the
2310 CRS analyst appears to be saying that the only standard of
2311 protection that Congress can put forth is something like
2312 protection of human health and the environment. And that is
2313 simply not accurate. Congress can establish performance
2314 standards that are, in fact, standards of protection. And I
2315 also have to note that while many of the earliest

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2316 environmental statutes did say to EPA go and protect human
2317 health and the environment, Congress hasn't passed
2318 legislation that is that open-ended in a very long time. And
2319 that spurs concerns on both sides of the issue. You have had
2320 people worried that the agency would go too far in that, and
2321 then people worry that the agency--giving the agency
2322 discretion to decide what is protecting human health and the
2323 environment, that they wouldn't go far enough. And so you
2324 have seen statutes that have prescriptive language,
2325 prescriptive standards. I would just point out the hazardous
2326 and solid waste amendments of 1984, Congress, at that time,
2327 decided they didn't like what the agency was doing to protect
2328 human health and the environment from hazardous wastes, and
2329 put in, you know, very prescriptive technical requirements
2330 into the statute.

2331 So yes, you can have technical criteria that are
2332 performance criteria, and that is a standard of protection.
2333 And that is in the draft legislation.

2334 Mr. {Latta.} Let me follow up with that. Do states
2335 also establish standard of protections for statutes,
2336 regulations, and programs that they implement?

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2337 Ms. {Bodine.} So the answer to that is, of course, yes.
2338 I could defer to my state colleagues here, but I would just
2339 point out that they have been doing this for years. The
2340 states regulate far more than the Federal Government
2341 regulates. They have state solid waste management programs,
2342 beneficial use programs. They regulate more waste as
2343 hazardous than the Federal Government has, and of course,
2344 there is also regulation of coal ash. So in many areas, in
2345 many programs, states are establishing and implementing their
2346 own protective standards.

2347 Mr. {Latta.} Thank you.

2348 Mr. Martineau, let me ask this question. Mr. Stanislaus
2349 stated in his written testimony the timelines for development
2350 and implementation of state programs are necessary. Would
2351 the states be open to a reasonable implementation schedule?

2352 Mr. {Martineau.} Yes, I think that certainly makes
2353 sense to provide time for the states to pass legislation,
2354 adopt rules, whatever they need at the state level to get
2355 that permit program up and running or anything like that
2356 would make sense, and then the statute already had certain
2357 timelines in there for when you do the groundwater monitoring

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2358 requirements or when the thing has to be upgraded by a
2359 certain date or closed by a certain date. So those kinds of
2360 schedules all make sense.

2361 Mr. {Latta.} Thank you.

2362 Mr. Cobb, same question.

2363 Mr. {Cobb.} Yes, I believe that we would be very
2364 amenable to that kind of thing, particularly for the
2365 operational requirements which can be implemented almost
2366 immediately or on an accelerated schedule and get the
2367 protections in place earlier. The more design-related
2368 considerations, in my opinion, would need to wait on the
2369 permits because that is changing the very fabric of how the
2370 units are built, and we need to make sure those standards are
2371 right before a facility begins constructing, so that they
2372 construct it properly.

2373 Mr. {Latta.} Let me ask a follow-up on that then. What
2374 would, you know, a timeframe could the states live with if
2375 there were a deadline for issuance of permits? Mr. Cobb?

2376 Mr. {Cobb.} Based on our evaluation of the universe
2377 that we have in Alabama where we know we have at least nine
2378 large facilities that will require permitting, looking at our

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2379 current workloads and everything, we believe that 3 to 4
2380 years after applications are submitted we will be able to
2381 have all of our permits in place.

2382 Mr. {Latta.} And Mr. Martineau, can I ask you the same
2383 question?

2384 Mr. {Martineau.} Yes, and I certainly can't speak for
2385 all the states on that, but I would think 2 years to set up
2386 the permit program, adopt any state rules that are needed
2387 through the state rulemaking process or legislative
2388 approvals, and then some period of time, 2 to 4 years, to get
2389 the permits in place probably makes sense, would be about
2390 right.

2391 Mr. {Latta.} Thank you.

2392 Mr. Chairman, I yield back the balance of my time.

2393 Mr. {Shimkus.} Gentleman yields back his time.

2394 Chair now recognizes the gentleman from West Virginia,
2395 Mr. McKinley, for 5 minutes.

2396 Mr. {McKinley.} Thank you, Mr. Chairman. I have a
2397 whole host of questions here, but I think if we can focus in
2398 on Mr. Spadaro, please, if we could. I wonder if I didn't--
2399 maybe because of my hearing problem, maybe you misspoke or I

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2400 misheard, because in your opening statement you made
2401 something about challenging the structural integrity, you
2402 thought that it was only to meet good community standards.
2403 Do you remember saying that?

2404 Mr. {Spadaro.} I think--can you hear me now?

2405 Mr. {McKinley.} Yes.

2406 Mr. {Spadaro.} In the--

2407 Mr. {McKinley.} Is that a yes or a no? Did you say--I
2408 think you said good community standards.

2409 Mr. {Spadaro.} I said good engineering standards.

2410 Mr. {McKinley.} Yes, good engineering standards, and
2411 that is fairly typical with the industry. If you are--you
2412 understand that, I mean, that people use good engineering
2413 practices because it falls under--but let me go back to more--
2414 -you are a licensed engineer?

2415 Mr. {Spadaro.} No, I worked at the Federal Government
2416 for 30 years, but I ran the Dam Control Division--

2417 Mr. {McKinley.} That is okay, so you are not a licensed
2418 engineer. A couple things in your testimony that--in your
2419 written testimony I found curious. You made a couple
2420 statements, and just for the record, I would like to make

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2421 sure that they are correct, because you are testifying before
2422 Congress. You said that the Robinson Run mine was utilized
2423 as a disposal for coal ash. You know that is false?

2424 Mr. {Spadaro.} No, that is not false. There are--I am
2425 sorry, sir. It was used for disposal from both the power
2426 plant and the coal preparation--

2427 Mr. {McKinley.} For slurry. Not coal ash, slurry.

2428 Mr. {Spadaro.} For slurry, and that is coal ash that is
2429 delivered to the reservoir on the form of slurry, sir.

2430 Mr. {McKinley.} I hope that you will be--apparently you
2431 will be under oath when--

2432 Mr. {Spadaro.} Yes, I am under oath, and I understand
2433 that it was delivered in the form of slur.

2434 Mr. {McKinley.} They are not--it was not used for coal
2435 ash.

2436 Secondly--

2437 Mr. {Spadaro.} I am sorry, but it was a coal ash--

2438 Mr. {Shimkus.} Would the gentleman suspend? The time
2439 is the gentleman from West Virginia.

2440 Mr. {McKinley.} You also said that--by implying, you
2441 said that 25 percent of the dams were in poor condition, but

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2442 the reality in conversation with EPA that the EPA said that
2443 just because they are classified as poor does not mean that
2444 they are unsafe. It just means that they are not meeting
2445 certain guidelines in terms of studies of paper evaluation.
2446 So let's just make sure we understand, the 25 percent that
2447 are labeled as poor are not unsafe, they just have not met
2448 all the criteria.

2449 Mr. {Spadaro.} I disagree with that statement.

2450 Mr. {McKinley.} Well, you can, and you are disagreeing
2451 with the EPA then.

2452 Mr. {Spadaro.} Yes.

2453 Mr. {McKinley.} So also in regards to--you are aware
2454 that the Federal Government inspects dams. If they have any
2455 concern, they inspect them every 7 days, according to the
2456 federal regulations. Are you aware of that?

2457 Mr. {Spadaro.} They are required--the dams are required
2458 to be inspected by the mine operator every 7 days.

2459 Mr. {McKinley.} And the--in West Virginia, you have all
2460 our coal impoundments, they fall under the Office of Surface
2461 Mining, MSHA, that you were involved with, and also the state
2462 DEP have inspections. It is done monthly, those inspections,

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2463 so I do appreciate the fact that you were involved once as an
2464 engineer. I think you are out of touch--

2465 Mr. {Spadaro.} No, sir, I have been regulating dams my
2466 whole career, and when I worked with the Office of Surface
2467 Mining, I wrote the federal regulations that are in this
2468 book. I wrote them in 1978. They are still in effect, and I
2469 have been enforcing those regulations--

2470 Mr. {McKinley.} You list yourself, sir, as--on your
2471 résumé as the Engineer of the Year in 1993.

2472 Mr. {Spadaro.} I was by the National Society of
2473 Professional Engineers.

2474 Mr. {McKinley.} We talked to them today and they said
2475 they have no record of that.

2476 Mr. {Spadaro.} Well I am sorry, but I did receive it
2477 and I have the certificate to prove it.

2478 Mr. {McKinley.} If you could, I would like to see that
2479 if you could submit that for the record, because in 1993,
2480 there is no such thing, first, as the Engineer of the Year.

2481 Mr. {Spadaro.} I was with the Federal Government--

2482 Mr. {McKinley.} Federal engineer, but that wasn't
2483 awarded to you unless you were the engineer--were you in the

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2484 Air Force at the time?

2485 Mr. {Spadaro.} No, I was working--

2486 Mr. {McKinley.} Because that is where it went in 1993.

2487 The Federal Engineer of the Year was an engineer in the Air

2488 Force, so--

2489 Mr. {Spadaro.} Listen. I was awarded that award as an
2490 employee of the Federal Department of the Interior in 1993 by
2491 the National Society of Professional Engineers, and there was
2492 an award ceremony, sir.

2493 Mr. {McKinley.} If you would send that certificate in,
2494 I would like to see that and share it with the NSPE, because
2495 they have no record of you. You are not licensed in West
2496 Virginia, you are not licensed in Kentucky, but you are
2497 acting as though you are an engineer.

2498 Mr. {Spadaro.} I have been qualified as an expert on
2499 dam safety in six federal courts in the past 30 years, and I
2500 am qualified every day in federal and state courts as an
2501 expert in dam--

2502 Mr. {McKinley.} I think the record shows that you are
2503 not a licensed engineer, and secondly, I agree with
2504 everything that has been said about the concern about the dam

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2505 safety, and I think people have moved--what you discovered in
2506 '72 or '75, that is yesterday.

2507 Mr. {Spadaro.} I investigated--

2508 Mr. {McKinley.} Actually moving in a way that we go
2509 ahead, and I am really glad to hear that there are other
2510 people--that we are moving on it, that there have been
2511 improvements with those standards and we can continue to do
2512 that. But some of the record that you are testifying to,
2513 that you are representing, is just factually incorrect.

2514 Mr. {Spadaro.} That is not true. Everything I have
2515 said in my testimony is factually correct, and I have done
2516 dam safety investigations as recently as last year.

2517 Mr. {McKinley.} I look forward to your testimony on the
2518 Robinson Run when they determine that it did not include fly
2519 ash.

2520 Apparently my time has run out, so I have to end at
2521 that. I yield back my time.

2522 Mr. {Shimkus.} Gentleman's time is expired.

2523 Chair now recognizes the gentleman from Mississippi, Mr.
2524 Harper, for 5 minutes.

2525 Mr. {Harper.} Thank you, Mr. Chairman, and thank each

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2526 of you for being here and sharing your views on this very
2527 important issue to us, and if I may, is it Ms. Bodine or
2528 Bodine?

2529 Ms. {Bodine.} Bodine, thank you.

2530 Mr. {Harper.} Bodine, thank you very much. Ms. Bodine,
2531 would you consider authority in the legislation for EPA to
2532 analyze at any time state permit programs and find programs
2533 deficient if they do not meet the minimum requirements of the
2534 federal backstop?

2535 Ms. {Bodine.} Yes, I would consider that to be backstop
2536 authority. The way the proposed legislation, the draft
2537 legislation works is that EPA has the authority to evaluate
2538 the state programs and then if they are deficient, has the
2539 authority to then implement a federal permitting program in
2540 lieu of the state program, and that is a backstop.

2541 Mr. {Harper.} Okay. The legislation sets out a
2542 detailed list of criteria that states must include in their
2543 permit programs. Is this approach completely unprecedented,
2544 or when has it been done before?

2545 Ms. {Bodine.} So--and I talked a little about this
2546 earlier. The fact that Congress can set up in federal law

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2547 specific criteria is not unprecedented, and again, has been
2548 done with very detailed statutory language in the hazardous
2549 waste context where Congress was setting out minimum
2550 technology requirements, indeed specifying the number of
2551 liners, for example, that would be--and that is all in
2552 federal statute, so the fact that you would have federal
2553 criteria established in federal law is not unprecedented.

2554 Mr. {Harper.} Okay, thank you.

2555 Mr. Cobb, how long have you been regulating solid and
2556 hazardous waste?

2557 Mr. {Cobb.} For 25 years.

2558 Mr. {Harper.} Based on that experience, those 25 years,
2559 does the legislation contain all of the necessary technical
2560 elements needed to establish a protective permit program?

2561 Mr. {Cobb.} Yes, sir, I believe it does because based
2562 on my experience both in hazardous waste and in solid waste,
2563 primarily in hazardous waste, going through the legislation,
2564 it appears to contain the things that we would need to be
2565 able to have a protective regulatory program.

2566 Mr. {Harper.} Okay. Do you believe that the
2567 legislation allows states the latitude to go beyond the

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2568 federal standards?

2569 Mr. {Cobb.} Absolutely. As I read the legislation,
2570 there is clearly the provision that allows states to go
2571 beyond the minimum national requirements.

2572 Mr. {Harper.} Now, would the legislation result in
2573 states developing or revising requirements for CCR management
2574 that would go beyond current waste management requirements?

2575 Mr. {Cobb.} Well, I can only speak for Alabama, but
2576 certainly, because as has been pointed out, we have only
2577 recently been able to regulate CCRs, so what we will be
2578 putting in place as a result of this legislation or EPA rules
2579 or whatever comes out, will certainly go far beyond what we
2580 have done in the past, and I would be very surprised, based
2581 on my experience in discussions with other states, if there
2582 would be any state that would not have to do some expansion
2583 of their programs beyond the current status.

2584 Mr. {Harper.} And I think you have answered it, but
2585 just so that I am sure, so would Alabama have to develop new
2586 requirements or make changes to existing requirements that
2587 may apply to coal ash?

2588 Mr. {Cobb.} Yes, sir. We have already incorporated

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2589 coal ash into our landfill program, but we will have to add
2590 requirements, particularly for surface impoundments, for
2591 structural integrity, for any other units, and that is what
2592 we are ready to do. We are waiting on to see what the
2593 national requirement is to know how to put those in place so
2594 that we can do it, and we are ready to do it now.

2595 Mr. {Harper.} I yield back.

2596 Mr. {Shimkus.} Gentleman yields back his time. Chair
2597 now recognizes the gentleman from Florida, Mr. Bilirakis, for
2598 5 minutes.

2599 Mr. {Bilirakis.} Thank you, Mr. Chairman. I appreciate
2600 it.

2601 Mr. Cobb, a criticism of the legislation is that the
2602 flexibility in the bill would allow states to define what
2603 constitutes CCR landfill, surface impoundment, or other land-
2604 based unit to define what specific CCR structures state
2605 program conditions would be applied to. Why is it a good
2606 approach?

2607 Mr. {Cobb.} Sir, I believe that this is a good approach
2608 because it allows states the flexibility to tailor the
2609 regulations to what exists in their state. It allows us to

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2610 make sure that the regulations are better responsive to
2611 individual state conditions, to state geology, to state
2612 climate in a way that often cannot be done with strictly
2613 rigid, uniform national requirements. It goes to the part of
2614 states being more stringent, of states having additional
2615 requirements. We need that ability to tailor the regs to
2616 make sure we can address what is in our state.

2617 Mr. {Bilirakis.} Thank you.

2618 Ms. Bodine suggests that these terms are well understood
2619 as the RCRA regulation content. Do you agree?

2620 Mr. {Cobb.} Yes, I would definitely agree with that.
2621 The terms such as landfill surface impoundment, land disposal
2622 unit, are used in all of the waste programs and regulations,
2623 and one of the things that you can take comfort in is we are
2624 regulators. As regulators, we like to have consistent
2625 definitions. We like to have consistency, because it enables
2626 us to regulate better and more consistently across programs.
2627 So yes, I believe that these terms are well understood and
2628 will be well represented.

2629 Mr. {Bilirakis.} Thank you very much.

2630 Ms. Bodine, based on your experience, would the approach

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2631 set out in the discussion be successful at creating state
2632 permit programs that protect human health and the
2633 environment?

2634 Ms. {Bodine.} I believe so, yes.

2635 Mr. {Bilirakis.} Do you want to elaborate a little bit
2636 on it?

2637 Ms. {Bodine.} I think that this may be the only way
2638 that we are going to get, you know, standards for coal ash
2639 across the country is through legislation, and that this is
2640 the--not only will it be successful, it may be the only
2641 avenue for success, and that goes back to my earlier
2642 discussion about the fact that EPA has not been able to
2643 create the record and have a risk assessment that justifies
2644 regulation, and so Congress can step in and say as a matter
2645 of policy and as a matter of congressional prerogatives, that
2646 they are going to set up a federal program. The legislation
2647 does that. We have heard from the state regulators saying
2648 yes, it has all the elements. Yes, we can implement it. And
2649 so now it is just a matter of getting it done, of having
2650 Congress act.

2651 Mr. {Bilirakis.} Very good. Thank you very much.

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2652 I yield back, Mr. Chairman.

2653 Mr. {Shimkus.} Gentleman yields back his time.

2654 We want to thank this panel for coming and giving their
2655 testimony. I would like unanimous consent to submit three
2656 letters into the record--actually, four statements. Two
2657 letters from professional engineering firms regarding the
2658 appropriate dam safety standards for coal ash impoundments,
2659 one letter from a beneficial user, the Portland Cement
2660 Association, and a submission for testimony from the
2661 representative from North Dakota, Congressman Cramer.

2662 [The information follows:]

2663 ***** COMMITTEE INSERT *****

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|
2664 Mr. {Shimkus.} Without objection, so ordered, and the
2665 hearing is now adjourned.

2666 [Whereupon, at 12:58 p.m., the subcommittee was
2667 adjourned.]