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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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April 29, 2013

Ms. Lisa Evans
Senior Administrative Counsel
EarthJustice
21 Ocean Avenue
Marblehead, MA 01945

Dear Ms. Evans:

Thank you for appearing before the Subcommittee on Environment and the Economy on Thursday, April 11, 2013, to testify at the hearing on a discussion draft entitled "The Coal Ash Recycling and Oversight Act of 2013."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions and requests by the close of business on Monday, May 13, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,
Subcommittee on Environment and the Economy

Attachment

The Honorable Henry A. Waxman

Recent reports by the Congressional Research Service (CRS) analyzing legislative proposals to address coal ash disposal have raised serious concerns about the efficacy of recent bills.

1. Do you concur with conclusions reached in the CRS reports about weaknesses in H.R. 2273 and S. 3512?
2. Please describe what the most significant weaknesses with those bills are, in your view.
3. Are those weaknesses addressed in the discussion draft that was the subject of the April 11th hearing?

According to CRS, the term “federal backstop enforcement authority” is widely understood to mean explicit authority provided to the Environmental Protection Agency (EPA) to enforce standards at individual facilities in a state authorized by EPA to implement and enforce federal standards.

4. Do you concur with CRS’s definition of that term?

As we heard at a hearing in the Environment and the Economy Subcommittee in February, under the proven model of environmental delegation to the states, EPA retains backstop enforcement authority, as defined by CRS, to ensure that every citizen in the United States is receiving a minimum level of protection from environmental risks. This backstop authority allows EPA to step in and enforce requirements at a non-compliant facility, when a state is incapable, unable, or unwilling to do so. This authority is especially important when environmental harms are disproportionately borne by traditionally disenfranchised groups, like low income communities.

5. Can you describe whether contamination associated with coal ash disposal disproportionately harms vulnerable communities, and, if so, how?
6. Is federal backstop enforcement authority necessary to address that disparate impact?

The Congressional Research Service has found that S. 3512, which is identical to the discussion draft examined at the April 11th hearing, does not include federal enforcement backstop authority.

7. Do you agree with that conclusion?

Much attention has been given to the conclusions reached by EPA in the 2000 determination on coal combustion residuals, but very little has been paid to the study underlying it. That study was based on congressionally mandated criteria that went beyond risk and included criteria unrelated to health effects, such as the impact of regulation on the competitiveness of coal as a fuel source.

8. In your view, would a scientific study of the health and environmental risks of coal ash, uninfluenced by congressional policy preferences favoring fossil fuels, demonstrate that subtitle C regulation of these wastes is merited?

In the 2000 determination, EPA determined that coal ash contains more than 40 toxic constituents, and that those constituents can degrade and migrate into groundwater.

9. My understanding is that the leaching test used by EPA to complete the 2000 determination has been criticized by EPA’s Science Advisory Board and the National Academy of Sciences. Can you explain these criticisms and their significance?

In the 2000 determination, EPA found that there was sufficient evidence that adequate controls were not in place at coal ash disposal sites. This was the case, in part, because the states that did require liners for wet impoundments did not apply that requirement to impoundments that were already in use.

10. Under the discussion draft considered at the April 11 hearing, would liner requirements apply to impoundments that are already in use?
11. Does leaving these impoundments unlined pose risks to human health and the environment?
12. Please describe some of the new evidence of risk from coal ash since the 2000 determination?
13. Given this evidence, in your view, are enforceable federal requirements necessary to protect human health and the environment from this waste?
14. Should those requirements meet a legal standard of protection, such as the current standard for municipal solid waste – protection of human health and the environment?
15. Would the discussion draft considered at the hearing hold state coal ash permit programs to such a legal standard of protection?

When the Tennessee Valley Authority coal ash impoundment in Kingston, Tennessee, failed, it released 5.4 million cubic yards of toxic sludge, blanketing the Emory River and 300 acres of surrounding land, and creating a Superfund site that could cost up to \$1.2 billion to remediate. The sludge from that spill was removed and disposed of in a municipal solid waste landfill in Perry County, Alabama, over the protests of local residents. There are reports that residents became sick from foul smells and off-gassing from the waste.

16. What are some of the issues residents around the Perry County, Alabama landfill have experienced?
17. My understanding is that Alabama regulators allow the use of coal ash as daily cover at the landfill. Did the decision to allow the use of coal ash as daily cover exacerbate or mitigate issues of concern for the residents of Perry County?
18. Have those residents been able to address these issues to protect their air and water?
19. Have they been able to recover damages for the impairment of their air and water?
20. Does the experience of residents around the Perry County landfill suggest that municipal solid waste landfills, operating under state programs in accordance with the MSW disposal criteria under RCRA, can safely accept coal ash?