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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

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Assistant Administrator Stanislaus:

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.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

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

Attachments

Attachment 1—Member Requests for the Record

During the hearing, Members asked you to provide information for the record. For your convenience, relevant excerpts from the hearing transcript regarding these requests are provided below.

The Honorable Robert E. Latta

1. Do you agree that the bill includes all of the constituents identified by the EPA as being of concern for coal ash?

2. Doesn't the bill set a timeline for meeting the groundwater protection standards for surface impoundments that are incorrective?

3. Does the bill require financial assurance?

The Honorable Bill Johnson

1. Does CERCLA give EPA the authority to address inactive or abandoned impoundments or units?

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

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

The Honorable Paul Tonko

1. And EPA's technical assistance states that under the previous language, dry landfills would not be required to comply with many of the operating criteria that currently apply to municipal solid waste and would be applied to coal ash under EPA's proposed rule. Does this discussion draft fix that flaw with the previous proposal?

The Honorable John D. Dingell

1. Do you believe this draft bill has the timelines and minimum legal standards of protection to ensure that proper program plans are implemented in the states? Yes or no.

2. Under EPA's proposed rule to establish requirements to address this issue, in your testimony you said that EPA received nearly a half million public comments, solicited public data, started drafting a methodology to evaluate the beneficial uses. Under the legislative proposal before us, would EPA have the authority to gather public comments, technical data, or develop methodologies in the future to improve the implementation of the program proposed in the bill? Yes or no?

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

4. Now do you believe this legislation as currently written would require these standards to be included in state program plans? Yes or no?

The Honorable Lois Capps

1. In technical assistance you provided to the committee last Congress, you identified multiple principal contaminants of concern in coal ash, including arsenic, cadmium, lead, mercury, and many others. These heavy metals pose very serious threats to human health. Would you, for our hearing today, please identify briefly some of the health effects of these contaminants?

Attachment 2—Additional Questions for the Record

The Honorable John Shimkus

1. Does CERCLA give EPA authority to address inactive or abandoned coal ash impoundments/units? Why or Why not? Please explain.

   a. Would EPA's authority under CERCLA be sufficient to address any inactive or abandoned coal ash impoundments that may pose a threat to public health or welfare or the environment?

2. From information gathered as part of the Steam Electric Power Generating effluent limitation guidelines rulemaking, does EPA currently have information regarding the *location* of coal ash impoundments?

   a. Please be specific in your answer as to specifically what information EPA has requested and from whom.

   b. Please be specific about what information EPA currently has or expects to receive.

3. From information gathered as part of the Steam Electric Power Generating effluent limitation guidelines rulemaking, does EPA currently have, for coal ash impoundments, *specific information* such as ground water monitoring data or other information regarding the performance of the unit?

   a. Please be specific as to what information EPA has requested and from whom.

   b. Please be specific about what information EPA currently has or expects to receive.

4. How does EPA plan to coordinate the Steam Electric Power Generating effluent limitation guidelines rulemaking and the rulemaking for Coal Combustion Residuals?

5. Has EPA developed a risk assessment that supports a determination that coal ash should be regulated under Subtitle C?

6. RCRA typically requires an adequacy determination of State permit programs *prior to* State implementation. Do you see value in having EPA review the adequacy of a State program *after* the State begins implementing it? Please explain why or why not.

7. Please respond to the following questions in as much detail as possible. Please provide a detailed explanation of your answer:

   a. Do you agree that the Discussion Draft contains a provision requiring liners?

   b. Do you agree that the Discussion Draft contains a provision requiring groundwater monitoring?

   c. Do you agree that the Discussion Draft has a deadline for the installation of groundwater monitoring?

   d. Do you agree that the Discussion Draft includes all of the constituents identified by EPA as being of concern for coal ash?

   e. Do you agree that the Discussion Draft sets a time limit for meeting groundwater protection standards for surface impoundments that are discovered to be leaking or are in corrective action on the date of enactment?

f. Do you agree that the Discussion Draft requires control of fugitive dust in the same manner as EPA did in the June 2010 Proposed Rule with the exception of the numeric limit?

g. Do you agree that the Discussion Draft requires financial assurance?

h. Do you agree that the Discussion Draft contains location restrictions for coal ash management and disposal units?

i. Do you agree that the Discussion Draft contains requirements similar in nature to the June 2010 Proposed Rule, please explain.

8. Following the incident at Kingston, EPA inspected coal ash impoundments – some 600 – to make sure that they are structurally sound. You hired independent contractors who, in the Agency's own words, "are experts in the area of dam integrity."

   a. Do you agree with the findings of your staff that not a single coal ash impoundment was rated "unsatisfactory" and poses an "immediate safety threat"?

   b. Do you agree with the findings of your professional staff that the owners and operators of impoundments with identified deficiencies have responded responsibly by submitting response action plans? If not, please explain your answer.

9. What standard(s) or criteria did/does EPA, or contractors hired by EPA, use to complete the Coal Combustion Residuals Impoundment Assessment Reports found at http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/ ? Please be specific and include any documents provided to EPA personnel or contractors to assist or instruct them in conducting the assessments.

10. What standard(s) or criteria were used to develop the Safety Inspection Reports generated as a result of the assessments?

    a. Please describe, in detail, EPA's on-site inspection that was part of the Coal Combustion Residuals Impoundment Assessment – including what criteria/standards were used to determine whether structures at the facilities were well maintained and in good condition, or not, at the time of the inspection.

    b. Please describe in detail the criteria/standards used to analyze the integrity of dams and dikes at the facilities inspected.

    c. Please describe, in detail, the criteria/standards used to determine the recommendations that were part of the Site Assessment Reports (or Dam Safety Assessment Reports – or any other name by which these reports are identified).

11. Does EPA believe that the MSHA requirements found at 30 CFR Part 77.216 are the appropriate standards for:

    a. Inspecting and analyzing the *design* of impoundments/dams used to manage coal ash? Please explain your answer and provide the citation(s) to the specific requirements EPA believes are applicable and explain why.

    b. Inspecting and analyzing the *construction* of impoundments/dams used to manage coal ash? Please explain your answer and provide the citation(s) to the specific requirements EPA believes are applicable and explain why.

c. Inspecting and analyzing the *continued operation and maintenance* of impoundments/dams used to manage coal ash? Please explain your answer and provide the citation(s) to the specific requirements EPA believes are applicable and explain why.

d. Please explain why an inspection for appearances of structural weakness is necessary at intervals not exceeding 7days?

e. What about the Federal Dam Safety Guidelines published by FEMA – does EPA believe that these requirements may be appropriate standards/criteria for analyzing design of impoundments/dams used to manage coal ash? For analyzing construction of impoundments/dams used to manage coal ash? For analyzing continued operation and maintenance of impoundments/dams used to manage coal ash?

12. Does the Discussion Draft allow EPA to find a State program deficient if the program does not meet the minimum requirements?

    a. Does the Discussion Draft allow EPA to take over a State permit program if the State does not correct identified deficiencies?

    b. What criteria would EPA need to determine whether a State permit program is deficient?

13. Does the Discussion Draft address the full volume of liquid to be stored in an impoundment? Please explain your answer.

The Honorable Bill Cassidy

1. Coal fly ash has been used successfully for years in building materials and as fill material for roads without any negative incidents occurring. Over the last few years the Obama Administration has been pursuing a strategy to declare it hazardous, having an adverse impact on our road and home building industries. Is this just another step in the life cycle of harassment of coal and domestic energy by the Obama Administration? The Administration is delaying Army Corps of Engineers permits for sites of coal mines, pushing new regulations on the mining of coal through their stream buffer zone and mine dust regulations, trying to stop the use of coal by the utilities through air regulations, and now it is trying to declare the waste product hazardous. The Obama Administration lacks the authority to outright make coal illegal so they are attacking the entire life cycle through regulations. This will cost American jobs; by the cost of energy and the materials made from coal ash byproducts.

The Honorable Henry A. Waxman

During a hearing in the Environment and the Economy Subcommittee in February on the role of States in protecting the environment, witnesses suggested that giving EPA the ability to take over a state permit program if it is deficient would constitute backstop enforcement authority. Such a significant step would go well beyond enforcing against a particular facility.

1. What is the process for taking control of existing state permit programs under RCRA?

2. How often does EPA take the dramatic action of taking control of a state permit program under RCRA?

3. How does the process outlined in the discussion draft for taking control of a state coal combustion residual permit program compare to the process for taking control of existing state programs?

4. One advocate for the discussion draft said that if EPA determines that a state is not following the requirements of the bill, the agency can "seize the landfill." Is that accurate, under this bill can EPA seize a landfill found not to be meeting the requirements?