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RPTS HUMISTON

DCMN HERZFELD

MARKUP OF

COAL RESIDUALS REUSE AND MANAGEMENT ACT OF 2013;

REDUCING EXCESSIVE DEADLINE OBLIGATIONS ACT OF 2013;

FEDERAL FACILITY ACCOUNTABILITY ACT OF 2013; AND

FEDERAL AND STATE PARTNERSHIP FOR ENVIRONMENTAL PROTECTION ACT OF 2013

THURSDAY, JUNE 6, 2013

House of Representatives,

Subcommittee on Environment and the Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:06 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Gingrey, Hall, Pitts, Murphy, Latta, Harper, Cassidy, McKinley, Bilirakis, Johnson, Upton

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(ex officio), Tonko, Pallone, Green, Capps, McNerney, Schakowsky, Barrow and Matsui.

Staff Present: Nick Abraham, Legislative Clerk; Gary Andres, Staff Director; Mike Bloomquist, General Counsel; Matt Bravo, Professional Staff Member; Jerry Couri, Senior Environmental Policy Advisor; Brittany Havens, Legislative Clerk; Kirby Howard, Legislative Clerk; Peter Kielty, Deputy General Counsel; David McCarthy, Chief Counsel, Environment/Economy; Andrew Powaleny, Deputy Press Secretary; Tina Richards, Counsel, Environment; Chris Sarley, Policy Coordinator, Environment/Economy; Charlotte Savercool, Executive Assistant, Legislative Clerk; Phil Barnett, Minority Staff Director; Jen Berenholz, Minority Chief Clerk; Jacqueline Cohen, Minority Senior Counsel; Greg Dotson, Minority Staff Director, Energy and Environment; Caitlin Haberman, Minority Policy Analyst; Elizabeth Letter, Minority Assistant Press Secretary; and Roger Sherman, Minority Chief Counsel.

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Mr. Shimkus. Seeing a quorum, the subcommittee will now come to order.

At the conclusion of opening statements yesterday, the chair called up H.R. 2218, and the bill was open for amendment at any point. Are there any bipartisan amendments to the bill?

Seeing none, are there any amendments to the bill? Anyone seeking recognition? I don't have to wait too long.

Mr. Tonko. I think Gene has one, but I don't know where it is.

Mr. Shimkus. I thought he did, too, but he left. We will pause for a minute.

Are there any amendments to the bill?

Seeing none, the question now occurs on forwarding H.R. 2218 to the full committee. All those in favor, say aye.

Mr. Tonko. Mr. Chair.

Mr. Shimkus. The chair recognizes --

Mr. Tonko. Move to strike the last word, please.

Mr. Shimkus. The gentleman is recognized for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

I will state for the record, I oppose the bill. On December 22nd, 2008, a coal ash impoundment in Kingston, Tennessee, burst, releasing 5.4 million cubic yards of toxic sludge, blanketing the Emory River and the surrounding land, and creating a Superfund site that could cost up to \$1.2 billion to clean up.

The record before the subcommittee on coal ash is clear. We have

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heard testimony over the last several years about the devastating impacts contamination from coal combustion wastes can cause. We have learned of contaminated drinking water supplies and ruined property values. We have learned that improper disposal of coal ash can both present catastrophic risks from ruptures of containment structures and cause cancer and other illnesses from long-term exposure to leaking chemicals.

Two years ago EPA proposed regulations to ensure stronger oversight of coal ash impoundments in order to prevent disasters like the one at Kingston and to protect groundwater and drinking water from the threat of contamination. The Agency had proposed two alternatives for regulating coal combustion residuals. One proposal was to regulate these wastes under subtitle C of the Resources Conservation Recovery Act, or RCRA, as a hazardous waste. The other proposal was to regulate under subtitle D of RCRA as a nonhazardous solid waste.

Under both proposals there would be minimum Federal standards developed to protect human health and our environment. Those standards would address wet impoundments like in Kingston, and would also ensure that basic controls like the uses of liners, groundwater monitoring and dust control meet a minimum level of effectiveness. But this bill blocks both of EPA's proposals. It replaces them with an ineffective program that won't ensure the safe disposal of coal ash, won't protect public health, and won't protect the environment. We can and should do better.

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Some of my colleagues suggested yesterday that changes in this bill came from EPA and are supported by the Agency, but EPA saw these changes for the first time on Monday, the day the bill was introduced. They are still reviewing the changes, and neither the Agency nor the administration has taken a position on the bill.

If Members are looking for clues to what the administration's position might be if this bill comes to the floor, they can look to the statement of administration position that was issued on H.R. 2273, the predecessor to this bill. For those who need reminding, the administration opposed that given bill.

The concerns about this bill have not been addressed, despite repeated offers from Democratic Members to work together toward a solution. I, therefore, oppose this bill and I urge my colleagues to do the same.

And with that, Mr. Chair, I yield back.

Mr. Shimkus. The gentleman yields back his time.

The question now occurs on forwarding H.R. 2218 to the full committee. All those in favor, say aye.

Those opposed, no.

The ayes appear to have it. The ayes have it. The bill is agreed to.

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Mr. Shimkus. The chair calls up the committee print entitled "Reducing Excessive Deadline Obligations Act of 2013," and asks the clerk to report.

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

Mr. Shimkus. Without objection, the first reading of the bill is dispensed with, and the bill would be open for amendment at any point. So ordered.

[The information follows:]

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

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Mr. Shimkus. Are there any bipartisan amendments to the bill?  
Are there any other amendments?

The question now occurs on forwarding it to the committee --

Mr. Tonko. Mr. Chair.

Mr. Shimkus. The chair recognizes the gentleman from New York.

Mr. Tonko. Thank you.

I have a number of serious concerns with this bill, and most of them stemming from the fact that there is no record before the subcommittee to support these changes. One change in particular concerns me because it seems to target ongoing court cases, effectively extinguishing the rights of those plaintiffs by legislative fiat.

In the decades since RCRA was established, only three lawsuits have been brought to enforce the deadline in section 2002(b). All three of those lawsuits target EPA's significant delay in completing its coal ash rulemaking. One was brought by environmental groups and two by companies who beneficially reuse coal ash. All of them want to see the coal ash rulemaking completed, as do many members of this subcommittee.

As the rulemaking drags on, unsafe disposal of coal ash continues, and uncertainty impacts the beneficial reuse industry. Anyone that supports coal ash recycling should support a speedy resolution to this issue. Perhaps that is why some of the majority side said at the hearing on this bill that they weren't interested in blocking those ongoing lawsuits, but that would be the effect of this bill, and the

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language has not been changed.

I have here a memorandum from the American Law Division of CRS, which I would like to include for the record; describes the three lawsuits in which all plaintiffs are seeking injunctions to require EPA to complete its rulemaking. According to the American Law Division, and this is a quote, there is a substantial possibility that plaintiffs' claims for injunctive relief would be rendered moot if REDO were enacted, and if that happens, the Law Division says, quoting again, it seems unlikely that plaintiffs would have standing to maintain their claim for other relief.

So despite statements that these lawsuits should be able to continue, we still have before us in this bill language that would quash them by legislative fiat. We should allow these suits to run their course, and I, therefore, urge my colleagues to vote no on this measure.

With that, I yield back, Mr. Chair.

Mr. Shimkus. The gentlemen yields back his time.

Without objection, the request for submission into the record without objection is granted.

[The memorandum follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*



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Mr. Shimkus. The question now occurs on forwarding the committee print to the full committee. All those in favor, say aye.

Those opposed, no.

The ayes appear to have it. The ayes have it. The bill is agreed to.

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Mr. Shimkus. The chair calls up the committee print entitled "Federal and State Partnership for Environmental Protection Act of 2013," and asks the clerk to report.

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

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

[The information follows:]

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

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Mr. Shimkus. The chair recognizes the gentleman from New York.

Mr. Tonko. Thank you, Mr. Chair.

Again, I oppose this bill. The legislation before us has been presented as correcting a problem where States are not sufficiently consulted in the decisions to clean up contaminated sites through the Superfund program, but the bill is simply not thought out.

The argument appears to be that although Superfund is a Federal program carried out by Federal employees using Federal resources, a State should be able to slate sites for cleanup, veto sites from being slated for cleanup, have a greater say in cleanup decisions, and even collect their attorney fees from the United States taxpayers when they sue the Federal Government. I do not think this approach strikes the right balance.

As we heard at the hearing last month, States have a great deal of opportunity to be involved in cleanup decisions under current law, and, in fact, if a State wants complete control over the cleanup of a contaminated site, the State can simply conduct its own cleanup under State law and retain full control of all decisions.

But sometimes States want Federal resources and expertise brought to bear to get sites cleaned up faster. The States often request that EPA come in and conduct expensive removal actions and response actions. Under Superfund there is a cost share in place between States and the Federal Government for response actions. The Federal Government pays 90 percent of the costs, and the State pays just 10 percent. For

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short-term removal actions, the law is even more generous to the States. When the Federal Government carries out a removal action, it is paid for completely with Federal funds.

Even though Superfund is a Federal program, the law provides for a significant State involvement. Under the statute as it currently stands, EPA is required to provide, and I quote, substantial and meaningful participation to States. Under the provision, States are already involved in suggesting sites for cleanup under Superfund. EPA already seeks concurrence from States before slating a site for cleanup on the National Priority List, and States can already block EPA from carrying out a selected response action by not agreeing to pay the cost share for that response action. And if a State wants to take a leadership role at a Superfund site, under current law they already have the ability to assume the lead under cooperative agreements with EPA.

It is, therefore, natural that a State would want to be able to tell EPA what to focus on, what to spend money on, and what not to spend money on. It is natural that a State would want Federal resources available for use at their discretion. But this is a national program that must be available for cleaning up the most contaminated sites in every State. It is indeed our job to ensure a balanced approach, and this bill misses that mark. I urge my colleagues to vote no.

And with that, Mr. Chair, I yield back.

Mr. Shimkus. The gentleman yields back his time.

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

Are there any bipartisan amendments to the bill? Are there any other amendments?

The question now occurs on forwarding the committee print to the full committee. All those in favor, say aye.

Those opposed, no.

Mr. Tonko. Mr. Chair, I ask for a recorded vote, please.

Mr. Shimkus. A recorded vote has been requested. The clerk will call the roll.

The Clerk. Mr. Gingrey?

Dr. Gingrey. Yes.

The Clerk. Mr. Gingrey votes aye.

Mr. Hall?

Mr. Hall. Aye.

The Clerk. Mr. Hall votes aye.

Mr. Whitfield?

[No response.]

The Clerk. Mr. Pitts?

Mr. Pitts. Aye.

The Clerk. Mr. Pitts votes aye.

Mr. Murphy?

Mr. Murphy. Aye.

The Clerk. Mr. Murphy votes aye.

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Mr. Latta?

Mr. Latta. Aye.

The Clerk. Mr. Latta votes aye.

Mr. Harper?

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Mr. Cassidy?

[No response.]

The Clerk. Mr. McKinley?

Mr. McKinley. Aye.

The Clerk. Mr. McKinley votes aye.

Mr. Bilirakis?

Mr. Bilirakis. Aye.

The Clerk. Mr. Bilirakis votes aye.

Mr. Johnson?

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Barton?

[No response.]

The Clerk. Mr. Upton?

The Chairman. Aye.

The Clerk. Mr. Upton votes aye.

Mr. Tonko?

Mr. Tonko. No.

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The Clerk. Mr. Tonko votes no.

Mr. Pallone?

[No response.]

The Clerk. Mr. Green?

Mr. Green. No.

The Clerk. Mr. Green votes no.

Ms. DeGette?

[No response.]

The Clerk. Mrs. Capps?

Mrs. Capps. No.

The Clerk. Mrs. Capps votes no.

Mr. McNerney?

Mr. McNerney. No.

The Clerk. Mr. McNerney votes no.

Mr. Dingell?

[No response.]

The Clerk. Ms. Schakowsky?

Ms. Schakowsky. No.

The Clerk. Mr. Schakowsky votes no.

Mr. Barrow?

Mr. Barrow. Votes no.

The Clerk. Mr. Barrow votes no.

Ms. Matsui?

Ms. Matsui. No.

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The Clerk. Ms. Matsui votes no.

Mr. Waxman?

[No response.]

The Clerk. Mr. Shimkus?

Mr. Shimkus. Yes.

The Clerk. Mr. Shimkus votes aye.

Mr. Shimkus. The clerk will report the result.

The Clerk. Mr. Chairman, on that vote, there were 11 ayes and  
7 noes.

Mr. Shimkus. The ayes have it. The bill is agreed to.



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Mr. Shimkus. The chair calls up the committee print entitled "Federal Facility Accountability Act of 2013" and asks the clerk to report.

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

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

[The information follows:]

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

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Mr. Tonko. Mr. Chair, I move to strike the last word.

Mr. Shimkus. The gentleman is recognized for 5 minutes.

Mr. Tonko. Thank you, Mr. Chair.

This bill highlights an issue that this committee could pursue on a bipartisan basis. Contamination at Federal facilities is significant and complex. As we heard at the hearing on this bill, GAO has estimated significant cleanup costs at Federal facilities and found some difficulties in tracking and completing Federal facility cleanups. In particular because Federal facility cleanups are not funded through the Superfund Trust Fund, some procedural requirements that apply at non-Federal facilities do not apply at Federal sites.

GAO has made recommendations for improving cleanups at Federal facilities based on their extensive oversight work, but those recommendations are not reflected in this bill. Instead, this bill, like the other Superfund bills we are considering today, has not been developed through a careful committee process.

For instance, this bill makes Federal employees personally subject to criminal penalties under State law for failing to comply with State injunctive relief orders. The Department of Justice has informed us that this provision would put Federal employees in an impossible position. Cleanups at former Federal facilities are covered through the Department of Justice Settlement Fund, but Congress does not allow this fund to cover injunctive relief. That means that Federal employees could find themselves facing criminal penalties

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under this bill for doing exactly what Congress has told them to do.

This is the type of unintended consequence that follows when we rush the committee process and try to legislate without an adequate record. We do not know what the budget impact of this bill would be certainly on agencies such as the Department of Interior and the Department of Defense, but preliminary conversations suggest that the impact could be very significant. We should expect their opposition to be significant as well.

I am disappointed that there has been no effort to take these issues seriously. This is an important issue and deserves our serious attention. If the chair would like to undertake serious oversight of Federal facility cleanups, I would be happy to join him in that effort. If there is an interest in working carefully to draft effective legislation with stakeholder support, we will work with you in that process, but this bill is not ready for serious consideration.

I have to say that we should vote no on this bill, and I urge my colleagues to follow suit. And with that, I yield back, Mr. Chair.

Mr. Shimkus. The gentleman yields back his time.

Are there any bipartisan amendments to the bill?

Are there any other amendments?

The question now occurs on forwarding the committee print to the full committee. All those in favor, say aye.

Those opposed, no.

In the opinion of the chair, the ayes seem to have it, and the

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bill is agreed to.

Without objection, staff is authorized to make technical and conforming changes to the legislation approved by the subcommittee today. So ordered.

Without objection, this subcommittee stands adjourned.

[Whereupon, at 9:23 a.m., the subcommittee was adjourned.]