

CHAMBER OF COMMERCE  
OF THE  
UNITED STATES OF AMERICA

R. BRUCE JOSTEN  
EXECUTIVE VICE PRESIDENT  
GOVERNMENT AFFAIRS

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
202/463-5310

March 24, 2015

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and the  
Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Paul Tonko  
Ranking Member  
Subcommittee on Environment and the  
Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shimkus and Ranking Member Tonko:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, strongly supports the "Improving Coal Combustion Residuals Regulation Act of 2015," which would serve as an important tool to build upon and improve the final rule on coal combustion residuals that was issued in December 2014 by the Environmental Protection Agency (EPA). This needed draft legislation, which was crafted with the help of state environmental and solid waste officials, committee staff, and with input from the EPA, addresses the implementation issues associated with the EPA's final rule and provides states with the enforcement authority they need in order to implement the standards established by the EPA.

This draft legislation introduced by Rep. David McKinley would amend Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 *et seq.*) and takes into account the significant effort that the EPA undertook to develop sound technical standards protective of human health and the environment while also borrowing from previous legislative proposals that would have required states to develop enforceable coal combustion residual permit programs that would administer minimum federal standards. States would retain the ability, however, to make their permitting programs more rigorous than the standards set forth in the EPA's final rule. As such, the draft legislation would update the Solid Waste Disposal Act to include as a baseline the requirements set forth in the EPA's final rule while also ensuring that there would be direct enforcement of the EPA's requirements by a regulatory agency through a formal permitting program.

The draft legislation would also require that criteria regarding surface water protection and financial assurance be a part of formal coal ash permit programs and would require financial assurance for maintaining the applicable EPA-approved safety standards at closed inactive impoundments. Further, if an inactive impoundment is not formally closed within three years, such impoundment would be deemed a structure that is thereby required to go through the established permit process. The draft legislation would provide relief, however, if complete

closure can be demonstrated as infeasible consistent with the factors EPA established for obtaining an extension on closure under its December 2014 final rule.

The draft legislation also would fully incorporate the groundwater monitoring and corrective action provisions of the EPA's final rule, but provide flexibility to implementing agencies to tailor aspects of these rules on a case-by-case basis depending on site-specific and risk-based factors. The draft legislation's establishment of either state or federal oversight of a formal permitting program would make possible the agency discretion that is otherwise afforded to a state under the Municipal Solid Waste Regulations. Further, the draft legislation provides clarification and specific examples of beneficial use/reuse of coal combustion residuals.

The Improving Coal Combustion Residuals Regulation Act of 2015 would finish the job that EPA was unable to complete unilaterally. Through its establishment of a formal state or federal permitting program, many of the flexibilities otherwise available through the Municipal Solid Waste Regulations would be applied to coal ash permit programs while ensuring that the EPA's final baseline technical requirements are soundly enforced. This draft legislation also would not impact the ability to bring citizen enforcement suits under the Resource Conservation and Recovery Act, but rightly alleviates such suits as being the only mechanism to enforce the application of the EPA's final coal combustion residual standards. Thus, this legislation represents a workable and appropriate balance between the implementation of the EPA's final rule and the need to fairly and rationally address the storage and beneficial reuse of coal combustion residuals.

The Chamber strongly supports the Improving Coal Combustion Residuals Regulation Act of 2015 and applauds the subcommittee for its leadership on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Josten", written in a cursive style.

Bruce Josten

cc: Members of the Committee on Energy and Commerce