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Hearing
“H.R. ____, Improving Coal Combustion Residuals Regulation Act of 2015.”

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
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Testimony of
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On behalf of the
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Main Points:

- The discussion draft addresses the State implementation issues raised by the self-implementing construct of EPA's final coal combustion residuals rule (CCR) by providing the statutory authority for States to adopt and implement a CCR permit program.
- In giving States authority to implement the technical requirements in EPA's final rule through a CCR permit program, the draft legislation eliminates the situation of dual State and federal regulatory authority.

Good morning Chairman Shimkus, Ranking Member Tonko, Members of the Subcommittee. My name is Michael Forbeck, and I am President of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). I am here today to testify on behalf of ASTSWMO.

ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State program experts with individual responsibility for the regulation and management of solid and hazardous wastes.

Thank you for the opportunity to provide testimony on the discussion draft, "Improving Coal Combustion Residuals Regulation Act of 2015". Overall, ASTSWMO believes the discussion draft has successfully captured the essential parts of the EPA rule on coal combustion residuals (CCR) management that are germane to the protection of the environment and public health, and has modified or added those areas that improve upon the rule.

We also believe that this discussion draft has addressed the main concerns that ASTSWMO expressed regarding EPA's final rule on CCR in our testimony before this Subcommittee on January 22, 2015. While being in full agreement with issuance of the final rule under Subtitle D of the Resource Conservation and Recovery Act (RCRA), ASTSWMO's prior testimony noted State implementation issues raised by the self-implementing construct of RCRA Subtitle D Part 257. The concerns we voiced are summed up as follows:

- The rule's self-implementing requirements will set up the situation of a dual State and federal regulatory regime, in which the owner or operator of a CCR disposal facility would need to fully comply with the self-implementing national minimum standards

and existing State requirements, even if the State requirements meet or exceed the national minimums.

- The use of an EPA-approved State Solid Waste Management Plan (SWMP) as the mechanism to deal with the issue of dual regulatory authority will not fully alleviate dual implementation of State and federal standards, since the approved SWMP would not operate “in lieu of” the federal standards.
- The ability of States to establish regionally appropriate standards, as allowed under RCRA Subtitle D Part 258 for municipal solid waste landfills, is constrained by the rule’s self-implementing requirements.

ASTSWMO believes this discussion draft has addressed our main concerns regarding EPA’s final rule in the following three ways:

1. First, it eliminates dual State and federal regulatory authority resulting from the self-implementing construct of EPA’s rule by giving States the authority to adopt and implement a CCR permit program. Many States already have successful CCR permit programs. For States that choose to adopt and implement the permit program, it assures State primacy through the single permit program provision that is enforceable by the State. This results in a clear and consistent understanding of the permitting and enforcement roles of the States.

We also agree with the additional level of review by EPA to determine whether State permit programs are adequate to ensure compliance with the criteria as described in the discussion draft.

2. Second, by directly giving States the authority to implement a CCR permit program, the discussion draft eliminates the uncertainty of State-only implementation through the use of the SWMP as the implementation mechanism. The certification process under the draft legislation could allow for expedited implementation of the technical requirements.
3. Third, we appreciate that the draft legislation allows the flexibility for States to have regionally appropriate State standards for groundwater monitoring and corrective action.

In addition to the draft legislation addressing the concerns expressed in our previous testimony, ASTSWMO is pleased that the legislation requires financial assurance for post-closure care of inactive surface impoundments to ensure long term compliance with environmental and public health requirements. Financial assurance is an important component in State waste programs, and ASTSWMO has supported the inclusion of financial assurance as a key program element in a final EPA CCR rule under Subtitle D.

We would like to offer for the Subcommittee's consideration one modification to the draft legislation at this time. Under Agency Authority for inspections (Page 9, line 6), we ask that the Subcommittee consider not limiting an implementing agency's authority to enter a site for purposes of inspection to only "at reasonable times". This could be construed to mean during normal working hours. Provided there are no safety issues, after hours inspections would allow a more thorough compliance check that should be governed by the State authorities needed to inspect a facility. The timing of inspections should be at the discretion of the State.

Thank you again for providing me with the opportunity to testify on this draft legislation. I would be happy to answer any questions.