

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

Opening Statement of Rep. Henry A. Waxman
Ranking Member, Committee on Energy and Commerce
Markup on H.R. __, the Coal Residuals Reuse and Management Act
Subcommittee on Environment and the Economy
June 16, 2011

Mr. Chairman, I oppose the legislation we are considering today.

Disposal of toxic coal ash is a serious issue, and it deserves a more effective response than this bill offers. The Kingston coal ash spill in 2008 is a dramatic example of our failure to properly address coal ash waste.

At hearings in this Committee, we've heard testimony about the devastating impacts contamination from these wastes can cause. We've learned of contaminated drinking water supplies and ruined property values. We've 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.

Last year, the U.S. Environmental Protection Agency 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 has offered two alternative proposals to regulate coal combustion residuals. One proposal is to regulate these wastes under subtitle C of the Resources Conservation Recovery Act, or RCRA, as a hazardous waste. The other proposal is to regulate under subtitle D of RCRA as a nonhazardous solid waste.

Under both proposals, the wet impoundments, like in Kingston, would be phased out. Under both, disposal of residuals would require basic controls like the use of liners, groundwater monitoring, dust control, and other engineering measures.

My view is that regulation under subtitle C would most effectively address this issue.

But many stakeholders have sought a hybrid approach – one that would offer the protections of subtitle C regulation without a “hazardous” designation. Such an approach would require a legislative solution, what many have called a “D-plus” option.

I offered to compromise to reach such a solution because I believe our Committee should work together to craft solutions to problems. But my overtures were rejected.

As a result, we consider one-sided legislation that will protect utility company profits at the expense of public health. This bill is a D-minus approach. It says coal ash containing toxic chemicals like arsenic, lead, and mercury will be subject to fewer controls than ordinary household garbage. And instead of retrofitting wet impoundments with liners, it would allow them to continue unchanged.

If this legislation is adopted, no one should be fooled. This bill won't protect public health. It won't make high-risk impoundments of coal ash safe. It won't stop contamination of drinking water. All it will do is tie EPA's hands and give the utility companies an early Christmas.

There is one other issue I want to mention. When the Committee organized earlier this year, Chairman Upton announced that a central policy in deciding what legislation is scheduled for consideration in Committee will be compliance with a discretionary CutGo rule. He also said that when we authorize a new program, we'll adopt specific authorization amounts rather than relying on authorization of "such sums as necessary."

To the Chairman's credit, when the chemical security legislation was brought up for consideration without a specific authorization clause, that was quickly corrected in Committee.

The legislation we consider today, however, does not comply with these policies.

Instead, we will be told that the legislation before us is, somehow, without cost. On the one hand, we will hear that there are no unfunded mandates in the bill because state action is voluntary. Then we will hear that the program won't require any EPA resources because it will be implemented by the states.

This is a shell game. This bill is only free for the states if EPA implements, and only free for EPA if the states implement. This legislation creates a new government program and that program will have costs. If the Chairman is abandoning his policies on specific authorizations and discretionary CutGo, he should announce that policy change so that all members understand which policies do and do not apply.

I urge my colleagues to oppose this bill, which puts human health and the environment at risk.