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4 MARKUP ON H.R. \_\_\_\_\_, THE ``COAL RESIDUALS REUSE AND

5 MANAGEMENT ACT''

6 TUESDAY, JUNE 21, 2011

7 House of Representatives,

8 Subcommittee on Environment and the Economy

9 Committee on Energy and Commerce

10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 4:05 p.m., in  
12 Room 2123 of the Rayburn House Office Building, Hon. John  
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Murphy,  
15 Pitts, Bass, Latta, Harper, Cassidy, Barton, McKinley, Upton  
16 (ex officio), Green, Baldwin, Barrow, Matsui, Pallone,  
17 DeGette and Waxman (ex officio).

18 Staff present: Gary Andres, Staff Director; Jim

19 Barnette, General Counsel; Mike Bloomquist, Deputy General  
20 Counsel; Allison Busbee, Legislative Clerk; Jerry Couri,  
21 Professional Staff Member, Environment; Peter Kielty, Senior  
22 Legislative Analyst; Dave McCarthy, Chief Counsel,  
23 Environment and the Economy; Jeff Mortier, Professional Staff  
24 Member; Tina Richards, Counsel, Environment and the Economy;  
25 Chris Sarley, Policy Coordinator, Environment and the  
26 Economy; Kristin Amerling, Democratic Chief Counsel and  
27 Oversight Staff Director; Phil Barnett, Democratic Staff  
28 Director; Jen Berenholz, Democratic Chief Clerk; Jacqueline  
29 Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and  
30 Environment Staff Director; Caitlin Haberman, Democratic  
31 Policy Analyst; and Karen Lightfoot, Democratic  
32 Communications Director, and Senior Policy Advisor.

|  
33 H.R. \_\_\_\_\_

34 4:05 p.m.

35 Mr. {Shimkus.} The chairman will call the committee to  
36 order. For my colleagues and for those assembled, the plan  
37 is to conduct opening statements. We have competing  
38 hearings, one upstairs that is pretty well attended, so we  
39 will get through the opening statements and then we will wait  
40 until that hearing ends, I will call up the bill and then we  
41 will hold off for amendments and stuff until afterwards. So  
42 I will recognize myself for 5 minutes for an opening  
43 statement.

44 Today, our subcommittee will mark up legislation that  
45 will provide certainty to producers and recyclers of coal  
46 combustion byproducts while also ensuring the safe and  
47 appropriate disposal and monitoring of coal combustion  
48 byproducts, or CCRs.

49 Since the very first hearing in this subcommittee,  
50 regulation of CCRs has been a topic of discussion--coal  
51 combustion residues. We learned early on that regulating  
52 coal combustion residues as a hazardous waste, when these  
53 materials do not even meet EPA's own standard for toxicity,  
54 would have devastating effects on jobs in a very successful  
55 and emerging byproducts industry.

56           At the same time, this proposed over-regulation by the  
57 Environmental Protection Agency will raise utility prices for  
58 families across the country. We heard firsthand from a  
59 utility manager in my district, the immediate impact would be  
60 a 25 percent increase in costs to consumers. With the  
61 economy sputtering, we can't afford to have jobs put at risk  
62 because the political appointees think it is a good idea.

63           In our legislative hearing on H.R. 1391, independent  
64 experts testified further on the inability of coal combustion  
65 residues to reach the threshold necessary for regulation as a  
66 hazardous material, even though EPA is claiming it is.  
67 Further, the witnesses called into serious question whether  
68 the Obama Environmental Protection Agency actually gave  
69 appropriate consideration to important practical factors  
70 that, if done, would have radically altered its final  
71 decision.

72           I am not suggesting government should take a holiday on  
73 these matters. When it comes to oversight and protection  
74 from risks, there is no doubt it is the government's  
75 responsibility to check on these activities. The question  
76 becomes who is the appropriate monitor.

77           State officials affirmed their expertise and desire to  
78 regulate this area without federal control. Given the unique  
79 challenges of each individual State, I believe this is the

80 best approach.

81         The legislation, therefore, creates a new subsection to  
82 subtitle D of the Solid Waste Disposal Act that establishes  
83 targeted authority to address the management and disposal of  
84 coal combustion residue at landfills, surface impoundments,  
85 and other land-based units. This program, which will be led  
86 by the States, or EPA if the State cannot or does not want to  
87 operate it, will for the first time ever create national,  
88 enforceable requirements for groundwater monitoring, liners  
89 at landfills, corrective action when environmental damage  
90 occurs, and structural stability criteria to prevent issues  
91 like the one that caused the problems at Tennessee Valley  
92 Authority in Tennessee.

93         In working with stakeholders, we have received broad  
94 support for this legislation, including State environmental  
95 officials, the beneficial use community, and other regulated  
96 stakeholders, and I want to place into the record two  
97 letters, one from the Edison Electric Institute and U.S. SWAG  
98 from the industry and also ECOS, which is the Environmental  
99 Council of the States, both supporting this legislation.  
100 They all believe the provisions in this bill will protect  
101 jobs, encourage economic growth and job creation and prevent  
102 unnecessary higher energy prices and construction costs.

103         [The information follows:]

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

|  
105           Mr. {Shimkus.} I want to thank Representative McKinley  
106 for his leadership as well as Representative Latta for his  
107 efforts on this subcommittee to move this jobs legislation  
108 forward. As we move this bill to full committee  
109 consideration, I hope we can work with all members to present  
110 a bipartisan bill to the full House.

111           With that, I finish my time and I yield back.

112           [The prepared statement of Mr. Shimkus follows:]

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

|  
114           Mr. {Shimkus.} I would like to now recognize the  
115 ranking member, Mr. Green from Texas, for 5 minutes.

116           Mr. {Green.} Thank you, Mr. Chairman, and I find it  
117 unfortunate we are wasting our opportunity to demonstrate a  
118 rare moment of bipartisanship today. Our subcommittee held a  
119 legislative hearing on April 15th on the original legislation  
120 by Representative McKinley. In that hearing, I believe the  
121 general consensus was a path forward on the issue of  
122 regulating coal ash was to be done under subtitle II of RCRA  
123 and to work together to come to an agreement. Despite  
124 member-level discussions between myself and you along with  
125 Chairman Emeritus Dingell, we have been unable to have  
126 substantial staff-level discussions on a bipartisan agreement  
127 on the bill before the subcommittee today. I find it  
128 disheartening that the majority has said they wish to work  
129 with us but they still sent around a new bill before they  
130 answered questions posed by our staff for potential  
131 negotiations.

132           This bill leaves a lot to be desired including a lot of  
133 kinks that need to be worked out. After reading it, though,  
134 I am more confused as to how this program will work and even  
135 more confused by the role of the EPA and their  
136 responsibilities as well as authority under the new



137 legislation. I think there are a lot of questions that need  
138 to be answered and clarifications to be made in order for the  
139 legislation to be successful.

140 Right now, as I see it, the bill is like fitting a  
141 square peg in a round hole and ultimately setting this  
142 program up for failure. The last thing we want to do is  
143 direct the EPA and the States to do something that isn't  
144 going to work. Now, this could be what our colleagues on the  
145 other side of the aisle are hoping for but I don't see how  
146 this helps either our industry or the environment.

147 Mr. Chairman, my staff has reached out to your staff to  
148 sit down and work on the legislation and hopefully come to  
149 some sort an agreement and hopefully this conversation will  
150 be more productive than last week. We are here to work on a  
151 commonsense solution and not waste precious committee time  
152 punting bills to the Senate that have zero chance of passing,  
153 and I thank you, and I will yield to any of my Democratic  
154 colleagues that would like the remainder of my time. I yield  
155 back.

156 [The prepared statement of Mr. Green follows:]

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

|  
158 Mr. {Shimkus.} The gentleman yields back his time.

159 The chair recognizes the chairman emeritus, Mr. Barton,  
160 for 3 minutes.

161 Mr. {Barton.} For how long? Three?

162 Mr. {Shimkus.} I am told three.

163 Mr. {Barton.} Okay. First of all, Mr. Chairman, I want  
164 to commend you and the ranking member on the minority for  
165 both sides playing by the rules last week. I think we ought  
166 to commend the minority staff and their leadership for  
167 finding the technical error and pointing it out, and I want  
168 to commend you and Chairman Upton for honoring the rule and  
169 withdrawing it so we could fix it. It shows the  
170 institutional integrity of the committee and the leadership  
171 on both sides, and while it has delayed the issue being  
172 addressed, it shows that the Energy and Commerce Committee  
173 plays by the rules. So I am very supportive of what happened  
174 last week.

175 On the issue before us, the Recycling Coal Combustion  
176 Residuals Accessibility Act of 2011 and the Coal Residuals  
177 Reuse and Management Act bill, this is something that needs  
178 to be addressed. I do not believe that coal ash is a  
179 hazardous material in the most technical sense of the world.  
180 Subtitle C of RCRA created a hazardous waste management

181 program that among other things directs the EPA to develop  
182 criteria for identifying and managing all waste deemed to be  
183 hazardous to human health and the environment. Subtitle D of  
184 RCRA established State and local governments as the primary  
185 planning, regulating and implementing entities. So under  
186 RCRA, it is the State that is preeminent, not the EPA. EPA,  
187 though, has decided that it should be preeminent and they are  
188 now proposing to regulate coal ash under RCRA for the first  
189 time. They have prepared two alternative options to do so.

190 I do not support what EPA is trying to do nor does the  
191 bill before us, so it is time to hold this markup and I  
192 believe that when we get to the actual markup, we will find  
193 bipartisan support for the bill.

194 And with that, Mr. Chairman, I will put my full  
195 statement in the record and would yield back or yield to  
196 whoever you think I should.

197 [The prepared statement of Mr. Barton follows:]

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

|  
199 Mr. {Shimkus.} The gentleman yields back his time.

200 The chair now recognizes the chairman emeritus, Mr.

201 Waxman, for 3 minutes.

202 Mr. {Waxman.} Mr. Chairman, disposal of toxic coal ash  
203 is a serious issue, and it deserves a more effective response  
204 than this bill offers. The Kingston coal ash spill in 2008  
205 is a dramatic example of our failure to properly address coal  
206 ash waste.

207 At hearings in this committee, we have heard testimony  
208 about the devastating impacts contamination from these wastes  
209 can cause. We have learned of contaminated drinking water  
210 supplies and ruined property values. We have learned that  
211 improper disposal of coal ash can both present catastrophic  
212 risks from ruptures of containment structures and cause  
213 cancer and other illnesses from long-term exposure to leaking  
214 chemicals.

215 Last year, the U.S. EPA proposed regulations to ensure  
216 stronger oversight of coal ash impoundments in order to  
217 prevent disasters like the one at Kingston and to protect  
218 groundwater and drinking water from the threat of  
219 contamination. The agency has offered two alternative  
220 proposals to regulate coal combustion residuals. One  
221 proposal is to regulate these wastes under subtitle C of the

222 Resource Conservation Recovery Act, or RCRA, as a hazardous  
223 waste. The other proposal is to regulate under subtitle D of  
224 RCRA as a non-hazardous solid waste. Under both proposals,  
225 the wet impoundments, like in Kingston, would be phased out.  
226 Under both, disposal of residuals would require basic  
227 controls like the use of liners, groundwater monitoring, dust  
228 control and other engineering measures.

229 My view is that regulation under subtitle C would most  
230 effectively address this issue. But many stakeholders have  
231 sought a hybrid approach, one that would offer the  
232 protections of subtitle C regulation without a hazardous  
233 designation. Such an approach would require a legislative  
234 solution, what many have called a D-plus option.

235 I offered to compromise to reach such a solution because  
236 I believe our committee should work together to craft  
237 solutions to problems. But these overtures were rejected.  
238 As a result, we consider one-sided legislation that will  
239 protect utility company profits at the expense of public  
240 health. This bill is a D-minus approach. It says coal ash  
241 containing toxic chemicals like arsenic, lead and mercury  
242 will be subject to fewer controls than ordinary household  
243 garbage. If this legislation is adopted, no one should be  
244 fooled. This bill will not protect public health.

245 There is one other issue I want to mention. When the

246 committee organized last year year, Chairman Upton announced  
247 that a central policy in deciding what legislation is  
248 scheduled for consideration in committee will be compliance  
249 with a discretionary CutGo rule. This seems to be ignored in  
250 this process today. Instead, we will be told that the  
251 legislation before us is somehow without cost. On the one  
252 hand, we will hear that there are no unfunded mandates in the  
253 bill because State action is voluntary. Then we will hear  
254 that the program won't require any EPA resources because it  
255 will be implemented by the States. This is a shell game. I  
256 urge my colleagues to oppose the bill, which puts human  
257 health and the environment at risk.

258 [The prepared statement of Mr. Waxman follows:]

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

|  
260 Mr. {Shimkus.} The gentleman yields back his time.  
261 Who seeks time on the majority side? Mr. Harper is  
262 recognized for 1 minute.

263 Mr. {Harper.} Thank you, Mr. Chairman, and I thank you  
264 for bringing 1391 to the subcommittee for a vote today. I  
265 believe that the hearing held by this subcommittee on the  
266 legislation highlighted the need for Congress to take quick  
267 action.

268 Mr. Chairman, I see the apparent intention of the EPA to  
269 regulate coal ash as a hazardous material as another decision  
270 by the agency to regulate business without the use of facts  
271 or common sense, and I am happy that this bill will halt that  
272 attempt. We all want a clean environment but decisions on  
273 how to keep it clean should be based on science, not  
274 political rhetoric, and those decisions should not be made at  
275 the cost of good-paying American jobs.

276 My district relies on coal and coal ash for jobs and  
277 electricity, and I will happily support H.R. 1391 to protect  
278 the interests of my constituents. I yield back, Mr.  
279 Chairman.

280 [The prepared statement of Mr. Harper follows:]

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

|  
282 Mr. {Shimkus.} The gentleman yields back his time.

283 The chair recognizes the gentlelady from Wisconsin, Ms.  
284 Baldwin, for 1 minute.

285 Ms. {Baldwin.} Thank you, Mr. Chairman.

286 I want to start by thanking you, Mr. Chairman, and  
287 Ranking Member Green along with each of your staffs for  
288 working with my office on this issue over the past few days.

289 The regulations in my home State of Wisconsin are viewed  
290 literally as the gold standard for handling coal combustion  
291 wastes. There are no wet ponds on Wisconsin. Our dry  
292 landfills are properly lined, covered and monitored, and  
293 there is a strong beneficial reuse program in place. In  
294 fact, a utility in my home State, We Energies, has an average  
295 beneficial use rate of 96 percent, and actually achieved a  
296 utilization rate close to 110 percent in 2010. You may ask  
297 how can you achieve 110 percent. The way the company has  
298 achieved this extraordinarily high utilization rate is that  
299 they one of only a few utilities around the country currently  
300 recovering coal ash from existing landfills and reburning the  
301 ash. This then results in high-quality ash used in concrete,  
302 cement, bricks and additional byproducts.

303 I want to thank the chairman for incorporating an  
304 amendment that I authored into the base text of the



305 legislation that is before us today. My amendment will  
306 ensure that companies like We Energies who are reclaiming  
307 coal ash from landfills have the clarification they need to  
308 continue their successful ash reuse program.

309 I know my time is running out but I do want to note that  
310 we are not yet at a point where I can support the underlying  
311 bill and do hope that we will be able to achieve some  
312 modifications as we move forward because I do ultimately want  
313 to be a part of the solution. So I look forward to working  
314 with the majority and minority to present a workable  
315 alternative.

316 [The prepared statement of Ms. Baldwin follows:]

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

|  
318 Mr. {Shimkus.} The gentlelady yields back her time.

319 The chair now recognizes anyone else on the majority  
320 side that seeks time for an opening statement. If not, the  
321 chair then turns to the majority side. Anyone seeking time  
322 for an opening statement?

323 The chair now calls up the Coal Residual Reuse and  
324 Management Act and asks the clerk to report.

325 The {Clerk.} A bill to amend subtitle D of the Solid  
326 Waste Disposal Act to facilitate recovery and beneficial use  
327 and provide for the proper management and disposal of  
328 materials generated by the combustion of coal and other  
329 fossil fuels.

330 [H.R. \_\_\_\_ follows:]

331 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
332 Mr. {Shimkus.} Without objection, the reading of the  
333 bill is dispensed with and the bill will be open for  
334 amendment at any point. So ordered.

335 The chair now recesses the committee pending the  
336 conclusion of the healthcare hearing.

337 [Recess.]

338 Mr. {Shimkus.} The committee will come to order. If I  
339 could have my colleagues on my side find their seats or move  
340 their conversations into the cloakroom.

341 When we recessed, the chair called up the bill. The  
342 clerk reported the bill, and without objection, the reading  
343 of the bill was dispensed with. So now I would like to, as  
344 per the chairman's announced policy, ask for any bipartisan  
345 amendments to the bill, if there are any. Seeing now, the  
346 chair now would like to ask, are there any amendments to the  
347 bill? For what purpose does the gentleman from California  
348 seek recognition?

349 Mr. {Waxman.} I have an amendment at the desk.

350 Mr. {Shimkus.} The clerk will report the amendment.

351 The {Clerk.} An amendment offered by Mr. Waxman of  
352 California.

353 [The amendment follows:]

354 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
355           Mr. {Shimkus.} Without objection, the reading of the  
356 amendment is dispensed with and the gentleman from California  
357 is recognized for 5 minutes in support of his amendment.

358           Mr. {Waxman.} Mr. Chairman, I am offering this  
359 amendment to provide a specific authorization for this  
360 program as required by the chairman's policies. I have  
361 sought information from the EPA and CBO in preparing this  
362 amendment and it is clear that this program will have a  
363 significant price tag.

364           The bill creates a new program to be administered by  
365 EPA. EPA would be required to review notices and  
366 certifications and oversee the program. Where States adopt a  
367 program, EPA will need to ensure they are sufficient. When  
368 EPA receives information that a State is failing to properly  
369 carry out a permit program, EPA will need to have the  
370 necessary resources to send staff to the State and conduct  
371 sufficient oversight to determine whether the State is  
372 actually permitting disposal sites. If States elect not to  
373 adopt a program, EPA would have to step in to establish a  
374 permit program and ensure that the permits are enforced.

375           Despite these new and significant duties on the agency,  
376 this legislation does not include an authorization. It  
377 therefore implicitly also authorizes appropriations of such

378 sums as may be necessary to implement the program. This is a  
379 violation of the policies announced by Chairman Upton when  
380 the committee organized earlier this year.

381 While my amendment does not fix this bill's  
382 discretionary CutGo problem, it ensures that the bill  
383 complies with Chairman Upton's requirement for a specific  
384 authorization. I urge my colleagues to vote yes on this  
385 amendment.

386 Mr. {Shimkus.} And the gentleman yields back his time.

387 The chair recognizes himself in opposition to the  
388 amendment.

389 One year ago, the EPA proposed two alternative plans for  
390 a whole new regulation of coal ash. One would have  
391 designated it as hazardous; the other would have created a  
392 new regulatory scheme on subtitle D of RCRA. Both would have  
393 had substantial new federal programs requiring significant  
394 resources yet EPA apparently planned to carry them out using  
395 otherwise available funds in RCRA. In fact, the EPA detailed  
396 budget justification for both fiscal year 2011 and 2012  
397 contained no new money for coal ash.

398 Unlike the EPA proposals, our bill places almost all the  
399 administrative duties for carrying out coal ash management  
400 programs on the States in line with their already robust  
401 municipal solid waste programs, and the municipal solid waste

402 programs in the States are already approved so it won't be  
403 necessary to start from scratch from the EPA. Authorizing  
404 new funding would definitely present a CutGo program under  
405 the majority leader's protocol which we do not need going  
406 forward.

407 The amendment is neither needed nor helpful, and I urge  
408 my colleagues to reject it.

409 The {Chairman.} Will the gentleman yield?

410 Mr. {Shimkus.} I would yield.

411 The {Chairman.} I just want to say I stand in  
412 opposition to the amendment as well, and I just want to say  
413 that actually had the markup proceeded last week as scheduled  
414 and based on the amendment that we saw that was at the desk  
415 by Mr. Waxman, we were actually prepared to accept that  
416 amendment and would have done so I think on a voice vote.  
417 There are no such sums in this bill. At least informally,  
418 the CBO has told us that any cost is de minimis, but in fact  
419 if CBO tells us that there is a score that needs to be  
420 offset, we would certainly find it, and I yield back my time.

421 Mr. {Shimkus.} The gentleman yields back his time to  
422 me. Anyone else on my side seeking recognition?

423 If not, I yield back the balance of my time--

424 Mr. {Waxman.} Mr. Chairman, would you yield to me?

425 Mr. {Shimkus.} I would yield.

426 Mr. {Waxman.} The bill on page 2 says ``each State may  
427 adopt and implement a program.'' Now, that is voluntary.  
428 But then if they don't adopt it, then it is up to the EPA, as  
429 I mentioned in my comments in support of this amendment, to  
430 carry out the work. We are giving them new work to do in  
431 this legislation. This is not the RCRA law, this is a new  
432 bill to give them more responsibilities under RCRA to be sure  
433 that this job is done. I think that you may call it de  
434 minimis but that is going to require appropriations, and if  
435 we are putting in place a bill that would require the agency  
436 to do more, then I think we have to authorize that sum.

437 I am curious to know why Chairman Upton said he was  
438 prepared to accept this before but not today.

439 The {Chairman.} No, not this amendment. If the  
440 gentleman will yield, the amendment that you had at the desk  
441 last week, which is different than this amendment, we were  
442 actually planning to accept it, but it was not this one.

443 Mr. {Waxman.} I regret, Mr. Chairman, that you and Mr.  
444 Upton oppose this amendment. I think it is consistent with  
445 the rules that you have set in place and I would urge its  
446 adoption.

447 Mr. {Shimkus.} Anyone else seeking the balance of my  
448 time? Seeing no one, I would yield back my time.

449 Anyone else seeking time in support or in opposition to



450 the amendment? Hearing none, the vote occurs on the  
451 amendment offered by Mr. Waxman. All those in favor, say  
452 aye. Those opposed, no. In the opinion of the chair, the  
453 nos have it. The nos have it and the amendment is not agreed  
454 to.

455 Who seeks recognition? For what purpose does the  
456 gentlelady from Wisconsin rise?

457 Ms. {Baldwin.} Mr. Chairman, I have an amendment at the  
458 desk.

459 Mr. {Shimkus.} The clerk will report the amendment.

460 The {Clerk.} An amendment in the nature of a substitute  
461 offered by Ms. Baldwin of Wisconsin.

462 [The amendment follows:]

463 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
464 Mr. {Shimkus.} Without objection, the reading of the  
465 amendment is dispensed with and the gentlelady is recognized  
466 for 5 minutes in support of her amendment.

467 Ms. {Baldwin.} Thank you, Mr. Chairman.

468 Let me first state that the amendment in the nature of a  
469 substitute that is going to be circulated in a moment is  
470 substantially similar to but not identical to the original  
471 H.R. 1391, the McKinley bill, that many on this committee are  
472 coauthors of.

473 Simply put, this amendment would allow EPA to go forward  
474 with their subtitle D proposal. However, this amendment  
475 would allow a State to designate coal combustion residuals  
476 under subtitle C of RCRA if the State determined that it is  
477 warranted. This is the same approach taken in the base bill  
478 that we are working off of today.

479 To be clear, under my amendment, the EPA Administrator  
480 may not regulate coal combustion residuals under subtitle C  
481 of RCRA. This is in line with what the utilities and  
482 advocates of beneficial refuse have favored all along, which  
483 is regulation under subtitle D of RCRA, the non-hazardous  
484 section.

485 Now, I want to explain how this is different from the  
486 original H.R. 1391, the McKinley bill. Many of my colleagues

487 here today are sponsors of that bill, and the original  
488 language would bar any entity, State, federal agency, etc.,  
489 from regulating coal combustion residuals under subtitle C of  
490 RCRA. State associations that regulate municipal solid waste  
491 were concerned about this provision because when some coal  
492 ash is burned, it can contain higher than permissible levels  
493 of contaminants which warrant a hazardous designation.

494 My amendment in the nature of a substitute recognizes  
495 this concern and a similar provision, as I said, is included  
496 in the base bill, which we are working off today. I refer  
497 you to page 3, section 3, maintenance of subsections 4005(c),  
498 etc. Therefore, if any my colleagues were supportive of the  
499 original McKinley bill with some of the modifications in the  
500 base bill today, voting in favor of my amendment today would  
501 be very consistent.

502 Mr. Chairman, as I stated in my opening statement, I  
503 would like to continue to work with you and my colleagues on  
504 this bill but I think that a vote on this amendment is needed  
505 to show the support from both sides on a proposal to regulate  
506 coal combustion residue under subtitle D of RCRA, and I would  
507 urge my colleagues to support this amendment.

508 Mr. {Shimkus.} Will the gentlelady yield for a second?

509 Ms. {Baldwin.} I would be happy to yield to the  
510 gentleman.

511 Mr. {Shimkus.} You understand that by striking all  
512 after the enacting clause and replacing with the original  
513 McKinley bill that the provisions that you have fought for in  
514 the amendment which we included would not be in the base  
515 bill?

516 Ms. {Baldwin.} That is correct, but they are not as  
517 necessary because it is a different regulatory scheme. In  
518 other words, the States right now have seen fit to allow this  
519 practice and we don't see anything in this that would make  
520 that discontinued.

521 Mr. {Shimkus.} Obviously I will yield back to you, and  
522 would you yield back your time?

523 Ms. {Baldwin.} Yield back the balance of my time.

524 Mr. {Shimkus.} I would recognize now for 5 minutes in  
525 opposition to the amendment.

526 This amendment is the text of the original McKinley bill  
527 and prohibits the Environmental Protection Agency from  
528 regulating coal combustion residues under subtitle C. The  
529 effect of this amendment is the same as the Floor amendment  
530 that my colleague from Wisconsin voted against in H.R. 1.  
531 The whole reason we are here with this bill is because simply  
532 prohibiting action under subtitle C is not enough, and it  
533 could open beneficial uses for an uncertain regulatory  
534 climate.

535           In addition, the amendment only includes certain kinds  
536 of waste and not as many non-hazardous coal combustion waste  
537 as are contemplated in the underlying bill. This means that  
538 the EPA could come back later and place these unenumerated  
539 items under subtitle C, putting beneficial users in the same  
540 bad spot they are in right now. A new C designation removes  
541 certain types of waste streams that beneficial users could  
542 access to promote more jobs in her State and my State and  
543 across the country.

544           Moreover, this amendment would hamstring the States  
545 because some of them are constrained to take only those  
546 actions that are permissible by the EPA. It is also not  
547 clear what my colleague would like to see as a disposal  
548 replacement including how we would address surface  
549 impoundments, landfills, groundwater testing and structural  
550 integrity issues. While these are clear in the underlying  
551 bill, the amendment shoots first and worries about the  
552 consequences later. This is the kind of uncertainty that  
553 will increase consumer costs and won't power people's air  
554 conditioning in the summer or heat in the winter.

555           Finally, the economic analysis subtitle D proposals that  
556 EPA has proposed would cost \$22 billion to \$34 billion to the  
557 economy and between 39,000 to 64,000 jobs. That is a huge  
558 risk to take with 90 percent unemployment. So I urge my

559 colleagues to oppose the amendment.

560 Ms. {Baldwin.} Would the gentleman yield?

561 Mr. {Shimkus.} I would yield.

562 Ms. {Baldwin.} I just want to note that the EPA is  
563 going through a very comprehensive process right now dealing  
564 with a lot of the, if not all of the issues you just listed,  
565 and this amendment would allow that process to continue. So  
566 I think your concerns would be addressed with the agency, but  
567 I yield back.

568 Mr. {Shimkus.} Reclaiming my time. You have much  
569 greater faith in the EPA than I do.

570 So anyone else seeking time? If not, the vote occurs on  
571 the amendment offered by my colleague from Wisconsin. All  
572 those in favor, say aye. All those opposed, no. In the  
573 opinion of the chair, the nos have it.

574 Mr. {Waxman.} Mr. Chairman, I request a roll call vote.

575 Mr. {Shimkus.} Roll call vote is requested. Roll call  
576 vote is called. Yes, the gentleman is recognized.

577 Mr. {Waxman.} May I make a unanimous consent request  
578 that the vote on the pending amendment be postponed until all  
579 time has expired on this legislation and of course prior to  
580 final passage?

581 Mr. {Shimkus.} If the gentleman would yield?

582 Mr. {Waxman.} Certainly.

583 Mr. {Shimkus.} For my Congress, in essence we are  
584 trying to go through the amendments, roll the votes to the  
585 end, cast votes on the amendments and then on the underlying  
586 bill. I have no objection. The gentleman from--

587 The {Chairman.} I just want to say as one that helped  
588 write the bill that it is up to the chairman. If we roll  
589 votes, the rule is such that you, Mr. Shimkus and Mr. Green,  
590 if you have an amendment to roll the votes, that is how it is  
591 done.

592 Mr. {Green.} That is fine.

593 The {Chairman.} But you need to get an agreement  
594 between you two, and if you decide to do that, then that is  
595 just fine. The vote will be held until the end.

596 Mr. {Shimkus.} If the gentleman would yield back his  
597 time, or if I could--the ranking member, Mr. Green, and I  
598 have been in consultation and we will go through the  
599 amendments. Once the amendments have been offered, we will  
600 then vote on the amendments and roll final passage at the end  
601 of the amendments. Hearing no objection, so ordered.

602 The chair now seeks time for an amendment offering. Who  
603 has an amendment? Anyone seeking recognition? If not, why  
604 did we go through that process?

605 Mr. {Green.} Mr. Chairman, I would like to ask for 5  
606 minutes.

607 Mr. {Shimkus.} The gentleman is recognized for 5  
608 minutes. Strike the last word.

609 Mr. {Green.} Thank you, Mr. Chairman. I would like to  
610 think the legislation put forth by the majority needs more  
611 work, and I would like to ask counsel some questions to see  
612 if we can highlight some of the issues that weren't addressed  
613 in this bill.

614 First of all, Counsel, does the draft bill envision that  
615 the EPA would develop revised criteria specific to coal  
616 combustion residuals or would the revised criteria only be  
617 which the EPA has already promulgated under 40 C.F.R. part  
618 258 for the municipal solid waste?

619 {Counsel.} The bill as currently drafted would not  
620 prevent EPA from updating part 258 should it see fit.

621 Mr. {Green.} Okay. Number two is, what is the EPA's  
622 role under the draft bill? For example, States are to  
623 certify that the State would adopt and implement a coal  
624 combustion residual program to the Administrator of EPA.

625 Mr. {Shimkus.} If the gentleman would suspend, I will  
626 ask my colleagues near the door to take their conversations  
627 into the cloakroom so that my colleague can be heard.

628 Mr. {Green.} Mr. Chairman, I am sure there are  
629 listening to these questions intently.

630 Does the draft bill envision that the EPA would revise



631 or approve that certification from the States, and if not,  
632 how does the draft bill envision that the EPA would find the  
633 State rules or certification deficient?

634 {Counsel.} The certification is the States basically  
635 just saying to EPA or they notify the EPA that they are going  
636 to do the program and then they certify that they have the  
637 appropriate rules and statutes in place. If brought to EPA's  
638 attention that the States aren't properly implementing the  
639 program, EPA sends a notice to the States. The States have a  
640 six-month time period to remedy the deficiencies, and if at  
641 that point EPA does not feel that the deficiencies have been  
642 remedied, they would be able to take over the program.

643 Mr. {Green.} EPA could do that on their own volition,  
644 they don't have to have someone to request that?

645 {Counsel.} The bill says if it is brought to the  
646 attention of EPA.

647 Mr. {Green.} So they could do that in-house?

648 {Counsel.} Presumably.

649 Mr. {Green.} Number three, the draft bill envisions  
650 only one permit will be enforced at any one time. Under the  
651 draft bill, EPA can implement a permit program if the State  
652 does not meet certain provisions under the draft bill.  
653 However, the bill also indicates that a State can adopt a  
654 program after EPA begins to implement a permit program. What

655 is the transition process between an EPA permit and a State  
656 permit?

657 {Counsel.} The typical process is that the existing  
658 permit would remain in force until the program has been  
659 transitioned from EPA to the State.

660 Mr. {Green.} So the initial State permit would still be  
661 in effect until EPA's process is complete?

662 {Counsel.} That is correct.

663 Mr. {Green.} Okay. Number four, the draft bill appears  
664 to provide EPA the authority to implement a permit program  
665 for coal combustion residuals if the State does not have a  
666 program as described in the draft bill. Does this include  
667 enforcement provisions? So what authority would EPA have to  
668 enforce the program if a State does not have a program?

669 {Counsel.} The bill as currently drafted doesn't  
670 provide the EPA with enforcement authority.

671 Mr. {Green.} So if half our 50 States don't do  
672 anything, the EPA doesn't have any authority over this  
673 particular coal combustion residuals?

674 {Counsel.} That is correct.

675 Mr. {Shimkus.} Would the gentleman yield for follow-up  
676 on that?

677 Mr. {Green.} I would be glad to.

678 Mr. {Shimkus.} I guess the question is, would the EPA

679 still have general enforcement authority?

680 {Counsel.} They would have authority, their imminent  
681 hazardous authority under 7003.

682 Mr. {Shimkus.} Thank you. I thank my colleague.

683 Mr. {Green.} Number five, the draft bill states that  
684 the States should maintain an approved program under section  
685 4005(c) or authorized program under section 3006 of RCRA.  
686 What is the relationship between this requirement and the  
687 remainder of the draft bill? That is, why is this provision  
688 included and what issue does it address?

689 {Counsel.} I am sorry. What was the second half of  
690 your question?

691 Mr. {Green.} The draft bill states that States should  
692 maintain an approved program under section 4005(c) or an  
693 authorized program under section 3006 of RCRA. What is the  
694 relationship between that requirement and the remainder of  
695 this draft bill? See, there is some confusion in the draft  
696 bill that I worry that we may not be giving EPA the guidance  
697 that most of us would like, and I wonder how that would work  
698 out in real life when EPA starts to look at it.

699 {Counsel.} The requirement that States have either an  
700 approved MSW plan or an authorized 3006 is a check-off. If  
701 the States have such programs currently in place, they are  
702 preapproved, so to speak, to implement and adopt a coal

703 combustion residuals permitting program in the State, and so  
704 long as they maintain those programs, they continue to be  
705 able to do CCR permitting program.

706 Mr. {Green.} My last question, Mr. Chairman, is the  
707 draft bill provides no guidance on how EPA to administer, if  
708 at all, this authority on Indian lands, section 4011(a) only  
709 applies to State which RCRA currently defines it to exclude  
710 Indian tribes and Indian territories. Is the intent of the  
711 bill to give EPA authority over the Native American lands or  
712 the Indian lands?

713 {Counsel.} The bill as currently drafted doesn't  
714 address tribal lands.

715 Mr. {Green.} Mr. Chairman, these questions highlight  
716 some of the issues that I think hopefully we can work  
717 together between now and the markup in the full committee,  
718 and I hope we have a real opportunity to put a bill together  
719 that will have a chance of passing in the Senate because I  
720 think we need to solve the problem of the coal ash instead of  
721 just sending something to the Senate and hopefully the  
722 majority will work with our side before we get to the full  
723 committee this week. I yield back my time.

724 Mr. {Shimkus.} The gentleman yields back his time.

725 Mr. {Waxman.} Mr. Chairman.

726 Mr. {Shimkus.} The chair recognizes the gentleman from

727 California.

728 Mr. {Waxman.} I have an amendment at the desk.

729 Mr. {Shimkus.} The clerk will report the amendment. Is  
730 there a number?

731 Mr. {Waxman.} Number two.

732 The {Clerk.} An amendment offered by Mr. Waxman of  
733 California.

734 [The amendment follows:]

735 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|  
736           Mr. {Shimkus.} Without objection, the reading of the  
737 amendment is dispensed with and the gentleman from California  
738 is recognized for 5 minutes in support of his amendment.

739           Mr. {Waxman.} The Resource Conservation and Recovery  
740 Act has a simple purpose: to protect public health and the  
741 environment from unsafe disposal of solid waste. My  
742 amendment would bring that purpose into this legislation.

743           This amendment is necessary because without it, the  
744 authority of States and EPA could be limited in ways that put  
745 human health and the environment at risk. Under the existing  
746 language, a State could put in place an insufficient program,  
747 one that threatens human health, and so long as they require  
748 the required certification, they are done. There would be no  
749 way for the EPA to intervene, to provide the necessary  
750 safeguards.

751           If we adopt this amendment, State plans will have to  
752 meet the existing standard for disposal under subtitle D of  
753 RCRA, meaning that they will have to include criteria  
754 necessary to protect public health and the environment. EPA  
755 will have the authority to step in if States fail to protect  
756 public health and the environment, and if EPA steps in, it  
757 will have to implement a program that protects public health  
758 and the environment. It is that simple. It could mean the

759 difference between a protective regime and one that puts  
760 people at risk.

761         So I urge my colleagues to support this amendment, and I  
762 yield back my time.

763         Mr. {Shimkus.} The gentleman yields back his time.

764         Does anyone seek recognition in opposition to the  
765 amendment? If not, I recognize myself for 5 minutes in  
766 opposition.

767         In the beginning of the markup, I highlighted the fact  
768 that the Environmental Council of the States, which is the  
769 environmental agencies from the States, submitted a letter in  
770 support of this legislation underlining the fact that they  
771 feel that this helps them protect the health and the  
772 community.

773         This amendment requires coal combustion residuals permit  
774 programs to protect human health and the environment and also  
775 inserts criteria for the location of landfills. This well-  
776 meaning amendment contains language that we feel is  
777 unnecessary. Page 3, lines 16 through 19, requires that  
778 State coal combustion residuals programs cannot be less  
779 stringent than the requirements of the revised criteria.  
780 These revised criteria, which are defined on page 13, lines 9  
781 through 13, already are implicit in section 410(c), which  
782 states the criteria shall be those necessary to protect human

783 health and the environment and may take into account the  
784 practical capability of such facilities. The amendment does  
785 not add any new requirements for protection on human health  
786 and the environment but could remove some flexibility on the  
787 technical feasibility of its application.

788 In addition, the municipal solid waste program and the  
789 part 258 criteria, the baseline for the coal combustion  
790 residue program in the States is based on the requirement  
791 that programs be protective of human health and the  
792 environment. Many States are already regulating coal  
793 combustion residue in manners that is protective of human  
794 health and the environment. Part 258 also contains criteria  
795 regarding the location of coal combustion residue management  
796 and disposal structures. This amendment seeks to add items  
797 that do not need to be added since they are already picked up  
798 by the underlying bill.

799 Mr. {Waxman.} Will the gentleman yield for a question?

800 Mr. {Shimkus.} I would be happy to yield.

801 Mr. {Waxman.} Is it your understanding then that if a  
802 State adopts a position that could be challenged as being  
803 unsafe, not protective of the public health and the  
804 environment, that EPA could step in and correct it or not  
805 approve it on that basis?

806 Mr. {Shimkus.} If the gentleman would yield, they would



807 have to meet the criteria under the bill, which is  
808 established in the language.

809 Mr. {Waxman.} So if they did not meet the criteria and  
810 were not protective of public health and the environment, EPA  
811 could deny a State's plan?

812 Mr. {Shimkus.} You know, it would have to be--obviously  
813 the State is going to in essence certify that they are going  
814 to be under the regime and then someone would have to  
815 identify that they are not meeting the standard and then EPA  
816 would then have the authority.

817 Mr. {Waxman.} Thank you.

818 Mr. {Shimkus.} Without anyone else seeking recognition,  
819 I yield back my time.

820 Anyone else seeking recognition in support or opposition  
821 of the amendment? Hearing none, the vote then occurs on the  
822 amendment offered by the gentleman from California. All  
823 those in favor, say aye. Those opposed, no. In the opinion  
824 of the chair, the nos have it.

825 Mr. {Waxman.} Mr. Chairman, I request a roll call vote.

826 Mr. {Shimkus.} The gentleman requests a roll call vote,  
827 and the roll call vote will be called at the end of the  
828 amendment offerings.

829 Is there anyone else seeking recognition to offer an  
830 amendment? If there are no further amendments, the clerk

831 will call the roll on the Baldwin amendment.

832 The {Clerk.} Mr. Murphy?

833 Mr. {Murphy.} No.

834 The {Clerk.} Mr. Murphy, nay.

835 Mr. Whitfield?

836 [No response.]

837 The {Clerk.} Mr. Pitts?

838 Mr. {Pitts.} Nay.

839 The {Clerk.} Mr. Pitts, nay.

840 Mrs. Bono Mack?

841 [No response.]

842 The {Clerk.} Mr. Sullivan?

843 [No response.]

844 The {Clerk.} Mr. Bass?

845 Mr. {Bass.} Nay.

846 The {Clerk.} Mr. Bass, nay.

847 Mr. Latta?

848 Mr. {Latta.} Nay.

849 The {Clerk.} Mr. Latta, nay.

850 Mrs. McMorris-Rodgers?

851 [No response.]

852 The {Clerk.} Mr. Harper?

853 Mr. {Harper.} Nay.

854 The {Clerk.} Mr. Harper, nay.

855 Mr. Cassidy?  
856 Dr. {Cassidy.} Nay.  
857 The {Clerk.} Mr. Cassidy, nay.  
858 Mr. Gardner?  
859 [No response.]  
860 The {Clerk.} Mr. Barton?  
861 Mr. {Barton.} No.  
862 The {Clerk.} Mr. Barton, nay.  
863 Mr. Upton?  
864 The {Chairman.} No.  
865 The {Clerk.} Mr. Upton, nay.  
866 Mr. Green?  
867 Mr. {Green.} Yes.  
868 The {Clerk.} Mr. Green, aye.  
869 Ms. Baldwin?  
870 Ms. {Baldwin.} Aye.  
871 The {Clerk.} Ms. Baldwin, aye.  
872 Mr. Butterfield?  
873 [No response.]  
874 The {Clerk.} Mr. Barrow?  
875 Mr. {Barrow.} Aye.  
876 The {Clerk.} Mr. Barrow, aye.  
877 Ms. Matsui?  
878 Ms. {Matsui.} Aye.

879           The {Clerk.} Ms. Matsui, aye.  
880           Mr. Pallone?  
881           Mr. {Pallone.} Aye.  
882           The {Clerk.} Mr. Pallone, aye.  
883           Ms. DeGette?  
884           Ms. {DeGette.} Aye.  
885           The {Clerk.} Ms. DeGette, aye.  
886           Mrs. Capps?  
887           [No response.]  
888           The {Clerk.} Mr. Waxman?  
889           Mr. {Waxman.} Aye.  
890           The {Clerk.} Mr. Waxman, aye.  
891           Mr. Shimkus?  
892           Mr. {Shimkus.} Mr. Shimkus votes no.  
893           The {Clerk.} Mr. Shimkus, nay.  
894           Mr. {Shimkus.} Any other member seeking an opportunity  
895 to vote? The clerk will report the tally.  
896           The {Clerk.} Mr. Chairman, on that, that there were  
897 seven ayes, nine nays.  
898           Mr. {Shimkus.} The amendment is not agreed to.  
899           The clerk will now call the roll on the Waxman  
900 amendment.  
901           The {Clerk.} Mr. Murphy?  
902           Mr. {Murphy.} No.

903           The {Clerk.} Mr. Murphy, nay.  
904           Mr. Whitfield?  
905           [No response.]  
906           The {Clerk.} Mr. Pitts?  
907           Mr. {Pitts.} Nay.  
908           The {Clerk.} Mr. Pitts, nay.  
909           Mrs. Bono Mack?  
910           [No response.]  
911           The {Clerk.} Mr. Sullivan?  
912           [No response.]  
913           The {Clerk.} Mr. Bass?  
914           Mr. {Bass.} Nay.  
915           The {Clerk.} Mr. Bass, nay.  
916           Mr. Latta?  
917           Mr. {Latta.} Nay.  
918           The {Clerk.} Mr. Latta, nay.  
919           Mrs. McMorris-Rodgers?  
920           [No response.]  
921           The {Clerk.} Mr. Harper?  
922           Mr. {Harper.} Nay.  
923           The {Clerk.} Mr. Harper, nay.  
924           Mr. Cassidy?  
925           Dr. {Cassidy.} No.  
926           The {Clerk.} Mr. Cassidy, nay.

927 Mr. Gardner?  
928 [No response.]  
929 The {Clerk.} Mr. Barton?  
930 Mr. {Barton.} No.  
931 The {Clerk.} Mr. Barton, nay.  
932 Mr. Upton?  
933 The {Chairman.} No.  
934 The {Clerk.} Mr. Upton, nay.  
935 Mr. Green?  
936 Mr. {Green.} Yes.  
937 The {Clerk.} Mr. Green, aye.  
938 Ms. Baldwin?  
939 Ms. {Baldwin.} Aye.  
940 The {Clerk.} Ms. Baldwin, aye.  
941 Mr. Butterfield?  
942 [No response.]  
943 The {Clerk.} Mr. Barrow?  
944 Mr. {Barrow.} Votes aye.  
945 The {Clerk.} Mr. Barrow, aye.  
946 Ms. Matsui?  
947 Ms. {Matsui.} Aye.  
948 The {Clerk.} Ms. Matsui, aye.  
949 Mr. Pallone?  
950 Mr. {Pallone.} Aye.

951           The {Clerk.} Mr. Pallone, aye.  
952           Ms. DeGette?  
953           Ms. {DeGette.} Aye.  
954           The {Clerk.} Ms. DeGette, aye.  
955           Mrs. Capps?  
956           [No response.]  
957           The {Clerk.} Mr. Waxman?  
958           Mr. {Waxman.} Aye.  
959           The {Clerk.} Mr. Waxman, aye.  
960           Mr. Shimkus?  
961           Mr. {Shimkus.} Mr. Shimkus votes no.  
962           The {Clerk.} Mr. Shimkus, nay.  
963           Mr. {Shimkus.} The clerk will report the tally.  
964           The {Clerk.} Mr. Chairman, on that, that there were  
965 seven ayes, nine nays.  
966           Mr. {Shimkus.} The amendment is not agreed to.  
967           If there are no further amendments, the question now  
968 occurs on favorably reporting the bill to the full committee.  
969 All those in favor will signify by saying aye. All those  
970 opposed, no. The ayes have it. The ayes have it. The bill  
971 is agreed to.  
972           I would like to thank my colleagues for their attention  
973 and their work and I look forward to working with my  
974 colleagues on the other side in the interim to see if there

975 is something we can do to address some of their concerns.

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

979           Again, the chair thanks the members and staff. The  
980 subcommittee stands adjourned.

981           [Whereupon, at 5:05 p.m., the Subcommittee was  
982 adjourned.]