

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

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

June 22, 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Upton:

Thank you for your letter of June 21, 2011, and its clarification of your discretionary CutGo policy. It actually confirms my concerns about the coal ash bill that is scheduled for markup tomorrow.

In your letter, you make two points. First, you write that you do not believe the bill will have a significant impact on the federal budget. You explain that the coal ash legislation is “analogous” to H.R. 2021, which “the Congressional Budget Office has now scored as having no significant impact on the federal budget.”

Second, you state that “[i]f CBO ... determines that any of these bills will have a significant impact on the federal budget, we will offset the newly authorized spending with reductions elsewhere.”

My concern is that the coal ash bill is not “analogous” to H.R. 2021. I did not raise any discretionary CutGo concerns when H.R. 2021 was considered in Committee because my estimation was that it would pose an “insignificant” cost on the federal government, which CBO defines as a cost under \$500,000. CBO confirmed this estimate in its official score, which found that H.R. 2021 would cost the taxpayer less than \$500,000 and thus “would have no significant impact on the federal budget.”¹

This is not the case with the coal ash legislation. My staff has consulted with CBO, which has advised us that “CBO’s preliminary review of the bill indicates that enacting this legislation would most likely increase discretionary costs by more than \$500 k over the next five

¹ Congressional Budget Office, Cost Estimate, H.R. 2021, Jobs and Energy Permitting Act of 2011 (June 8, 2011).

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years.” The version of the bill CBO reviewed was the same version the Subcommittee reported yesterday. CBO further advised us that increases in discretionary spending above \$500,000 are not considered “insignificant.”

It’s easy to understand CBO’s views. The proposed legislation would create a new program under the Resource Conservation and Recovery Act to require the permitting of disposal of coal combustion residuals. EPA is required to implement the permit program in each state that refuses or fails to create a program. Moreover, there are numerous site-specific and factual determinations that EPA will have to make pursuant to this legislation during the course of implementation.

I urge you to consult with CBO before tomorrow’s markup and, if CBO confirms my understanding of the costs of this legislation, to pull it from full Committee consideration until you have identified an offset for the new spending authorized under the bill. The Committee should have the opportunity to consider what offset, if any, is appropriate to be added to the legislation.

Thank you for considering my request.

Sincerely,



Henry A. Waxman
Ranking Member