

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

April 12, 2011

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

The Honorable Ed Whitfield
Chairman
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John Shimkus
Chairman
Subcommittee on Environment and Economy
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Upton, Whitfield, and Shimkus:

I am writing in regard to this week's three hearings on eight rules or actions of the U.S. Environmental Protection Agency (EPA). I am concerned that the Committee is providing insufficient notice to ensure that members have the benefit of EPA's views on the complex and controversial legislative proposals that are being brought before the Committee.

Three hearings relating to EPA rules or actions have been noticed for this week:

- On Wednesday, April 13, the Energy and Power Subcommittee will hold a legislative hearing on draft legislation to amend the Clean Air Act as it relates to drilling on the Outer Continental Shelf.

The Honorable Fred Upton
The Honorable Ed Whitfield
The Honorable John Shimkus
April 12, 2011
Page 2

- On Thursday, April 14, the Environment and Economy Subcommittee will hold a legislative hearing on H.R. 1391, legislation to amend the Resources Conservation and Recovery Act to block an EPA proposal designed to ensure the safe disposal of coal ash.
- On Friday, April 15, the Energy and Power Subcommittee will hold a hearing on five rulemakings under the Clean Air Act and one under the Resource Conservation and Recovery Act. The Clean Air Act rulemakings address toxic air pollutants, including mercury, from a variety of different types and sizes of sources. The Resource Conservation and Recovery Act rule addresses the definition of solid waste. Draft legislation relating to these rulemakings is expected to be circulated during the week.

In the case of each hearing, EPA was not contacted by the Committee until after the hearing was publicly noticed one week in advance. For the hearings on April 13 and April 15, Democratic staff could not give EPA advance notice because they received notice the same day as the public. The result of this approach is that EPA is unable to provide a witness for two of the three hearings.

In many cases during this Congress, members have not had an accurate understanding of EPA actions that the Committee has examined. At one hearing, members expressed concern that an EPA rule under the Toxic Substances Control Act applied to small businesses even though small businesses were specifically exempted. At another hearing, members were led to believe that an EPA rule that applies only to electric utilities applied to other facilities as well. In each case, a misunderstanding of EPA's action might have been prevented or quickly remedied if EPA had testified about the action at issue. Ensuring that EPA is available to testify at hearings can help ensure that members have access to accurate information about EPA's actions.

As the former Chair of both the Oversight Committee and the Energy and Commerce Committee, I always tried to provide Administration witnesses with more than one week notice of a hearing. Whether I sought the testimony of an Administration official during the Bush Administration or the Obama Administration, my outreach would often begin weeks ahead of publicly noticing a hearing. I believe this has been the general practice of chairmen of the Energy and Commerce Committee.

I hope you will make greater efforts in the future to ensure that the Committee is able to hear from Administration witnesses by providing adequate notice to the Administration of upcoming hearings and working with the Administration on scheduling to allow an appropriate Administration witness to be present.

The Honorable Fred Upton
The Honorable Ed Whitfield
The Honorable John Shimkus
April 12, 2011
Page 3

Finally, I would like to reiterate the request that Rep. Bobby L. Rush and I made on April 8, 2011, for a second legislative hearing on the Clean Air Amendment that will be examined in the Energy and Power Subcommittee tomorrow. That hearing and a second hearing on the legislative proposal relating to EPA's rules on toxic air pollution prior are needed so that EPA does have an opportunity to testify.

Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman
Ranking Member

cc: The Honorable Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power

The Honorable Gene Green
Ranking Member
Subcommittee on Environment and Economy