

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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December 17, 2012

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

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

Dear Chairman Upton and Chairman Shimkus:

I am writing to bring to your attention a recent report prepared by the Congressional Research Service (CRS), entitled “H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA.”<sup>1</sup> This report carefully examines H.R. 2273 and S. 3512, bills that address the disposal of coal ash, which is also known as coal combustion residuals (CCR). This report should be of great interest because it explains that the effects of the legislation were not well understood when the Committee considered H.R. 2273.

When the Committee considered H.R. 2273, Chairman Upton stated that the legislation would ensure that “coal ash waste will be managed in the same manner as municipal solid waste by the State environmental protection authorities applying stringent Federal standards.”<sup>2</sup> However, the CRS report explains in detail how H.R. 2273 differs from the municipal solid

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<sup>1</sup>Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, (Dec. 5, 2012) (R42847).

<sup>2</sup> Statement of Chairman Fred Upton, Committee on Energy and Commerce, *Full Committee Markup of H.R. 2273 Coal Residuals Reuse and Management Act of 2011 and H.R. 2401, Transparency in Regulatory Analysis of Impact on the Nation Act of 2011* (July 11, 2011).

The Honorable Fred Upton  
The Honorable John Shimkus  
December 17, 2012  
Page 2

waste (MSW) program under the Resources Conservation and Recovery Act (RCRA). CRS states: “EPA would have no federal backstop authority to implement federal standards comparable to its authorities established under other environmental law, including RCRA.”<sup>3</sup> According to CRS:

if creation of a CCR permit program is intended to result in state programs similar to those to regulate MSW landfills, provisions in Section 4011 [created by H.R. 2273] would not create such a program or be consistent with RCRA. The creation of such a program would likely require additional elements, beyond the creation of a permit program that draws from other standards. Again, to be consistent with RCRA, such a program would likely require

- the promulgation of detailed standards directly applicable to owners and operators of the facilities subject to the permit program;
- an indication of the level of protection the standards are intended to achieve; and
- enforcement authority to EPA that would compel states to adopt and implement a permit program adequate to assure facility compliance with a federal standard.<sup>4</sup>

During the full Committee markup, Chairman Shimkus said that the bill “will for the first time ever create national, enforceable requirements for groundwater monitoring, liners at landfills, corrective action when environmental damage occurs, and structural stability criteria to prevent issues like the one that caused the problem at TVA in Tennessee.”<sup>5</sup> However, CRS found that the bills “do not include certain requirements necessary to ensure the creation of a consistent set of standards or consistent state enforcement of those standards.”<sup>6</sup>

Chairman Shimkus asserted that the requirements developed for municipal solid waste would be effective in controlling coal ash, saying “[t]hese existing known and environmentally

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<sup>3</sup> Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, at 2 (Dec. 5, 2012) (R42847).

<sup>4</sup> *Id.* at 26.

<sup>5</sup> Statement of Chairman John Shimkus, Committee on Energy and Commerce, *Full Committee Markup of H.R. 2273 Coal Residuals Reuse and Management Act of 2011 and H.R. 2401, Transparency in Regulatory Analysis of Impact on the Nation Act of 2011* (July 11, 2011).

<sup>6</sup> Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, at 21 (Dec. 5, 2012) (R42847).

The Honorable Fred Upton  
The Honorable John Shimkus  
December 17, 2012  
Page 3

protective requirements are more than adequate to serve as a baseline for regulation of coal ash, so no new federal regulations are needed to deal with the coal ash.”<sup>7</sup> However, CRS found that “[n]either the House bill nor S. 3512 includes provisions comparable to those proposed by EPA, in detail or scope, to regulate landfills and surface impoundments that receive CCR.”<sup>8</sup> The report continues, “Absent the creation of standards applicable to CCR landfills and surface impoundments that address risks specifically associated with CCR disposal, the purpose of creating a CCR permit program is not clear.”<sup>9</sup>

The distance between what it was hoped H.R. 2273 would achieve and what it is now clear it would achieve can be attributed to the lack of proper process on this legislation. No hearing was ever held on H.R. 2273. In fact, the final text of H.R. 2273 was made available to the Committee members only moments before it was voted to be reported. As a result, there was significant disagreement and confusion as to the practical effect of this legislation during the full committee markup, when the statements cited above were made. That is why Rep. Rush and I requested a hearing on the legislation before it was scheduled to be considered on the House floor.<sup>10</sup> Mr. Dingell stated at the time:

[W]e have not yet heard what I think is a clear enough statement of either what the problems are that we are addressing or what the problems are that we will be leaving unaddressed, and I think that is unfortunate.<sup>11</sup>

Coal ash has been shown to contaminate groundwater and have adverse health impacts. A 2007 draft study by EPA found that arsenic leaching into drinking water from unlined CCR surface impoundments poses a lifetime cancer risk 900 times greater than the level that has been deemed acceptable.<sup>12</sup> The same study found that surface impoundments pose noncancer risks above the acceptable criteria for heavy metals including boron, lead, cadmium, cobalt, and

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<sup>7</sup> Statement of Chairman John Shimkus, Committee on Energy and Commerce, *Full Committee Markup of H.R. 2273 Coal Residuals Reuse and Management Act of 2011 and H.R. 2401, Transparency in Regulatory Analysis of Impact on the Nation Act of 2011* (July 12, 2011).

<sup>8</sup> Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, at 24 (Dec. 5, 2012) (R42847).

<sup>9</sup> *Id.*

<sup>10</sup> Statements of Representatives Henry A. Waxman and Bobby L. Rush, Committee on Energy and Commerce, *Full Committee Markup of H.R. 2273 Coal Residuals Reuse and Management Act of 2011 and H.R. 2401, Transparency in Regulatory Analysis of Impact on the Nation Act of 2011* (July 13, 2011).

<sup>11</sup> Statement of Representative John D. Dingell, Committee on Energy and Commerce, *Full Committee Markup of H.R. 2273 Coal Residuals Reuse and Management Act of 2011 and H.R. 2401, Transparency in Regulatory Analysis of Impact on the Nation Act of 2011* (July 13, 2011).

<sup>12</sup> U.S. Environmental Protection Agency, Office of Solid Waste. *Human and Ecological Risk Assessment of Coal Combustion Wastes*, at 4-7 (Aug. 6, 2007).

The Honorable Fred Upton  
The Honorable John Shimkus  
December 17, 2012  
Page 4

molybdenum.<sup>13</sup> Chronic exposure to these heavy metals is associated with neurotoxicity, reproductive complications, kidney disease, and cancer.<sup>14</sup>

Coal ash impoundments are located in 46 states, and with little state or federal regulation of the groundwater surrounding these impoundments, millions of Americans are at risk for drinking water contamination as CCR seeps into groundwater systems. And when gradual seepage turns into a large scale spill, as we saw in Tennessee last year, the risk spreads and grows.

Despite these risks, CRS concluded: “The proposed amendments to RCRA include no directive to EPA to determine whether state CCR permit programs are adequate to enforce the statutory standards or to assess whether the programs would result in necessary protections.”<sup>15</sup>

The risks from unsafe coal ash disposal must be addressed, but H.R. 2273 will not achieve your stated objective of creating a coal ash disposal program like the one in place for municipal solid waste or establishing national, enforceable standards. This legislation has not been subject to full Committee process, and the resultant deficiencies are now clear. I request that you refrain from any effort to pass this legislation during the lame duck session. I also hope you will join me and other Democratic members in drafting bipartisan legislation in the next Congress to create an effective coal ash disposal program.

Sincerely,



Henry A. Waxman  
Ranking Member

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<sup>13</sup> *Id.*

<sup>14</sup> U.S. Environmental Protection Agency, Integrated Risk Information System.

<sup>15</sup> Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, at 35 (Dec. 5, 2012) (R42847).