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RPTS WALKER

DCMN HERZFELD

MARKUP OF

H.R. 2273, COAL RESIDUALS REUSE AND MANAGEMENT ACT OF 2011; AND

H.R. 2401, TRANSPARENCY IN REGULATORY ANALYSIS OF IMPACTS ON THE NATION

ACT OF 2011

MONDAY, JULY 11, 2011

House of Representatives,

Committee on Energy and Commerce,

Washington, D.C.

The committee met, pursuant to call, at 5:05 p.m., in Room 2123, Rayburn House Office Building, Hon. Fred Upton [chairman of the committee] presiding.

Present: Representatives Upton, Barton, Stearns, Whitfield, Shimkus, Terry, Murphy, Gingrey, Scalise, Harper, McKinley, Waxman, Green and Matheson.

Staff Present: Gary Andres, Staff Director; Charlotte Baker, Press Secretary; Jim Barnette, General Counsel; Michael Beckerman,

Deputy Staff Director; Mike Bloomquist, Deputy General Counsel; Maryam Brown, Chief Counsel, Energy and Power; Jerry Couri, Professional Staff Member, Environment; Andy Duberstein, Special Assistant to Chairman Upton; Todd Harrison, Chief Counsel, Oversight/Investigations; Cory Hicks, Policy Coordinator, Energy & Power; Kirby Howard, Legislative Clerk; Peter Kielty, Senior Legislative Analyst; Heidi King, Chief Economist; Ben Lieberman, Counsel, Energy & Power; Dave McCarthy, Chief Counsel, Environment/Economy; Carly McWilliams, Legislative Clerk; Jeff Mortier, Professional Staff Member; Mary Neumayr, Senior Energy Counsel; Tina Richards, Counsel, Environment & the Economy; Chris Sarley, Policy Coordinator, Environment & Economy; Phil Barnett, Democratic Staff Director; Jen Berenholz, Democratic Chief Clerk; Jacqueline Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; Caitlin Haberman, Democratic Policy Analyst; Lindsay Vidal, Democratic Press Secretary.

The Chairman. The committee will come to order. We will only be conducting opening statements today on the bills that we are going to be marking up tomorrow at 10 o'clock, and the chair now recognizes myself for 5 minutes.

We are here this afternoon to begin consideration of two important bills that share a common theme: smart regulation to protect and create jobs. In January, the President issued an Executive Order on regulatory reform and relief. He said the goal was to ensure the benefit of Federal regs outweigh their costs. Given the tens of billions of dollars in compliance costs and the millions of jobs threatened by this administration's regulatory agenda, the President's Executive Order seemed like great news designed to put the brakes on overzealous regulators. Unfortunately, the rhetoric has not matched reality.

Agencies across the Federal Government continue to issue reams of red tape, leaving job creators with confusion and costly burdens that continue to hamstring our economic recovery. This committee alone has identified millions of jobs put at risk by a variety of regulations.

Today we are bringing up two bills designed to fulfill the President's pledge for regulatory relief. We are not suggesting Federal agencies should never be allowed to regulate. As a former OMB staffer, I understand that regs done right offer rules of the road for industries complying with Federal laws. Our goal should be to produce the most effective and least burdensome regulation. And before these

rules take effect, regulators should fully understand their consequences for States, industries, workers, and our economy.

As I mentioned at the outset, the two bills we will vote on tomorrow are about smart regulations that will protect jobs. The Coal Residuals Reuse and Management Act was introduced by Representative McKinley to ensure that we can continue the many beneficial uses of coal combustion byproducts and responsibly manage the portion that is not recycled.

The Environmental Council of the States, the Association of State and Territorial Solid Waste Management Officials, the Utility Solid Waste Activities Group, the Edison Electric Institute, and several individual State environmental officers have written me to endorse the Shimkus substitute amendment. So, without objection, I will include these letters as part of the record. So ordered.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. The substitute says coal ash waste will be managed in the same manner as municipal solid waste by the State environmental protection authorities applying stringent Federal standards. Even EPA says that using MSW standards would work well for managing coal ash.

Today we will consider a manager's amendment that strengthens H.R. 2273 by clarifying the respective roles of the States and EPA. This carefully crafted compromise is endorsed by a wide array of stakeholders, and I would urge its adoption.

I also applaud Mr. McKinley and subcommittee chair John Shimkus for putting in the time and effort to develop such a strong bill. As a result of their efforts, the bill should yield a stronger bipartisan vote and achieve greater likelihood of becoming law.

We will also consider the TRAIN Act, a bill authorized by Representative John Sullivan and Jim Matheson to study the cumulative impact of rules that have been proposed or recently promulgated by the EPA. While most of these regs are already considered on an individual basis, that analysis is sometimes incomplete. For example, often the economic analysis performed by the EPA does not actually evaluate how many jobs will be lost as a result of the rule.

We also know these rules don't exist in a vacuum. Industries do not adopt just a single rule. They are forced to comply with layers and layers of them, even when they contradict each other or are impossible to achieve in tandem. This puts even more jobs at risk by driving up the cost of doing business or by driving manufacturing

facilities oversees.

The TRAIN Act establishes an interagency committee to analyze the cumulative burden of these rules, including how many jobs will be put at risk, how the costs and the liability of energy will be affected, and the consequences for our global competitiveness. This rule will assist both regulators proposing and enforcing rules and policymakers conducting oversight.

Again, I applaud the work of my colleagues for refining and improving the bill over time to ensure a strong bipartisan product that will truly foster a more sensible approach to regulation that protects jobs in our economy.⁹

[The information follows:]

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The Chairman. I now recognize the ranking minority member Mr. Waxman for an opening statement.

Mr. Waxman. Thank you very much, Mr. Chairman.

Today the full committee considers two bills, H.R. 2273, regarding coal ash, and H.R. 2401, a revised version of the TRAIN Act, which requires additional study of EPA regulations.

Disposal of toxic coal ash is a serious issue, and it deserves an effective response that is much better vetted than this bill currently offers. At hearings in this committee, we have heard testimony about the devastating impacts contamination from these wastes can cause. We have learned of contaminated drinking water supplies and ruined property values. We have 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.

The EPA has been trying to develop regulations to assure that coal ash disasters, such as occurred at Kingston in 2008, will not recur. There are proposals to phase out wet impoundments like in Kingston and to require basic controls like the use of liners, groundwater monitoring, dust control, and other engineering measures.

The legislation we will consider does not yet accomplish any of this. It will establish a weak Federal program designed to maintain the status quo. This bill won't protect public health as currently drafted. It won't make high-risk impoundments of coal ash safe. It won't stop contamination of drinking water. It is now about ensuring

beneficial reuse of coal ash.

The TRAIN Act is similarly flawed. Energy lobbyists have been complaining that regulations to protect public health from air pollution from power plants will cause a train wreck for the reliability of the Nation's electric system. The premise of the TRAIN Act is that we need to analyze the cumulative impact of the regulation to prevent this from happening. But this train wreck idea is another one of the myths that have become so commonplace in this room, like the myth that climate change is a hoax.

Analysts have found that EPA regulations won't cause even a fender bender. Just last month the Bipartisan Policy Center released a new report on the regulations that finds impacts on the reliability of the electric system are manageable, while the public health and environmental benefits are huge. CEOs of leading electric utilities have said the same thing.

One core problem is that the bill calls for an analysis of only the costs of regulation, not their benefits. It asks for an analysis of the impact of EPA regulations on the global economic competitiveness of the United States, but not on the benefits of mitigating global climate change. It calls for an analysis of the impact of facility closures, but not of the facility openings that will be created by investments in clean energy.

Another problem is the feasibility of the legislation. The bill requires a new government committee to analyze actions that may be taken by Federal, State, and local regulators over the next 20 years. This

speculative effort must be completed by next August using state-of-the-art economic modeling. This does not appear to be feasible.

To pay for the costs of the new analysis, the legislation slashes the authorization for the effective and popular Diesel Emissions Reduction Act, called DERA. The last thing we should be doing is savaging a proven job-creating program like DERA to create an unnecessary government committee.

For months Republicans on this committee have been saying that we need to cut the size of government to create private-sector jobs. This bill now does the exact opposite. It cuts a program that has created thousands of good-paying jobs in the private sector to fund the creation of a new government bureaucracy. I thought Republicans want smaller, less bureaucratic government. A new committee with 11 heavyweights, including five Cabinet secretaries, will create more government bureaucracy and more government red tape and not one more job in the private sector to be created. That is why I will be opposing this bill today.

Thank you, Mr. Chairman. That completes my opening statement.

The Chairman. I thank the ranking member.

[The prepared statement of Mr. Waxman follows:]

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The Chairman. I recognize for an opening statement the chairman emeritus of the committee Mr. Barton for 5 minutes.

Mr. Barton. Thank you, Mr. Chairman. I want to introduce to the committee a special assistant this week who is no stranger to the committee. It is my son Jack Kevin Barton. He says the committee is boring.

The Chairman. He has got to go back to his other seat.

Mr. Barton. But he was a promised an ice cream by the chairman when we go to the floor to vote. So anyway, I am being assisted by Jack Kevin. Even though it is boring, he has lots of friends on the committee, and he is glad to be here.

Mr. Chairman, I am pleased to give an opening statement on the two bills that will be marked up tomorrow, H.R. 2273 and H.R. 2401.

H.R. 2273 would preserve the States' ability that have approved programs for municipal solid waste under section 4005 of RCRA or are delegated to implement a program under RCRA section 3006 to adopt and implement a coal combustion residual permit program under subtitle D under RCRA section 3006. The bill would preserve the right for EPA to continue its full review of imminent hazard authority under section 7003.

Coal ash should not be treated any differently than municipal solid waste. The manager's amendment that will be offered further clarifies the roles between the States and the EPA.

I support this bill and the subsequent manager's amendment that is expected to be offered to it.

H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act, or TRAIN Act, quite frankly is designed to do what the EPA has absolutely refused to do in terms of reviewing the various programs under its jurisdiction and doing a relevant and fair cost-benefit analysis.

When the President goes on television and bemoans the fact that the stimulus program doesn't appear to be working in spite of spending close to \$1 trillion, we have an unemployment rate that is going up and not down, he might look no further than what his Environmental Protection Agency appears to be doing. We have, in my opinion, Mr. Chairman, a double whammy: the law of diminishing returns and the law of vanishing jobs. When you keep tightening regulations without any apparent real review of the cost and the benefit of them, you shouldn't be surprised if industry reacts prudently by postponing, eliminating, moving offshore thousands of jobs.

The latest series of rules that the EPA has proposed in the last several months are going to be devastating to the economies of the various States in which those proposals are implemented, and yet the EPA, in its attempted compliance with the Regulatory Review Act that we reviewed earlier at the subcommittee, simply says that that review is not required because there is no economic consequence of it. That is patently false, Mr. Chairman, and something needs to be done about it.

The TRAIN Act is that something. I will admit that what former chairman and current Ranking Member Waxman said, that it seems to be

counterintuitive to want to create a supercommission to do the job that the EPA should do itself -- I think Mr. Waxman's comment on that has some merit. But when you have an agency that appears to be, no matter what, they are going to tighten all these rules as far as they can, as fast as they can, regardless of the economic consequences, I think it is a fair thing to put into place the commission that the TRAIN Act would do.

It does include a number of Cabinet secretaries. It does include some other regulatory agencies like the Federal Energy Regulatory Commission, and if it does do its job, it will do the job that the EPA should be doing but is not doing.

So, Mr. Chairman, I see that my time is about to expire. I look forward to tomorrow's markup. I will point out that this latest rule, this air transport rule that EPA just put out last week, is going to have a devastating economic impact on Texas. It probably would require the elimination of about 25 percent of electricity generation in the State of Texas, and this is in a State that is in compliance with the Clean Air Act in terms of SO₂ and ozone except in two areas.

So, Mr. Chairman, I appreciate the markup and look forward to participating in its tomorrow.

The Chairman. Thank you.

[The information follows:]

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The Chairman. The Chair recognizes Mr. Green from Texas for an opening statement for 5 minutes.

Mr. Green. Thank you, Mr. Chairman. I appreciate you taking off your coat, because if you want to set the standards, you know, since we are the Energy Committee, we are trying to conserve some energy.

I want to thank you for holding the markup today on H.R. 2273, the Coal Residuals Reuse and Management Act of 2011; and H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011.

Since the conclusion of our subcommittee markup, our Environment and Economy Subcommittee, a couple of weeks ago, our staff has been working diligently with the majority to come to a bipartisan agreement on H.R. 2273, the Coal Residuals Management Act. The amendment in the nature of a substitute circulated by the majority does represent a vast improvement over the original draft of the bill; however, I still believe there are some technical issues, and hopefully we can address those this evening before we go forward with it and I can support the amendment in the nature of a substitute. I believe our staffs are going to try and meet again tonight, and I hope some of those remaining issues can be resolved.

Mr. Chairman, I want to quickly state my support for H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act. We can't ignore the fact that our companies are faced with complying with several rules all at once. That is why I think it is appropriate to study the cumulative impact of these rules coming down the pike on

the competitive side of businesses along with any possible related impacts on the jobs.

This bill does not seek to duplicate efforts that the EPA has already undertaken in conducting regulatory impact analysis; however, it aims to look at all the EPA rules holistically and how they are intertwined and, more importantly, what it means for compliance. Having that said that, I hope my colleagues on the other side of the aisle understand some of these rules have been court ordered, and that the Obama administration did not single-handedly seek out to regulate these businesses on several fronts. That fact is often lost in the debate.

Again, Mr. Chairman, thank you, and I yield back my time.

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The Chairman. The gentleman yields back. The chair would recognize the gentleman from Florida Mr. Stearns for an opening statement.

Mr. Stearns. Thank you, Mr. Chairman, and let me also say how we pleased we are to be able to mark up these two bills.

Hearing the ranking member talking about more bureaucracy, this is really, just for the bill H.R. 2401, the TRAIN Act -- is really just a commission providing oversight. It is interesting. On January 18, 2011, the President issued an Executive Order asking that all government agencies roll back regulations, and then just Friday he issued another Executive Order asking the independent agencies, which were not covered, unfortunately and startling, on his first Executive Order on January 18, to roll back regulations, also. So it is really apropos that we here in the Energy and Commerce go ahead with this legislation tomorrow.

Even with 14 million Americans out of work and an economy that is teetering on the brink, the EPA is poised to continue enacting a series of backdoor mandates that will stifle economic growth. These new regulations include overreaching and inefficient air and water rules that will dramatically increase energy costs, cause enormous negative impacts to jobs and the economy, irreparably damage the competitiveness of American businesses, and trample on State sovereignty in the process, not to mention how much uncertainty they are going to create.

Although some regulations do serve the public interest, given

that the Federal Register is at an all-time high of over 81,000 pages, it is essential to carefully conduct a cost-benefit analysis of any new regulation and to identify those existing regulations that can be pared back or simply eliminated to promote job creation and ensure reliable power generation.

So H.R. 2401, the TRAIN Act, will do just that by establishing an interagency committee to analyze the cumulative and incremental impact of certain rules and actions by the EPA and their impact on energy and manufacturing in the United States.

The second piece of legislation we will be considering is H.R. 2273, which will continue to facilitate the beneficial use of coal combustion residuals, CCRs, while providing individual States with the option to regulate the proper management and disposal of materials generated by the combustion of coal and other fossil fuels.

Within the United States, 136 million tons of CCRs are produced annually. Currently around 44 percent of these tons are recycled in some form of benefit for use, such as road construction materials or wallboard. Recycling of these materials has well-established environmental and economic benefit, and the manufacturers who use recycled materials employ approximately 4,000 American workers, and the products are less costly than if they had to be manufactured without the benefit of recycled components.

So I encourage my colleagues to support these two critical pieces of legislation to help to slow the onslaught of EPA regulations and determine their cumulative effect on energy production and our economy.

The Chairman. Thank you.

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The Chairman. The chair would recognize the gentleman from Utah Mr. Matheson for an opening statement.

Mr. Matheson. Well, thank you, Mr. Chairman.

I support the TRAIN Act that is being marked up tomorrow, and I want to thank Mr. Sullivan and Chairman Upton for working with me on this legislation, which requires a cumulative impact study of certain EPA rules to be proposed and finalized before January 1, 2012.

An issue in Federal rules and regulations, we know that often there is no one who can look out and see the forest for the trees. That is the case right now with a number of these rules nearing completion by the Environmental Protection Agency that will have a major effect on consumers and on businesses and on our economy.

I have heard from many people in my State who invest in and operate plants and equipment that produce electricity to power our lives and our economy, and they worry about being in compliance with a dozen or so new environmental regulations that are rolled out at different times over the next few years. While the costs and benefits of many of these rules have been studied individually, the EPA hasn't sat back to evaluate the cumulative effect, and I believe that an harmonization of all of these proposed rules is something that all of us need: regulators, the business community, consumers, and policymakers. We all need that if we actually expect to have a situation where investments can be made that are needed to meet public health goals.

The study required by the TRAIN Act is designed to complement and expand upon what the EPA has found for the rules individually in terms

of public health and environmental benefits by combining it with a broader economywide analysis across a variety of sectors from electricity and fuel prices to global competitiveness, to availability of construction and engineering jobs, to small businesses.

Having this information will inform debate of policy going forward. I believe this legislation is necessary to keep the pressure on the EPA to ensure a thorough analysis is ultimately conducted of the various rules and effects across our country. So I hope folks can join us in supporting this bipartisan, commonsense legislation.

Mr. Chairman, in addition to my statement, Ms. Schakowsky from our committee also wanted to enter a statement. She is unable to be here today. So I have a written copy of that statement. I ask unanimous consent that that also could be included in the record.

The Chairman. Without objection.

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Mr. Matheson. Thank you.

With that, I yield back my time.

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The Chairman. The gentleman yields back.

The chair would recognize the chair of the Energy and Power Subcommittee Mr. Whitfield for 5 minutes.

Mr. Whitfield. Thank you, Chairman Upton, and I want to thank you for holding this full committee markup on the TRAIN Act and also the Coal Residuals Reuse and Management Act. I also want to thank Congressman Matheson, Congressmen McKinley and Shimkus and Sullivan for their involvement in both of these acts and for pushing them forward.

Some people ask, well, why do you really need to do a separate analysis of benefits and costs on these acts? I would like to just read some of the acts that EPA just adopted or is going to adopt very soon in a very short period of time: the greenhouse gas permitting rules for major modifications on new facilities; boiler-MACT rules; utility MACT; ozone national ambient air quality standards; cross-State air pollution rules; coal ash rules; sulfur dioxide ambient rules; nitrogen dioxide ambient rules; review of secondary ambient for NOX and SOX; particulate matter ambient rules; greenhouse gas standards for existing power plants; greenhouse gas standards for existing refineries; regional haze rules.

Some people are saying that EPA is a runaway train, and I, for one, believe, with everyone else, that we do need an analysis of the cumulative costs and benefits of all these rules.

And another reason I am so supportive of the TRAIN Act is that we also hope that this committee that will be analyzing this in more

detail will also look at some of the assumptions that EPA uses in their models where they provide a benefit economic cost, as well as analysis for health benefits. For example, do they consider that if you close five or six coal utility plants in Kentucky, West Virginia, and Illinois to meet these rules, and people are left unemployed, what will be the health costs to the children of those people? And do they analyze those costs when they look at cost-benefits for people who live in the Northeast? Well, I will tell you, they don't do that. So these are some assumptions that we need to explore, and that is one of the main purposes of the TRAIN Act.

I think people have already talked in great detail about the Coal Residuals Reuse and Management Act. The bottom line is why should we treat that any different than municipal solid waste? And as I said, Mr. McKinley and Mr. Shimkus have done a tremendous job on that act.

So I look forward to the markup tomorrow because I think we have an opportunity to provide a great service to the people of this country for a more thorough analysis and understanding of the costs, the benefits, and even the models used at EPA, and the assumptions that they make, because I can tell you, most people have no idea what these models are, what assumptions are made, and that is one of the purposes of the TRAIN Act.

And with that, I would yield back the balance of my time.

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The Chairman. The gentleman yields back.

The chair would recognize the chair of the Environment and Economic Subcommittee Mr. Shimkus for 5 minutes.

Mr. Shimkus. Thank you, Mr. Chairman.

Today has been a long time coming, but I think the steps we have taken to get more concerns addressed in this bill has made it a better product, and I want to thank you, Mr. Chairman. Your committee, your staff, and, of course, mine have put in a lot of long hours on this, and they have done a great job.

The legislation our committee will mark up on coal combustion residuals will provide certainty to producers and recyclers of coal combustion byproducts, while also ensuring the safe and appropriate disposal and monitoring of coal combustion byproducts.

Since the very first hearing in the Environment and the Economy Subcommittee, regulation of CCRs has been a topic of discussion. We learned early on that regulating CCRs as hazardous waste, when these materials do not even trigger EPA's own toxicity test, known as TCLP, would have devastating effects on jobs and cripple a very successful and emerging byproducts industry.

At the same time, independent analysis of the proposed overregulations for CCR by the Obama Environmental Protection Agency will raise utility prices for families across the country. We heard firsthand from a utility manager in my district the immediate impact would be a 25 percent increase in cost to consumers. With the economy sputtering, we cannot afford to have jobs put at risk by the Obama

administration's political appointees when they think it is just a good idea.

In our legislative hearing on H.R. 1391, the precursor bill to the one we are marking up, independent experts testified further on the inability of CCRs to reach the threshold necessary for regulation as a hazardous material, even though EPA is claiming it is. Further, the witnesses called into serious question whether the Obama Environmental Protection Agency actually gave appropriate consideration to important practical factors that, if done, would have radically altered its final decision.

I am not suggesting government should take a holiday on these matters when it comes to oversight and protecting the public from risk. There is no doubt it is government's responsibility to check on these activities. The question becomes who is the appropriate monitor. State officials affirm their expertise and desire to regulate this area without Federal control. Given the unique challenges of each individual State, I believe this is the best approach.

The legislation and the amendment in the nature of a substitute that will be offered, therefore, create a new section within subtitle (d) of the Solid Waste Disposal Act to establish targeted authority to address the management and disposal of coal combustion residuals at landfills, surface impoundments and other land-based units. This program, which will be led by the States, or EPA if the State cannot or does not want to operate it, 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.

In working with stakeholders, we have received broad support for this legislation, including State environmental officials, the Beneficial Use Committee, and other regulated stakeholders. They all believe the provisions in this bill would protect jobs, encourage economic growth and job creation, and prevent unnecessary high energy prices and construction costs.

I want to thank Representative McKinley for his leadership on this issue, as well as Representative Latta, Chairman Emeritus Dingell, my ranking member on the subcommittee Gene Green, for their efforts to move this important jobs legislation forward.

Let's make no mistake about this legislation and its long-term ramifications. Notwithstanding any comments to the contrary, efforts to diminish enactment of this bill are an overt show of support for subtitle (c) regulation, loss of more American jobs, higher electricity prices and a lower standard of living in this country.

I urge strong support for this legislation, and with that, Mr. Chairman, I yield back the balance of my time.

The Chairman. Thank you.

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The Chairman. The gentleman yields back.

The chair would recognize the gentleman from Nebraska for an opening statement.

Mr. Terry. Thank you, Mr. Chairman. And I am a sponsor, a cosponsor, of H.R. 2401, the TRAIN Act, which is a commonsense piece of legislation that really shouldn't be necessary, but it is.

This bill simply establishes an interagency committee that will analyze the incremental and cumulative impact of several rules and actions that will impact the power generation sector. Seems like this shouldn't be necessary because you would think that this was already being done, but it is not.

So why is this legislation necessary? Quite simply, too many regulations promulgated too quickly without thought or consideration of the cumulative impacts freeze capital and cost jobs. This was verified when several of us discussed with folks who invest capital in energy projects just recently said too much, too fast, too much uncertainty, no capital being invested. It is that simple.

Chairman Upton said it well when he said by issuing multiple regulations for the energy and other sectors at such an accelerated rate, EPA has turned regulation from a manageable tool into an unpredictable moving target that makes it difficult for companies to invest and create jobs.

Mr. Shimkus raised it; others have raised it. What this will do is close many smaller coal-fired plants, which I am sure is the goal here. We all know it is the goal. Many people out in the audience

today may think that is an admirable goal. What if you lived near one of these coal-fired plants in the middle of Nebraska, and it is closed? There is nothing to replace it with, folks, and there is no capital out there to build a new plant. How do you run a feed lot, ranch, or farm? It is not going to be done solely on wind and solar. Great mixes, but when you do away with the base power load, it is gone. They can't operate.

A recent study for the Small Business Administration found that the cost of Federal regulations increased more than \$1.75 trillion in 2008. This equals more than \$15,000 per household and more than \$10,500 per employee. Note the date of the study. It does not take into account those regulations addressed in the TRAIN Act.

When we allow regulations to raise energy costs, we allow jobs to be eliminated, then we allow uncertainty, we can be assured that American investment dollars will go elsewhere. It is simple. We no longer can afford this.

I yield back.

[The information follows:]

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The Chairman. The gentleman yields back.

The chair would recognize Mr. Murphy from Pennsylvania.

Mr. Murphy. Thank you, Mr. Chairman.

You know, families in my district understand better than most why Congress is working on this matter of our coal ash. About 5 years ago in Forward Township in Pennsylvania, an embankment built with coal ash 50 years before collapsed because of a water main break. The ash temporarily dammed the street at the base of the embankment, and when this ash and dam failed, water carried the ash to the valley, onto residential streets, into yards and a playground.

Immediately after the landslide, a State regulator said that in this day and age, Pennsylvania would not allow disposal fly ash next to a stream, let alone right over a hillside on a highway. New State regulations reflect the stronger stand that States like Pennsylvania have taken to deal responsibly with disposal.

Mr. McKinley's legislation requires States to meet standards, ensuring fly ash impoundments are well constructed, groundwater is protected, and sites are continuously monitored for potential leaching.

This bill also respects the Federal interest in protecting public health if a State is unwilling or unable to bear the responsibility of proper fly ash management, and the bill recognizes some States can take even more restrictive steps, if necessary.

Now, some of my constituents have asked me whether coal ash will harm public health. Twice, in 1993 and the year 2000, the

Environmental Protection Agency examined coal ash, and twice they ruled that coal ash can be recycled safely. Proper recycling is key, and proper disposal in lined landfills with strong structural integrity is also key, but bearing all, the coal ash as a limited option.

Recycling ash reduces air emission and saves space in landfills. Designating coal ash as hazardous would increase waste headed to the Nation's 21 special landfills each year by more than 50 percent. There is simply not enough capacity, and the expense is massive.

This legislation will preserve the market for beneficial use recycling, allowing coal to be put into an inert state in the Pennsylvania company's recycled coal ash, using concrete and wallboard, creating jobs.

If Congress does not enact this legislation, the EPA could potentially proceed with regulations based on fear instead of science. Moreover, designating fly ash a hazardous waste would send shock waves through the economy, and electricity costs from coal-fired plants would rise considerably and further harm family budgets, threaten the viability of both the CCB beneficial use program in certain power plants employing tens of thousands. This requires States to have stronger standards and actually, in fact, says that the EPA can step in and deal with these issues if the States fail to take that action.

This legislation reflects a balanced approach and ensures cost-effective management of CCBs and is protective of human health and the environment. I might add, a quote from the bill states that actually it increases EPA powers to step in if a State does not take

corrective action, quote, "in a manner that protects human health and the environment," unquote.

And for these reasons I ask my colleagues to work to support this bill to protect health, protect the environment, protect jobs, and expand more American manufacturing with this recycled product.

I yield back.

[The information follows:]

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The Chairman. The chair would recognize for an opening statement the gentleman from Georgia Dr. Gingrey.

Dr. Gingrey. Mr. Chairman, I want to thank you for calling today's markup on two pieces of legislation that will address the economic impact of proposed regulations promulgated by the EPA, the Environmental Protection Agency.

The legislation that will be considered by the full committee is intended to relieve some of the burden placed on industries by unnecessary regulation that could lead to job loss at a time when it can be least afforded.

Mr. Chairman, we will consider an amendment in the nature of a substitute from the majority to H.R. 2273, the Coal Residuals Reuse and Management Act. This bill addresses the regulatory structure of the EPA on solid waste management through the Solid Waste Disposal Act, commonly referred to as RCRA. Under subtitle D of this statute, local and State governments have been tasked with being the primary regulator for municipal solid waste programs, solid waste coming from households and nonhazardous industrial waste.

Mr. Chairman, in its most recent regulatory determination in 2000, the EPA has not considered coal combustion residuals, so-called CCR, to be a hazardous waste and has considered CCR to be classified under title D. Unfortunately, the EPA's proposed rules issued on June 21, 2010, one proposed rule determined that everyday household waste should no longer be classified as nonhazardous and would impose much more burdensome regulations on solid waste.

The other proposed rule would also place further regulations on CCR disposal based on the existing regulatory structure at the State and local level.

Mr. Chairman, the amendment in the nature of a substitute to H.R. 2273 would eliminate the regulatory uncertainty from the two proposed rules from the EPA. This legislation does so by continuing the current regulatory practices being utilized by State and local governments for CCR programs. H.R. 2273 will limit the role of the EPA and give control to the States by patterning CCR programs after the existing municipal solid waste programs that are already successfully regulated at the State level.

Mr. Chairman, the other bill that we will consider, H.R. 2401, the TRAIN Act, is the product of bipartisan input from our colleagues Mr. Sullivan of Oklahoma, Mr. Matheson of Utah. This important legislation will require the establishment of an interagency committee that will be charged with analyzing the economic impact of various rules issued by the EPA on manufacturing and energy producers in the United States. Within this analysis, there will be a focus on the impact these rules will have on job creators across this country. H.R. 2401 will provide a comprehensive review of the economic impact that the EPA's rules will have on multiple industries.

Mr. Chairman, I urge all of my colleagues to support both of these bills, and I yield back any time that I may have.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. The gentleman yields back.

The chair would recognize the gentleman from West Virginia Mr. McKinley for an opening statement.

Mr. McKinley. Thank you, Mr. Chairman. Thank you for holding this markup on these two pieces of legislation.

Last year the EPA created a stigma with their proposed regulation of coal ash as a hazardous material. A June 2011 Veritas economic report says that the EPA's hazardous designation will cost the public \$78- to \$110 billion, with estimated job losses ranging from 184,000 to 316,000. This is simply unconscionable. This legislation, H.R. 2273, will eliminate these costs on the American people, stop the job losses, protect the health, and also remove the stigma of this byproduct as being hazardous.

H.R. 2273 will tighten the disposal and the management of coal ash and ultimately give the States the control of the program, as well as the ability to work with the EPA to ensure it is handled, stored, and monitored properly. That is what this legislation does.

Now, for those who don't trust that the States are capable of performing their responsibility, they need to be well aware that the States currently handle municipal solid waste effectively under subtitle D of RCRA. Municipal solid waste landfills include battery acids, household cleaners, lead paint, treated lumber, asphalt, tires, refrigerators, air conditioners to name a few. If the municipalities in the States can regulate these municipal solid wastes, then we should expect nothing less, given that fly ash exhibits virtually the same

chemical characteristics as rock and undisturbed soil and constantly falls below the hazardous designations under the EPA's very own toxicity characteristic leaching procedure.

Let us be candid. The opponents of this legislation clearly have an agenda against the use of coal. Their arguments are fallacious and found in tabloids, not in science.

The science is clear. The EPA stated in 1993 and 2000 reports, both of which were under the Democrat Clinton administration, that coal ash is nonhazardous. Shame on my colleagues across the aisle, some of them, and the environmentalists for using scare tactics and exaggerating health hazards of coal ash at the expense of jobs in the coal industry.

Under this legislation we are protecting jobs and the health of those communities in which fly ash is created and treating fly ash the way the clear-cut science provides to us.

This chart shows where the coal-fired generating powerhouses are across America. They are in all but two States. Nearly 700 powerhouses across America are generating fly ash. For those still those unaware, this is a jobs bill. The people keep saying, where are the jobs bills? This is a jobs bill.

I yield back my time.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. The gentleman yields back.

The chair would recognize Mr. Harper for an opening statement.

Mr. Harper. Thank you, Mr. Chairman. And I thank you for bringing H.R. 2273, the Coal Residuals Reuse and Management Act, and H.R. 2401, the Transparency in Regulatory Analysis of Impacts on the Nation Act of 2011, to this committee for consideration today. I think it is very appropriate that these two bills are being considered together.

I appreciate the leadership that this committee has shown in investigating the effects that the EPA has on jobs in the United States. I believe that the committee has acted on legislation this Congress that could help save jobs and create jobs by reducing overly burdensome government regulation which we know has a negative impact on our businesses all across this country.

Again, thank you for bringing H.R. 2273 and H.R. 2401 before the committee today. I support reporting the bills to the full House for a vote, and I yield back.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. The gentleman yields back.

The chair recognizes Mr. Scalise for an opening statement.

Mr. Scalise. Thank you, Mr. Chairman. I, too, appreciate and thank you for bringing these two pieces of legislation to our committee, and hopefully we will pass them out not only to the House floor and out of the House, but out of the Senate, so that we can get back to reining in some of these radical regulations.

There is a mountain of evidence that has been shown over the last few months as we have been having hearings in this committee and on our subcommittee that, in fact, if you look at the problems in our economy, many of the real problems that have created job losses in America can be tracked directly back to radical regulations by this administration.

And it is arguable that EPA is probably the worst offender of all of the agencies, and unfortunately, that is saying a lot when we look at all of the different agencies that have seemed to be putting a bull's eye around the job creators in this country. When you look at the unemployment numbers that came out the other day, we have now ticked up to 9.2 unemployment, and when you talk to our small businesses, when you talk to our country's job creators, what they tell you is it is, in fact, many of these regulations by these agencies that is creating the problems, that is running jobs out of our country.

Just look at today's Wall Street Journal. There is another editorial that highlights the EPA's abuse of the regulatory process, which has led to dramatically higher rates on water bills in the State

of New York, and it is an endless supply, unfortunately.

Just had a report that came out -- we highlighted this last week in a hearing. The Small Business Administration came out with a report that not only went across industries and talked about the damaging effects, the job loss effect, that radical regulations have had, but they actually quantified it and came up with a number that nobody disputed. They said the cost of radical regulations on American families is \$15,000 per family, and at the hearing we had last week on this issue, a number of agencies were represented. Not one regulator had read that report, and, in fact, when you asked them about it, nobody disputed it.

But what they point out is they basically think they are immune to transparency on the impacts of regulations, and many acknowledge it has nothing to do with health or safety. This is just a radical agenda by people who feel like they are in power now, they are bureaucrats, so they can make the rules. Well, it is the Legislature that makes the rules, the legislative branch, and we need to have that oversight.

I am glad that these pieces of legislation finally hopefully rein in some of these radical regulations, but also put transparency so people across the country can see just what kind of damage they are doing not only to American families, but running jobs out of our country.

Thank you, and I yield back.

[The information follows:]

***** COMMITTEE INSERT *****

The Chairman. The gentleman yields backs.

Are there other Members wishing to make an opening statement.

Seeing none, the Chair will call up H.R. 2273 and ask the clerk to report.

The Clerk. H.R. 2273, to amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels.

The Chairman. Without objection, the first reading of the bill is dispensed with, and the bill will be open for amendment at any point. So ordered.

[The information follows:]

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The Chairman. So the committee will now reconvene at 10 o'clock tomorrow morning. I remind Members that the Chair will be giving priority to amendments offered on a bipartisan basis. I look forward to seeing all of you tomorrow bright and early. Thank you. We stand adjourned.

[Whereupon, at 5:55 p.m., the committee was adjourned.]