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4 MARKUP ON H.R. 2401, THE TRANSPARENCY IN REGULATORY ANALYSIS  
5 OF IMPACTS ON THE NATION ACT OF 2011; AND  
6 H.R. 2273, THE COAL RESIDUALS REUSE AND MANAGEMENT ACT OF  
7 2011  
8 TUESDAY, JULY 12, 2011  
9 House of Representatives,  
10 Committee on Energy and Commerce  
11 Washington, D.C.

12 The Committee met, pursuant to call, at 10:20 a.m., in  
13 Room 2123 of the Rayburn House Office Building, Hon. Fred  
14 Upton [Chairman of the Committee] presiding.

15 Members present: Representatives Upton, Barton, Stearns,  
16 Whitfield, Shimkus, Pitts, Bono Mack, Walden, Terry, Rogers,  
17 Myrick, Sullivan, Murphy, Burgess, Blackburn, Bilbray, Bass,  
18 Gingrey, Scalise, Latta, McMorris Rodgers, Harper, Lance,

19 Cassidy, Guthrie, Olson, McKinley, Gardner, Pompeo,  
20 Kinzinger, Griffith, Waxman, Dingell, Markey, Towns, Pallone,  
21 Rush, Eshoo, Engel, Green, DeGette, Capps, Doyle, Schakowsky,  
22 Gonzalez, Inslee, Baldwin, Ross, Matheson, Butterfield,  
23 Barrow, Matsui, Christensen, and Castor.

24       Staff present: Gary Andres, Staff Director; Charlotte  
25 Baker, Press Secretary; Jim Barnette, General Counsel;  
26 Michael Beckerman, Deputy Staff Director; Mike Bloomquist,  
27 Deputy General Counsel; Anita Bradley, Senior Policy Advisor  
28 to Chairman Emeritus; Maryam Brown, Chief Counsel, Energy and  
29 Power; Jerry Couri, Professional Staff Member, Environment;  
30 Andy Duberstein, Special Assistant to Chairman Upton; Cory  
31 Hicks, Policy Coordinator, Energy and Power; Kirby Howard,  
32 Legislative Clerk; Peter Kielty, Senior Legislative Analyst;  
33 Heidi King, Chief Economist; Alexa Marrero, Communications  
34 Director; Dave McCarthy, Chief Counsel, Environment and  
35 Economy; Carly McWilliams, Legislative Clerk; Jeff Mortier,  
36 Professional Staff Member; Mary Neumayr, Counsel,  
37 Oversight/Energy; Tina Richards, Counsel, Environment and  
38 Economy; Chris Sarley, Policy Coordinator, Environment and  
39 Economy; Lyn Walker, Coordinator, Admin/Human Resources;  
40 Kristen Amerling, Democratic Chief Counsel and Oversight  
41 Staff Director; Phil Barnett, Democratic Staff Director; Jen  
42 Berenholz, Democratic Chief Clerk; Alison Cassady, Democratic

43 Senior Professional Staff Member; Jacqueline Cohen,  
44 Democratic Counsel; Greg Dotson, Democratic Energy and  
45 Environment Staff Director; Caitlin Haberman, Democratic  
46 Policy Analyst; Karen Lightfoot, Democratic Communications  
47 Director, and Senior Policy Advisor; Alexandra Teitz,  
48 Democratic Senior Counsel, Environment and Energy; and  
49 Lindsay Vidal, Democratic Press Secretary.

|  
50 H.R. 2401

51 10:20 a.m.

52           The {Chairman.} When we adjourned yesterday, we had  
53 called up H.R. 2273. We are going to lay that aside for the  
54 time being and instead bring up H.R. 2401 first. So the  
55 clerk will report the title.

56           The {Clerk.} H.R. 2401: To require analysis of  
57 accumulative and incremental impacts of certain rules and  
58 actions of the Environmental Protection Agency, and for other  
59 purposes.

60           [H.R. 2401 follows:]

61 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
62           The {Chairman.} And without objection, the first  
63 reading of the bill is dispensed with. So ordered.

64           First, are there any bipartisan amendments to the bill?  
65 Mr. Bilbray?

66           Mr. {Bilbray.} I think I have got an amendment at the  
67 desk.

68           The {Chairman.} So this is a bipartisan amendment?

69           Mr. {Bilbray.} Yes, it is.

70           The {Chairman.} And the clerk will report the title of  
71 the amendment.

72           The {Clerk.} What is the number, sir?

73           Mr. {Bilbray.} Excuse me?

74           The {Chairman.} The clerk will report the amendment.

75           The {Clerk.} The number of the amendment.

76           Mr. {Bilbray.} It is the Bass, Matheson, Green,  
77 Bilbray--what is the number? Do we have a number on it? I  
78 would have the number if I had a number of amendments, but  
79 seeing that we had one, I figured that this was--

80           The {Clerk.} An amendment to H.R. 2401 offered by Mr.  
81 Bilbray.

82           [The amendment follows:]

83 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
84           The {Chairman.} Without objection, the reading of the  
85 amendment is dispensed with.

86           The gentleman is recognized for 5 minutes in support of  
87 his amendment, and the staff will distribute the amendment.

88           Mr. {Bilbray.} Thank you, Mr. Chairman. I want to  
89 first thank my colleagues on both sides of the aisle of  
90 addressing this.

91           Mr. Chairman, this is the balance between the fiscal  
92 responsibility of basically making the tough decisions when a  
93 cut needs to be made, but it also has the environmental  
94 sensitivity to understand that diesel emissions is a very  
95 toxic emission that we need to address. It is something that  
96 became very obvious for myself when I was serving on the Air  
97 Resources Board in California, that it is an item that was  
98 ignored for too long. But this amendment, all it basically  
99 says is that we will pay for the bill for that expense but  
100 the funding will continue on the off years to address this  
101 environmental concern and that is the toxic and diesel  
102 emissions.

103           It is one of those issues that we are cooperating with  
104 state and local agencies to address it and I think the fact  
105 that we do have the bipartisan support and the names that are  
106 on there, I am very proud to have this amendment before us in

107 showing that this committee can address bipartisan issues  
108 that address the fiscal responsibility and the environmental  
109 concerns at the same time.

110 And I yield back.

111 The {Chairman.} The gentleman yields back.

112 Are there other members wishing to speak on the  
113 amendment?

114 Mr. Green is recognized for 5 minutes.

115 Mr. {Green.} Mr. Chairman, thank you. And I want to  
116 thank my colleague from California for working with us on  
117 this amendment. The Diesel Emissions Reduction Act  
118 establishes a voluntary national and state-level grant and  
119 loan program to reduce emissions from existing diesel engines  
120 to clean diesel retrofits. The program has proved popular  
121 and successful, and every State in the Nation now has a  
122 Diesel Retrofit program and benefits from DERA funding.

123 For example, on March 28 of 2011, approximately 500  
124 groups across the country ranging from the American Lung  
125 Association to the American Manufacturers Association wrote  
126 to the House Appropriations Committee requesting support for  
127 the program. The EPA has established that if DERA was fully  
128 funded, it would reduce particulate matter emissions by  
129 70,000 tons, generate nearly 20 billion in economic benefit  
130 and return \$13 for every benefit for every \$1 invested. That

131 is why I am a cosponsor to the amendment which would amend  
132 the bill to ensure that DERA is authorized at the \$100  
133 million level through 2016. Again, I urge my colleagues to  
134 support this bipartisan amendment, and again, I appreciate  
135 the working across the aisle to help the drafting of this  
136 amendment.

137 I yield back my time.

138 The {Chairman.} Are there other members wishing to  
139 speak on the amendment? Seeing none, the vote then comes on  
140 the amendment offered by the gentleman from California and  
141 the gentleman from Texas.

142 Those in support of the amendment will say aye. Aye.  
143 Those opposed say no. The ayes appear to have it. The ayes  
144 have it and the amendment is agreed to.

145 Are there other members wishing to offer an amendment,  
146 particularly a bipartisan amendment?

147 The gentleman from Kentucky, Mr. Whitfield.

148 Mr. {Whitfield.} I have an amendment at the desk. It  
149 is an RO-1.

150 The {Chairman.} The clerk will report the title of the  
151 amendment.

152 The {Clerk.} Amendment to H.R. 2401 offered by Mr.  
153 Whitfield.

154 [The amendment follows:]

155 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
156 Mr. {Whitfield.} I ask unanimous consent we dispense  
157 with the reading.

158 The {Chairman.} The amendment will be considered as  
159 read. The staff will distribute the amendment. And the  
160 gentleman is recognized in support of his amendment for 5  
161 minutes.

162 Mr. {Whitfield.} Thank you, Mr. Chairman. This is an  
163 amendment offered by Mr. Ross and myself. And yesterday,  
164 President Obama issued another executive order expressing  
165 concern about the unemployment rate going up to 9.2 percent,  
166 and in this executive order issued Monday, he is ordering  
167 that all independent regulatory agencies, including EPA, do  
168 significant reanalysis of recent regulations that they have  
169 issued and the impact that this will have on the economy, as  
170 well as other aspects of our society.

171 This amendment, I think President Obama would be  
172 supportive of our amendment because under the TRAIN Act, we  
173 are asking--because EPA is acting with such aggressive  
174 issuance of regulations now--they have recently done a  
175 Greenhouse Gas Permitting Rule, a Boiler MACT Rule, a Utility  
176 MACT; they are coming out with new ozone ambient air quality  
177 standards early; they have got the Cross-State Error  
178 Pollution Rule that just came out, a Coal-Ash Rule, sulfur

179 dioxide, nitrogen dioxide, particulate matter, Greenhouse Gas  
180 and Use Source Performance Standards, Regional Haze Rules.  
181 They are moving at an unprecedented rate, and the TRAIN Act  
182 basically sets up a committee to study the global economic  
183 impact on the competitiveness of the United States as a  
184 result of the cumulative impact of all these regulations.

185         It also looks at the cumulative cost and some people  
186 have been saying we are not looking at cumulative benefits  
187 under the TRAIN Act, but if you look at the language on page  
188 3, look at cumulative costs and cumulative benefits,  
189 including evaluation.

190         Also, we look at the change in national, state, and  
191 regional electricity prices. We look at the change in  
192 national, state, and regional fuel prices. We look at the  
193 impact on national, state, and regional unemployment and  
194 employment figures. We look at the reliability, the impact  
195 on the reliability of our electricity grid and the adequacy  
196 of bought power supply. And we also look at the assumptions  
197 of EPA and their modeling. And this is important for this  
198 reason: all of these regulations, particularly on Air  
199 Transport Rules, Utility MACT as it relates to the Northeast  
200 under the Air Transport Rules particularly. And we hear a  
201 lot about the impact that that is having on health for people  
202 in the Northeast, which we are all concerned about.

203 But these assumptions, for example, do not take into  
204 consideration the impact on the health of young people in  
205 Appalachia, in Kentucky, West Virginia, and other parts of  
206 the country where a lot of coal is used because these  
207 regulations will put coal utilities and coalminers out of  
208 business. And what impact does that have on the health of  
209 their children? That is not something that the EPA modeling  
210 looks at. So the TRAIN Act asks and requires that they look  
211 at their assumptions and make some considerations about this.

212 I might also say that on the Utility MACT a coalition of  
213 unions concluded that based upon EPA data, not a single coal  
214 plant in EPA sample of 200 units, including units with state-  
215 of-the-art control equipment could meet the Utility MACT's  
216 combined emission limits. So not one could meet it.

217 So this amendment that we offer today, Mr. Ross and I,  
218 simply says that Utility MACT, which is not a final rule yet,  
219 cannot be finalized or implemented until 6 months after the  
220 study required by the TRAIN Act has been completed, which  
221 would be sometime in late July, early August of 2012. It  
222 also says that the Air Transport Rule, which has been  
223 finalized and is expected to go into effect in January of  
224 2012, just a few months away, that that cannot be implemented  
225 until 6 months after this additional study has been made.

226 I think we would be irresponsible to not postpone the

227 effective date of these regulations from EPA until after this  
228 comprehensive study has been completed on the cumulative  
229 impact of cost and benefits. And I would urge every member  
230 to support this amendment.

231 The {Chairman.} The gentleman's time has expired.

232 Mr. Ross, the cosponsor of the amendment.

233 Mr. {Ross.} Thank you, Mr. Chairman. And I want to  
234 thank Congressman Whitfield for his work on this amendment.  
235 I also want to thank Congressman Sullivan and Matheson for  
236 your work on the underlying legislation, the Transparency and  
237 Regulatory Analysis of Impacts on the Nation Act, or TRAIN  
238 Act, which will provide time for the appropriate agencies to  
239 conduct an analysis of the cumulative impacts of the  
240 regulations currently being developed by the EPA.

241 This amendment provides a limited time period after the  
242 final report has been issued to allow regulators to assess  
243 the impacts of the Utility MACT Rule and the Cross-State Air  
244 Pollution Rule on jobs and economic growth. Specifically, it  
245 would prohibit the administration from taking final action on  
246 these rules until at least 6 months after the final report is  
247 issued on the cumulative economic impacts required under the  
248 TRAIN Act, which is August 1 of 2012.

249 I believe this time is critical to examine the cost and  
250 benefits of these rules, along with any potential for job

251 loss and the feasibility of the timelines associated with the  
252 implementation of these rules. The EPA estimates that the  
253 cost of the Utility MACT Rule alone would be \$10.9 billion  
254 annually in 2016 and an electricity price increase for  
255 working families, small businesses, and seniors, and everyone  
256 else, 3.7 percent in 2015.

257 We absolutely must understand the impacts of these rules  
258 before they are implemented and this amendment is a logical  
259 step to ensure that we are fully informed of the potential  
260 cost and benefits of these regulations as we move forward.  
261 Basically, as Congressman Whitfield stated, this is just a 6-  
262 month delay on not all the rules but two of the rules, those  
263 being the Utility MACT Rule and what is commonly referred to  
264 as the Transport Rule.

265 And Mr. Chairman, let me just point out a couple of  
266 things if I may as it relates to, for example, the Utility  
267 MACT Rule. Utilities are expected to be required to comply  
268 with the MACT provisions by 2015. EPA expects utilities to  
269 comply through the installation of scrubbers, selective  
270 catalytic reduction, various injections, fabric filter, bag-  
271 house technologies, and here is the real kicker on that \$10.9  
272 billion annually: a 3.7 percent increase in electricity  
273 prices. And that is on the Utility MACT. Then the Transport  
274 Rule, there is 3,642 units at 1,081 power plant facilities

275 affected by this. It applies to 28 States, including my home  
276 State of Arkansas.

277 And the fact is that it will be impossible for these  
278 utilities and others to be able to get the work done in the  
279 short period of time that they are being allowed. Utilities  
280 cannot finance or install the billions of dollars of  
281 pollution-control equipment that would be required in 6  
282 months or even 3 years. Scrubbers, 2 to 3 years at least are  
283 typically need to finance, plan, design, obtain necessary  
284 permits, install tests, and start up new equipment.

285 So in my opinion, this is a backdoor attempt at shutting  
286 down every coal plant in America, and coal is the most  
287 abundant, affordable supply of energy we have. We have got  
288 about a 225-year supply of it, and instead of turning our  
289 backs on it, we should be spending this time and we should be  
290 making the kind of investments necessary to continue to find  
291 ways to clean it up.

292 We have got a new coal plant going up right now near my  
293 hometown, near Hope, Arkansas. It is putting 1,700 people to  
294 work today as they build it. And when it comes online, it is  
295 going to be the cleanest coal plant in America. Why?  
296 Because it is going to be the newest coal plant in American.  
297 And I believe we should continue to hold the utilities feet  
298 to the fire and continue to find ways to clean these things

299 up. There is a lot of promise with carbon capture and  
300 sequestration, but we shouldn't pass rules that are basically  
301 going to shut them all and leave this country with a huge  
302 shortage in electricity and consumers with a very high  
303 electric bill if they are able to even get electricity.

304 So this is a commonsense approach and we are only asking  
305 for 6 months more time. And I support this amendment. I am  
306 pleased to be authoring it with Congressman Whitfield, and I  
307 ask the members on both sides to give serious consideration  
308 to this bipartisan, commonsense amendment.

309 The {Chairman.} The gentleman's time expired.

310 The chair will recognize Mr. Waxman for 5 minutes.

311 Mr. {Waxman.} Thank you, Mr. Chairman.

312 The bill we are considering today purports to be about  
313 regulatory analysis, but this amendment reveals what the real  
314 agenda has been all along. The real goal of the TRAIN Act  
315 isn't to improve analysis of regulations but to stop  
316 regulations, specifically to stop long-overdue efforts to  
317 clean up old polluting coal-fired power plants. The  
318 Whitfield amendment indefinitely delays two critical Clean  
319 Air Act regulations that will allow hundreds of thousands of  
320 Americans to enjoy better health and save our economy tens of  
321 billions of dollars.

322 The Utility Air Toxics Rule reduces emissions of mercury

323 and other air toxics from power plants. The EPA expects to  
324 finalize that regulation in November. The economic value of  
325 the benefits from lives saved and health improvements is 5 to  
326 10 times greater than the cost. Isn't that the idea of the  
327 TRAIN Act was to make sure that we are getting a cost-benefit  
328 analysis. Here, we have a benefit that is 5 to 10 times  
329 greater than the cost.

330         The Cross-State Air Pollution Rule reduced emissions of  
331 sulfur dioxide and nitrogen oxide that contribute to air  
332 pollution problems in downwind States. EPA finalized the  
333 rule last week. The health benefits for that rule, including  
334 lives saved and heart attacks and asthma attacks avoided are  
335 over \$100 billion per year. The cost to the utilities is  
336 less than \$3 billion per year. In other words, each year,  
337 these two rules will avoid tens of thousands of premature  
338 deaths. They will avoid tens of thousands of heart attacks  
339 and hospital admissions. They will avoid hundreds of  
340 thousands of aggravated asthma attacks. Americans will  
341 report to work or school on millions of days they would have  
342 otherwise missed due to illness. And these rules are  
343 projected to create new jobs, manufacturing and installing  
344 pollution-control equipment. This adds up to a healthier,  
345 more productive, and stronger economy.

346         Many utilities support these rules. They knew the

347 regulations were coming. They made the investments to clean  
348 up their pollution. These responsible businesses who played  
349 by the rules will be disadvantaged if Congress changes the  
350 rules mid-game. Some argue that these rules, together with  
351 other future EPA regulations will lead to power plant  
352 shutdowns and threaten the reliability of the electric grid.  
353 These fears have been rebutted by analysis performed by the  
354 MJ Bradley Group and the Bipartisan Policy Center, both of  
355 which found that utility industry can meet the standards  
356 without harm to reliability.

357         The utility industry had ample notice these rules were  
358 coming. The Utility Mercury Rule is at least 10 years  
359 overdue and earlier versions of both rules were finalized by  
360 George W. Bush Administration but overturned by the courts as  
361 insufficiently protective. The Whitfield amendment leaves  
362 the earlier versions of the Cross-State Air Pollution Rule in  
363 place, but this approach still sacrifices significant  
364 benefits that would be achieved under the updated, final  
365 Cross-State Air Pollution Rule.

366         In 2012, the Whitfield amendment would allow at least  
367 1.5 million tons more SO<sub>2</sub> and over 100,000 tons more NO<sub>x</sub>.  
368 This means more premature deaths, heart attacks, aggravated  
369 asthma attacks, respiratory diseases every year of delay.  
370 This amendment hurts downwind States that are trying to meet

371 ambient air quality standards by their deadlines. Downwind  
372 States may have to impose more stringent controls on local  
373 businesses to make up for the effects of increased out-of-  
374 state pollution. That is more costly and it is not fair.

375         The Whitfield amendment also harms downwind States whose  
376 air pollution problems were not fixed under the earlier rule.  
377 Significantly, the amendment would delay reductions needed by  
378 Michigan, Louisiana, Texas, Wisconsin, and Illinois to meet  
379 the standards for fine particulate pollution or ozone. The  
380 Cross-State Air Pollution Rule was based on updated data.  
381 The Whitfield amendment relies on old, less-protective, less-  
382 effective rule.

383         The TRAIN Act isn't about better analysis. The reams of  
384 analysis we have already show that these regulations are some  
385 of the best investments we could make. The TRAIN Act is  
386 about stopping these regulations so that 50-year-old,  
387 uncontrolled power plants never have to put on pollution  
388 controls. That is bad for public health, bad for the  
389 economy, bad for utilities that played by the rules, and bad  
390 for jobs. This amendment to the TRAIN Act is hijacking that  
391 TRAIN Act and it is going to take the whole thing and cause  
392 it to go into the ditch and never become law, which isn't the  
393 bad result, but it is not one that you would think the  
394 authors of this bill would want.

395 I yield back.

396 Mr. {Barton.} Mr. Chairman?

397 The {Chairman.} The Chair would recognize Mr. Barton  
398 for 5 minutes.

399 Mr. {Barton.} Thank you. Mr. Chairman, back in either  
400 the late 1980s or the early 1990s, then-Chairman John Dingell  
401 took a congressional CODEL trip to Europe and part of that  
402 trip was to go to Poland to meet with the Solidarity Union,  
403 Lech Walesa. And I will never forget as the congressional  
404 plane flew into the capital that you could literally see the  
405 air. And when we got to the airport and when we got on the  
406 buses, I mean you could literally see the air you were  
407 breathing because Poland, at that point in time, had old  
408 coal-fired power plants with no scrubbers and they were using  
409 real soft, crumbly, almost lignite coal. Now, there is no  
410 question that the air that the Polish people at that time  
411 were breathing was an impairment to their health.

412 Now, I have been a strong supporter of a strong  
413 Environmental Protection Agency. I supported the Clear Air  
414 Act amendments in the early 1990s when John Dingell was  
415 chairman, and as we have gone through the Congress the last  
416 20 years at various points, I supported modifications to  
417 those. Now, I want clean air and I want clean water. I want  
418 rules that are fair, I want rules that are transparent, and I

419 want rules that can be implemented without too negatively  
420 affecting our economy. The Obama EPA has apparently thrown  
421 out all the procedures that have been built up over the years  
422 to review these new rules and they appear to have adopted a  
423 political decision that they are going to push every air  
424 regulation as far as they can, as fast as they can, and be  
425 damned with the truth.

426         Now, I totally respect the former chairman of the  
427 committee, Mr. Waxman. I will submit for the record that he  
428 has been a strong advocate for the absolute strongest air  
429 quality regulations, not only in his home State of  
430 California, but in the United States. He is a true believer  
431 and he has absolutely been true to the environmental creed in  
432 terms of trying to push for law that implements that. But to  
433 sit here and listen to him--and these are not his statistics;  
434 he is just regurgitating them--that these proposed rules are  
435 going to somehow save all these lives and prevent these  
436 premature deaths is absolute hogwash. There has not been one  
437 case, one in the last 10 years of any instance of mercury  
438 poisoning because of air inhalation. Not one. Not one.  
439 Okay?

440         In terms of--

441         Mr. {Waxman.} Will the gentleman yield?

442         Mr. {Barton.} I would be happy to yield.

443 Mr. {Waxman.} We have an Environmental Protection  
444 Agency. They have done a lot of studies. All of the  
445 scientists--

446 Mr. {Barton.} They can't prove it--reclaiming my time,  
447 Mr. Chairman.

448 Mr. {Waxman.} They can't prove it? But they can prove  
449 it.

450 Mr. {Barton.} They can't prove it. I have asked them  
451 for the records. I have asked them for the documents.

452 Mr. {Waxman.} There is a cumulative effect of mercury--

453 Mr. {Barton.} You get anomalies.

454 Mr. {Waxman.} --and there is a cumulative effect of  
455 these other--

456 Mr. {Barton.} You get absolutely nothing but  
457 regurgitated hogwash.

458 Mr. {Waxman.} I think we are hearing that from you.

459 Mr. {Barton.} Now, that is the truth. I am not  
460 certified as a registered professional engineer at this point  
461 in time, but I have been in the past, and I would love to sit  
462 down with somebody at the EPA that would actually go through  
463 and prove these statistics. You know, what we know is this  
464 Air Transport Rule that was put out yesterday or earlier this  
465 week, in my home State of Texas where, as far as I know,  
466 every power plant in the State is in total compliance on

467 particulate matter and in total compliance on all the various  
468 mercury rules and regulations, 18 of them may have to shut  
469 down. And they have got until January to comply? I mean  
470 that is not statistical analysis. That is not any kind of a  
471 cost benefit. EPA puts in their justification that they  
472 don't have to comply because the costs are not consequential.  
473 One paragraph.

474 Now, what Mr. Whitfield is saying is let us really do an  
475 analysis.

476 Mr. {Waxman.} Will the gentleman yield?

477 Mr. {Barton.} I will yield again.

478 Mr. {Waxman.} The scientists have said that exposure to  
479 mercury causes children to have a difficult time to learn and  
480 to develop. Do you dispute that scientific finding?

481 Mr. {Barton.} I do not.

482 Mr. {Waxman.} And so therefore, if we limit mercury  
483 pollution, we are limiting the harm to children who are going  
484 to be impeded by that mercury pollution in their development.

485 Mr. {Barton.} I am reclaiming my time. I understand  
486 that mercury is a very toxic substance, but the EPA analysis  
487 earlier this year was off by a factor of 1,000. 1,000. So,  
488 you know, my time has expired, Mr. Chairman, but at some  
489 point in time, the folks that support these ever-increasingly  
490 stringent rules need to put the facts on the table and the

491 EPA has refused to do that. So the Whitfield amendment is  
492 long overdue. It is prudent and it should be passed.

493 Mr. {Waxman.} Mr. Chairman, I ask unanimous consent the  
494 gentleman be given 30 additional seconds if he will yield to  
495 me.

496 The {Chairman.} Without objection, the gentleman will  
497 be recognized for a minute more.

498 Mr. {Waxman.} I just want to point out that mercury is  
499 harmful to children in their development, and if you do  
500 things to limit the mercury pollution, you are limiting other  
501 pollutants as well. And that is important because other  
502 pollutants kill people; mercury harms children. There is a  
503 clear benefit that would be accomplished in these rules from  
504 these coal-burning power plants that we were told in 1970s  
505 were going to be out of business so we shouldn't impose any  
506 restrictions on them. And now, they are operating without  
507 any restrictions or without any limits on very dangerous  
508 pollutants, mercury being a toxic pollutant.

509 I yield back.

510 The {Chairman.} The gentleman's time has expired. The  
511 chair would recognize the gentelady from California.

512 Ms. {Eshoo.} Thank you, Mr. Chairman.

513 I have listened up real hard to this debate that is  
514 going on and I couldn't help but think of the article that

515 David Brooks wrote last week. And the article really refers  
516 to the thinking of my colleagues on the other side of the  
517 aisle. And that is that regardless of what, on the one hand,  
518 economists say from across the political spectrum to  
519 scientists and what their consensus is, and he goes on and he  
520 develops it, but I think you get the point. I hope you have  
521 read it. I think that you might squirm in your seat when you  
522 read it because it is unsettling, but I think that there is  
523 truth interwoven between all of the sentences. And that is  
524 what this debate reminds me of, the David Brooks article.  
525 Regardless of what the science is, regardless of what we know  
526 about what is toxic, regardless of what we know it does to  
527 children and the cumulative effects it has on our population,  
528 regardless of what has been documented of what these  
529 emissions do, you have a TRAIN Act. It is aptly named. This  
530 is a train just running over the facts, just running over the  
531 facts.

532         Now, do I believe in analysis so that we know what the  
533 impacts are and what the costs are? Even when that is  
534 examined, it said that these things are just made up. Each  
535 one of us has a responsibility not only to our constituents  
536 but collectively to the public health, obviously the  
537 businesses. There has been an analysis done. There is an  
538 effect in terms of downwind States relative to this

539 amendment. The air pollution problems can't be fixed under  
540 an earlier rule, but what to me is so disturbing is that  
541 regardless of the facts, regardless of the facts, the  
542 majority is willing to send a train down the track and run  
543 over them.

544 Now, I don't know how many of you have taken the time  
545 and the trouble to read the letter that the American Lung  
546 Association sent to the chairman of the full committee, the  
547 ranking member of the full committee, and all the members. I  
548 don't know about you, but I respect them. Maybe you have  
549 gone to some of their local events and their ribbon-cutting  
550 and shaken hands with them and said we think you are doing a  
551 great job. Read the letter and what they say. Are they full  
552 of hot air? Excuse the expression. They have been around  
553 for a long time talking about and fighting for cleaner air  
554 and what stands in the way of that.

555 And I have a lot of affection and respect for Mr.  
556 Whitfield. I think that this is really an awful bill and I  
557 think that this is really a dangerous amendment. And I think  
558 it comes more out of despising the EPA and that any  
559 regulation relative to the Clean Air Act is something that  
560 only despots would support. So you know what? I think David  
561 Brooks was right. And I don't know how many of you have read  
562 it, but I think that you should because today's hearing, it

563 is like holding up a mirror. It is holding up a mirror and  
564 carrying out exactly what he spoke about. And I think it is  
565 a sad day for our country when we are sitting here  
566 legislating, rolling back what we know is the wrong way to go  
567 and what is harmful to the American people.

568 Mr. {Shimkus.} Mr. Chairman?

569 The {Chairman.} The gentlelady yields back?

570 The chair would recognize Mr. Shimkus for 5 minutes.

571 Mr. {Shimkus.} Thank you, Mr. Chairman, and I  
572 appreciate--I mean this is going to have strong debate and  
573 strong emotions on both sides.

574 I think in Mr. Ross' opening statement he talked about  
575 utility rate increases of 3.7 percent I think over 3 years.  
576 Utility increases are about 8.2 percent. You know, and that  
577 is EPA's estimate. You know, David Broder can't get elected  
578 in my district. I would like for him to move to my district  
579 and run in my district, but he will not get elected. What I  
580 do know is is that we have had numerous coalmines closed--

581 Ms. {Eshoo.} David Broder died.

582 Mr. {Shimkus.} Well, then he definitely can't run in my  
583 district. In Chicago he might.

584 So, you know, I am concerned about the folks in Southern  
585 Illinois who mine the coal. And for folks to say there is no  
586 permits on coal-fired power plants means that we didn't pass

587 a Clean Air Act, means that coal-powered generation isn't  
588 under any regulation and that is just untrue.

589 Chairman Emeritus Barton was right in saying we have  
590 made great strides in air emissions over the years at great  
591 cost to miners and at great cost to generating plants, at  
592 great cost to the prices that individuals pay because when  
593 the generating plants conform to these new standards, they  
594 pass that price on to the consumers. And I think you could  
595 make the argument at great cost to our manufacturing base,  
596 because as that price increase is passed on to manufacturers,  
597 that makes it a little more difficult to be competitive in an  
598 international environment.

599 So this is an amendment whose time has come to say when  
600 we are in an economic crisis, why do we continue to move to  
601 create more regulatory burdens at a time when we are trying  
602 to create jobs? Why are we focused on creating more  
603 uncertainty in a world in which capital will not flow or  
604 capital costs will be so high that we won't do the expense?  
605 Why don't we just pause and allow the economy to catch up and  
606 get back to 5 percent unemployment where then we can try to  
607 fix all the problems of the universe, as is our like. But at  
608 this moment, it does not make sense to continue to harm the  
609 employers. If you want employers, you have to send the  
610 signals that we like what they are doing, and then the

611 employers can have employees, which are our constituents.

612         This continued attack on the fossil fuel sector and  
613 electricity generation by coal really impacts rural America  
614 and coal States because as these power plants are pushed out  
615 of production, they are the largest job-creator in the  
616 county, they are the largest taxpayer in the county, the fund  
617 the schools, the fund the cities, they fund the counties,  
618 they fund the environmental response, they fund the  
619 hospitals. And so as we talk about putting all the facts on  
620 the table, part of the facts of this debate is that we want  
621 these entities to continue to employ our constituents and  
622 continue to pay taxes so that the health and the welfare and  
623 the benefit of rural America is taken in as much  
624 consideration as those who don't actually mine the coal and  
625 produce the electricity, but they just use the electricity.

626         So we want the people who mine the coal, create the  
627 electricity to get the same benefits as those who are using  
628 the electricity. So I appreciate the amendment from my  
629 colleague and my neighbor from Kentucky.

630         And with that, I yield back my time.

631         The {Chairman.} The gentleman yields back.

632         The chair would recognize the gentlelady from  
633 California, Ms. Capps.

634         Mrs. {Capps.} Thank you, Mr. Chairman. I move to

635 strike the last word and to speak against Chairman  
636 Whitfield's amendment.

637         Mr. Chairman, the TRAIN Act is designed to make a train  
638 wreck out of a specific list of lifesaving public health  
639 protections that are provided by the Clean Air Act. Now, we  
640 have an amendment before us to delay EPA's mercury and air  
641 toxic standards for power plants, standards that will save  
642 thousands of lives each and every year. Power plants are the  
643 largest emitters of mercury and scores of other toxic air  
644 pollutants and they are still failing to comply with the  
645 basic Clean Air Act requirements for toxic pollution over 2  
646 decades after the adoption of the 1990 amendment.

647         This situation is due to unlawful delays in standards by  
648 the prior administration that had resulted in the obligation  
649 by the present EPA to re-propose and reissue lawful air toxic  
650 standards to protect the public. EPA's proposed mercury and  
651 air toxic standards for power plants will deliver enormous  
652 public health benefits. Were these standards to be delayed  
653 by even a single year, the potential magnitude of extreme  
654 health consequences would be significant. EPA has projected  
655 that by 2016 the proposed standards every year would avoid up  
656 to 17,000 premature deaths, 11,000 nonfatal heart attacks,  
657 120,000 asthma attacks, and 850,000 days of people missing  
658 work.

659 Mr. Chairman, why would we delay with saving that many  
660 lives? Why would we delay preventing that many asthma  
661 attacks? There is a huge economic cost in not doing  
662 implementing those standards immediately. In fact, we should  
663 really be working to do that here today. It is what our  
664 constituents want us to do.

665 You know, I learned this firsthand when I recently  
666 received some test results--and I brought the results here--  
667 showing that I have personally an unsafe level of mercury in  
668 my body. I decided to take a clump of my hair and I sent it  
669 down to the University of Georgia to an independent lab and  
670 this is the result I received back, that I have an unsafe  
671 level of mercury in my body. So I would suggest that my  
672 colleagues might want to do the same thing. It costs 20  
673 bucks, but it is worth knowing what impacts air pollution has  
674 on our bodies, along with other kinds of pollution, of  
675 course, as well.

676 I think about that when I think about the vote that is  
677 coming before us to delay implementation of these rules. And  
678 I particularly think about it when I watch my daughter  
679 breastfeed her child, about 2 months old now, and I wonder  
680 what the level of mercury in her body is that she may be  
681 passing on some toxic elements to her son through the  
682 wonderful act of breastfeeding. So this is a very personal

683 situation. And I really believe that in the interest of  
684 public health that there is an overwhelming public health  
685 benefit plainly justifies the timely adoption of these vital  
686 safeguards.

687 And I am prepared to yield back.

688 The {Chairman.} The gentlelady yields back.

689 The gentleman from California, Mr. Bilbray.

690 Mr. {Bilbray.} Thank you, Mr. Chairman.

691 Look, Mr. Chairman, it is no secret about my concerns  
692 about the coal industry as a whole, but as I hear my  
693 colleagues talk about invoking lives and babies and, you  
694 know, the risk and the cost of unhealthy environments, I just  
695 hope those same colleagues remember all the obstructionism  
696 that we continue to allow to stand in this country providing  
697 alternatives. I just wonder whenever they talk about  
698 building a new dam for hydroelectric in West Virginia, will  
699 the same individual stand up and say, look, EPA, look, Fish  
700 and Wildlife, we need to save lives and have a clean, non-  
701 polluting energy to be able to save lives. Are they willing  
702 to do that?

703 When we talk about electrifying our auto industry, does  
704 anybody talk about the fact that we do not allow the mining  
705 of rare earth on our public lands in this country, which are  
706 essential for going to electrification of our auto industry?

707 The fact is that there is 70 pounds of rare earth in every  
708 Prius. Is anybody willing to stand up and say because we got  
709 to allow the mining on our public lands to save the children,  
710 to save the lungs, to stop all this pollution? No, they are  
711 not willing to do that. And when we talk about renewables,  
712 are we willing to recognize that solar and wind not only has  
713 technological challenges, but when we do build it, the  
714 transmission lines are three times farther than traditional?  
715 Are we willing to now stand up to save the children we will  
716 allow power transmission through our public lands rather than  
717 focusing them around the public lands, the same public lands  
718 they allow freeways through but won't allow renewable energy  
719 to be transmitted to our population centers?

720       You know, my question is this: are we willing to take  
721 the same position against regulations that are stopping clean  
722 technologies and clean answers? Are we willing to be as  
723 tough and as compassionate when it comes to just eliminating  
724 the federal and state regulations that are standing in the  
725 way of clean alternatives? Are we willing to be that  
726 outraged about regulations that are causing problems at  
727 implementing clean technology as we are at going after the  
728 old plants that have been grandfathered through and  
729 maintained because the alternatives have not been  
730 economically available? That the regulatory system is

731 designed to guarantee these plants be put and left and  
732 continue to operate in this historical approach.

733         So I just really ask every colleague here who really  
734 says that mercury and emissions and the whole particulate  
735 issue is so important that we are willing to trash the  
736 economies of certain areas of this country to save lives, are  
737 you willing to trash the federal regulations that are also  
738 blocking and causing the pollution to continue? Are you  
739 willing to change the way we do business as much as we are  
740 asking the areas in this country that have been using coal to  
741 change the way they do business? I just think there is a  
742 degree of insincerity here when it comes down to one industry  
743 which I have not been a big ally of. But to point fingers at  
744 that industry when the fact of Washington is not willing to  
745 change the way we are doing business with our regulations,  
746 and I think that if we want to take that moral high ground  
747 and be able to invoke children and lives, then we have a  
748 responsibility to consider the fact that maybe we should lead  
749 through example and change the way Washington has been  
750 handling this issue.

751         And I really think that a lot of these issues should be  
752 sent to the Energy Department and address what will be the  
753 alternative? What will be the impact? What are we doing to  
754 be able to make it possible economically and environmentally

755 to phase out one technology and move the other? Are we  
756 willing to take the heat of providing a better alternative  
757 than what we are damning? And I haven't seen that in this  
758 body on both sides of the aisle.

759 And I yield back.

760 The {Chairman.} The gentleman yields back. The chair  
761 would recognize the gentleman from Michigan, Mr. Dingell, for  
762 5 minutes.

763 Mr. {Dingell.} Mr. Chairman, I thank you for your  
764 courtesy. I move to strike the last word if you please.

765 Mr. Chairman, our former colleague, now mayor of Chicago  
766 once observed that a crisis is too good a thing to waste. We  
767 got a problem on our hands here. And I want to say this with  
768 respect to all of my colleagues. I think everybody in this  
769 room wants to solve the problem. Unfortunately, we seem to  
770 be hitched to a wide array of theological and disputatious  
771 positions, and the result is that the issues addressed in the  
772 TRAIN Act, which are serious and require serious solutions,  
773 are probably not going to be addressed in the bill, nor are  
774 they probably going to become law to take care of the  
775 problems that the industry and the environmentalists and  
776 everybody else feels are a real problem.

777 Unhappily, there are a lot of people running around here  
778 who want to eviscerate EPA. I yield to no one in having been

779 angry at EPA for some of the highhanded, arrogant, and  
780 ignorant things that they have done down there. But the  
781 harsh fact of the matter is they are the only EPA we have got  
782 and I don't think eviscerating them is in the interest of  
783 anybody.

784         So I think what we have to do is to recognize that the  
785 gutting of the EPA's budget and the EPA is not good and that  
786 we are going to have to understand that there are some  
787 legitimate problems. It is fairly easy to identify the  
788 problems. One of the biggest single problems we got is the  
789 coal ash problem and that should be fairly simple to simply  
790 identify that coal ash is a problem that probably has to,  
791 because of its peculiar character, to be treated separately  
792 and distinctly. That is fairly easy to do. Let us figure  
793 out what is wrong with the way EPA is handling coal ash. Let  
794 us figure out what ought to be done to make the solution  
795 work. And then let us begin to address it.

796         And I am just a poor Polish lawyer from Detroit and I  
797 think that if we will approach that and deal with these  
798 matters in a more surgical fashion and we could get down to  
799 dealing with the specific concerns we have. Whether we have  
800 coal ash as a separate category or whether it is treated as a  
801 hazardous waste or whether it is treated as a household  
802 waste, I don't think is a matter for any kind of theological

803 discussion. All we really got to do is figure out what are  
804 the problems and then figure out how we are going to come up  
805 with a solution. I think the solution to be fairly simple,  
806 and that is to find out how we are going to deal with the  
807 empowerment question, let EPA write the regulations and  
808 dispose of the problem.

809         So I am going to be sitting here in the rather  
810 unfortunate position of having to vote against most of the  
811 TRAIN Act and a lot of the associated amendments. And I hope  
812 that my colleagues on both sides of the aisle will work  
813 together to solve this problem in an efficient and reasonable  
814 and a competent way.

815         And I thank you, Mr. Chairman.

816         The {Chairman.} The gentleman yields back.

817         The chair would recognize the gentleman from Oklahoma,  
818 Mr. Sullivan.

819         Mr. {Sullivan.} Thank you, Mr. Chairman.

820         And you know, when you look at this stuff and you wonder  
821 how much longer is the Obama Administration going to punish  
822 the American people in this economy, these things have great  
823 cost to our economy and the American people. The Transport  
824 Rule, just for example, according to EPA's estimates, the  
825 projected annualized compliance costs are \$1.4 billion in  
826 2012 and 800 million in 2014. The new rule applies to 27

827 States in the eastern half of the United States and affects  
828 3,642 electric-generating units at 1,081 facilities,  
829 facilities in Texas, Arkansas, Oklahoma would be subject not  
830 only to the reasonable NOx program with limits that are  
831 proposed to take effect in 2012. The Utility MACT is a  
832 hugely expensive rule. According to EPA, this rule would  
833 affect 24 percent of the Nation's electricity generation,  
834 1,353 coal- and oil-fired units at 525 power plants. New  
835 compliance costs of this regulation is \$10.9 billion  
836 annually. This has the potential of being EPA's most  
837 expensive rule on the U.S. economy, hurting jobs and the  
838 economy.

839         And I want to thank Chairman Whitfield for offering this  
840 amendment to my bill. This is a very important amendment. I  
841 think it is going to help a lot. And as we can see by EPA's  
842 actions on the utilities sector alone, they are issuing  
843 multiple regulations on top of each other at such an  
844 accelerated rate that it makes it difficult for companies to  
845 invest and create jobs. This is EPA's regulatory train  
846 wreck.

847         The Utility MACT Rule alone has the potential to be  
848 EPA's most expensive rule impacting the U.S. economy.  
849 Combined, they will cost tens of billions on the economy and  
850 hurt job growth. According to NERA Economic Consulting, an

851 analysis of these proposed rules could cost 17.8 billion to  
852 implement and the result is a net employment loss of 1.44  
853 million jobs in America. A report is out recently we aren't  
854 creating jobs. And these are private-sector jobs that we  
855 need desperately. These rules will force the premature  
856 retirement of power plants, raise electricity rates on  
857 families and businesses alike, and hurt our global  
858 competitiveness. If there is one thing that can help our  
859 struggling economy, it is having access to stable and  
860 reliable sources of energy.

861 I am pleased to support this commonsense amendment to  
862 delay EPA's action on both the Utility MACT and the Transport  
863 Rule until 6 months after the TRAIN Act analysis is complete.  
864 This delay is prudent in light of our national unemployment  
865 rising to 9.2 percent over the past month.

866 And I would like to yield the balance of my time to  
867 Chairman Whitfield.

868 Mr. {Whitfield.} Thank you very much, Mr. Sullivan.

869 And there has been a lot of discussion today about  
870 mercury, which we are all very much concerned about, but I  
871 would point out that under Utility MACT, 99.99996 percent of  
872 the benefit comes from reduction of particulate matter.

873 Now, in these amendments, we are not advocating the  
874 repeal of any of these regulations, even though the Utility

875 MACT is the most expensive comprehensive regulation ever  
876 issued by EPA. I don't think anyone would object to  
877 additional analysis. And that is all we are doing here. We  
878 want additional analysis. Let us look at what is the impact  
879 on the competitiveness of the United States against other  
880 businesses and countries around the world as a result of  
881 these regulations? Fifty percent of electricity produced in  
882 America comes from coal, and when you start putting  
883 regulations like this, you impact the price of electricity.  
884 That affects jobs.

885         And I doubt that there is one member on this committee  
886 that has any idea or can explain in any way the modeling and  
887 the assumptions used at EPA in calculating health benefits.  
888 Now, we have heard this morning that there is going to be  
889 17,000 less premature deaths if we move these regulations,  
890 850,000 days of people not missing work if we move these  
891 regulations. How is that really determined? And the  
892 question I mentioned when I first talked about this  
893 amendment, these assumptions at EPA, they may look at health  
894 benefits up in the Northeast for the reduction of pollutants,  
895 but what about the children of unemployed utility workers and  
896 coalminers in the Midwest? They don't look at the  
897 assumptions of the cost of their lack of healthcare.

898         And so all we are asking is let us delay the

899 implementation of these two rules until we can look more  
900 thoroughly at the impact. We are not saying repeal it. Let  
901 us just look at it. Even President Obama in today's energy  
902 daily concerned about unemployment, concerned about the  
903 impact of these regulations, he issued another executive  
904 order and say we need to relook at this and maybe we need to  
905 even repeal some of them.

906         So I believe that this amendment that we are talking  
907 about today that Mr. Ross and I have introduced is a modest--  
908 simply, let us take a little time, let us analyze, and let us  
909 fully understand what we are talking about.

910         So I want to thank the gentleman for yielding his time  
911 to me.

912         The {Chairman.} The chair would recognize Mr. Rush for  
913 5 minutes.

914         Mr. {Rush.} Well, Mr. Chairman, I move to strike the  
915 last word. I move to strike the last word.

916         Mrs. {Myrick.} [Presiding] You are recognized for 5  
917 minutes.

918         Mr. {Rush.} The bill we are considering today purports  
919 to be about regulatory analysis but this amendment reveals  
920 what the real agenda has been all throughout this effort. I  
921 am from a coal-producing State and I also come from a  
922 district that is suffering many health issues and health

923 problems permeate many of those who are in my district,  
924 including birth defects and other kinds of illnesses and  
925 diseases that can be attributed in great measure to the  
926 environmental conditions that some of the people in my  
927 district are forced to live with.

928         And I must say that the real goal of this TRAIN Act  
929 isn't to improve, as been argued vociferously by the members  
930 of the other side. It is not to improve the analysis of  
931 regulations but it has one goal and one goal in mind only,  
932 and that is to stop the EPA, to stop regulations,  
933 specifically to stop long-overdue efforts to clean up old,  
934 polluting, coal-fired power plants, two of which are in my  
935 city, the Crawford power plant and the Fisk power plant. And  
936 my friend Mr. Whitfield, the chairman of the subcommittee on  
937 which I serve is ranking member is a good guy, well-  
938 intentioned, but I know for a fact and it is obvious to  
939 everyone here that the purpose of this amendment is to  
940 indefinitely delay two critical clean air regulations that  
941 will allow hundreds of thousands of American people  
942 throughout the Nation, including those in my district, to  
943 enjoy better health and to save our economy tens of millions  
944 of dollars.

945         Mr. Chairman, I want to just say that the Utility Air  
946 Toxics Rule reduces emissions of mercury and air toxins from

947 power plants. The EPA is on the record that it expects to  
948 finalize the regulation in November. The economic value of  
949 benefits from lives saved and health improvement has been  
950 stated categorically by many learned and expert individuals,  
951 organizations, and others. The improvements aspire to 10  
952 times greater than the cost. The Cross-State Air Pollution  
953 Rule reduces emissions of sulfur dioxide and nitrogen oxide  
954 that contribute to air pollution problems in downwind States.  
955 EPA finalized that rule last week.

956 Madam Chairman, we are asking for some kind of standard,  
957 some kind of study? Well, 2011 there was a report issued by  
958 the University of Massachusetts Political Economy Research  
959 Institute, and they found that meeting new standards that  
960 limit sulfur dioxide, nitrogen oxide, mercury, and other  
961 pollutants will create, in the report's own words, ``jobs.''   
962 Jobs for the American people. As a matter of fact, I will  
963 quote them. They say, ``a wide array of skilled construction  
964 and professional jobs from electricians, plumbers, laborers,  
965 and engineers who will build and retrofit power plants all  
966 across the Eastern United States and their operations and  
967 maintenance, O and M employees, will keep these modernized  
968 facilities running.''

969 The utility companies themselves, the largest utility  
970 companies in this Nation, the most successful companies in

971 this Nation, they support the EPA's rule. They are not  
972 marching lockstep into our offices lobbying against these  
973 rules. They are in favor of these rules. They knew  
974 beforehand just like every utility company in the Nation knew  
975 beforehand that these regulations were coming. They knew  
976 that they were coming, and these individuals, these  
977 companies, these responsible companies, these companies that  
978 do create jobs and are the engines for economic viability in  
979 this Nation, they didn't say, well, we are going to stand  
980 back and fight these amendments. They got ahead of the  
981 curve. They made the investment to clean up their pollution,  
982 to retrofit their factories and their plants.

983         These responsible businesses plagued by the rules and  
984 they will be severely disadvantaged. You will hurt these and  
985 harm these responsible businesses who you purport to protect,  
986 who you purport to advocate for. You are going to hurt them,  
987 harm them, take money out of their pockets if this Congress  
988 changed the rules in the mid-game after they have made these  
989 billions and billions of dollars in investments.

990         My own utility company, Exelon, has made millions and  
991 millions of dollars in investment, and I tell you, my friend  
992 from California, you ask what am I willing to do? I am not  
993 willing to allow this company that supplies jobs and helps  
994 clean up the environment in my district, I am not going to

995 allow their investment to go down the drain because of this  
996 TRAIN.

997 The {Chairman.} The gentleman's time has expired.

998 Mr. {Rush.} I yield back the balance of my time.

999 The {Chairman.} Are there other members wishing to  
1000 speak on the amendment? Dr. Burgess.

1001 Dr. {Burgess.} I thank the chairman for the  
1002 recognition.

1003 You know, some utility companies may have known for some  
1004 time that this rule was coming. I would submit to you the  
1005 State of Texas was absolutely caught off guard by the last  
1006 minute being included in this rule. The administration,  
1007 unfortunately, has a long and established track record of  
1008 wanting to punish success. Up until last week I thought that  
1009 was just punishing successful individuals and companies.  
1010 Now, we see it is aimed at punishing successful States.

1011 Chairman Whitfield correctly articulated that there are  
1012 strict standards for mercury emissions prior to this rule.  
1013 There will be strict standards for mercury emissions  
1014 afterwards. It is not going to change that. But what it  
1015 will change is the ability for Texas companies to provide  
1016 power generation for their citizens. Two times in the last 6  
1017 months, one was February, 3 days before the Super Bowl and  
1018 power production was severely curtailed during a cold snap in

1019 the State of Texas. And then 2 weeks ago the Electricity  
1020 Reliability Council of Texas asked people to voluntarily  
1021 reduce consumption because it was a very hot day and air  
1022 conditioners were running and they could not keep up with the  
1023 power demands. Now, what happens when you lose your air  
1024 conditioning in the summer in Texas? It gets extremely hot  
1025 extremely quickly.

1026 Now, Mr. Rush may remember we heard some hypotheticals  
1027 about premature deaths that would be prevented by enacting  
1028 this EPA rule but what about facts? And Mr. Rush may  
1029 remember in the city of Chicago several years ago you had a  
1030 very hot spell one summer, it was toward the end of the  
1031 summer, and you lost I think it was 800 of your citizens due  
1032 to heat-related deaths predominantly affecting the very  
1033 elderly.

1034 What about Paris, France? Remember the summer of 2003?  
1035 Remember how people said that going into Iraq was going to  
1036 cause the greatest humanitarian disaster that ever occurred?  
1037 But where was the humanitarian disaster that summer? It was  
1038 in Paris, France, because they had a very hot spell over a  
1039 holiday weekend and 11,000 people died because they did not  
1040 have access to climate control in their houses, and they  
1041 weren't checked on because their relatives had gone on  
1042 holiday. Heat-related deaths in the summertime can be a very

1043 serious phenomenon.

1044           But what does this rule do? This rule removes, what,  
1045 some 18 power plants in the State of Texas, those that depend  
1046 on lignite coal for their power production? All we are  
1047 asking, all we are asking is for someone at the federal  
1048 agency to do a nonpartisan, non-ideological cost-benefit  
1049 analysis of this proposed rule before it is enacted. I don't  
1050 think that is asking too much. I don't think that is  
1051 jeopardizing public health and safety and public welfare. I  
1052 think shutting down 18 power plants in the State of Texas  
1053 when we have--

1054           Mr. {Rush.} Will the gentleman yield?

1055           Dr. {Burgess.} I will not yield for just a moment. Let  
1056 me finish this thought. I think two episodes of having to  
1057 curtail power production in Texas in the last 6 months shows  
1058 that we are operating very close to the margin on that. If  
1059 you close down 18 power plants in the State of Texas, there  
1060 are going to be severe problems, yes, in the summer. There  
1061 are going to be severe problems in the winter because, yes,  
1062 we do have cold winters in the State of Texas despite global  
1063 warming. This is a serious problem for our State. It is  
1064 going to affect productivity, it is going to affect jobs, it  
1065 is going to affect employment, and the fact of the matter is,  
1066 it came at us at the last minute. There was no discussion of

1067 this prior to 10 days ago.

1068           So it is extremely important that, again, in a  
1069 nonpartisan, non-ideological fashion a cost-benefit analysis  
1070 be performed. I know this administration does not like to do  
1071 cost-benefit analyses. We have seen that over and over and  
1072 over again with the closure of automobile dealerships, with  
1073 some of the stuff in the healthcare law, but this time it is  
1074 important to do that cost-benefit analysis. This economy is  
1075 in critical shape in case you hadn't noticed. People across  
1076 the country are so frightened of what is happening to our  
1077 economy. Let us not take an axe to it in the State of Texas,  
1078 the one State that in fact is showing a few bright spots as  
1079 far as employment.

1080           And I will be happy to yield to my colleague from  
1081 Chicago.

1082           Mr. {Rush.} I want to thank the gentleman for yielding.  
1083 I do remember the 700 people who died in the early '90s in  
1084 the summer. Some of them were my neighbors; some of them  
1085 were my constituents. Now, let me just tell you what my  
1086 utility company did as a result of that. Do you--

1087           Dr. {Burgess.} Reclaiming my time. This is not about  
1088 the fact that your utility company knew this ahead of time--

1089           Mr. {Rush.} The utility companies--

1090           Dr. {Burgess.} Reclaiming my time. This is the fact

1091 that we had no idea that this rule was coming--

1092 Mr. {Rush.} --that got out in front and invested a  
1093 billion dollars retrofitting and upgrading their plant--

1094 Dr. {Burgess.} --until 10 days ago and they forced this  
1095 rule--

1096 Mr. {Rush.} --a billion dollars they invested--

1097 Dr. {Burgess.} --on the State of Texas. I yield back  
1098 to the chairman.

1099 The {Chairman.} The gentleman from Texas controls the  
1100 time and his time has now expired. Are there other members  
1101 wishing to speak on the amendment?

1102 The gentlelady from Illinois, Ms. Schakowsky.

1103 Ms. {Schakowsky.} Well, thank you for recognizing me.  
1104 First of all, I would like to yield 30 seconds to my  
1105 colleague from Chicago.

1106 Mr. {Rush.} I want to thank the gentlelady.

1107 My utility company, as a result, they didn't rely on  
1108 some act of Congress, all right, to try to correct the  
1109 problem that they found existed that resulted in these  
1110 massive deaths. They acted responsibly, invested over a  
1111 billion dollars in accordance with the EPA standard and  
1112 retrofitted and made improvements to their power plants.  
1113 They didn't sit back and wait for the moment in time when  
1114 their friends were in power and then their friends could

1115 circumvent the aspirations and the well being of the American  
1116 people and of the citizens and their customers. They got out  
1117 in front of it and made some major investments.

1118 I want to thank the gentlelady.

1119 Ms. {Schakowsky.} Thank you. Reclaiming my time.

1120 A number of members today have said on a number of  
1121 occasions that the Clean Air Act is responsible for killing  
1122 coalmining jobs and putting the children of miners at risk.  
1123 Well, actually, last April we asked the Congressional  
1124 Research Service to examine this issue. So I have a chart  
1125 that I hope we can put up that shows the results. Can we put  
1126 that up on the screen? And if it gets there, you will see  
1127 that coal--there it is--that coalmining jobs, which is the  
1128 red line, started to precipitously decline long before the  
1129 Clean Air Act amendments. You can see those entered about  
1130 halfway down on the chart. They were enacted in 1990. And  
1131 you know what happened after that? Production of coal has  
1132 only increased. In fact, coal production has increased 30  
1133 percent since 1980, even while the number of mining jobs has  
1134 dropped by 60 percent. So the Clean Air Act did not cause  
1135 these job losses. Instead, it is the same cause that we have  
1136 seen in many industries. It is mechanization.

1137 Now, I am more than willing to acknowledge that  
1138 government isn't always the solution, but I hope that my

1139 colleagues across the aisle can acknowledge that this problem  
1140 has simply been misdiagnosed. It is not the cause of the  
1141 unemployment in the industry is not caused by the Clean Air  
1142 Act. And we can, in fact, have both. We can have a reliable  
1143 source of energy in this country and we can have clean air.  
1144 That is the goal here. But we don't have to pick on whether  
1145 our children become sick because of pollution or that they  
1146 become poor because there are no jobs. We can have clean  
1147 energy in this country and we can have clean air and healthy  
1148 children in this country. The Clean Air Act is not the cause  
1149 of job loss.

1150         And I would be happy to yield if anyone likes the time.  
1151 Mr. Barton?

1152         Mr. {Barton.} I just want to point out that your chart  
1153 is absolutely true but what it doesn't show is that the hard  
1154 rock underground miners in the East with high sulfur coal  
1155 plummeted and the low-sulfur, open-pit mined coal in the West  
1156 skyrocketed. So the total number of jobs did decline because  
1157 of the Clean Air Act amendments of 1990, but coal production  
1158 maintained itself and went up because they substituted coal  
1159 from the West that were strip-mined in open coalmines for  
1160 coal that was underground-mined in the East that tended to be  
1161 the anthracite, harder, high-sulfur coal.

1162         Ms. {Schakowsky.} Well, reclaiming my time.

1163           As my colleague from Illinois has said, Mr. Rush, there  
1164 are those utility companies and mining companies who had the  
1165 foresight to do what it is needed in order to comply with the  
1166 Clean Air Act and the answer in 2011 is not to say that we  
1167 are now going to explore reducing the important safeties that  
1168 have been introduced to keep us all well. We have had the  
1169 same arguments about jobs and the environment when it comes  
1170 to mercury, one of the most toxic chemicals in our  
1171 environment. I for one am not willing to go back to those  
1172 days where we just decide we have to trade off having toxic  
1173 pollutants that are hurting our children, that are hurting  
1174 our families in order to preserve jobs. Those are not the  
1175 only options on the table and I suggest that we look at those  
1176 others so that we can have a better economy and a healthier  
1177 populace.

1178           And I yield back my time.

1179           The {Chairman.} The gentlelady's time has expired.

1180           Are there other members wishing to speak on the  
1181 amendment?

1182           Mr. Murphy?

1183           Mr. {Murphy.} Thank you, Mr. Chairman.

1184           Let us remember what this bill does, the TRAIN Act. It  
1185 actually calls upon the administration to use their Cabinet  
1186 members to tell us what the impact is of what the EPA is

1187 doing. This committee passed last year, as I recall, and it  
1188 went to the Floor, a bill that had a similar appointment of  
1189 officials to deal with some other job issues. So either we  
1190 trust the administration or we don't, but in this case, this  
1191 is to ask the administration to do that which it doesn't want  
1192 to do and that is to come up with an economic and job  
1193 analysis of these.

1194 Now, there also was a health analysis of this and this  
1195 is critically important because nobody here in this room or  
1196 who is a Member of Congress wants to have problems with air,  
1197 land, and water. We want them cleaned up. But the issue is  
1198 make sure we are using hard science and look at these through  
1199 a number of levels.

1200 Also, as Congress is dealing with a massive debt and  
1201 deficit, let us keep in mind that poverty is one of the  
1202 biggest contributors also to environmental problems. And  
1203 that is when you have people who are desperate for jobs, they  
1204 may not be looking at some of these other issues here, too.  
1205 When we have the money in the economy to clean up our power  
1206 plants and do other things, we can invest it.

1207 With a June unemployment rate of 9.2 percent, keep this  
1208 in mind that if you look at that, it turns into 18,000 jobs.  
1209 That is about 360 jobs per State. That is not even worth  
1210 about one graduating class per State from a typical large

1211 American high school. In June of 2011, total high school  
1212 graduates in America was 3.7 million. College graduates was  
1213 1.7 million. We have to be thinking of ways we can grow  
1214 jobs. Now, a 1 percent decline in unemployment is \$90  
1215 billion in federal revenue in one year. So while we are  
1216 looking at other ways of increasing revenue instead of  
1217 raising taxes, let us increase the number of taxpayers. A  
1218 decrease in unemployment compensation and decrease in federal  
1219 revenue all comes with that. And what we are asking the  
1220 administration to do is keep this in mind and give us some  
1221 analysis while this goes forth.

1222         So while the President and the Speaker and other Members  
1223 are over at the White House trying to figure out ways of  
1224 dealing with the reduction of our debt and our deficit, let  
1225 us keep in mind the biggest part of that also is increasing  
1226 the number of jobs. And this bill is asking for some of that  
1227 analysis to take place. What do we have to fear with the  
1228 truth?

1229         And I would like to yield the remainder of my time to  
1230 Mr. Whitfield.

1231         Mr. {Whitfield.} Thank you very much. There has been  
1232 some discussion today about certain utility companies  
1233 actually support the Utility MACT and Air Transport Rule, and  
1234 that is true, including some in Mr. Rush's area. And all of

1235 us are fans and proponents of nuclear energy. Exelon is a  
1236 great company but they use nuclear energy, so I don't think  
1237 they are going to be too concerned about the impact on coal  
1238 with these regulations.

1239       Yeah, this right here is the rule for the air transport.  
1240 This is supposed to take effect on January 1, just a few  
1241 months away. And as I said, independent analysis have looked  
1242 at the assumptions made by EPA and many of these entities are  
1243 concerned that they have made a lot of mistakes in their  
1244 assumptions. So I would just reiterate once again I  
1245 genuinely believe that Congress does have the responsibility  
1246 to make sure that analyses are complete. And it has been  
1247 said more than once today, all we are asking for is a more  
1248 in-depth analysis looking at electricity prices, looking at  
1249 competitiveness, looking at fuel cost, looking at impact on  
1250 unemployment.

1251       And I would just ask the question once again, when we  
1252 talk about health benefits--and Mr. Waxman mentioned \$100  
1253 billion in health benefits--and when you really think about  
1254 these models being used, how do they determine, for example,  
1255 how many 10-year-olds and below are coming down with asthma  
1256 or how many 70-year-olds and above may have a premature death  
1257 if this regulation does not pass? How is that done? What  
1258 assumptions are being used? Now, those are questions that we

1259 are asking. And as I have said now for the third time, these  
1260 analyses still do not take into effect the damage to the  
1261 healthcare of children whose parents will lose jobs because  
1262 of these regulations. That is a cost that we also ought to  
1263 explore.

1264 So I think it is a reasonable approach. We are not  
1265 trying to repeal anything here. We need additional time for  
1266 a more comprehensive look. And I would yield back to--

1267 Mr. {Waxman.} Will the gentleman yield?

1268 Mr. {Whitfield.} I would be happy to yield.

1269 Mr. {Waxman.} Well, it seems to me that if you have  
1270 questions, we had to have hearings; we had to have regular  
1271 order. But these issues are being dropped on another bill as  
1272 amendments as if we knew exactly what we all agreed to do and  
1273 we don't agree on it. You don't have the analysis. These  
1274 power plant emission standards for the eastern States benefit  
1275 primarily the Northeast while hurting the Midwest. That is  
1276 what you said but that is not the case at all. There are  
1277 other things I want to go into. I know your time has  
1278 expired, but my point briefly is we should have had a  
1279 hearing. We should know what the consequences are. This is  
1280 too important an issue just to offer amendments on another  
1281 bill and bring it up in full committee without getting the  
1282 information.

1283 Mr. {Whitfield.} Well, I may just make one other  
1284 comment if I could. One of the concerns has been the very  
1285 short comment period that EPA has allowed on these very  
1286 comprehensive and complex rules.

1287 The {Chairman.} The gentleman's time has expired. Are  
1288 there other members wishing to speak in opposition or in  
1289 support of the amendment?

1290 The gentleman from California?

1291 Mr. {Waxman.} Mr. Chairman, I want to strike the last  
1292 word.

1293 The {Chairman.} The gentleman is recognized for 5  
1294 minutes.

1295 Mr. {Waxman.} I want to respond to some of the things  
1296 that have been said. Chairman Whitfield suggested earlier  
1297 that the new power plant emission standards for the eastern  
1298 States benefit primarily the Northeast while hurting the  
1299 Midwest. That is not the case. As I understand it,  
1300 according to EPA, starting in 2014 and all, you will base  
1301 some of the largest benefits of the new Cross-State Air  
1302 Pollution Rule occur in the Midwest and the South. For  
1303 example, in both Michigan and Kentucky will avoid up to 1,400  
1304 premature deaths and provide monetized benefits of up to \$11  
1305 billion. In Ohio, will avoid up to 3,200 premature deaths  
1306 and provide monetized benefits up to \$26 billion. In Texas,

1307 will avoid up to 1,700 premature deaths and provide monetized  
1308 benefits of up to \$14 billion. This rule will prevent tens  
1309 of thousands of premature deaths and asthma attacks across  
1310 the country, not just in New England. And those are the  
1311 facts.

1312 Chairman Whitfield suggested earlier new power plant  
1313 emission standards for the eastern States benefit primarily--  
1314 so I think that we need to be mindful that this is important  
1315 for many parts of the country and it is a good reason we  
1316 should have a hearing. I have cited facts and figures. I  
1317 have gotten them, of course, from EPA and others who have  
1318 done an analysis. Some of these rules they have been working  
1319 on for a decade. And now that they have finally come about  
1320 with one rule and they are talking about another one later,  
1321 it just seems to be so inappropriate to drop a repeal of  
1322 those rules on another piece of legislation without--I don't  
1323 think they are related except if you look at them both in  
1324 terms of trying to stop regulations, not to analyze them more  
1325 carefully.

1326 I yield back the balance of my time. I yield to Mr.  
1327 Rush.

1328 Mr. {Rush.} On this issue of jobs, I really want us to  
1329 be real clear about what these facts are. According to the  
1330 employment effects, an EPA study of employment effects on the

1331 planned changes to the EPA's air pollution rules, in the  
1332 matter of jobs, under pollution controls, there would be an  
1333 increase of 305,000 jobs. Those are direct jobs. Direct and  
1334 indirect jobs, there will be an increase of 683,734 jobs.  
1335 New generation capacity, 312,617 new jobs direct; direct and  
1336 indirect, 774,151 new direct and indirect jobs for a total of  
1337 637,922 new jobs that are direct and 1,457,885 direct and  
1338 indirect jobs. The employment estimates for O and M jobs  
1339 associated with capital improvement and retirement of coal  
1340 generation. Under pollution controls, that would be a total  
1341 of 2,167 net jobs created; direct and indirect, 4,254 jobs.

1342         The purpose of this and the conclusion that anyone would  
1343 draw is that the EPA under its rules have been creating jobs.  
1344 It is a job-creator, not a job-killer. And I really don't  
1345 understand what it is going to take for the majority to come  
1346 to grips with this and to admit this and to acknowledge this.

1347         I yield back.

1348         The {Chairman.} The gentleman yields back. Are there  
1349 other members wishing to speak? Seeing none, the vote occurs  
1350 on the amendment offered by Mr. Whitfield and Mr. Ross.

1351         All those in favor of the amendment will say aye. Aye.  
1352 All those in opposed say no. In the opinion of the chair,  
1353 the ayes have it.

1354         Roll call is asked for. The clerk will call the tally.

- 1355           The {Clerk.}   Mr. Barton?
- 1356           Mr. {Barton.}   Aye.
- 1357           The {Clerk.}   Mr. Barton, aye.
- 1358           Mr. Stearns?
- 1359           [No response.]
- 1360           The {Clerk.}   Mr. Whitfield?
- 1361           Mr. {Whitfield.}   Aye.
- 1362           The {Clerk.}   Mr. Whitfield, aye.
- 1363           Mr. Shimkus?
- 1364           Mr. {Shimkus.}   Aye.
- 1365           The {Clerk.}   Mr. Shimkus, aye.
- 1366           Mr. Pitts?
- 1367           Mr. {Pitts.}    Aye.
- 1368           The {Clerk.}   Mr. Pitts, aye.
- 1369           Mrs. Bono Mack?
- 1370           Mrs. {Bono Mack.}   Aye.
- 1371           The {Clerk.}   Mrs. Bono Mack, aye.
- 1372           Mr. Walden?
- 1373           Mr. {Walden.}    Aye.
- 1374           The {Clerk.}   Mr. Walden, aye.
- 1375           Mr. Terry?
- 1376           Mr. {Terry.}    Aye.
- 1377           The {Clerk.}   Mr. Terry, aye.
- 1378           Mr. Rogers?

1379 [No response.]

1380 The {Clerk.} Ms. Myrick?

1381 Mrs. {Myrick.} Aye.

1382 The {Clerk.} Ms. Myrick, aye.

1383 Mr. Sullivan?

1384 Mr. {Sullivan.} Aye.

1385 The {Clerk.} Mr. Sullivan, aye.

1386 Mr. Murphy?

1387 Mr. {Murphy.} Aye.

1388 The {Clerk.} Mr. Murphy, aye.

1389 Mr. Burgess?

1390 [No response.]

1391 The {Clerk.} Ms. Blackburn?

1392 Mrs. {Blackburn.} Aye.

1393 The {Clerk.} Ms. Blackburn, aye.

1394 Mr. Bilbray?

1395 [No response.]

1396 The {Clerk.} Mr. Bass?

1397 Mr. {Bass.} No.

1398 The {Clerk.} Mr. Bass, no.

1399 Mr. Gingrey?

1400 Dr. {Gingrey.} Aye.

1401 The {Clerk.} Mr. Gingrey, aye.

1402 Mr. Scalise?

1403 Mr. {Scalise.} Aye.

1404 The {Clerk.} Mr. Scalise, aye.

1405 Mr. Latta?

1406 Mr. {Latta.} Aye.

1407 The {Clerk.} Mr. Latta, aye.

1408 Mrs. McMorris Rodgers?

1409 Mrs. {McMorris Rodgers.} Aye.

1410 The {Clerk.} Mrs. McMorris Rodgers, aye.

1411 Mr. Harper?

1412 Mr. {Harper.} Aye.

1413 The {Clerk.} Mr. Harper, aye.

1414 Mr. Lance?

1415 Mr. {Lance.} No.

1416 The {Clerk.} Mr. Lance, aye. Mr. Lance, no.

1417 Mr. Cassidy?

1418 Dr. {Cassidy.} Aye.

1419 The {Clerk.} Mr. Cassidy, aye.

1420 Mr. Guthrie?

1421 Mr. {Guthrie.} Aye.

1422 The {Clerk.} Mr. Guthrie, aye.

1423 Mr. Olson?

1424 Mr. {Olson.} Aye.

1425 The {Clerk.} Mr. Olson, aye.

1426 Mr. McKinley?

1427 Mr. {McKinley.} Aye.

1428 The {Clerk.} Mr. McKinley, aye.

1429 Mr. Gardner?

1430 [No response.]

1431 The {Clerk.} Mr. Pompeo?

1432 Mr. {Pompeo.} Aye.

1433 The {Clerk.} Mr. Pompeo, aye.

1434 Mr. Kinzinger?

1435 Mr. {Kinzinger.} Aye.

1436 The {Clerk.} Mr. Kinzinger, aye.

1437 Mr. Griffith?

1438 Mr. {Griffith.} Aye.

1439 The {Clerk.} Mr. Griffith, aye.

1440 Mr. Waxman?

1441 Mr. {Waxman.} No.

1442 The {Clerk.} Mr. Waxman, no.

1443 Mr. Dingell?

1444 Mr. {Dingell.} No.

1445 The {Clerk.} Mr. Dingell, no.

1446 Mr. Markey?

1447 [No response.]

1448 The {Clerk.} Mr. Towns?

1449 [No response.]

1450 The {Clerk.} Mr. Pallone?

1451 [No response.]

1452 Mr. {Towns.} No.

1453 The {Clerk.} Mr. Towns, no.

1454 Mr. Rush?

1455 Mr. {Rush.} No.

1456 The {Clerk.} Mr. Rush, no.

1457 Ms. Eshoo?

1458 Ms. {Eshoo.} No.

1459 The {Clerk.} Ms. Eshoo, no.

1460 Mr. Engel?

1461 [No response.]

1462 The {Clerk.} Mr. Green?

1463 Mr. {Green.} Yes.

1464 The {Clerk.} Mr. Green, yes.

1465 Ms. DeGette?

1466 Ms. {DeGette.} No.

1467 The {Clerk.} Ms. DeGette, no.

1468 Mrs. Capps?

1469 Mrs. {Capps.} No.

1470 The {Clerk.} Mrs. Capps, no.

1471 Mr. Doyle?

1472 Mr. {Doyle.} No.

1473 The {Clerk.} Mr. Doyle, no.

1474 Ms. Schakowsky?

1475 Ms. {Schakowsky.} No.  
1476 The {Clerk.} Ms. Schakowsky, no.  
1477 Mr. Gonzalez?  
1478 [No response.]  
1479 The {Clerk.} Mr. Inslee?  
1480 Mr. {Inslee.} No.  
1481 The {Clerk.} Mr. Inslee, no.  
1482 Ms. Baldwin?  
1483 Ms. {Baldwin.} No.  
1484 The {Clerk.} Ms. Baldwin, no.  
1485 Mr. Ross?  
1486 Mr. {Ross.} Yes.  
1487 The {Clerk.} Mr. Ross, aye.  
1488 Mr. Matheson?  
1489 Mr. {Matheson.} Aye.  
1490 The {Clerk.} Mr. Matheson, aye.  
1491 Mr. Butterfield?  
1492 Mr. {Butterfield.} No.  
1493 The {Clerk.} Mr. Butterfield, no.  
1494 Mr. Barrow?  
1495 Mr. {Barrow.} Aye.  
1496 The {Clerk.} Mr. Barrow, aye.  
1497 Ms. Matsui?  
1498 Ms. {Matsui.} No.

1499 The {Clerk.} Ms. Matsui, no.  
1500 Ms. Christensen?  
1501 Dr. {Christensen.} No.  
1502 The {Clerk.} Ms. Christensen, no.  
1503 Ms. Castor?  
1504 Ms. {Castor.} No.  
1505 The {Clerk.} Ms. Castor, no.  
1506 Chairman Upton?  
1507 The {Chairman.} The vote is aye.  
1508 The {Clerk.} Chairman Upton, aye.  
1509 The {Chairman.} Other members wishing to cast a vote?  
1510 Mr. Stearns?  
1511 Mr. {Stearns.} Aye.  
1512 The {Clerk.} Mr. Stearns, aye.  
1513 The {Chairman.} Mr. Rogers?  
1514 Mr. {Rogers.} Aye.  
1515 The {Clerk.} Mr. Rogers, aye.  
1516 The {Chairman.} Dr. Burgess?  
1517 Dr. {Burgess.} Aye.  
1518 The {Clerk.} Mr. Burgess, aye.  
1519 The {Chairman.} Mr. Gardner?  
1520 Mr. {Gardner.} Aye.  
1521 The {Clerk.} Mr. Gardner, aye.  
1522 The {Chairman.} Mr. Pallone?

1523 Mr. {Pallone.} No.

1524 The {Clerk.} Mr. Pallone, no.

1525 The {Chairman.} Mr. Matheson? Are there other members  
1526 wishing to cast a vote? Seeing none, the clerk will report  
1527 the tally.

1528 The {Clerk.} Mr. Chairman, on that there were 32 ayes  
1529 and 18 nos.

1530 The {Chairman.} Eighteen nos, the amendment is agreed  
1531 to.

1532 Are there other members wishing to offer an amendment?

1533 The gentlelady from California, Mrs. Capps.

1534 Mrs. {Capps.} Thank you, Mr. Chairman. I have an  
1535 amendment at the desk and it is number D-01.

1536 The {Chairman.} The clerk will report the title.

1537 The {Clerk.} Would you repeat the number again, please,  
1538 ma'am?

1539 Mrs. {Capps.} D-01.

1540 The {Clerk.} Amendment to H.R. 2401 offered by Mrs.  
1541 Capps.

1542 [The amendment follows:]

1543 \*\*\*\*\* INSERT 4 \*\*\*\*\*

1544           The {Chairman.} Amendment will be considered as read.

1545 The staff will pass the amendment out.

1546           And the gentlelady is recognized for 5 minutes in  
1547 support of her amendment.

1548           Mrs. {Capps.} Thank you, Mr. Chairman.

1549           And as I said when I introduced the amendment in the  
1550 subcommittee, it is my hope that we can all simply agree to  
1551 this amendment and it is still my hope in the full committee.

1552           The TRAIN Act requires a committee of Cabinet  
1553 secretaries to analyze and thus potentially delay long-  
1554 overdue safeguards that provide vital public health  
1555 protections. Delays in implementing these protections would  
1556 lead to tens of thousands of premature deaths every year. In  
1557 my view, the studies required under the TRAIN Act are  
1558 redundant and they waste Agency time and they waste taxpayer  
1559 money. Indeed, both the EPA and the OMB already performed  
1560 the studies mandated by the TRAIN Act. Additionally,  
1561 numerous executive orders and regulatory review laws require  
1562 similar analyses.

1563           That is why I have put forth this straightforward  
1564 amendment. It would make certain that the committee created  
1565 by the TRAIN Act would perform analyses to the extent that  
1566 they are feasible given the available information, the

1567 limitations of economic modeling, and available funding. It  
1568 also allows the committee to complete the analyses to the  
1569 extent the information produced is useful to policymakers and  
1570 stakeholders. If analyses are not feasible or not useful, we  
1571 should not be spending taxpayer resources on them.

1572 My amendment also charges the committee to carry out the  
1573 law in such a way that it doesn't delay or interfere with  
1574 statutory or legal obligations. I consider this to be simply  
1575 common sense. It attempts to make this task more manageable  
1576 given the time and resource limitations before us.

1577 So I urge my colleagues to vote yes on this amendment,  
1578 and I am prepared to yield back the balance of my time.

1579 The {Chairman.} The gentlelady yields back the balance  
1580 of her time.

1581 Are there other members wishing to speak on the  
1582 amendment?

1583 The gentleman from California is recognized for 5  
1584 minutes.

1585 Mr. {Waxman.} I support the Capps amendment as drafted.  
1586 The TRAIN Act will create a new government bureaucracy to  
1587 conduct a biased and burdensome study about the cumulative  
1588 cost impacts of important regulations established by the EPA  
1589 to protect public health and the environment. The bill would  
1590 require a dizzying array of analysis of EPA state and local

1591 rule, some of which have not been finalized or even proposed  
1592 yet. As a result, this legislation is likely to produce a  
1593 report that is full of guess work and that could dramatically  
1594 over- or underestimate the true costs of the programs. This  
1595 guess work comes with a hefty price tag for taxpayers.

1596         The bill also gives the new government bureaucracy a  
1597 very limited amount of time to complete this complicated  
1598 study of EPA rules. EPA's past reports to examine cumulative  
1599 costs and benefits serve as an example of how long it takes  
1600 to produce a truly meaningful and substantive analysis. EPA  
1601 recently finalized a prospective study of the cumulative  
1602 costs and benefits of the Clean Air Act itself. EPA spent 10  
1603 years to complete this study taking the time needed to  
1604 develop a state-of-the-art analytical design and execute a  
1605 study that was reviewed by OMB and outside experts. This  
1606 study confirmed the tremendous benefits of the Clean Air Act.

1607         If the committee is going to approve this legislation,  
1608 then we should work to make sure that the report it produces  
1609 is more than a hastily-drafted educated guess but should  
1610 actually be useful to policymakers. That seems like a  
1611 reasonable threshold for a \$4 million project. The Capps  
1612 amendment is designed to do just that. This amendment is  
1613 common sense. If analyses are not feasible or not useful, we  
1614 should not be spending taxpayers' resources on them. I urge

1615 my colleagues to support the Capps amendment.

1616           And I yield to anybody else who wishes me to yield on  
1617 either side of the dais. If not, I yield back my time.

1618           The {Chairman.} The gentleman yields back.

1619           Are there other members?

1620           Mr. Whitfield is recognized.

1621           Mr. {Whitfield.} Mr. Chairman, I rise in opposition to  
1622 the amendment simply because the amendment would actually  
1623 defeat the entire purpose of the TRAIN Act by giving the  
1624 committee the freedom to determine whether or not they want  
1625 to limit the study or not do the study or change it or  
1626 whatever. My response to this amendment is to simply  
1627 reiterate what we have already said. These regulations are  
1628 so comprehensive. We have primarily been talking about two  
1629 of them today: the Utility MACT and the so-called Air  
1630 Transport Rule. But there are about 10 others.

1631           And really the analysis we are requiring of the TRAIN  
1632 Act are not really much different than what the President is  
1633 requiring under his executive order, which does not seem to  
1634 be abided by. In fact, yesterday, he came out with another  
1635 executive order and said we need to review these things  
1636 because I am very much concerned about the impact on  
1637 unemployment.

1638           And I would just reiterate once again all we are asking

1639 for is let us look at the impact that it has on the ability  
1640 of the U.S. to compete in the global marketplace. Let us  
1641 look at the impact on electricity cost. Let us look at the  
1642 impact on unemployment. Let us look at the assumptions being  
1643 made by EPA because I don't think any entity or any group  
1644 outside of a few think-tanks have really analyzed the  
1645 assumptions made by EPA and those assumptions basically drive  
1646 the analysis.

1647         As a matter of fact, I think EPA could get any result  
1648 that it wanted on benefits by applying certain assumptions.  
1649 And none of us really know what those assumptions are. And  
1650 the TRAIN Act, if we pass it, it does get into the  
1651 assumptions as well.

1652         So I would respectfully request that we defeat the  
1653 gentlelady from California's amendment. And yield back the  
1654 balance of my time.

1655         The {Chairman.} The gentleman yields back.

1656         Are there other members wishing to speak on the  
1657 amendment? Seeing none, the vote occurs on the Capps  
1658 amendment. Those in favor say aye. Those opposed say no.  
1659 No. The noes appear to have it. The noes have it and the  
1660 amendment is not agreed to.

1661         Are there other members wishing to offer--

1662         Mr. {Rush.} Mr. Chairman?

1663           The {Chairman.} The gentleman from Illinois.

1664           Mr. {Rush.} Mr. Chairman, I have an amendment at the  
1665 desk, number two, the Rush/Christensen amendment.

1666           The {Chairman.} The clerk will report the title of the  
1667 amendment.

1668           The {Clerk.} Amendment to H.R. 2401 offered by Mr. Rush  
1669 of Illinois and Ms. Christensen of the Virgin Islands.

1670           [The amendment follows:]

1671           \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
1672           The {Chairman.} And the amendment will be considered as  
1673 read. The staff will distribute the amendment.

1674           And the gentleman from Illinois is recognized for 5  
1675 minutes in support.

1676           Mr. {Rush.} Mr. Chairman, last week during the  
1677 subcommittee markup, I offered an amendment in good faith  
1678 that I thought would help make this bill more balanced by  
1679 including language that would direct the committee created  
1680 under this act to look at the public health and environmental  
1681 impacts associated with EPA regulations instead of only the  
1682 costs to industry as the bill currently does.

1683           During that subcommittee markup, my distinguished  
1684 colleague from Virginia, Mr. Griffith, asked why my amendment  
1685 only directed the committee to look at reductions in public  
1686 health impacts such as asthma, developmental defects, and  
1687 missed school and workdays, among others, and not increases  
1688 as well. Well, I thought that Mr. Griffith made a valid  
1689 point. And in the spirit of bipartisanship trying to work  
1690 together in good faith, I directed my staff to go back and  
1691 make some changes to the language of my amendment to ensure  
1692 that it would take into account both the positive and the  
1693 negative impacts of health and environmental consequences of  
1694 EPA's regulations.

1695           So an amendment I am offering today reflects those  
1696 changes to the language that the majority requested. My  
1697 amendment was still at the chair of the Council on  
1698 Environmental Quality, the secretary of Health and Human  
1699 Services, as well as the director of the Centers for Disease  
1700 Control and Prevention, among others, to an interagency  
1701 council that this bill would create.

1702           Additionally, my amendment would direct the committee to  
1703 look at important health impacts that would be affected by  
1704 EPA's proposed rules, including the effects on vulnerable  
1705 subpopulations such as the elderly, such as pregnant women,  
1706 and populations with pulmonary disease, as well as  
1707 environmental impacts on global climate change and the  
1708 effects of promoting clean energy jobs and clean energy  
1709 technologies.

1710           Mr. Chairman, it is my hope that my amendment will be  
1711 supported by the majority side with the expectation that it  
1712 will strengthen this bill by making sure that this new  
1713 committee takes a balanced and unbiased approach that looks  
1714 at costs as well as benefits from proposed EPA regulations.  
1715 By including health and environmental impacts of proposed EPA  
1716 rules instead of just costs to industry, as I said  
1717 beforehand, this bill has a much better chance of having  
1718 bipartisan support as it moves its way through the

1719 legislative process.

1720           So Mr. Chairman, I urge my colleagues to support my  
1721 amendment, and I yield such time as anyone may want. If not,  
1722 I yield back.

1723           I yield to the ranking member of the full committee.

1724           Mr. {Waxman.} This amendment assures that there be some  
1725 balance in this inquiry. The bill creates a new government  
1726 bureaucracy to conduct a complicated study of EPA's rules.  
1727 At a minimum, we should ensure that the committee and the  
1728 committee's product are balanced. The Rush amendment would  
1729 do just that.

1730           As currently drafted, the bill requires an unbalanced  
1731 and inherently biased study. The bill requires this  
1732 interagency committee to look at economic and cost impacts  
1733 but it does not require the committee to look at economic  
1734 benefits of EPA's rules such as reducing the number of  
1735 hospital visits due to asthma attacks and improving the  
1736 efficiency of the economy by cutting down missed workdays.  
1737 The bill requires an examination of impacts on small  
1738 businesses and agriculture but not vulnerable subpopulations  
1739 in developing infants and children. The Rush amendment would  
1740 correct that imbalance. This amendment would ensure that the  
1741 makeup of the committee is balanced by ensuring that  
1742 departments and offices with expertise in health, disease,

1743 and environmental quality can participate.

1744 Even with this amendment, I am worried that the analysis  
1745 proposed would be burdensome and impossible to complete given  
1746 the scope and timing required by the bill, but at least the  
1747 balance by this amendment is essential. I urge my colleagues  
1748 to support the Rush/Christensen amendment.

1749 The {Chairman.} Other members wishing to speak on the  
1750 amendment?

1751 Mr. {Sullivan.} Mr. Chairman?

1752 The {Chairman.} The gentleman from Oklahoma, Mr.  
1753 Sullivan, recognized for 5 minutes.

1754 Mr. {Sullivan.} I would like to speak in opposition to  
1755 the amendment. The TRAIN Act specifically calls for analysis  
1756 of cumulative benefits in 3B, Section 1. This does not  
1757 preclude health benefits from being considered, and in fact,  
1758 health benefits have already been considered by the EPA for  
1759 their most expensive rules and actions covered under my bill.  
1760 The cumulative impact of rules is not limited to either  
1761 negative or positive but the opponents of the bill apparently  
1762 believe those impacts outlined in my bill are only negative  
1763 and have asked that positive cumulative impacts be  
1764 specifically required.

1765 I believe assessing how the global competitiveness of  
1766 the United States as impacted by EPA rules and regulations is

1767 a positive undertaking to understand the cumulative impact of  
1768 EPA's regulatory train wreck. I feel the same way towards  
1769 looking at how the EPA regulations will result in changes to  
1770 electricity prices, electric reliability, jobs, small  
1771 businesses, and local governments. The EPA in many cases  
1772 doesn't look at these criteria when issuing these expensive  
1773 regulations, which is why the TRAIN Act is so important.

1774 To address these claims, the EPA rules, the Utility MACT  
1775 and New Transport Rules, and now Cross-State Air Pollution  
1776 Rules offer billions of dollars in health benefits.

1777 And I would like to yield back the balance of my time to  
1778 Chairman Whitfield if he needs to speak on this.

1779 Mr. {Whitfield.} Well, I thank the gentleman for  
1780 yielding.

1781 I would just say that I know that the other side are  
1782 concerned about cumulative benefits and the contents of the  
1783 TRAIN Act on page 3 specifically says that we will look at  
1784 cumulative costs and cumulative benefits, so that is already  
1785 a part of this legislation. And then the fact that we have  
1786 so many Cabinet-level officers on this committee, as well as  
1787 the administrator of EPA, the chairman of the Council of  
1788 Economic Advisors, the chairman of Federal Energy Regulatory  
1789 Commission, the administrator of the Office of Information  
1790 Regulatory Affairs, all of these things I think provides

1791 adequate width and broad basis of knowledge in the Federal  
1792 Government to be a part of this. And so for that reason I  
1793 would oppose the amendment as well.

1794 And I yield back the balance of the time to the  
1795 gentleman from Oklahoma.

1796 The {Chairman.} The gentleman yields back his time.

1797 Mr. {Sullivan.} I yield back.

1798 The {Chairman.} Other members wishing to speak?

1799 The gentlelady from the Virgin Islands.

1800 Dr. {Christensen.} Thank you, Mr. Chairman.

1801 I am really pleased to be able to cosponsor this  
1802 amendment with the distinguished ranking member of the  
1803 Subcommittee on Energy and Power and a gentleman who always  
1804 stands up for what is right and fair and just.

1805 One of my very first markups that is coming back to the  
1806 committee was H.R. 910, which essentially denied that  
1807 greenhouse gases contributed to the escalation of climate  
1808 change and the discussion also includes doubts that they were  
1809 injurious to public health. That bill would prohibit EPA  
1810 from regulating greenhouse gases to address these important  
1811 impacts, and so I should not be surprised--but I am--that not  
1812 only an unnecessary, impossible-to-administer bill would be  
1813 introduced but that it would be so blatantly one-sided,  
1814 ignoring the very reason why the EPA has the responsibility

1815 to promulgate regulations, which is to protect the well being  
1816 and health of all of us who live in this country.

1817 I know that my colleagues don't mean to put a cost on  
1818 life and health, but that is exactly what this bill does. It  
1819 only directs the committee--it would create the study costs,  
1820 the impacts on business, the economy, and so forth. It  
1821 merely ignores the health impact. And know that health and  
1822 life and the full and healthy development of our children are  
1823 paramount to all of us.

1824 This amendment, the Rush/Christensen amendment would  
1825 create a broader committee with additional expertise on the  
1826 environment, climate, and public health. It would bring a  
1827 more comprehensive approach to the analytic process that the  
1828 committee is being created to carry out. Without  
1829 representation from the Department of Interior, and Health  
1830 and Human Services, and NIH's Institute on Environmental  
1831 Services, the narrow interest of the committee as created in  
1832 the base bill would omit factors important to our environment  
1833 and our health, not assessing at all the purpose of the  
1834 regulation it is to analyze. And it would do nothing to look  
1835 at the jobs the regulations might create. It only looks at  
1836 the ones that might be lost. As the ranking member said, it  
1837 is an unbalanced approach.

1838 I know that as the gentleman from Oklahoma and the

1839 chairman stated, there are some areas to be reported on that  
1840 are rather vague, but if it were the intent of the sponsors  
1841 to have the factors this amendment would include addressed in  
1842 those areas, then there should be no objection to having it  
1843 clearly spelled out as the Rush/Christensen amendment would  
1844 do.

1845 I don't know if there is anything that could make this  
1846 bill better, but this is an attempt to do so. And while I am  
1847 not sure that I am going to support the entire bill, this  
1848 amendment would at least make the committee look at all  
1849 factors, including job creation and climate change, but most  
1850 importantly, the impacts on health of our fellow Americans.

1851 And so I thank Congressman Rush for developing it and  
1852 for allowing me to be a cosponsor of this important  
1853 amendment.

1854 I yield back the balance.

1855 The {Chairman.} The gentlelady yields back. The chair  
1856 would recognize the gentleman from Virginia, Mr. Griffith.

1857 Mr. {Griffith.} Mr. Chairman, I believe there is an  
1858 amendment to the amendment at the desk.

1859 The {Chairman.} The clerk will report the title.

1860 The {Clerk.} An amendment to the amendment offered by  
1861 Mr. Griffith of Virginia.

1862 [The amendment follows:]

1863 \*\*\*\*\* INSERT 6 \*\*\*\*\*

|  
1864           The {Chairman.} The amendment to the amendment will be  
1865 considered as read. The staff will circulate the amendment.  
1866 And the gentleman from Virginia is recognized for 5 minutes  
1867 in support of his--

1868           Mr. {Griffith.} Thank you, Mr. Chairman.

1869           I realize that my amendments to the amendment may not  
1870 convince my colleagues on this side of the aisle to vote for  
1871 Mr. Rush's underlying amendment because of the first page and  
1872 the first couple of lines on page 2, but we did have a  
1873 discussion in subcommittee, and at that time I indicated that  
1874 I would like to make some amendments. And some of that is, I  
1875 believe, attempted in the Rush amendment but I don't think it  
1876 goes far enough.

1877           One, I think we need to be clear when dealing with  
1878 bureaucratic agencies that we want both the positive and  
1879 negative changes, not just changes. I think we end up with a  
1880 net change when we do that. So you will see that language.  
1881 You will also see that I went into the other paragraphs  
1882 dealing with the effects on air quality, particularly K, but  
1883 I put them all in there because I think it is important that  
1884 we see both the positive and negative changes, not just the  
1885 net change in there and the positive and negative effects.

1886           And then I added a paragraph P, which I think is very

1887 important. We constantly get into debates in this  
1888 subcommittee and in this full committee regarding the quality  
1889 of air and so forth, and yet we have heard testimony on  
1890 several occasions that when we send our jobs overseas by  
1891 making our costs too high to do business in the United States  
1892 that we may have a negative impact on air outside of the  
1893 United States of America. And I don't believe that the EPA  
1894 has been studying that.

1895         Thus, I offer this amendment to Mr. Rush as an  
1896 improvement on his amendment. Again, I don't think it solves  
1897 the problems in the first part but I think it solves the  
1898 problems in the second part of Mr. Rush's amendment, and thus  
1899 I offer it understanding full well that should it be adopted  
1900 that while my colleagues may not support it, I will.

1901         Thank you, Mr. Chairman. I yield back my time.

1902         Mr. {Rush.} Will the gentleman yield?

1903         Mr. {Griffith.} I yield.

1904         Mr. {Rush.} I thank the gentleman for yielding.

1905         We did have a discussion during the subcommittee markup  
1906 and I, indeed, made modifications to my amendment. On page  
1907 2, lines E to O, we changed the phrase ``any resulting  
1908 reductions'' to read ``any resulting change'', which of  
1909 course covers most positive and negative changes. So if the  
1910 gentleman would agree to work with me on the language in

1911 paragraph P, which he introduced, then I would be willing to  
1912 support his amendment. I propose that we make paragraph P  
1913 neutral by adding the phrase ``any resulting change'' before  
1914 ``impact'' and adding ``or decrease'' after ``increase'' and  
1915 adding ``oncoming'' after ``leaving.'' So the modified  
1916 paragraph P would read ``any resulting change to the impact  
1917 of increased or decreased air pollution in the air of the  
1918 Northern Hemisphere by virtue of jobs leaving or coming to  
1919 the U.S. to countries in the Northern Hemisphere that do not  
1920 have substantially similar laws and regulations of the United  
1921 States of America.'' And that is it. And if the gentleman  
1922 would agree to work with me with this language, then I will  
1923 support his amendment to the amendment.

1924 Mr. {Griffith.} If in order, I would accept those  
1925 amendments to the amendment to the amendment. If in order.  
1926 I am not sure it is in order, Mr. Chairman.

1927 Mr. {Waxman.} Ask unanimous consent you should get it.

1928 Mr. {Stearns.} Mr. Chairman, can I object so we just  
1929 have a--I will object temporarily just until we understand  
1930 what we are doing because amendment to the amendment. I am  
1931 not sure we all do.

1932 The {Chairman.} The gentleman from Florida reserves the  
1933 right to object.

1934 Mr. {Stearns.} Sure. Just until we understand it and

1935 to get from counsel what we are doing.

1936 Mr. {Rush.} Mr. Chairman?

1937 The {Chairman.} The gentleman from Illinois, go ahead.

1938 Mr. {Rush.} I have accepted Mr. Griffith's amendment  
1939 and I am proposing that we make paragraph P neutral by adding  
1940 certain phrases and the resulting new paragraph P, again,  
1941 would read ``any resulting change to the impact of increase  
1942 or decrease air pollution in the air of the Northern  
1943 Hemisphere by virtue of jobs leaving or coming to the U.S. to  
1944 countries in the Northern Hemisphere that do not have  
1945 substantially similar laws and regulations of the United  
1946 States of America.'' And I think that fulfills his  
1947 intentions and I accept it if he accepts his amendment when  
1948 he said he did. And now I ask that by unanimous consent that  
1949 we accept the Rush amendment as amended by Mr. Griffith.

1950 The {Chairman.} Without objection, the amendment  
1951 offered by Mr. Griffith is so modified. And without seeing  
1952 members wishing to speak on the amendment, the vote is on the  
1953 Griffith amendment to the amendment offered by Mr. Rush.

1954 Those in favor of the amendment by Mr. Griffith will say  
1955 aye. Those opposed will say no. In the opinion of the  
1956 chair, the ayes have it and the amendment to the Rush  
1957 amendment is accepted.

1958 The vote now occurs on the Rush amendment as amended by

1959 the Griffith amendment. All those in favor say aye. All  
1960 those opposed say no. No. In the opinion of the chair, the  
1961 noes have it and the amendment is not agreed to.

1962 The gentleman asks for a roll call. The clerk will call  
1963 the tally.

1964 The {Clerk.} Mr. Barton?

1965 Mr. {Barton.} No.

1966 The {Clerk.} Mr. Barton, no.

1967 Mr. Stearns?

1968 Mr. {Stearns.} No.

1969 The {Clerk.} Mr. Stearns, no.

1970 Mr. Whitfield?

1971 Mr. {Whitfield.} No.

1972 The {Clerk.} Mr. Whitfield, no.

1973 Mr. Shimkus?

1974 Mr. {Shimkus.} No.

1975 The {Clerk.} Mr. Shimkus, no.

1976 Mr. Pitts?

1977 Mr. {Pitts.} No.

1978 The {Clerk.} Mr. Pitts, no.

1979 Mrs. Bono Mack?

1980 Mrs. {Bono Mack.} No.

1981 The {Clerk.} Mrs. Bono Mack, no.

1982 Mr. Walden?

1983 Mr. {Walden.} No.

1984 The {Clerk.} Mr. Walden, no.

1985 Mr. Terry?

1986 Mr. {Terry.} No.

1987 The {Clerk.} Mr. Terry, no.

1988 Mr. Rogers?

1989 Mr. {Rogers.} No.

1990 The {Clerk.} Mr. Rogers, no.

1991 Ms. Myrick?

1992 Mrs. {Myrick.} No.

1993 The {Clerk.} Ms. Myrick, no.

1994 Mr. Sullivan?

1995 Mr. {Sullivan.} No.

1996 The {Clerk.} Mr. Sullivan, no.

1997 Mr. Murphy?

1998 Mr. {Murphy.} No.

1999 The {Clerk.} Mr. Murphy, no.

2000 Mr. Burgess?

2001 Dr. {Burgess.} No.

2002 The {Clerk.} Mr. Burgess, no.

2003 Ms. Blackburn?

2004 [No response.]

2005 The {Clerk.} Mr. Bilbray?

2006 Mr. {Bilbray.} Aye.

2007 The {Clerk.} Mr. Bilbray, aye.  
2008 Mr. Bass?  
2009 Mr. {Bass.} Aye.  
2010 The {Clerk.} Mr. Bass, aye.  
2011 Mr. Gingrey?  
2012 Dr. {Gingrey.} No.  
2013 The {Clerk.} Mr. Gingrey, no.  
2014 Mr. Scalise?  
2015 Mr. {Scalise.} No.  
2016 The {Clerk.} Mr. Scalise, no.  
2017 Mr. Latta?  
2018 Mr. {Latta.} No.  
2019 The {Clerk.} Mr. Latta, no.  
2020 Mrs. McMorris Rodgers?  
2021 Mrs. {McMorris Rodgers.} No.  
2022 The {Clerk.} Mrs. McMorris Rodgers, no.  
2023 Mr. Harper?  
2024 Mr. {Harper.} No.  
2025 The {Clerk.} Mr. Harper, no.  
2026 Mr. Lance?  
2027 Mr. {Lance.} Aye.  
2028 The {Clerk.} Mr. Lance, aye.  
2029 Mr. Cassidy?  
2030 Dr. {Cassidy.} No.

2031 The {Clerk.} Mr. Cassidy, no.  
2032 Mr. Guthrie?  
2033 Mr. {Guthrie.} No.  
2034 The {Clerk.} Mr. Guthrie, no.  
2035 Mr. Olson?  
2036 Mr. {Olson.} No.  
2037 The {Clerk.} Mr. Olson, no.  
2038 Mr. McKinley?  
2039 Mr. {McKinley.} No.  
2040 The {Clerk.} Mr. McKinley, no.  
2041 Mr. Gardner?  
2042 Mr. {Gardner.} No.  
2043 The {Clerk.} Mr. Gardner, no.  
2044 Mr. Pompeo?  
2045 Mr. {Pompeo.} No.  
2046 The {Clerk.} Mr. Pompeo, no.  
2047 Mr. Kinzinger?  
2048 Mr. {Kinzinger.} No.  
2049 The {Clerk.} Mr. Kinzinger, no.  
2050 Mr. Griffith?  
2051 Mr. {Griffith.} Aye.  
2052 The {Clerk.} Mr. Griffith, aye.  
2053 Mr. Waxman?  
2054 Mr. {Waxman.} Aye.

2055 The {Clerk.} Mr. Waxman, aye.  
2056 Mr. Dingell?  
2057 Mr. {Dingell.} No.  
2058 The {Clerk.} Mr. Dingell, no.  
2059 Mr. Markey?  
2060 [No response.]  
2061 The {Clerk.} Mr. Towns?  
2062 Mr. {Towns.} Aye.  
2063 The {Clerk.} Mr. Towns, aye.  
2064 Mr. Pallone?  
2065 [No response.]  
2066 The {Clerk.} Mr. Rush?  
2067 Mr. {Rush.} Aye.  
2068 The {Clerk.} Mr. Rush, aye.  
2069 Ms. Eshoo?  
2070 Ms. {Eshoo.} Aye.  
2071 The {Clerk.} Ms. Eshoo, aye.  
2072 Mr. Engel?  
2073 Mr. {Engel.} Aye.  
2074 The {Clerk.} Mr. Engel, aye.  
2075 Mr. Green?  
2076 Mr. {Green.} Aye.  
2077 The {Clerk.} Mr. Green, aye.  
2078 Ms. DeGette?

2079 Ms. {DeGette.} Aye.  
2080 The {Clerk.} Ms. DeGette, aye.  
2081 Mrs. Capps?  
2082 Mrs. {Capps.} Aye.  
2083 The {Clerk.} Mrs. Capps, aye.  
2084 Mr. Doyle?  
2085 Mr. {Doyle.} Yes.  
2086 The {Clerk.} Mr. Doyle, yes.  
2087 Ms. Schakowsky?  
2088 [No response.]  
2089 The {Clerk.} Mr. Gonzalez?  
2090 [No response.]  
2091 The {Clerk.} Mr. Inslee?  
2092 Mr. {Inslee.} Aye.  
2093 The {Clerk.} Mr. Inslee, aye.  
2094 Ms. Baldwin?  
2095 Ms. {Baldwin.} Aye.  
2096 The {Clerk.} Ms. Baldwin, aye.  
2097 Mr. Ross?  
2098 Mr. {Ross.} No.  
2099 The {Clerk.} Mr. Ross, no.  
2100 Mr. Matheson?  
2101 Mr. {Matheson.} No.  
2102 The {Clerk.} Mr. Matheson, no.

2103 Mr. Butterfield?

2104 Mr. {Butterfield.} Aye.

2105 The {Clerk.} Mr. Butterfield, aye.

2106 Mr. Barrow?

2107 Mr. {Barrow.} Aye.

2108 The {Clerk.} Mr. Barrow, aye.

2109 Ms. Matsui?

2110 [No response.]

2111 The {Clerk.} Ms. Christensen?

2112 Dr. {Christensen.} Aye.

2113 The {Clerk.} Ms. Christensen, aye.

2114 Ms. Castor?

2115 Ms. {Castor.} Aye.

2116 The {Clerk.} Ms. Castor, aye.

2117 Chairman Upton?

2118 The {Chairman.} The vote is no.

2119 The {Clerk.} Chairman Upton, no.

2120 The {Chairman.} Members wishing to change their votes

2121 or wishing to cast a vote? Mr. Dingell?

2122 Mr. {Dingell.} Off no, on aye.

2123 The {Clerk.} Mr. Dingell, off no, on aye.

2124 The {Chairman.} Other members wishing to cast a vote?

2125 Seeing none, the clerk will report the tally.

2126 The {Clerk.} Mr. Chairman, on that vote there were 20

2127 ayes and 28 nos.

2128           The {Chairman.} Twenty ayes, 28 nos, the amendment as  
2129 amended is not agreed to.

2130           Are there other members wishing to offer an amendment?

2131           The gentlelady from California, Mrs. Capps.

2132           Mrs. {Capps.} Mr. Chairman, I have an amendment at the  
2133 desk. It is 001.

2134           The {Chairman.} 001. The clerk will report the title  
2135 of the amendment.

2136           The {Clerk.} Amendment to H.R. 2401 offered by Mrs.  
2137 Capps.

2138           [The amendment follows:]

2139 \*\*\*\*\* INSERT 7 \*\*\*\*\*

|  
2140           The {Chairman.} And the amendment will be considered as  
2141 read. Staff will distribute the amendments.

2142           And the gentlelady is recognized for 5 minutes in  
2143 support of her amendment.

2144           Mrs. {Capps.} Thank you, Mr. Chairman.

2145           I won't take 5 minutes because this is a very  
2146 commonsense amendment and it requires the Nuclear Regulatory  
2147 Commission to ensure that the 104 nuclear reactors in this  
2148 country can withstand a complete loss of electricity caused  
2149 by severe natural disasters. We cannot afford to ignore the  
2150 series of wakeup calls that we have received in this country  
2151 during the past several months. Worldwide, in Japan, a  
2152 devastating tsunami knocked out power to the Fukushima  
2153 nuclear plants. The cores of three reactors partially melted  
2154 down; spent nuclear fuel was on fire spewing radioactive  
2155 material into the air; highly radioactive water found its way  
2156 into the Pacific Ocean; radiation contaminated the tap water,  
2157 milk, and the food supply. The result was the worst nuclear  
2158 disaster since Chernobyl.

2159           In Nebraska, a huge flood nearly overwhelmed the Fort  
2160 Calhoun nuclear plant's barriers and threatened to cut off  
2161 power to the site. In New Mexico, a massive wildfire  
2162 threatened a Los Alamos laboratory where thousands of drums

2163 of low-level radioactive waste are currently stored.

2164           Currently, NRC regulations do not require nuclear plants  
2165 to be able to cope with a combination of fires, flooding, and  
2166 an earthquake, but that is exactly what happened in Japan.  
2167 Right now, NRC standards don't require nuclear power plants  
2168 to be prepared to handle a prolonged loss of electrical  
2169 power, but that is what we saw in Japan. An extended loss of  
2170 power could also result from a forest fire or a flooding  
2171 river or any combination of natural disasters.

2172           In 2003, the NRC found that 93 U.S. reactors had an  
2173 ability to cope with a loss of power for 4 hours while 11  
2174 reactors could cope for 8 hours. In my opinion, that is  
2175 simply not long enough. If these reactors lost power for a  
2176 couple of days, we would have a nuclear disaster on our  
2177 hands. Without power, the systems that keep the reactor core  
2178 and the spent fuel cool cannot operate for very long, and if  
2179 cooling stops, it is only a matter of time before a reactor's  
2180 core begins to melt down or spent nuclear fuel starts to  
2181 burn. Our Nation's nuclear plants must be able to avoid a  
2182 meltdown in this situation.

2183           So I encourage my colleagues to support this  
2184 straightforward nuclear safety amendment, and I am prepared  
2185 to yield back the balance of my time.

2186           The {Chairman.} The gentlelady yields back the balance

2187 of her time.

2188 Are there other members wishing to speak on the  
2189 amendment?

2190 Mr. Terry is recognized for 5 minutes.

2191 Mr. {Terry.} Yeah, thank you, Mr. Chairman.

2192 And first of all, I raise the issue of whether this is  
2193 germane to the EPA rule train wreck but that is--

2194 The {Chairman.} It is.

2195 Mr. {Terry.} Pardon me?

2196 The {Chairman.} It is germane. We have checked.

2197 Mr. {Terry.} The second issue is that the gentlelady  
2198 from California raised the issue of the Fort Calhoun nuclear  
2199 power plant, which supplies the power to my district, and I  
2200 have been to Fort Calhoun nuclear power plant several times  
2201 since the beginning of the core cost flood. And I know Good  
2202 Morning America tried to create an issue with that power  
2203 plant that was fault, but the reality is that it was never in  
2204 danger. And flood waters are on the property but not  
2205 affecting any of the operation. And just coincidentally,  
2206 they were shut down for their routine maintenance anyway and  
2207 they are not starting it up even though the NRC says they can  
2208 right now.

2209 So I just don't want there to be a false impression out  
2210 there that the Fort Calhoun nuclear power plant is in any

2211 danger at all because of the floodwaters. It is high and  
2212 dry. Well, it is not high and outside it is wet, but I have  
2213 walked inside every one of the buildings, inspected the live  
2214 feed of the nuclear reactor and containment areas and  
2215 everything is dry and it is safe.

2216         So when you bring it up, I felt I had to get some of  
2217 that out. So anybody else want time? I could yield my  
2218 remaining 3 minutes? Seeing none, yield my time back.

2219         The {Chairman.} The gentleman yields back his time.

2220         The gentl lady from Colorado, Ms. DeGette.

2221         Ms. {DeGette.} Thank you very much, Mr. Chairman.

2222         Well, obviously, we are all relieved that the plant that  
2223 provides the service to Mr. Terry's district is safe and we  
2224 would hope that if had a natural disaster at any of our  
2225 nuclear plants in this country that the first or second  
2226 levels of protection like those sandbags at his plant would  
2227 hold.

2228         But what we learned from the Fukushima Daiichi  
2229 experience and also what we learned in a different context  
2230 from the Deepwater Horizon experience is that catastrophic  
2231 failures do happen. And you have to be prepared at several  
2232 different levels for those catastrophic failures. And in the  
2233 case of a nuclear reactor, a catastrophic failure, as we saw  
2234 in Japan, can have serious health and economic effects, which

2235 is why it is so important that the NRC really look at all of  
2236 the different options.

2237         We had a hearing, Mr. Chairman, in the Oversight and  
2238 Investigations Subcommittee where we discussed this. And  
2239 there are some concerns with the NRC's modeling and  
2240 simulation work. And we talked about this simulation they  
2241 did of a severe loss of power scenario at the Peach Bottom  
2242 plant in Pennsylvania. During that scenario, the plant came  
2243 within 1 hour of core damage. Now, the simulation purported  
2244 to determine the realistic consequences of a severe accident,  
2245 and when it did, it almost resulted in a simulated partial  
2246 meltdown. I guess the good news is that they came within an  
2247 hour of--they were able to stop within the hour of the core  
2248 damage, but the bad news is it was only an hour. And even in  
2249 this simulation, they didn't consider the impact of a  
2250 disastrous event on spent fuel pools.

2251         So we know that in Japan, uncovered spent fuel was a  
2252 major source of radiation and radioactive contamination. And  
2253 so this really highlights a significant vulnerability in our  
2254 own backup plans. And I was frankly really disturbed about  
2255 this when we had the hearing. If there is a complete loss of  
2256 electrical power, as Mrs. Capps said, the backup plans only  
2257 account for a 4- to 8-hour interruption of this electrical  
2258 power backup.

2259           Now, if you really had some kind of a catastrophic  
2260 disaster, God forbid some kind of terrorist attack or  
2261 something like that, 4 to 8 hours is simply not going to be  
2262 enough. And so I think what Mrs. Capps is trying to do with  
2263 her amendment is to fill that gap, improve the safety of our  
2264 nuclear plants, and I think we could all agree on that.  
2265 Whatever our opinion is on nuclear power, I think we could  
2266 all agree that we should really look at the effects of a  
2267 catastrophe and we should think about really having  
2268 electrical backup that would prevent us from what happened in  
2269 Japan.

2270           And with that, I will yield back.

2271           The {Chairman.} The gentlelady yields back.

2272           Mr. {Whitfield.} Mr. Chairman?

2273           The {Chairman.} The gentleman from Kentucky, Mr.  
2274 Whitfield.

2275           Mr. {Whitfield.} Thank you, Mr. Chairman.

2276           I would like to ask the counsel a couple of questions if  
2277 I could.

2278           Yes. On the Capps amendment for some we have actually  
2279 seen this, but it says the Nuclear Regulatory Commission in  
2280 conjunction with the Environmental Protection Agency for the  
2281 purpose of preventing the release of radioactive pollution,  
2282 does the Environmental Protection Agency have joint

2283 responsibility with the Nuclear Regulatory Commission under  
2284 existing law relating to radioactive material from a nuclear  
2285 power plant?

2286 {Counsel.} I do not know the answer to that question.

2287 Mr. {Whitfield.} Does the gentlelady from California  
2288 know if the EPA currently has regulatory authority over  
2289 radioactive pollution?

2290 Mrs. {Capps.} We believe that they do, yes.

2291 Mr. {Whitfield.} You believe that they do but do we  
2292 have definitive proof that they do?

2293 Mrs. {Capps.} They do have an Office of Radiation. I  
2294 am happy to supply that information.

2295 Mr. {Whitfield.} Well, I mean I would have difficulty  
2296 voting for this amendment until we had a definitive answer on  
2297 that because--

2298 Mr. {Waxman.} Will the gentleman yield?

2299 Mr. {Whitfield.} Yes, sir. I would be happy to.

2300 Mr. {Waxman.} As I understand, the EPA sets what is a  
2301 safe level of exposure to radiation. So they do have a part  
2302 of the jurisdiction which primarily is with the NRC but they  
2303 do it together.

2304 Mr. {Whitfield.} But this talks about preventing the  
2305 release of radioactive pollution. I know the Nuclear  
2306 Regulatory Commission has, I thought, exclusive authority

2307 relating to prevention of releases and I would be reluctant  
2308 to give EPA additional authority in this area of nuclear  
2309 waste prevention unless they already have that authority  
2310 definitively.

2311 I would be happy to yield to the gentleman from  
2312 Illinois.

2313 Mr. {Shimkus.} And while you are having a pause, we are  
2314 trying to draft a secondary amendment to address one of the  
2315 provisions in this amendment, which is the spent fuel. And I  
2316 wouldn't be willing to accept this amendment until we talked  
2317 about spent fuel since it is such a big issue at Fukushima  
2318 Daiichi.

2319 And the secondary amendment would talk about placing all  
2320 spent nuclear fuel in a centralized location in Yucca  
2321 Mountain. So I would encourage my colleagues to not support  
2322 this amendment until we have an opportunity to offer a  
2323 secondary amendment to address high-level nuclear waste,  
2324 which we have already spent \$14.5 billion to develop a  
2325 centralized facility in a desert underneath a mountain 90  
2326 miles from Las Vegas. It is the law of the land from the  
2327 Nuclear Waste Policy Act and so we are trying to work on that  
2328 secondary amendment right now.

2329 And I yield back to my colleague from Kentucky.

2330 Mr. {Waxman.} Will the gentleman yield?

2331 Mr. {Whitfield.} I would be happy to yield.

2332 Mr. {Waxman.} I just want to point out that three  
2333 reactors melted down in Japan, so the problem wasn't just the  
2334 spent fuel. This was a problem with the reactors themselves.  
2335 And what the Capps amendment is suggesting is that we have an  
2336 evaluation of the nuclear power facility of what they are  
2337 doing to prevent damage to reactor cores in the event of loss  
2338 of onsite electric power for any extended period of time. I  
2339 think it is a reasonable idea. It is not beyond the range of  
2340 comprehension that such a thing can happen. We saw this  
2341 happen in Japan where we had the combination of a tsunami and  
2342 an earthquake. In New Mexico we had fires in Los Alamos;  
2343 Diablo Canyon is near an earthquake site.

2344 We need to look at the most severe situation where there  
2345 can be a loss of power. The Nuclear Regulatory Commission at  
2346 the present time uses as an analysis where power is out for a  
2347 short period of time so plants are not required to be able to  
2348 cope with a prolonged loss of electric power. And this  
2349 amendment would fill that gap and improve the safety of our  
2350 nuclear plants. I think it is a good amendment. I urge our  
2351 colleagues to support it.

2352 Mr. {Gonzalez.} Will the gentleman yield?

2353 Mr. {Whitfield.} Well, my time has expired.

2354 The {Chairman.} The gentleman's time has expired.

2355 Other members--gentleman from Texas is recognized.

2356 Mr. {Gonzalez.} Thank you very much, Chairman. I am  
2357 going to be really brief.

2358 I don't know that there is anyone here today that has  
2359 any objection to the goals of the amendment. It seems  
2360 appropriate. The only question I have--and I am going to  
2361 join Mr. Whitfield--are we bringing the EPA in an area that  
2362 is not really relevant to their present jurisdiction? It  
2363 would be my understanding that the NRC--it might be the  
2364 appropriate agency when it comes to the construction,  
2365 certification, approval of a facility, how it is operated,  
2366 how it maintained, and how it is inspected. And to that  
2367 degree I would be in full support of the amendment. I am  
2368 just not real sure where the relevancy of the EPA comes in.  
2369 And I don't think counsel was able to answer that question as  
2370 posed by Mr. Whitfield.

2371 Mr. {Waxman.} Will the gentleman yield?

2372 Mr. {Gonzalez.} Does anyone--

2373 Mr. {Waxman.} Mr. Gonzalez, let us ask unanimous  
2374 consent to strike the EPA. Let us just have the NRC do this  
2375 job. Anybody--

2376 Mr. {Gonzalez.} I have no problem with that.

2377 Mr. {Waxman.} --Mr. Chairman, I ask unanimous consent  
2378 that we strike EPA.

2379 Mr. {Whitfield.} I have no objection to striking EPA.

2380 Mr. {Walden.} Mr. Chairman, would that make it still  
2381 germane to this bill?

2382 Mr. {Gonzalez.} Mr. Chairman, I don't know if we have  
2383 unanimous consent or a request on the Floor, but if there is  
2384 any further discussion, I would just ask anybody here that is  
2385 present as to the EPA's present role and jurisdiction, and if  
2386 it is appropriate, then, I would reconsider. Otherwise, I  
2387 think what Mr. Waxman is proposing would be appropriate and  
2388 we can still get to the goal of the Capps amendment.

2389 And I would yield back.

2390 The {Chairman.} A motion has been made to strike in  
2391 line 2 and 3 in conjunction with the Environmental Protection  
2392 Agency. Is there objection to striking those words?

2393 Mr. {Walden.} Point of order.

2394 The {Chairman.} The gentleman from--

2395 Mr. {Walden.} My question would be if you strike the  
2396 reference to the Environmental Protection Agency, does that  
2397 leave this amendment germane to this bill?

2398 Mr. {Waxman.} We believe it would. We wouldn't want to  
2399 strike it if it didn't, so we don't think that takes away the  
2400 germaneness of the amendment itself.

2401 Mr. {Walden.} Because are we working with the Nuclear  
2402 Regulatory Commission?

2403           The {Chairman.} Let me just confer with counsel here  
2404 one second. We are told that it is okay.

2405           Mr. {Walden.} I withdraw my point of order.

2406           The {Chairman.} Without objection, from the comma after  
2407 ``the Nuclear Regulatory Commission, in conjunction with the  
2408 Environmental Protection Agency'' is struck. So in essence,  
2409 it will read, ``The Nuclear Regulatory Commission, for the  
2410 purpose of preventing the release of radioactive pollution''  
2411 and go on with line 5. Is there objection to the change of  
2412 that amendment? Hearing none, that is now the amendment.

2413           And I will strike the last word just to say I had a  
2414 fairly lengthy conversation yesterday with the chairman of  
2415 the NRC, who is preparing a report that should be available  
2416 later today or certainly later in the week in terms of their  
2417 analysis of what happened at Fukushima. They will be making  
2418 a number of recommendations. I want to give every member the  
2419 assurance that this committee with jurisdiction over the NRC  
2420 will entertain those recommendations and work with the NRC to  
2421 make sure that the operation of all 104 sites is safe and  
2422 that we can actually learn constructively from the  
2423 difficulties that were made in Japan.

2424           And I would say that with this change that we can accept  
2425 the amendment as written. And I will yield to the gentleman  
2426 from--

2427 Mr. {Shimkus.} Again, as we are working on the drafting  
2428 of a secondary amendment, the ranking member is correct.  
2429 There was core that melted but he curiously left off the  
2430 major radioactivity that was lost in the spent pools. The  
2431 spent pools, the loss of power or the crack in the pools, the  
2432 water going down was a major part of Fukushima Daiichi. And  
2433 to not address--it is addressed in the amendment. For us not  
2434 to focus on, again, going back to Nuclear Regs Policy Act,  
2435 over 30 years of U.S. policy towards a centralized location  
2436 in a mountain underneath a desert 90 miles from Las Vegas  
2437 does not address the risk of, as you list here, nuclear  
2438 poisoning or air emissions of radiation. The best way to do  
2439 that is to centralize it underneath a mountain in a desert in  
2440 an arid location, 30 years. We need to have that part of  
2441 this amendment to go forward. And until we do that, I would  
2442 encourage my colleagues to not support the amendment.

2443 Mr. {Waxman.} Will the gentleman yield?

2444 Mr. {Shimkus.} It is not my time.

2445 The {Chairman.} Gentleman will state his parliamentary  
2446 procedure.

2447 Mr. {Waxman.} As I understand it, if we adopt the Capps  
2448 amendment, a further amendment, as the gentleman suggested,  
2449 would be in order. I don't think we need to sacrifice this  
2450 amendment because you don't have that as well. Let us take

2451 that first issue, resolve it, and then if you have another  
2452 amendment you want to offer, let us debate that amendment.  
2453 But it would be in order.

2454 Mr. {Shimkus.} Would the gentleman yield? It would be  
2455 in order but I would still vote against it.

2456 Mr. {Bilbray.} Mr. Chairman?

2457 The {Chairman.} The gentleman from California, Mr.  
2458 Bilbray.

2459 Mr. {Bilbray.} Thank you, Mr. Chairman.

2460 Mr. Chairman, I have a problem with this amendment.  
2461 First of all, I think that we all agree that Jackson would  
2462 not have the expertise in this issue. Obviously, ambient  
2463 nuclear exposure or even radon EPA is talking about and I am  
2464 glad to see that taken out. If you want to add somebody in  
2465 that can add an informed decision, I think Secretary Chu  
2466 would be who you want to step in.

2467 But the whole text of this amendment implies that the  
2468 Agency is not doing this as we speak. It implies as if the  
2469 Agency is not on top of this issue. And I think that is  
2470 quite unfair to the Agency. The fact is every report we have  
2471 seen coming out, if you take the time to get the informed  
2472 decisions, it is showing the Agency has been on top of these  
2473 issues again and again and again to the point where even the  
2474 Agency recognizes that the regulatory oversight of the

2475 domestic nuclear power industry has been so safety oriented  
2476 that they would even take second thought about how far they  
2477 would require the industry to go.

2478 Mr. {Waxman.} Will the gentleman yield?

2479 Mr. {Bilbray.} Let me hold up for just a second.

2480 And the fact is is that this spent fuel issue is enough  
2481 of an issue that we need to address that our own Senator,  
2482 Senator Feinstein, after looking at what happened in Japan,  
2483 specifically has taken a position that we need to revisit the  
2484 abandonment of Yucca Mountain. And the fact is this is  
2485 exactly what I was talking before about those who were  
2486 concerned about safety issues and raised health risks got to  
2487 stop saying no, have to say yes to the best technology and  
2488 best availability. And Senator Feinstein, to her credit, has  
2489 said we need to go back and find reasons to say yes, to allow  
2490 technology to do, allow good science to do, get the politics  
2491 to take a second seat to good science.

2492 And frankly, I think the concern I have here is the  
2493 regulatory agencies have concerns, have looked at it, and are  
2494 going to be coming out with extensive reports. This motion  
2495 by itself, in all fairness to the gentelady from California,  
2496 implies that they are not seriously looking at this stuff.

2497 I will yield to the gentelady from California.

2498 Mrs. {Capps.} I would just like to clarify, as my

2499 colleague knows, he and I both have nuclear facilities in our  
2500 respective congressional districts. The amendment is  
2501 specifically designed to speak to the limitations, in my  
2502 opinion, of the NRC's regulation, which they say that is very  
2503 unlikely, almost impossible that there would be a combination  
2504 of the most severe natural phenomena, including earthquakes  
2505 and--

2506       Mr. {Bilbray.} Reclaiming my time. Let me just say  
2507 this. Anyone who takes a look at what happened in Japan and  
2508 takes a look at our California facilities comes out feeling  
2509 more confident of the safety of our facilities than there was  
2510 before. And I would just like to point out we can go down  
2511 the list of not having fuel tanks--we can go down the whole  
2512 list of pump facilities being secured. The whole list down  
2513 the line becomes more secure. The fact is when you look at  
2514 this, too many people are not recognizing that 20,000 died in  
2515 Japan. Twenty thousand. Every one of my grandchildren,  
2516 children live in a tsunami area, except for the ones in  
2517 Helena, thank God, but they are under volcanoes. Twenty  
2518 thousand died from the tsunami. Not one has been proven to  
2519 die from the nuclear reactors. If you want to take the  
2520 science of what those numbers say, it says that it is 20,000  
2521 times more dangerous for me to live next to the beach than  
2522 next to a nuclear power plant.

2523 Mrs. {Capps.} Would my colleague yield again?

2524 Mr. {Bilbray.} I will yield to gentlelady.

2525 Mrs. {Capps.} Because you are exactly right in  
2526 underscoring the importance of this amendment. I had a  
2527 conversation--we have heard a chairman of the NRC testify--in  
2528 my conversations with him they are limited in what their  
2529 regulations now propose, and that is what this is after,  
2530 which is that they do not consider the likelihood of a  
2531 combination of natural disasters--

2532 Mr. {Bilbray.} Reclaiming my time. I think if you look  
2533 at your facility and my facility, to compare it to Japan is  
2534 not only a misrepresentation, I think it is using  
2535 misinformation to misinform and scare the public. The fact  
2536 is your facility and my facility could have survived what  
2537 happened in Japan in an area that it is geologically  
2538 impossible for the incident to occur. How much more  
2539 assurance does our constituency need at the same time that  
2540 you and I cannot assure anybody living within a mile of the  
2541 ocean that the same tsunami couldn't have happened there. We  
2542 are not saying that we are going to have to move populations  
2543 or that we should be studying moving populations as a  
2544 reasonable issue. I am just saying this motion implies  
2545 something that I think all of us know scientifically is not  
2546 true and regulatory-wise, I still don't believe it is true.

2547 And I yield back, Mr. Chairman.

2548 The {Chairman.} The gentleman yields back his time.

2549 Are there other members wishing to speak on the  
2550 amendment?

2551 Mr. {Olson.} Mr. Chairman?

2552 The {Chairman.} Who seeks--the gentleman from Texas,  
2553 Mr. Olson.

2554 Mr. {Olson.} Thank you, Mr. Chairman.

2555 And I would like to identify myself, first of all, with  
2556 the comments from my colleague from Illinois. I mean it is  
2557 critically important to our national security that we have a  
2558 single repository for our nuclear waste.

2559 I was on the Homeland Security Committee last Congress  
2560 and one of the issues that we discussed over and over was the  
2561 fact that we have got nuclear waste sitting in over 50  
2562 locations all across this country. And from a Homeland  
2563 Security perspective, somebody who might want to have a dirty  
2564 bomb, it is much more dangerous to have it scattered all over  
2565 the country than having it in one particular place, one  
2566 location right there in Nevada.

2567 The other concern I have, and I just want to straighten  
2568 up a misconception about the reactor being a problem as Los  
2569 Alamos. That wasn't the case. The fire there wasn't a  
2570 threat to the reactor. It was a threat to the spent fuel.

2571 And so we have got to address this problem. We need to get  
2572 it out of places like Los Alamos and put it in Yucca  
2573 Mountain. And if we have an opportunity to do that on this  
2574 bill, I support that.

2575 I yield back the balance of my time.

2576 The {Chairman.} The gentleman yields back his time.

2577 Are there other members wishing to speak on the amendment?

2578 If not, the vote occurs on the Capps amendment as modified by  
2579 the unanimous consent request.

2580 Those in favor of the amendment will say aye. Those  
2581 opposed will say no. In the opinion of the chair, the noes  
2582 have it. Roll call is requested. The clerk will call the  
2583 role.

2584 The {Clerk.} Mr. Barton?

2585 Mr. {Barton.} No.

2586 The {Clerk.} Mr. Barton, no.

2587 Mr. Stearns?

2588 Mr. {Stearns.} No.

2589 The {Clerk.} Mr. Stearns, no.

2590 Mr. Whitfield?

2591 Mr. {Whitfield.} No.

2592 The {Clerk.} Mr. Whitfield, no.

2593 Mr. Shimkus?

2594 Mr. {Shimkus.} No.

2595 The {Clerk.} Mr. Shimkus, no.  
2596 Mr. Pitts?  
2597 Mr. {Pitts.} No.  
2598 The {Clerk.} Mr. Pitts, no.  
2599 Mrs. Bono Mack?  
2600 Mrs. {Bono Mack.} No.  
2601 The {Clerk.} Mrs. Bono Mack, no.  
2602 Mr. Walden?  
2603 Mr. {Walden.} No.  
2604 The {Clerk.} Mr. Walden, no.  
2605 Mr. Terry?  
2606 Mr. {Terry.} No.  
2607 The {Clerk.} Mr. Terry, no.  
2608 Mr. Rogers?  
2609 Mr. {Rogers.} No.  
2610 The {Clerk.} Mr. Rogers, no.  
2611 Mrs. Myrick?  
2612 [No response.]  
2613 The {Clerk.} Mr. Sullivan?  
2614 Mr. {Sullivan.} No.  
2615 The {Clerk.} Mr. Sullivan, no.  
2616 Mr. Murphy?  
2617 Mr. {Murphy.} No.  
2618 The {Clerk.} Mr. Murphy, no.

2619 Mr. Burgess?  
2620 Dr. {Burgess.} No.  
2621 The {Clerk.} Mr. Burgess, no.  
2622 Mrs. Blackburn?  
2623 Mrs. {Blackburn.} No.  
2624 The {Clerk.} Mrs. Blackburn, no.  
2625 Mr. Bilbray?  
2626 Mr. {Bilbray.} No.  
2627 The {Clerk.} Mr. Bilbray, no.  
2628 Mr. Bass?  
2629 Mr. {Bass.} No.  
2630 The {Clerk.} Mr. Bass, no.  
2631 Mr. Gingrey?  
2632 [No response.]  
2633 The {Clerk.} Mr. Scalise?  
2634 Mr. {Scalise.} No.  
2635 The {Clerk.} Mr. Scalise, no.  
2636 Mr. Latta?  
2637 Mr. {Latta.} No.  
2638 The {Clerk.} Mr. Latta, no.  
2639 Mrs. McMorris Rodgers?  
2640 Mrs. {McMorris Rodgers.} No.  
2641 The {Clerk.} Mrs. McMorris Rodgers, no.  
2642 Mr. Harper?

2643 Mr. {Harper.} No.  
2644 The {Clerk.} Mr. Harper, no.  
2645 Mr. Lance?  
2646 Mr. {Lance.} No.  
2647 The {Clerk.} Mr. Lance, no.  
2648 Mr. Cassidy?  
2649 Dr. {Cassidy.} No.  
2650 The {Clerk.} Mr. Cassidy, no.  
2651 Mr. Guthrie?  
2652 Mr. {Guthrie.} No.  
2653 The {Clerk.} Mr. Guthrie, no.  
2654 Mr. Olson?  
2655 Mr. {Olson.} No.  
2656 The {Clerk.} Mr. Olson, no.  
2657 Mr. McKinley?  
2658 Mr. {McKinley.} No.  
2659 The {Clerk.} Mr. McKinley, no.  
2660 Mr. Gardner?  
2661 Mr. {Gardner.} No.  
2662 The {Clerk.} Mr. Gardner, no.  
2663 Mr. Pompeo?  
2664 Mr. {Pompeo.} No.  
2665 The {Clerk.} Mr. Pompeo, no.  
2666 Mr. Kinzinger?

2667 Mr. {Kinzinger.} No.

2668 The {Clerk.} Mr. Kinzinger, no.

2669 Mr. Griffith?

2670 Mr. {Griffith.} No.

2671 The {Clerk.} Mr. Griffith, no.

2672 Mr. Waxman?

2673 Mr. {Waxman.} Aye.

2674 The {Clerk.} Mr. Waxman, aye.

2675 Mr. Dingell?

2676 [No response.]

2677 The {Clerk.} Mr. Markey?

2678 [No response.]

2679 The {Clerk.} Mr. Towns?

2680 [No response.]

2681 The {Clerk.} Mr. Pallone?

2682 [No response.]

2683 The {Clerk.} Mr. Rush?

2684 Mr. {Rush.} Aye.

2685 The {Clerk.} Mr. Rush, aye.

2686 Ms. Eshoo?

2687 Ms. {Eshoo.} Aye.

2688 The {Clerk.} Ms. Eshoo, aye.

2689 Mr. Engel?

2690 Mr. {Engel.} Aye.

2691 The {Clerk.} Mr. Engel, aye.  
2692 Mr. Green?  
2693 [No response.]  
2694 The {Clerk.} Ms. DeGette?  
2695 Ms. {DeGette.} Aye.  
2696 The {Clerk.} Ms. DeGette, aye.  
2697 Mrs. Capps?  
2698 Mrs. {Capps.} Aye.  
2699 The {Clerk.} Mrs. Capps, aye.  
2700 Mr. Doyle?  
2701 Mr. {Doyle.} Aye.  
2702 The {Clerk.} Mr. Doyle, aye.  
2703 Ms. Schakowsky?  
2704 [No response.]  
2705 The {Clerk.} Mr. Gonzalez?  
2706 Mr. {Gonzalez.} Aye.  
2707 The {Clerk.} Mr. Gonzalez, aye.  
2708 Mr. Inslee?  
2709 [No response.]  
2710 The {Clerk.} Ms. Baldwin?  
2711 Ms. {Baldwin.} Aye.  
2712 The {Clerk.} Ms. Baldwin, aye.  
2713 Mr. Ross?  
2714 Mr. {Ross.} Aye.

2715 The {Clerk.} Mr. Ross, aye.  
2716 Mr. Matheson?  
2717 Mr. {Matheson.} Aye.  
2718 The {Clerk.} Mr. Matheson, aye.  
2719 Mr. Butterfield?  
2720 Mr. {Butterfield.} Aye.  
2721 The {Clerk.} Mr. Butterfield, aye.  
2722 Mr. Barrow?  
2723 Mr. {Barrow.} Aye.  
2724 The {Clerk.} Mr. Barrow, aye.  
2725 Ms. Matsui?  
2726 [No response.]  
2727 The {Clerk.} Mrs. Christensen?  
2728 Dr. {Christensen.} Aye.  
2729 The {Clerk.} Mrs. Christensen, aye.  
2730 Ms. Castor?  
2731 Ms. {Castor.} Aye.  
2732 The {Clerk.} Ms. Castor, aye.  
2733 Mr. Upton?  
2734 The {Chairman.} The vote is no.  
2735 The {Clerk.} Mr. Upton, no.  
2736 The {Chairman.} Are there other members wishing to cast  
2737 a vote?  
2738 Mr. Inslee?

2739 Mr. {Inslee.} Aye.

2740 The {Clerk.} Mr. Inslee, aye.

2741 The {Chairman.} Ms. Myrick?

2742 Mrs. {Myrick.} No.

2743 The {Clerk.} Mrs. Myrick, no.

2744 The {Chairman.} Are there other members?

2745 Mr. Dingell?

2746 Mr. {Dingell.} Vote is aye.

2747 The {Clerk.} Mr. Dingell, aye.

2748 The {Chairman.} Are there other members wishing to cast

2749 votes? Seeing none, the clerk will report the tally. Mr.

2750 Pallone, is he recorded?

2751 The {Clerk.} Mr. Pallone, aye.

2752 Mr. Chairman, on that, there were 18 ayes, 30 nays.

2753 The {Chairman.} 18 ayes, 30 nays. The amendment is not

2754 agreed to.

2755 Are there further amendments to the bill?

2756 Mr. {Barton.} Mr. Chairman?

2757 The {Chairman.} The gentleman from Texas.

2758 Mr. {Barton.} I don't have an amendment but I would

2759 like to strike the--

2760 The {Chairman.} The gentleman is recognized for 5

2761 minutes.

2762 Mr. {Barton.} Mr. Chairman, I have spent the last hour,

2763 as we listened to the debate, actually reading the final  
2764 transport rule here. It is 1,300 pages long. And I want to  
2765 bring the committee's attention to page 443 through pages 449  
2766 of this rule where it talks about benefits. And I just want  
2767 members to have an open mind and just listen. And I  
2768 especially want Drs. Cassidy and Burgess and Murphy and  
2769 Gingrey, who are medical doctors, to listen, and Mrs. Capps,  
2770 who I believe is a registered professional nurse and if there  
2771 are others that have got medical training.

2772 First of all, it says that--Dr. Christensen--it says  
2773 that 1 in 20 deaths in the United States every year is caused  
2774 by exposure to unhealthy levels of ozone and PM2.5--1 in 20.  
2775 Now, that seems a little high to me but maybe it is. Okay.

2776 Then it goes on to say that if we implement these rules,  
2777 we are going to save somewhere between 13,000 and 34,000  
2778 premature deaths per year. And that is the statistic that  
2779 Ranking Member Waxman has referred to. It monetizes those  
2780 benefits, and the minimum monetized benefit on page 449 for  
2781 those 13,000 saved deaths is \$100 billion. One hundred  
2782 billion dollars. Now, that is the minimum. If you divide  
2783 13,000 into \$100 billion, you get approximately \$8 million  
2784 per saved premature death. Now, where they get that, I don't  
2785 know, the \$100 billion. But \$8 million per death, if that is  
2786 some sort of an economic benefit that the person, who has to

2787 be at least age 30 under their assumption, then that means  
2788 that their annual income for the next 35 years is at least  
2789 \$230,000 a year if that is the assumption. I am not saying  
2790 that that is, but what I would ask the committee on both  
2791 sides of the aisle--they cite two studies, one done in 2002  
2792 and one done in 2006. And they use these numbers. I am  
2793 quoting their numbers, and they say in their benefit analysis  
2794 that 90 to 95 percent of the benefit is by preventing these  
2795 premature deaths.

2796 Mr. {Waxman.} Would the gentleman yield?

2797 Mr. {Barton.} I would be happy to.

2798 Mr. {Waxman.} What value would you put on a human life?  
2799 You think \$8 million is too much?

2800 Mr. {Barton.} I don't know, but I don't make \$230,000 a  
2801 year. You don't make \$230,000 a year.

2802 Mr. {Waxman.} So tell us what value you would put on  
2803 it.

2804 Mr. {Barton.} I don't know. I am--my point is--

2805 Mr. {Waxman.} You think--

2806 Mr. {Barton.} --this is the minimum.

2807 Mr. {Whitfield.} How did they determine the value?

2808 Mr. {Barton.} I don't know.

2809 Mr. {Waxman.} Well, it would have been nice if we had a  
2810 hearing, wouldn't it? You could ask these questions.

2811 Mr. {Barton.} I have asked--

2812 Mr. {Waxman.} Instead of this all being dropped--

2813 Mr. {Barton.} Reclaiming my time, Chairman Waxman--

2814 Mr. {Waxman.} Yeah. It is your time.

2815 Mr. {Barton.} --I have repeatedly asked the EPA to  
2816 justify. This is an EPA study. These are two studies, one  
2817 by the American Cancer Society and another independent study,  
2818 one that is 2002, one that is 2006, and they get these huge  
2819 benefits, and all I am pointing out to the committee is  
2820 wouldn't it be nice to have some independent agency actually  
2821 validate this before we assume at face value that the  
2822 benefits are as they say they are.

2823 Mr. {Waxman.} Would the gentleman yield further?

2824 Mr. {Barton.} I would be happy to yield.

2825 Mr. {Waxman.} Well, it sounds to me like you are making  
2826 a distinction of there is a mechanic making \$40,000 to  
2827 \$50,000 a year, that shouldn't be \$8 million, but if it is a  
2828 wealthier man, then maybe \$8 million would be adequate.

2829 Mr. {Barton.} I am not making any assumptions at all.

2830 Mr. {Waxman.} Well, you are assuming that their  
2831 assumptions aren't correct.

2832 Mr. {Barton.} No. I am not even assuming--I am  
2833 assuming that we ought to at least independently investigate  
2834 them.

2835 Mr. {Waxman.} Okay. How would you suggest we do that?

2836 Mr. {Barton.} Well, first I think we ought to get the  
2837 EPA to actually do a real analysis themselves. Then maybe we  
2838 could have a hearing, maybe we could bring in some  
2839 statisticians and some mortality experts and actually see.

2840 Mr. {Murphy.} Will the gentleman yield?

2841 Mr. {Barton.} Dr. Murphy.

2842 Mr. {Murphy.} Mr. Chairman, isn't that what having this  
2843 panel appointed to look at all those numbers is all about?  
2844 This is about doing an extensive study and asking the  
2845 Administration to do that. That is why we are doing this  
2846 bill so we can get that very accurate information.

2847 Mr. {Barton.} My time has expired, but my point, Mr.  
2848 Chairman, is we just take all these assumptions at face  
2849 value, and by their own admission the EPA is saying that 90  
2850 percent of the benefit is by the prevention of these  
2851 premature deaths, and I think any open-minded person would be  
2852 correct to at least question some of these assumptions.

2853 Mr. {Waxman.} Mr. Chairman.

2854 Mr. {Barton.} And I yield back.

2855 The {Chairman.} The gentleman from California.

2856 Mr. {Waxman.} I wish to be recognized and strike the  
2857 last word.

2858 The {Chairman.} The gentleman is recognized.

2859 Mr. {Waxman.} There are difficulties whenever you want  
2860 to quantify something. It is--if you want to quantify the  
2861 cost, you could take the amount that the industry says they  
2862 would have to spend on a particular regulation, which may or  
2863 may not be accurate, but that is at least something that is  
2864 monetized.

2865 But when you are talking about asthma prevented or heart  
2866 attacks or lives or children not being able to learn, then it  
2867 is hard to put a number on it, but we can't say because it is  
2868 hard that it can't be done. EPA does analysis or they  
2869 contract for analysis. The whole purpose of this bill is you  
2870 don't trust this government agency to do its job, so you are  
2871 going to set up another government agency to watch over the  
2872 existing government agencies. You are going to create  
2873 another bureaucracy to be sure that the numbers are right,  
2874 and until those numbers are determined to be accurate, we  
2875 will assume that the numbers by EPA, which has a legal  
2876 responsibility to do this, can't be trusted.

2877 That is the road we are taking with this TRAIN Act  
2878 legislation. That is the purpose of the TRAIN Act, but on  
2879 top of the TRAIN Act we have had the amendment that would  
2880 stop the EPA rules. They have been working on those rules  
2881 for a decade, and they have done all sorts of analysis, and  
2882 they have come up with rules dealing with mercury emissions

2883 and transport of air pollution from one State to another. If  
2884 you have air pollution from another State, you can do nothing  
2885 about it, and you are trying to come into compliance with the  
2886 health standards for the air, you have to figure out how to  
2887 do it even though you have no control over the air pollution  
2888 coming in, which means you have got to press harder on your  
2889 sources of pollution to reduce it even more.

2890         So a lot of States would like to do something about the  
2891 air pollution that is brought into the State by some other  
2892 sources in another State, but we are going to stop those  
2893 rules. We are going to stop EPA from going forward with  
2894 those rules on the assumption that Mr. Barton doesn't think  
2895 they have done a correct analysis. If that is your  
2896 assumption, then we ought to hold hearings on the details of  
2897 how these determinations are made by EPA, and we haven't done  
2898 that. We ought to know it if you feel that you want to go  
2899 into that level of detail.

2900         As I understood the way the law has worked is we ask EPA  
2901 to set a health standard, and they bring in the experts to  
2902 talk about a health standard under the Clean Air Act, and  
2903 then the States are supposed to come up with an  
2904 implementation plan to reach those health standards, but we  
2905 are saying, no, that doesn't count anymore. We need some  
2906 other analysis. In fact, we need another government agency

2907 to do another analysis. This is the road we are taking with  
2908 this legislation. It is fundamentally flawed. The purpose  
2909 of the TRAIN Act is to stop regulation, not to make sure that  
2910 it really is accurate.

2911 Now, the purpose of the EPA writers in this bill is to  
2912 stop the EPA from doing what they have been working on. When  
2913 does it end? Is no regulation worthwhile? Some of you would  
2914 say that. I have heard it said over and over again. EPA  
2915 regulations or any government regulations kill jobs. So if  
2916 you don't have those regulations, there are people that are  
2917 going to die, and you could put a monetary value on them, or  
2918 you could say they don't count, but I don't think we ought to  
2919 have a discussion of \$8 million being excessive because some  
2920 people don't make a lot of money.

2921 I don't know what the value of a life is, but if we are  
2922 going to talk about the value of life, the value of avoiding  
2923 pain, the value of preventing illnesses, we ask the agencies  
2924 to come up with a risk benefit analysis, and they come up  
2925 with some number, and we could go into more detail on how  
2926 that number is achieved. But I think this whole bill is  
2927 ridiculous, and this whole discussion is outrageous.

2928 If you want to go into the fundamental questions, hold a  
2929 hearing, not just do a markup, not come up with legislation  
2930 that says we will--we won't trust regulatory agencies. We

2931 want another bureaucracy to write over them, which really is  
2932 the purpose, for the purpose of making sure they do nothing.  
2933 And if you want nothing done, go back to the core bills  
2934 themselves. Repeal the Clean Air Act, repeal all these other  
2935 laws and then let us see what the impact will be. We know  
2936 what it will be; a lot of people will be--

2937 Mr. {Barton.} Will the gentleman yield?

2938 Mr. {Waxman.} --harmed. Yes.

2939 Mr. {Barton.} Do you think that all of the things that  
2940 we have done in the last 20 years on this committee have had  
2941 any positive impact on public health?

2942 Mr. {Waxman.} Absolutely.

2943 Mr. {Barton.} I agree with you.

2944 Mr. {Waxman.} Absolutely.

2945 Mr. {Barton.} But the premise of this interpretation is  
2946 that it hasn't.

2947 Mr. {Waxman.} What interpretation?

2948 Mr. {Barton.} Of the analysis I just referred to.

2949 Mr. {Waxman.} No. They are talking about a mercury  
2950 rule and a transport rule, and you are looking at the  
2951 justifications for those rules.

2952 Mr. {Barton.} Well, this--what I just cited, Mr.  
2953 Waxman, only refers to PM2.5 and ozone. That is all.

2954 Mr. {Waxman.} And so therefore what conclusion do you

2955 reach?

2956 Mr. {Barton.} Well, the conclusion I reach is that  
2957 their analysis at least needs to be reviewed by experts, and  
2958 it wouldn't hurt if the EPA would actually use some of their  
2959 internal experts to do a little analysis themselves.

2960 Mr. {Waxman.} That is not what is pending before us.  
2961 What is pending before us is a bill to put another layer of  
2962 bureaucracy on all the other bureaucracies that are in  
2963 existence and do the study further and let nothing happen  
2964 until that study is done. That is what is before us, and in  
2965 a minute we will get to the vote, and I will tell you what I  
2966 am going to do. I am going to vote no on that bill. I want  
2967 to see all of you vote yes for a new bureaucracy, new  
2968 government spending, and stopping regulation.

2969 Yield back the balance of my time.

2970 The {Chairman.} The gentleman's time has expired.

2971 The question now occurs on favorably reporting the bill  
2972 as amended to the House. All those in favor will say aye.  
2973 Those opposed will say no. The ayes appear--

2974 Mr. {Waxman.} Roll call.

2975 The {Chairman.} Roll call is requested. The clerk will  
2976 call the roll.

2977 The {Clerk.} Mr. Barton?

2978 Mr. {Barton.} Aye.

2979 The {Clerk.} Mr. Barton, aye.  
2980 Mr. Stearns?  
2981 [No response.]  
2982 The {Clerk.} Mr. Whitfield?  
2983 Mr. {Whitfield.} Aye.  
2984 The {Clerk.} Mr. Whitfield, aye.  
2985 Mr. Shimkus?  
2986 Mr. {Shimkus.} Aye.  
2987 The {Clerk.} Mr. Shimkus, aye.  
2988 Mr. Pitts?  
2989 [No response.]  
2990 The {Clerk.} Mrs. Bono Mack?  
2991 Mrs. {Bono Mack.} Aye.  
2992 The {Clerk.} Mrs. Bono Mack, aye.  
2993 Mr. Walden?  
2994 Mr. {Walden.} Aye.  
2995 The {Clerk.} Mr. Walden, aye.  
2996 Mr. Terry?  
2997 [No response.]  
2998 The {Clerk.} Mr. Rogers?  
2999 Mr. {Rogers.} Aye.  
3000 The {Clerk.} Mr. Rogers, aye.  
3001 Mrs. Myrick?  
3002 [No response.]

3003 The {Clerk.} Mr. Sullivan?  
3004 Mr. {Sullivan.} Aye.  
3005 The {Clerk.} Mr. Sullivan, aye.  
3006 Mr. Murphy?  
3007 Mr. {Murphy.} Aye.  
3008 The {Clerk.} Mr. Murphy, aye.  
3009 Mr. Burgess?  
3010 [No response.]  
3011 The {Clerk.} Mrs. Blackburn?  
3012 Mrs. {Blackburn.} Aye.  
3013 The {Clerk.} Mrs. Blackburn, aye.  
3014 Mr. Bilbray?  
3015 [No response.]  
3016 The {Clerk.} Mr. Bass?  
3017 Mr. {Bass.} No.  
3018 The {Clerk.} Mr. Bass, nay.  
3019 Mr. Gingrey?  
3020 Dr. {Gingrey.} Yes.  
3021 The {Clerk.} Mr. Gingrey, aye.  
3022 Mr. Scalise?  
3023 Mr. {Scalise.} Aye.  
3024 The {Clerk.} Mr. Scalise, aye.  
3025 Mr. Latta?  
3026 Mr. {Latta.} Aye.

3027           The {Clerk.}   Mr. Latta, aye.  
3028           Mrs. McMorris Rodgers?  
3029           [No response.]  
3030           The {Clerk.}   Mr. Harper?  
3031           Mr. {Harper.}   Aye.  
3032           The {Clerk.}   Mr. Harper, aye.  
3033           Mr. Lance?  
3034           Mr. {Lance.}   Yes.  
3035           The {Clerk.}   Mr. Lance, aye.  
3036           Mr. Cassidy?  
3037           Dr. {Cassidy.}  Aye.  
3038           The {Clerk.}   Mr. Cassidy, aye.  
3039           Mr. Guthrie?  
3040           Mr. {Guthrie.}  Aye.  
3041           The {Clerk.}   Mr. Guthrie, aye.  
3042           Mr. Olson?  
3043           Mr. {Olson.}   Aye.  
3044           The {Clerk.}   Mr. Olson, aye.  
3045           Mr. McKinley?  
3046           Mr. {McKinley.} Yes.  
3047           The {Clerk.}   Mr. McKinley, aye.  
3048           Mr. Gardner?  
3049           Mr. {Gardner.}  Aye.  
3050           The {Clerk.}   Mr. Gardner, aye.

3051 Mr. Pompeo?  
3052 Mr. {Pompeo.} Aye.  
3053 The {Clerk.} Mr. Pompeo, aye.  
3054 Mr. Kinzinger?  
3055 The {Clerk.} Mr. Kinzinger, aye.  
3056 Mr. Griffith?  
3057 Mr. {Griffith.} Aye.  
3058 The {Clerk.} Mr. Griffith, aye.  
3059 Mr. Waxman?  
3060 Mr. {Waxman.} No.  
3061 The {Clerk.} Mr. Waxman, nay.  
3062 Mr. Dingell?  
3063 Mr. {Dingell.} No.  
3064 The {Clerk.} Mr. Dingell, nay.  
3065 Mr. Markey?  
3066 [No response.]  
3067 The {Clerk.} Mr. Towns?  
3068 [No response.]  
3069 The {Clerk.} Mr. Pallone?  
3070 Mr. {Pallone.} No.  
3071 The {Clerk.} Mr. Pallone, nay.  
3072 Mr. Rush?  
3073 Mr. {Rush.} No.  
3074 The {Clerk.} Mr. Rush, nay.

3075 Ms. Eshoo?

3076 Ms. {Eshoo.} No.

3077 The {Clerk.} Ms. Eshoo, nay.

3078 Mr. Engel?

3079 [No response.]

3080 The {Clerk.} Mr. Green?

3081 Mr. {Green.} Yes.

3082 The {Clerk.} Mr. Green, aye.

3083 Ms. DeGette?

3084 Ms. {DeGette.} No.

3085 The {Clerk.} Ms. DeGette, nay.

3086 Mrs. Capps?

3087 Mrs. {Capps.} No.

3088 The {Clerk.} Mrs. Capps, nay.

3089 Mr. Doyle?

3090 Mr. {Doyle.} No.

3091 The {Clerk.} Mr. Doyle, nay.

3092 Ms. Schakowsky?

3093 [No response.]

3094 The {Clerk.} Mr. Gonzalez?

3095 Mr. {Gonzalez.} Yes.

3096 The {Clerk.} Mr. Gonzalez, aye.

3097 Mr. Inslee?

3098 Mr. {Inslee.} No.

3099 The {Clerk.} Mr. Inslee, nay.  
3100 Ms. Baldwin?  
3101 Ms. {Baldwin.} No.  
3102 The {Clerk.} Ms. Baldwin, nay.  
3103 Mr. Ross?  
3104 Mr. {Ross.} Aye.  
3105 The {Clerk.} Mr. Ross, aye.  
3106 Mr. Matheson?  
3107 Mr. {Matheson.} Aye.  
3108 The {Clerk.} Mr. Matheson, aye.  
3109 Mr. Butterfield?  
3110 Mr. {Butterfield.} No.  
3111 The {Clerk.} Mr. Butterfield, nay.  
3112 Mr. Barrow?  
3113 Mr. {Barrow.} Votes aye.  
3114 The {Clerk.} Mr. Barrow, aye.  
3115 Ms. Matsui?  
3116 [No response.]  
3117 The {Clerk.} Mrs. Christensen?  
3118 [No response.]  
3119 The {Clerk.} Ms. Castor?  
3120 Ms. {Castor.} No.  
3121 The {Clerk.} Ms. Castor, nay.  
3122 Mr. Upton?

- 3123 The {Chairman.} Aye.
- 3124 The {Clerk.} Mr. Upton, aye.
- 3125 The {Chairman.} Other members wishing to cast a vote?
- 3126 Dr. Burgess?
- 3127 Dr. {Burgess.} Aye.
- 3128 The {Clerk.} Dr. Burgess, aye.
- 3129 The {Chairman.} Ms. Myrick?
- 3130 Mrs. {Myrick.} Aye.
- 3131 The {Clerk.} Mrs. Myrick, aye.
- 3132 The {Chairman.} Ms. Myrick--
- 3133 The {Clerk.} Mrs. Myrick, aye.
- 3134 The {Chairman.} Mr. Bilbray?
- 3135 Mr. {Bilbray.} Aye.
- 3136 The {Clerk.} Mr. Bilbray, aye.
- 3137 The {Chairman.} Mr. Pitts?
- 3138 Mr. {Pitts.} Aye.
- 3139 The {Clerk.} Mr. Pitts, aye.
- 3140 The {Chairman.} Other members wishing to cast a vote?
- 3141 Seeing none, the clerk will report the tally.
- 3142 Mr. Stearns?
- 3143 Mr. {Stearns.} Aye.
- 3144 The {Clerk.} Mr. Stearns, aye.
- 3145 The {Chairman.} The clerk will report.
- 3146 The {Clerk.} Mr. Chairman, on that there were 33 ayes,

3147 13 nays.

3148           The {Chairman.} Thirty-three ayes, 13 nays. The bill  
3149 is approved as amended without objection. The staff is  
3150 authorized to make technical and conforming changes. The  
3151 bill is approved by the committee.

|

3152 H.R. 2273

3153           The {Chairman.} We now call up the bill H.R. 2273, and  
3154 the clerk will report the title.

3155           Mr. {Rush.} Mr. Chairman, on the last bill would you  
3156 allow for language for the review period?

3157           The {Chairman.} Minority views--without objection  
3158 minority views will be given the proper amount of time.

3159           And the chair calls up H.R. 2273. The clerk will report  
3160 the title.

3161           The {Clerk.} H.R. 2273, to amend subtitle D of the  
3162 Solid Waste Disposal Act to facilitate recovery and  
3163 beneficial use and provide for the proper management and  
3164 disposal of materials generated by the combustion of coal and  
3165 other fossil fuels.

3166           [H.R. 2273 follows:]

3167 \*\*\*\*\* INSERT 8 \*\*\*\*\*

|  
3168           The {Chairman.} And without objection, the bill is  
3169 considered as read, and I will recognize Mr. Shimkus for the  
3170 purpose of offering an amendment in the nature of a  
3171 substitute.

3172           Mr. {Shimkus.} Thank you, Mr. Chairman. I have an  
3173 amendment at the desk.

3174           The {Chairman.} And the clerk will report that  
3175 amendment.

3176           The {Clerk.} An amendment in the nature of a substitute  
3177 to H.R. 2273 offered by Mr. Shimkus of Illinois.

3178           [The amendment follows:]

3179 \*\*\*\*\* INSERT 9 \*\*\*\*\*

|  
3180           The {Chairman.} And without objection the reading of  
3181 that substitute is dispensed with, and the gentleman is  
3182 recognized for 5 minutes in support of his amendment, and the  
3183 staff will distribute that substitute.

3184           Mr. {Shimkus.} Thank you, Mr. Chairman. I just want to  
3185 start by saying I appreciate my friends on both sides of the  
3186 aisle for trying to get as close as we could. I am not sure  
3187 where we are at at the end of the day, but we have been  
3188 working diligently over many weeks to try to get to a better  
3189 bill.

3190           Having said that, for me and the clock has struck  
3191 twelve, and we need to move forward, this amendment is  
3192 predicated on a few simple concepts. It creates a program  
3193 under Subtitle D for State regulation of coal ash and  
3194 addresses the management of disposal of coal combustion  
3195 residuals in landfills, surface emplacements, and other land-  
3196 based units.

3197           If a State is currently approved to implement either a  
3198 municipal solid waste permit program or is authorized to  
3199 implement a hazardous waste permit program and thus has  
3200 previously demonstrated to EPA its ability to run these types  
3201 of permitting programs, the State is pre-approved to operate  
3202 a coal combustion residuals permit program.

3203 All States have approved programs for municipal solid  
3204 waste under the Solid Waste Disposal Act, and those programs  
3205 are governed by existing regulations promulgated by EPA  
3206 pursuant to Section 4010 of the Solid Waste Disposal Act.  
3207 These regulations, the revised criteria, are a known quantity  
3208 to the States and are based on the requirement that they be  
3209 protective of human health and the environment. These  
3210 existing known and environmentally-protective requirements  
3211 are more than adequate to serve as a baseline for regulation  
3212 of coal ash, so no new federal regulations are needed to deal  
3213 with the coal ash.

3214 Using these criteria the bill sets out minimum standards  
3215 for coal ash permit program. States can choose to be more  
3216 protective than the federal baseline. To implement a permit  
3217 program States must notify EPA of their intent to adopt and  
3218 implement a permit program and must certify that they will  
3219 implement a permit program that meets the minimum federal  
3220 baseline.

3221 If a State chooses not to adopt and implement a coal  
3222 combustion residual permit program, EPA would step in and  
3223 implement a program based on the same federal baseline. A  
3224 State can always take back a permit program from EPA by  
3225 notifying EPA of its intent to assume or resume control of  
3226 the permit program and certify to EPA that its permit program

3227 meets the minimum specification.

3228           This amendment improves the bill marked up in  
3229 subcommittee in several important ways. As part of their  
3230 certification States are required to submit detailed  
3231 information laying out why their coal combustion residuals  
3232 permit program complies with the minimum federal  
3233 requirements, including a legal certification that the State  
3234 has fully effective statutes, regulations, and guidance that  
3235 meet the minimum specifications for coal ash permit program.

3236           If a coal combustion residuals management or disposal  
3237 structure is determined by the permitting authority to be  
3238 high-hazard potential under FEMA's guidelines for dam safety,  
3239 the permitting authority has the authority under this bill to  
3240 assess the structural stability of the structure and require  
3241 corrective action, if necessary. And if correction action  
3242 isn't undertaken, the permitting authority has the authority  
3243 to require closure pursuant to the requirements of the bill.

3244           The bill sets out particular criteria as part of the  
3245 federal baseline for coal ash permit program and specifically  
3246 includes criteria for groundwater monitoring, location  
3247 restrictions, design requirements, and structural integrity.

3248           Should a permit program transfer from EPA back to a  
3249 State or vice versa, the amendment clarifies what happens  
3250 during the transition from one permitting authority to

3251 another and makes it clear that permits and corrective  
3252 actions remain unchanged until the new permitting authority  
3253 takes the action to change them.

3254         This amendment creates a unique program that gives  
3255 States the right to regulate coal ash using existing,  
3256 familiar, and environmentally-protected federal municipal  
3257 solid waste requirements by allowing States to adopt and  
3258 implement a coal combustion residuals permit program in the  
3259 same fashion as they operate their existing municipal solid  
3260 waste programs. EPA stated explicitly in its proposed rule  
3261 on June, 2010, that these requirements were a reasonable  
3262 balance between ensuring protection of human health and the  
3263 environment from the risk of coal ash, and the practical  
3264 realities of facilities' ability to implement the criteria  
3265 and that the, ``engineered structures regulated under Part  
3266 258 are very similar to those found at coal combustion  
3267 residual disposal facilities and the regulations applicable  
3268 to such units would be expected to address the risk presented  
3269 by the risk presented by the constituents in coal combustion  
3270 residual waste.''

3271         Moreover, coal combustion residual waste do not contain  
3272 the constituents that are likely to require modification of  
3273 the existing Part 258 requirements such as organics, for  
3274 example. No adjustments would be needed to ensure that

3275 groundwater monitoring would be protective as CCR components  
3276 are all readily distinguishable by standard analytical  
3277 chemistry.

3278         By generally adopting the framework of the municipal  
3279 solid waste program in Part 258 and by setting out specific  
3280 criteria and requirements for our coal combustion residuals  
3281 permit program, the amendment obviates a need to recreate the  
3282 wheel and have EPA issue new federal regulations for coal  
3283 ash. The amendment for the first time sets a federal  
3284 baseline for all coal combustion residuals permit programs  
3285 but allows States to be stringent, if they wish, which allows  
3286 States to tailor their programs as necessary.

3287         In doing so the amendment ensures the integrity and  
3288 safety of the coal ash materials used in beneficial reused  
3289 products. The amendment also ensures the structural  
3290 integrity of structures that handle coal ash. As a municipal  
3291 solid waste each State that intends to adopt and implement a  
3292 permit program must certify that their State's program meets  
3293 the minimum requirements, EPA's role, too, and crosscheck the  
3294 State's permit program as set out in the certificate against  
3295 the minimum requirements of the amendment.

3296         Mr. Chairman, I am almost done. This amendment is a  
3297 commonsense approach that promotes States' rights, conserves  
3298 resources by obviating the need for duplicative and time-

3299 consuming federal regulation, protects the environment,  
3300 preserves jobs lost as a result of unduly-burdensome federal  
3301 regime suggested by EPA in June, 2010, and I urge its  
3302 support.

3303       The {Chairman.} The gentleman's time has expired.

3304       The gentleman from Texas, Mr. Green, is recognized for 5  
3305 minutes.

3306       Mr. {Green.} Mr. Chairman, I move to strike the last  
3307 word. This is a bill, and I want to thank the chair of our  
3308 Environment and Economy Subcommittee for working with us. WE  
3309 had a legislative hearing months ago and said this is  
3310 something we could work on. We could solve this problem, and  
3311 the manager's amendment goes a long way that we worked on. I  
3312 think there is still some other issues that we are concerned  
3313 about, and I will just bring them up.

3314       Our whole point on this was what happened in Tennessee  
3315 with wet impoundment, and there is still some concern about  
3316 when you have a wet impoundment that the groundwater  
3317 monitoring the concern about the leeching into the  
3318 groundwater, I have a little bit of concern about the dust  
3319 issue. I am familiar with how we control dust under State  
3320 law. I am told now from our piles of residual from  
3321 refineries, and I think that that is a concern I have that  
3322 how you would deal with the particulate matter that gets

3323 blown.

3324           We are--we have done a long way, gone a long way since  
3325 we have--when we started the first draft of the bill, and I  
3326 want to compliment my colleague from Illinois for doing that.  
3327 We are still not quite there, though, and believe me, I would  
3328 like to show this as a real bipartisan bill and with maybe a  
3329 little more time we could do this, get our staffs, and I  
3330 don't know if my colleague from Pennsylvania wants to talk  
3331 about it, because I know Congressman Doyle has been involved  
3332 in it particularly because of the number of wet impoundments  
3333 in his area, and if you would like, I could yield you some of  
3334 the time, Mike.

3335           Mr. {Doyle.} Yeah. I want to thank the gentleman from  
3336 Texas. Yeah. I, too, want to say I was hopeful this was  
3337 something that we could get together and be supportive of.  
3338 There is lots about this bill that I think is okay, but I  
3339 don't think anyone really believes that we should be treating  
3340 wet impoundments for coal ash the same as we treat our  
3341 household garbage, and it is this section of this bill that  
3342 really gives me some pause and keeps me from being able to be  
3343 yes right now, and I was hoping we could sit down and resolve  
3344 some of these.

3345           The, I mean, the way it is structured now this only  
3346 requires States to apply an undefined, generally-accepted

3347 engineering standards to these structures. I think we need a  
3348 different criteria here. It just doesn't appear to me that  
3349 this provides enough corrective action of when impoundments,  
3350 especially those that are considered not to be high hazard,  
3351 it is my hope that our staffs can continue to work on this  
3352 issue and resolve what I think is a very serious problem.

3353         We have--hopefully, you know, we can make the time to  
3354 get this done and come to some resolution, but based on our  
3355 inability to be able to do it at this time, I am not able to  
3356 support this either at this present time.

3357         Mr. {Dingell.} Would the gentleman yield to me?

3358         Mr. {Green.} I will be glad to yield. I need about 30  
3359 seconds at the end, John, but I will be glad to yield to my  
3360 colleague from Michigan.

3361         Mr. {Dingell.} Oh, well, I just simply want to observe  
3362 if you are trying to kill the bill to cease the negotiations  
3363 at this time, it is a fine way to begin. My two colleagues  
3364 and I are happy to work with our colleagues on the other side  
3365 to try and come up with a bipartisan bill. If that is not  
3366 the desire of the majority, then so be it.

3367         The problems are not large. They are difficult, but  
3368 they could be addressed, and I would urge my colleagues on  
3369 the other side to continue to staff discussions. I am  
3370 willing to vote for a bipartisan bill, but I certainly am not

3371 going to, as my good friend from Pennsylvania said, treat  
3372 coal ash the same way I do household trash. There is a big  
3373 difference, and people are going to be seriously hurt because  
3374 of it.

3375 So I thank the gentleman for yielding.

3376 Mr. {Green.} Thank you, and, again, I want to thank  
3377 both Chairman Emeritus Dingell for--and his staff and  
3378 Congressman Doyle for trying to get where we are at. We have  
3379 been working for months.

3380 My concern about, inclosing on the amendment that was  
3381 laid out, the manager's amendment, there was some agreements  
3382 made that, over the last day or so, and I am pointing out on  
3383 line six where in II and in B where in B, I, where it says,  
3384 as appropriate. I thought we had a number of things we had  
3385 agreed on, and we were down to only dealing with the disposal  
3386 of wet impoundment or dry, but I see this manager's amendment  
3387 doesn't even do some of the things that we had agreed.

3388 So, Mr. Chairman, it is real difficult to support a  
3389 manager's amendment that is not where we were at when I  
3390 thought, you know, at the end of the day yesterday, and I am  
3391 out of time I see.

3392 The {Chairman.} The gentleman's time has expired.

3393 The gentleman from California seeks time.

3394 Mr. {Bilbray.} Thank you, Mr. Chairman.

3395           Mr. Chairman, I just would like to ask since we stepped  
3396 back to take a look at this issue from both sides of the  
3397 aisle, and we could really help the process, the outcome of  
3398 the process to be so much better if we care about the  
3399 outcome. So often, though, the procedure takes precedence  
3400 over outcome, and then we wonder why people lose trust in the  
3401 ability for government to address these issues.

3402           And I want to give you just an example of what--the  
3403 frustration I had as a regulatory, in a regulatory agency.  
3404 We had actually worked years at trying to find a way to  
3405 utilize sandblasting sand and avoid it having to be put in  
3406 our landfills and being, you know, dropped in our creeks or  
3407 whatever.

3408           So we actually developed a system where you had people  
3409 going around picking up the sandblasting sand and using it as  
3410 an aggregate for asphalt and cement. And that reuse was not  
3411 only avoiding the disposal problem but also was avoiding  
3412 having to go into rural areas and find virgin material for  
3413 aggregate and then ship it into the urban areas with all the  
3414 pollution and all the environmental impact.

3415           The whole system worked great until somebody at the  
3416 California level at the Cal EPA decided that, wait a minute.  
3417 Because there was trace elements of metal, lead, zinc,  
3418 whatever in this sand after it had been used for

3419 sandblasting, that it now had to be tracked and reported as a  
3420 hazardous material. The paperwork and the regulatory  
3421 oversight of that one rulemaking drove the recycling industry  
3422 out of business.

3423         So good intention of somebody thinking they are helping  
3424 the environment ended up creating a situation that destroyed  
3425 a reasonable economic and environmental strategy because  
3426 regulation took precedence over outcome.

3427         And so as we address these issues, and someone could  
3428 say, oh, wait a minute. You don't want to have this stuff in  
3429 your neighborhood. Well, I am sorry, but if you take a look  
3430 at asphalt, the asphalt that is in the street outside your  
3431 house, if you grind, if you pick it up, it becomes a  
3432 hazardous waste as soon as you pick it up. Now, your kids  
3433 are playing on it, you are driving on it, everybody is living  
3434 around it, but as soon as you try to reuse it, now you have a  
3435 burden of proof far beyond what it took when you put the--  
3436 when it was sitting in front of your yard the whole time.

3437         It is that type of regulatory insensitivity to outcome  
3438 that has frustrated so many of us that has tried to say there  
3439 is a good economic and environmental option if we are just  
3440 willing to put the regulatory straightjackets in the back  
3441 corner and allow people to do what is practical and  
3442 reasonable.

3443           So I am not going to go at length on this except the  
3444 fact that, please, let's make sure we don't go out of this  
3445 thinking we are saving the planet, and we are not only  
3446 trashing the economic opportunity, we are actually trashing  
3447 the environmental cleanup at the same time and--

3448           Mr. {Shimkus.} Would the gentleman yield?

3449           Mr. {Bilbray.} Yes, I will yield.

3450           Mr. {Shimkus.} Thank you. Just in response, I do  
3451 appreciate my colleagues and the weeks we have been working  
3452 on it, and to my good friend, Mr. Dingell, we have been in  
3453 the room. So I am a little taken aback about the strong  
3454 statement about walking away, because most of my opening  
3455 statement on the manager's amendment was addressing what we  
3456 have been talking about.

3457           Now, I want to read from the federal register to address  
3458 Mr. Dingell, your and Mr. Doyle's particular point. The  
3459 federal register, June 21, 2010, here is the EPA. The EPA  
3460 believes, and this is part of my opening statement. The EPA  
3461 believes that Part 258 criteria represents a reasonable  
3462 balance between ensuring the protection of human health and  
3463 the environment from the risks of these wastes.

3464           Now, that is the EPA. That is what is on page 13 of our  
3465 bill. That is what we are doing. This is not me. This is  
3466 the EPA, and so--and then not only that, then why do we have

3467 this bill? Based upon the comments of what Mr. Bilbray was  
3468 saying about sand, is there is 40 percent of coal combustion  
3469 residuals is recycled, which keeps them out of the landfill.  
3470 But if we move in the direction of what the EPA wants to  
3471 label a toxic, then we have to add 40 percent additional in  
3472 toxic waste landfills, which the EPA even admits isn't toxic.

3473 Mr. {Bilbray.} Will the gentleman yield for a second?

3474 Mr. {Shimkus.} It is your time.

3475 Mr. {Bilbray.} I point out you need aggregate for cover  
3476 every day. There is a meter of barrier sand that has got to  
3477 be placed over the landfill when you do it. So you need to  
3478 have that barrier sand in the mix by law under our  
3479 regulations for landfills. So you are actually reusing, it  
3480 is not just throwing it away. It is actually using it as a  
3481 product that is needed to fulfill the landfill laws.

3482 And I yield back.

3483 The {Chairman.} The gentleman's time has expired.

3484 Other members wishing to speak on the amendment in the  
3485 nature of a substitute?

3486 Mr. McKinley is recognized for 5 minutes.

3487 Mr. {McKinley.} Strike the last word.

3488 Mr. Chairman, I have been listening to the--with  
3489 whatever patience we have here to deal with the description  
3490 of what fly ash is and its toxicity and its characteristics.

3491 It has been said that it is worse than what goes into a  
3492 municipal landfill. That is just categorically false. We  
3493 have--there have been two studies done by the EPA on fly ash;  
3494 1993, and 2000, and both of them has said that it is not  
3495 hazardous material. As a matter of fact, in the 2000, study  
3496 they even go so far as to say in the federal register as a  
3497 result of their study, no documented cases of damage to human  
3498 health or the environment has been identified from fly ash.

3499       Go on with that. We talked about whether it is wet  
3500 impoundments or dry impoundments. We know that fly ash is  
3501 used as an agricultural additive. In the 2000, study they  
3502 went on to say the agricultural use of fly ash creates no  
3503 adverse environmental impact, and the EPA identified no case,  
3504 damaged cases associated with this practice.

3505       These have been studied. We look at the levels of  
3506 toxicity. This is fly ash. These are the chemical elements,  
3507 trace elements of fly ash, and here are the toxicity levels.  
3508 In every case it falls below the level of toxicity. When we  
3509 look at that and consider that, not the hyperbole that hear  
3510 from so many people talking about this as a poisonous--I have  
3511 heard it said time and time again over the last 6 months that  
3512 this is a toxic material. It is no more toxic than the earth  
3513 in your front yard and what you just heard about in the  
3514 asphalt in the roads.

3515           It is there, part of our life. What we need to focus on  
3516 here are jobs. Twenty-seven States in this country mine  
3517 coal. Twenty-seven States. And here are all the power  
3518 plants that generate electricity all across America. Every  
3519 one of them is producing fly ash. The issue is what are we  
3520 going to do with it, knowing that it is no more hazardous  
3521 than the soil in our backyard. And we are trying to say that  
3522 it is worse than in a municipal landfill that uses--that they  
3523 store battery acid, motor fuels, Freon gases, old tires,  
3524 treated lumber, that are filled with CCA, the most heavily-  
3525 arsenic level you could.

3526           I trust our States. Our States are managing fly ash  
3527 today, and they will manage fly ask tomorrow, because they  
3528 have done a good job. It may have some failures on some  
3529 times with municipal solid waste, but we have now  
3530 strengthened, thanks to this amendment that was  
3531 bipartisanly supported, it is going to require far more  
3532 stringent than current municipal landfills. So we are in the  
3533 right direction. I want people to understand. This is what  
3534 we are talking about, and again, for those people that don't  
3535 understand a jobs bill, that is what this is. This is a jobs  
3536 bill, and it takes care of all this fly ash that is created  
3537 all across America.

3538           Thank you, Mr. Chairman. I yield back my time.

3539 Mr. {Dingell.} Mr. Chairman.

3540 The {Chairman.} The gentleman from Michigan is  
3541 recognized for 5 minutes.

3542 Mr. {Dingell.} With all respect for my colleagues on  
3543 the other side, I don't know anybody in this room who would  
3544 say that these coal residues or whatever they might be should  
3545 be regulated as hazardous waste. The question is how are  
3546 they going to be regulated.

3547 And a particular concern that a lot of us have over here  
3548 is what happens when the retention pond breaks, or what  
3549 happens when the stuff does get loose? Now, it just may be  
3550 some my colleagues on the other side think that is just fine  
3551 to go be dumped in somebody else's backyard. I don't. I  
3552 sure as hell don't want it in my backyard.

3553 What we are trying to do is see to it that we establish  
3554 a mechanism for controlling this stuff so it doesn't get back  
3555 into the environment. I happen to know that this stuff is  
3556 useful, it could be made into wallboard and lots of other  
3557 useful things, and I want to see that happen, but I do want  
3558 to see that when somebody sets up a pond to control this  
3559 stuff and it breaks, that all the sudden somebody is not  
3560 going to say, my God, Dingell, why were you sitting around  
3561 down there letting this be set up so it could be in my  
3562 backyard.

3563 All I think we ought to do is to see to it that we  
3564 address the question of how we see to it that there is no  
3565 reaching in the groundwater, that there is no escape of this  
3566 stuff into the environment, that if a retention dam breaks,  
3567 all the sudden some community is not going to find that their  
3568 whole community is awash in these kinds of semi-liquefied  
3569 nastiness that is going to get into their yard.

3570 We are willing to talk about that with my Republican  
3571 colleagues. I think it would be a good thing to do. We  
3572 offer you the hand of friendship, a chance to work together  
3573 with us, and have a bipartisan bill. I keep hearing about  
3574 bipartisan bills, but I ain't seeing much evidence that that  
3575 is desired.

3576 So if you want to work with us, we are willing to. If  
3577 you don't, we will oppose the bill. You will probably  
3578 prevail and get the bill through the House, but you will not  
3579 get the bill through the Senate, and I would be willing to  
3580 bet you anybody in this room a new hat that you are going to  
3581 get a veto by the President.

3582 My friends in the electrical utility industry would very  
3583 much like to have this issue solved. So would I. I think it  
3584 is important that we do so, but the course upon which we are  
3585 set is not going to lead us in that direction.

3586 So my advice to my colleagues is let's work together.

3587 If you don't want to work together, we will fight. That is  
3588 not functioning as the Congress should, and it is not  
3589 functioning as we should to protect the interests of our  
3590 people, including our electrical utilities and all of the  
3591 electrical servants, the businesses that are dependent on it.

3592 Mr. {Shimkus.} Will the gentleman yield?

3593 Mr. {Dingell.} I will be glad to yield. Yes.

3594 Mr. {Shimkus.} Are you claiming that we have not worked  
3595 for the past month on this bill? Are you making a statement  
3596 that--

3597 Mr. {Dingell.} I am not--

3598 Mr. {Shimkus.} --my entire 5-minute opening statement  
3599 was on position?

3600 Mr. {Dingell.} If the gentleman would permit, I am not  
3601 claiming anything. I am just simply saying if you terminate  
3602 the discussions now without understanding the points that I  
3603 am raising and that my two colleagues here are raising--

3604 Mr. {Shimkus.} I just take offense--

3605 Mr. {Dingell.} --you are not proceeding in accordance  
3606 with the good faith that we had hoped and had--

3607 Mr. {Shimkus.} And are you assuming we don't have good  
3608 faith in the negotiations? Are you making a claim that we  
3609 didn't have good faith in the negotiations?

3610 Mr. {Dingell.} I am not going to get in a great

3611 discussion with my good friend. Simple fact of the matter is  
3612 you could get a bill, or you could kill the bill, and there  
3613 is all kinds of ways these things could be done. I hope we  
3614 can get a bill, because the utility industry needs this.  
3615 Quite frankly, the country needs it, but it takes two to  
3616 tango, and I am inviting the gentleman to tango with us. If  
3617 he doesn't want to tango, then so be it.

3618 And with that I yield back the balance of my time.

3619 The {Chairman.} The gentleman yields back his time.

3620 Are there other members wishing to speak in opposition or  
3621 support of the amendment in the nature of a substitute?

3622 Mr. {Whitfield.} Yes. Mr. Chairman.

3623 The {Chairman.} The gentleman from Kentucky.

3624 Mr. {Whitfield.} I would like to yield to the gentleman  
3625 from Illinois.

3626 Mr. {Shimkus.} And just to the Chairman Emeritus, on  
3627 page four, B and C, was language that we put in specifically  
3628 on your staff's request on impoundment facilities.

3629 Mr. {Dingell.} This fine as far as it goes.

3630 Negotiation requires that the gentleman from Illinois be  
3631 satisfied, and my friends and I over here be satisfied, and  
3632 until all the participants in the discussion are satisfied,  
3633 we don't have a deal. Until we got a deal, we don't got a  
3634 bill.

3635 Mr. {Shimkus.} Reclaiming my time, and just to keep  
3636 this whole thing in perspective, why are we here? We are  
3637 here to make sure that obviously coal combustion residuals  
3638 doesn't get claimed by the EPA under Subtitle C so that we  
3639 continue the recycling industry, and we can continue to  
3640 store.

3641 Now, we are talking about huge job impacts. Not just--  
3642 this is a whole, part of this whole job debate. According to  
3643 the Veritas study that estimated under Subtitle D you have  
3644 got 39,000 to 64,000 jobs potentially lost if we allow this  
3645 to go, or other numbers are 183,000 to 316,000 jobs.

3646 Now, that is why we are doing this. That is why we have  
3647 done in good faith to work across the aisle. We have made  
3648 many, many changes, and I will take the Chairman Emeritus's  
3649 word we will just, you know, we will just continue to move,  
3650 cast our votes, be accountable to our constituents, whoever  
3651 they may be, based upon how we cast our vote on this  
3652 particular legislation, and with that I yield back my time.

3653 Mr. {Green.} Will the gentleman yield?

3654 The {Chairman.} Yielded back--ask unanimous consent the  
3655 gentleman from Texas is yield 5 minutes.

3656 Mr. {Green.} Thank you, Mr. Chairman.

3657 I just, you know, I think we need a little more time. I  
3658 guess my concern about the manager's amendment is that we had

3659 reached a point yesterday evening, and a lot of that is not  
3660 reflected in here, and I don't have a list of any other  
3661 amendments that are available. I was hoping to have a  
3662 manager amendment.

3663         From what I understand our last issue that we were  
3664 literally working on up and all through this morning was the  
3665 impoundment issue and how we could deal with that with  
3666 adequate monitoring for groundwater, and the goal of this  
3667 bill is to actually deal with what happened in Tennessee and  
3668 yet continue to be able to--and I will use Wisconsin example,  
3669 to be able to use how much coal ash they use for recycling.  
3670 They are 96, 97 percent, and their success, we don't want to  
3671 eliminate that. But we also want to make sure that there is  
3672 nothing happens like what happened in Tennessee.

3673         And so I think, I thought we had gotten over the last 3  
3674 months since we had our legislative hearing, to a point  
3675 where--and that is why my concern is the manager amendment  
3676 not reflected in the latest agreement or the last things we  
3677 had last evening, and it would be much better if we had some  
3678 time to put it altogether and come back to the committee with  
3679 a manager's amendment.

3680         But, again, I am following the dean of the house. You  
3681 know, I can vote no, but I really wanted to be a problem  
3682 solver, and I think that is what we were working on.

3683 Mr. {Doyle.} Will the gentleman yield?

3684 Mr. {Green.} I would be glad to yield to my colleague.

3685 Mr. {Doyle.} I just want to be clear to my colleagues  
3686 from West Virginia, from Illinois, nobody--we are not  
3687 suggesting regulating this under Subsection C. We understand  
3688 beneficial reuse. We don't have an argument here. We are  
3689 trying to just get down to these couple, I mean, the  
3690 Tennessee thing was a wet impoundment. This is a real  
3691 problem. We have them up in our neck of the woods, too, and  
3692 we are just trying to work out some final details in the  
3693 language that I think would allow this to move forward as a  
3694 bipartisan bill and give you a chance to actually pass the  
3695 bill.

3696 So I just--it is a little bit frustrating that there  
3697 seems to be a clock running here, and we have just got to do  
3698 this right now when I think there is an opportunity to work  
3699 it out. So--

3700 The {Chairman.} Will the gentleman yield? I just  
3701 announce that--

3702 Mr. {Doyle.} I would be glad to yield to the chair of  
3703 the committee.

3704 The {Chairman.} --votes have been called. We have  
3705 about 15 votes on the House Floor, so I think we will adjourn  
3706 until 3:00, and we will see if we can't negotiate a last-

3707 ditch compromise when we come back. We will come back at  
3708 3:00. Come back at 3:00.

3709 [Recess.]

3710 The {Chairman.} Okay. It is our understanding that we  
3711 are expecting a long series of votes again at 5:00, and it is  
3712 not likely that we will be done with this bill by 5:00. We  
3713 are going to take up amendments now until those votes occur,  
3714 and when we adjourn today, I would like to notice folks that  
3715 we will reconvene the full committee to finish the bill and  
3716 some language that we are working on on a bipartisan  
3717 amendment at 2:30 tomorrow here. As I know that we have a  
3718 number of subcommittees that meet in the morning, so we will  
3719 come back at 2:30 when we conclude action, when we finish  
3720 with the amendments that we are still going to take up.

3721 So at this point who would like to offer an amendment?

3722 The gentlelady from Wisconsin is recognized.

3723 Ms. {Baldwin.} Thank you. I have an amendment at the  
3724 desk, and let me pull up Baldwin 03.

3725 The {Chairman.} And the clerk will report the title of  
3726 the amendment.

3727 The {Clerk.} Amendment to the substitute to H.R. 2273  
3728 offered by Ms. Baldwin of Wisconsin.

3729 [The amendment follows:]

3730 \*\*\*\*\* INSERT 10 \*\*\*\*\*

|  
3731           The {Chairman.} The amendment will be considered as  
3732 read. The amendment distributed and the gentlelady is  
3733 recognized for 5 minutes in support of her amendment.

3734           Ms. {Baldwin.} Thank you, Mr. Chairman. I don't expect  
3735 it to take the full time, but my amendment would simply ask  
3736 that coal combustion residuals be regulated with at least the  
3737 same oversight that we use for municipal solid waste  
3738 landfills.

3739           Yesterday during opening statements our Chairman  
3740 Emeritus Mr. Barton stated that coal ash should not be  
3741 treated differently from municipal solid waste, and I agree  
3742 with that statement to the degree that this amendment is  
3743 intended to achieve that goal.

3744           The Wisconsin Department of Natural Resources in their  
3745 response to EPA's proposed rulemaking for coal combustion  
3746 residuals said essentially the same. In their comments they  
3747 stated that the Department supports regulation of CCR  
3748 materials under Subtitle D of the Resource Conservation and  
3749 Recovery Act as an industrial solid waste subject to  
3750 oversight by proper State environmental agency under a  
3751 program authorized by the U.S. Environmental Protection  
3752 Agency similar to the approach used for municipal solid waste  
3753 programs that are authorized under 40 CFR Part 258 rules.

3754           The underlying amendment in the nature of a substitute  
3755 picks and chooses certain criteria for municipal solid waste  
3756 that would apply to coal combustion residuals. I believe  
3757 that criteria such as runoff control systems, recordkeeping  
3758 requirements, and financial assurance should be part of any  
3759 federal minimum requirements.

3760           That being said, my amendment allows for State  
3761 flexibility in the application of the standard, just as the  
3762 underlying amendment in the nature of a substitute does.

3763           Lastly, the amendment makes a small technical correction  
3764 so that Sections 2 and 3 use the same language when referring  
3765 back to one another.

3766           I would urge that--I would also note, Mr. Chairman, that  
3767 I am aware of an amendment being offered perhaps by a member  
3768 of the majority that brings into this regulatory structure  
3769 Subpart G of 258. This is intended to do that as well as  
3770 others so that we have a comprehensive approach as we include  
3771 CCR in this regulatory section.

3772           I would ask for support of the committee on this  
3773 amendment and would yield back the balance of my time.

3774           Mr. {Waxman.} Will the gentlelady yield to me?

3775           Ms. {Baldwin.} I would be happy to yield to the  
3776 gentleman from California, Mr. Waxman.

3777           Mr. {Waxman.} I want to join in supporting your

3778 amendment. Stakeholders have offered the criteria for  
3779 disposal of municipal solid waste as a model for the coal  
3780 combustion residuals. Those criteria have important  
3781 standards for operation including recordkeeping, runoff  
3782 control, and control of disease vectors like mosquitoes that  
3783 find wet impoundments very attractive.

3784         Yet inexplicably the bill excludes those criteria.  
3785 Rather than applying all of the municipal solid waste  
3786 criteria as stakeholders have suggested, this legislation  
3787 would apply only a limited subset of those criteria. Your  
3788 amendment, the Baldwin amendment, addresses that deficiency  
3789 by ensuring that all of the criteria in place for municipal  
3790 solid waste will be applied to coal combustion residuals.  
3791 That will still allow individual States to determine that  
3792 specific criteria are not needed for coal combustion residual  
3793 disposal in the State, providing any flexibility that might  
3794 be needed.

3795         This amendment will help ensure that human health and  
3796 the environment are adequately protected, and I urge support  
3797 for the Baldwin amendment.

3798         Yield back my time to her.

3799         The {Chairman.} Other members?

3800         The chair would recognize Mr. Shimkus for 5 minutes.

3801         Mr. {Shimkus.} I am speaking against this amendment,

3802 Mr. Chairman.

3803 Thank you, Mr. Chairman. This amendment would require  
3804 EPA to issue new regulations to Part 258 concerning the  
3805 national primary drinking water standards in effect as of  
3806 such date of enactment and chemical constituents of material  
3807 subject to regulation under the section.

3808 Practically speaking this amendment directs the EPA to  
3809 revise Appendix 1 constituents to reflect revised drinking  
3810 water standards for constituents on list and add constituents  
3811 relevant to CCRs. Boron and radionuclide are not even listed  
3812 as hazardous constituents or groundwater monitoring  
3813 constituents under Subtitle C for the hazardous waste. So  
3814 they would not be required to be monitored there either  
3815 because they have never been determined to be hazardous  
3816 constituents.

3817 Appendix 8 of Appendix--and Appendix 9 list--are the  
3818 authoritative lists for hazardous constituents in Subtitle C  
3819 just as Appendix 1 and Appendix 2 are in Subtitle D, and  
3820 further, CCRs are certainly not the first or most  
3821 concentrated waste to ever have boron or radionuclides  
3822 present. If they were a significant concern, they would  
3823 already be on the monitoring list. Most items in coal  
3824 combustion residuals are picked up by them.

3825 I recognize EPA has prepared a NODA, but this is not

3826 definitive information. It seeks clarification on items  
3827 brought to the attention of the EPA. This has not gone out  
3828 for public comment or review.

3829 Most groundwater testing for municipal solid waste picks  
3830 up--hold for a second, Mr. Chairman.

3831 Ms. {Baldwin.} Would the gentleman yield while you are--  
3832 -

3833 Mr. {Shimkus.} Yeah. I yield.

3834 Ms. {Baldwin.} Just quickly to respond to your comments  
3835 on boron and other elements not considered toxic, the testing  
3836 for the presence of boron or other elements linked to coal  
3837 combustion residuals is not a comment on the toxicity of  
3838 those elements but rather a signal that there is a leakage  
3839 from the CCR landfill. The presence of boron or sulfate or  
3840 arsenic and others is simply an indication of groundwater  
3841 impacts, and they should be monitored.

3842 I would yield back to the gentleman.

3843 Mr. {Shimkus.} Yeah. The lady--I am glad she yielded  
3844 back. I think she and I might be both talking about a  
3845 different amendment than the one that was circulated, so can  
3846 we get confirmation from the desk. So she was confused, and  
3847 I was confused. We better make sure--

3848 The {Clerk.} We sent around 003. Right? Yeah.

3849 Mr. {Shimkus.} Point 03 is what is on the desk.

3850           The {Clerk.} Yeah. I mean, we called up 003 and  
3851 distributed--

3852           Mr. {Shimkus.} It is my time. It looks like we have  
3853 two versions of .003, and we are trying to get that  
3854 clarified.

3855           Ms. {Baldwin.} Mr. Chairman, could I explain? I don't  
3856 know. Let me just explain quickly why there are two  
3857 versions, and I can direct you to the--the only difference  
3858 between the two versions is striking the words, as  
3859 appropriate. I understood that there was going to be a  
3860 majority amendment striking the phrase, as appropriate, from  
3861 all the sections in the underlying bill, and I didn't know  
3862 whether my amendment would be offered before or after that  
3863 amendment, and so I wanted it to conform. And so you  
3864 actually have it in two different forms, one assuming that  
3865 amendment passes and the other that it does not.

3866           I hope that explains with clarity why you have two  
3867 different versions.

3868           Mr. {Shimkus.} And just reclaiming my final 24 seconds,  
3869 I would just say just because a chemical or an element is  
3870 present in a wastewater material does not mean it should be  
3871 required to be monitored, so I still urge rejection of the  
3872 amendment.

3873           Yield back my time.

3874           The {Chairman.} Are there other members wishing to  
3875 speak on the amendment?

3876           Seeing none, the vote occurs on the amendment offered by  
3877 the gentlewoman from Wisconsin. All those in favor, say aye.  
3878 All those opposed, say no. In the opinion of the chair the  
3879 no's have it. The no's have it, and the amendment is not  
3880 agreed to.

3881           Are there other members wishing to offer an amendment?

3882           Mr. Markey.

3883           Mr. {Markey.} I have an amendment at the desk.

3884           The {Chairman.} The clerk will report the title of the  
3885 amendment.

3886           The {Clerk.} An amendment offered by Mr. Markey of  
3887 Massachusetts.

3888           [The amendment follows:]

3889           \*\*\*\*\* INSERT 11 \*\*\*\*\*

|  
3890           The {Chairman.} The amendment will be considered as  
3891 read. Staff will distribute the amendment, and the gentleman  
3892 from Massachusetts is recognized for 5 minutes in support of  
3893 his amendment.

3894           {Voice.} Is this Markey number three?

3895           Mr. {Markey.} Markey number one.

3896           {Voice.} Markey number one. You mean you have more  
3897 than one?

3898           Mr. {Markey.} I do not. I do not. I do not.

3899           The {Chairman.} This is Markey number one? Right?

3900 This says Markey number one that they are distributing.

3901           Okay. This is the one?

3902           Mr. {Markey.} Yes, it is.

3903           The {Chairman.} The gentleman is recognized for 5  
3904 minutes.

3905           Mr. {Markey.} Thank you, Mr. Chairman, very much.

3906           This bill says that no matter what the EPA learns about  
3907 the sludge that comes out of coal-fired power plants, no  
3908 matter how high the concentrations of poisonous arsenic,  
3909 mercury, or chromium, no matter what EPA learns about how  
3910 these materials find their way into our drinking water, that  
3911 the EPA is forbidden from classifying or regulating it as a  
3912 hazardous waste. It is a green-light pass for utility

3913 companies to dispose of their waste without regard to public  
3914 health or the environment.

3915         Now, it turns out that the Republican majority is not  
3916 alone in this conclusion. Mercury, a major component of coal  
3917 ash, was the common cure-all for many 19th century ailments.  
3918 If you had a toothache, you could just rub a little mercury  
3919 on it. That is 19th century medicine.

3920         Now, I have a chart, an image that I would like to have  
3921 be put on the screen as well, and that is an advertisement  
3922 back about a century ago that deals with--and here is what it  
3923 says. ``Ladies, if you desire a transparent, clear, fresh  
3924 complexion, free from blotch, blemish, roughness, coarseness,  
3925 redness, freckles, or pimples, use Dr. Campbell's safe  
3926 arsenic complexion wafers and Fould's medicated arsenic  
3927 complexion soap.''

3928         So these medications at the time were basically held out  
3929 to be something that would help people. It turns out you  
3930 never have to worry about aging if you rub arsenic on your  
3931 face every day. Of course, the ads did not mention that  
3932 using this product could also lead to premature death so that  
3933 one could actually avoid the aging process altogether.

3934         Now, last year in a hearing in this committee a  
3935 Republican witness, Dr. Donald McGraw, even said that he  
3936 would be happy to sprinkle arsenic-laced coal ash on his

3937 cereal. So perhaps next week we could in the subcommittee  
3938 make a new space on the food pyramid for coal ash, being  
3939 guaranteed that it is absolutely not harmful to people.  
3940 Maybe we could put that--maybe we could use the containment  
3941 pond next to the pyramid.

3942 The Republican bill takes us back in time to the era of  
3943 magic tonics and medical quackery passed off as legitimate  
3944 medicine. So the problem with continuing to push the 19th  
3945 century technology like traditional coal is that,  
3946 unfortunately, there is a commitment that has to be made to  
3947 19th century attitudes about health and the environment.

3948 So instead of allowing the coal industry and Republicans  
3949 to transport our country's environmental and public health  
3950 standards back to that era long ago, we should hold these  
3951 industries to greater expectations. The bill denies the  
3952 public a role in permitting decisions that intimately affect  
3953 local communities in the 42 States in which coal ash disposal  
3954 occurs. It denies communities a voice in decisions about  
3955 waste sites that may be hundreds of acres in size, receive  
3956 millions of tons of waste, and as a result absent public  
3957 participation we could easily see a disproportionate number  
3958 of waste facilities being cited in low-income communities or  
3959 communities of color.

3960 So my amendment is simple and straightforward. It

3961 ensures that there are opportunities for a public  
3962 participation in the permitting process by, one, allowing for  
3963 a public hearing before a State adopts a plan for handling  
3964 coal combustion wastes, two, allowing for public comment on  
3965 the standards that are applied to the establishment and  
3966 expansion of waste impoundments and landfills, and three,  
3967 allowing any affected person to seek judicial review of EPA  
3968 decisions regarding the State plans.

3969         And the amendment also ensures that when EPA notes  
3970 deficiencies in a State program that the notice it issues is  
3971 made available to the public and not hidden behind a cloak of  
3972 secrecy, and that results from groundwater monitoring would  
3973 also be made public.

3974         Public participation is the essential cornerstone here  
3975 to ensure that the public understands what is going on, the  
3976 Clean Water Act, the Safe Drinking Water Act, the Clean Air  
3977 Act, the Resource Conservation and Recovery Act, the  
3978 communities have a right to know. That is what my amendment  
3979 propounds to accomplish.

3980         I urge an aye vote, and I yield back the balance of my  
3981 time.

3982         The {Chairman.} The gentleman yields back.

3983         Other members--Mr. Shimkus.

3984         Mr. {Shimkus.} If I could speak against the amendment,

3985 Mr. Chairman.

3986 Of course, since I have been the one who has been  
3987 labeled as a 19th century guy on the committee, I think I can  
3988 speak to this debate.

3989 First of all, I want to remind people that sludge is  
3990 not--coal combustion waste is not always in a sludge  
3991 material, and folks just need to understand this. The  
3992 gentleman's amendment would require notice and comment,  
3993 procedures in five places in the bill. These requirements  
3994 would be on both federal and State decisions.

3995 In addition, the amendment requires groundwater  
3996 monitoring data be made public. Some of the ideas in this  
3997 amendment are quite appealing. In fact, we are addressing  
3998 some of those in negotiations that were taking place right  
3999 now.

4000 But the fact is the matter is that we have to vote on  
4001 the whole of the amendment, not just parts of it. There are  
4002 three parts to this amendment that trouble me because they  
4003 completely handcuff the States and make them subservient to  
4004 the Federal Government. This amendment not only places a  
4005 test on whether a certain application, a State CCR program is  
4006 appropriate, it makes the EPA decision on a State CCR into a  
4007 federal regulatory action of its own. This could trigger use  
4008 of the precious federal and State resources.

4009           This amendment makes a notification of State deficiency  
4010 available to the public before the State has seen it or had a  
4011 chance to respond or remedy it. This requirement opens the  
4012 State or regulated entities open to citizen suit actions  
4013 under 7002. This seems unfair if they have not had a chance  
4014 to remedy.

4015           On top of that this amendment requires new regulations  
4016 that might infringe on the existing and effective State  
4017 programs.

4018           Finally, the amendment opens all actions by EPA and  
4019 since notice and comment would be by federal requirements, it  
4020 is arguable that States would now be open to judicial review  
4021 of their actions under Section 7006.

4022           And in my remaining time what we haven't talked about is  
4023 who is in support of this bill, and for the record, ECOS, the  
4024 Environmental Council of the States, which are all the State  
4025 environmental regulators. So in the letter we received today  
4026 Richard Opper, who is the director of Montana Department of  
4027 Environment Quality, he is the president. Thomas Burack,  
4028 Commissioner, New Hampshire Department of Environment  
4029 Service, he is the vice-president, Theresa Marks from  
4030 Arkansas, Michael Lender from Nebraska, they are on the  
4031 governing board. We have got a letter here from the Kansas  
4032 Department of Health and the Environment.

4033           What my colleague, Mr. Markey, is saying is the States  
4034 don't really care about the environment of the States in  
4035 which they regulate. What he basically says is we can't  
4036 trust them. We have to have the national government  
4037 intervene, and that is the beauty of this piece of  
4038 legislation is that using coal combustion residuals under the  
4039 solid waste debate, which the EPA, I don't think my colleague  
4040 was there when we had this debate this earlier, even in the  
4041 federal registry on June 21, 2010, the EPA said under--  
4042 regulating this under municipal solid waste works, and I  
4043 could quote the whole thing, but I did it earlier, and I know  
4044 you are probably on the Floor working on a big amendment.

4045           But so the issue is the States are concerned about their  
4046 citizens. They regulate municipal solid waste. They have to  
4047 comply with their own legislators and I would argue who are  
4048 closest to the people than we are. I mean, I represent parts  
4049 of 30 counties. A State rep could represent one county. A  
4050 State senator might represent ten counties in downstate  
4051 Illinois.

4052           So if you don't think that the local folks are going to  
4053 be going to the State legislators, concern about the citing  
4054 based upon the rules and regs of States, then I am sorry. I  
4055 am going to trust the environmental council of the States  
4056 which are the State regulators, who are fully in support of

4057 this bill. We also have the Edison Electric Institute and  
4058 USWAG. We have the Association of Solid Waste Management  
4059 Officials. We have done a great job trying to develop  
4060 legislation that would do the job in making sure that coal  
4061 combustion residuals meets all the environmental standards to  
4062 protect our citizens. The State regulators agree this would  
4063 be turning more over to the Federal Government, which we  
4064 think would be harmful, and in fact, the bill would not pass  
4065 with it as amended.

4066 So with that I yield back my time.

4067 The {Chairman.} The gentlelady from Florida is  
4068 recognized.

4069 Ms. {Castor.} Thank you very much, Mr. Chairman, and I  
4070 want to thank Mr. Markey for offering this amendment.

4071 I support the Markey amendment. It would increase  
4072 transparency and accountability in the regulation of coal  
4073 combustion residuals. It would provide important  
4074 opportunities for notice and comment at the State and federal  
4075 levels in the setup and implementation of these permit  
4076 programs.

4077 There is significant public interest in this issue as we  
4078 saw when more than 450,000 comments were filed on EPA's  
4079 proposed rule, and why do so many people want to comment on  
4080 this issue? Because it has an impact on the public health,

4081 people's livelihoods, their home values for so many living  
4082 around these dumpsites and for many businesses.

4083         It is also important to provide the experts in the  
4084 field, so many in the recycling industry and the utility  
4085 industry who have technical expertise, an opportunity to  
4086 comment as well. So this amendment will allow that expertise  
4087 and that personal experience to inform the process, resulting  
4088 in better public policy with more public support.

4089         So if you believe that folks and our neighbors and  
4090 businesses should participate in their government, then this  
4091 is an amendment for you. It is straightforward, and I urge  
4092 my colleagues to vote yes on the amendment.

4093         The {Chairman.} The gentlelady yield back?

4094         Ms. {Castor.} I yield back.

4095         The {Chairman.} Are there other members wishing to  
4096 speak on the amendment?

4097         Seeing none, the vote occurs on the Markey amendment.  
4098 All those in favor will say aye. All those opposed say no.  
4099 No's appear to have it. The no's have it. The amendment is  
4100 not agreed to.

4101         Mr. {Markey.} Could we ask--

4102         The {Chairman.} You can. The clerk will call the roll.

4103         The {Clerk.} Mr. Barton?

4104         [No response.]

4105           The {Clerk.} Mr. Stearns?  
4106           [No response.]  
4107           The {Clerk.} Mr. Whitfield?  
4108           Mr. {Whitfield.} No.  
4109           The {Clerk.} Mr. Whitfield, nay.  
4110           Mr. Shimkus?  
4111           Mr. {Shimkus.} No.  
4112           The {Clerk.} Mr. Shimkus, nay.  
4113           Mr. Pitts?  
4114           Mr. {Pitts.} No.  
4115           The {Clerk.} Mr. Pitts, nay.  
4116           Mrs. Bono Mack?  
4117           [No response.]  
4118           The {Clerk.} Mr. Walden?  
4119           Mr. {Walden.} No.  
4120           The {Clerk.} Mr. Walden, nay.  
4121           Mr. Terry?  
4122           [No response.]  
4123           The {Clerk.} Mr. Rogers?  
4124           [No response.]  
4125           The {Clerk.} Mrs. Myrick?  
4126           Mrs. {Myrick.} No.  
4127           The {Clerk.} Mrs. Myrick, nay.  
4128           Mr. Sullivan?

- 4129 [No response.]
- 4130 The {Clerk.} Mr. Murphy?
- 4131 Mr. {Murphy.} No.
- 4132 The {Clerk.} Mr. Murphy, nay.
- 4133 Mr. Burgess?
- 4134 [No response.]
- 4135 The {Clerk.} Mrs. Blackburn?
- 4136 [No response.]
- 4137 The {Clerk.} Mr. Bilbray?
- 4138 [No response.]
- 4139 The {Clerk.} Mr. Bass?
- 4140 [No response.]
- 4141 The {Clerk.} Mr. Gingrey?
- 4142 Dr. {Gingrey.} No.
- 4143 The {Clerk.} Mr. Gingrey, nay.
- 4144 Mr. Scalise?
- 4145 Mr. {Scalise.} Nay.
- 4146 The {Clerk.} Mr. Scalise, nay.
- 4147 Mr. Latta?
- 4148 Mr. {Latta.} No.
- 4149 The {Clerk.} Mr. Latta, nay.
- 4150 Mrs. McMorris Rodgers?
- 4151 Mrs. {McMorris Rodgers.} No.
- 4152 The {Clerk.} Mrs. McMorris Rodgers, nay.

4153 Mr. Harper?

4154 Mr. {Harper.} Nay.

4155 The {Clerk.} Mr. Harper, nay.

4156 Mr. Lance?

4157 Mr. {Lance.} No.

4158 The {Clerk.} Mr. Lance, no.

4159 Mr. Cassidy?

4160 [No response.]

4161 The {Clerk.} Mr. Guthrie?

4162 Mr. {Guthrie.} Nay.

4163 The {Clerk.} Mr. Guthrie, nay.

4164 Mr. Olson?

4165 Mr. {Olson.} No.

4166 The {Clerk.} Mr. Olson, nay.

4167 Mr. McKinley?

4168 Mr. {McKinley.} No.

4169 The {Clerk.} Mr. McKinley, nay.

4170 Mr. Gardner?

4171 Mr. {Gardner.} No.

4172 The {Clerk.} Mr. Gardner, nay.

4173 Mr. Pompeo?

4174 [No response.]

4175 The {Clerk.} Mr. Kinzinger?

4176 [No response.]

4177 The {Clerk.} Mr. Griffith?  
4178 Mr. {Griffith.} No.  
4179 The {Clerk.} Mr. Griffith, nay.  
4180 Mr. Waxman?  
4181 [No response.]  
4182 The {Clerk.} Mr. Dingell?  
4183 [No response.]  
4184 The {Clerk.} Mr. Markey?  
4185 The {Chairman.} Mr. Waxman voted aye.  
4186 The {Clerk.} Oh.  
4187 Mr. {Waxman.} Aye.  
4188 The {Clerk.} Mr. Waxman, aye. Apologies.  
4189 Mr. Towns?  
4190 Mr. {Towns.} Yes.  
4191 The {Clerk.} Mr. Towns, aye.  
4192 Mr. Pallone?  
4193 [No response.]  
4194 The {Clerk.} Mr. Rush?  
4195 Mr. {Rush.} Aye.  
4196 The {Clerk.} Mr. Rush, aye.  
4197 Ms. Eshoo?  
4198 Ms. {Eshoo.} Aye.  
4199 The {Clerk.} Ms. Eshoo, aye.  
4200 Mr. Engel?

4201 [No response.]

4202 The {Clerk.} Mr. Green?

4203 [No response.]

4204 The {Clerk.} Ms. DeGette?

4205 [No response.]

4206 The {Clerk.} Mrs. Capps?

4207 Mrs. {Capps.} Aye.

4208 The {Clerk.} Mrs. Capps, aye.

4209 Mr. Doyle?

4210 [No response.]

4211 The {Clerk.} Ms. Schakowsky?

4212 [No response.]

4213 The {Clerk.} Mr. Gonzalez?

4214 [No response.]

4215 The {Clerk.} Mr. Inslee?

4216 [No response.]

4217 The {Clerk.} Ms. Baldwin?

4218 Ms. {Baldwin.} Aye.

4219 The {Clerk.} Ms. Baldwin, aye.

4220 Mr. Ross?

4221 Mr. {Ross.} No.

4222 The {Clerk.} Mr. Ross, nay.

4223 Mr. Matheson?

4224 [No response.]

4225 The {Clerk.} Mr. Butterfield?  
4226 Mr. {Butterfield.} Aye.  
4227 The {Clerk.} Mr. Butterfield, aye.  
4228 Mr. Barrow?  
4229 Mr. {Barrow.} Votes aye.  
4230 The {Clerk.} Mr. Barrow, aye.  
4231 Ms. Matsui?  
4232 Ms. {Matsui.} Aye.  
4233 The {Clerk.} Ms. Matsui, aye.  
4234 Mrs. Christensen?  
4235 Dr. {Christensen.} Aye.  
4236 The {Clerk.} Mrs. Christensen, aye.  
4237 Ms. Castor?  
4238 Ms. {Castor.} Aye.  
4239 The {Clerk.} Ms. Castor, aye.  
4240 Mr. Upton?  
4241 The {Chairman.} Votes no.  
4242 The {Clerk.} Mr. Upton, nay.  
4243 The {Chairman.} Other members wishing to cast a vote?  
4244 Mr. Pallone?  
4245 Mr. {Pallone.} Aye.  
4246 The {Clerk.} Mr. Pallone, aye.  
4247 The {Chairman.} Mr. Engel?  
4248 Mr. {Engel.} Aye.

4249 The {Clerk.} Mr. Engel, aye.

4250 The {Chairman.} Mr. Inslee?

4251 Mr. {Inslee.} Aye.

4252 The {Clerk.} Mr. Inslee, aye.

4253 The {Chairman.} Mr. Matheson?

4254 Mr. {Matheson.} No.

4255 The {Clerk.} Mr. Matheson, nay.

4256 The {Chairman.} Mr. Terry?

4257 Mr. {Terry.} Nay.

4258 The {Clerk.} Mr. Terry, nay.

4259 The {Chairman.} Dr. Burgess?

4260 Dr. {Burgess.} No.

4261 The {Clerk.} Mr. Burgess, nay.

4262 The {Chairman.} Ms. Bono Mack?

4263 Mrs. {Bono Mack.} No.

4264 The {Clerk.} Mrs. Bono Mack, nay.

4265 The {Chairman.} Are there other members wishing to cast  
4266 a vote?

4267 Seeing none--Mr. Bass?

4268 Mr. {Bass.} No.

4269 The {Clerk.} Mr. Bass, nay.

4270 The {Chairman.} Mr. Bilbray?

4271 Mr. {Bilbray.} No.

4272 The {Clerk.} Mr. Bilbray, nay.

4273           The {Chairman.} Other members? Seeing none, the clerk  
4274 will report the tally.

4275           Mr. Kinzinger?

4276           Mr. {Kinzinger.} No.

4277           The {Chairman.} Mr. Kinzinger votes no.

4278           The {Clerk.} Mr. Kinzinger, nay.

4279           The {Chairman.} Ms. Schakowsky?

4280           Ms. {Schakowsky.} Yes.

4281           The {Clerk.} Ms. Schakowsky, aye.

4282           Mr. Chairman.

4283           The {Chairman.} Yes.

4284           The {Clerk.} On that 16 ayes, 26 nays.

4285           The {Chairman.} Sixteen ayes, 26 nays. The amendment  
4286 is not agreed to.

4287           Are there other amendments to the bill?

4288           The gentlelady from Florida.

4289           Ms. {Castor.} Thank you, Mr. Chairman. I have an  
4290 amendment at the desk, Castor 01.

4291           The {Chairman.} The clerk will read the title of the  
4292 amendment.

4293           The {Clerk.} Substitute for the amendment in the nature  
4294 of a substitute to H.R. 2273 offered by Ms. Castor of  
4295 Florida.

4296           [The amendment follows:]

4297 \*\*\*\*\* INSERT 12 \*\*\*\*\*

|  
4298           The {Chairman.} And the amendment will be considered as  
4299 read. Staff will circulate the amendment, and the gentlelady  
4300 is recognized for 5 minutes.

4301           Ms. {Castor.} Thank you, Mr. Chairman.

4302           Colleagues, my substitute amendment offers a different  
4303 approach by encouraging the recycling and beneficial use of  
4304 coal fly ash. Specifically my amendment states that the  
4305 Administrator of the EPA may not classify coal fly ash that  
4306 is being beneficially reused as hazardous waste under  
4307 Subtitle C of the Solid Waste Disposal Act.

4308           And at this time, Mr. Chairman, I would like to ask  
4309 unanimous consent that we perfect my amendment. It currently  
4310 reads, ``The Administrator of the Environmental Protection  
4311 Agency may not regulate fly ash waste that has the potential  
4312 to be beneficially reused,'' and change it to read, ``may not  
4313 regulate fly ash waste that is beneficially reused.''

4314           The {Chairman.} Without objection the amendment is or  
4315 the unanimous consent is agreed to.

4316           Ms. {Castor.} Thank you, Mr. Chairman.

4317           We all learned serious lessons following the catastrophe  
4318 involving the enormous flood of coal ash in Tennessee in  
4319 2008. The flood destroyed three homes, spilled into rivers,  
4320 and damaged property. That disaster was a wake-up call, I

4321 believe. Now we know that there are 1,300 dumps across the  
4322 United States that contain billions of gallons of fly ash and  
4323 which contain metals in sufficient concentrations that have  
4324 been linked to human cancers, respiratory diseases, nervous  
4325 system disorders, and reproductive problems.

4326         So I believe it is appropriate for the Nation's  
4327 environmental watchdog to act to corral this environmental  
4328 threat. My simple suggestion to EPA as it moves forward is  
4329 to distinguish fly ash that is recycled, meaning the fly ash  
4330 that is put to beneficial use and never enters the disposal  
4331 stream, because it is clear that we can reuse and recycle the  
4332 fly ash in both an environmentally and economically  
4333 beneficial way.

4334         Innovative companies are putting recycled fly ash to a  
4335 number of different uses, including making concrete stronger  
4336 and more durable, producing non-slip surfaces for our  
4337 roadways, and even in the construction of the Panama Canal.  
4338 There are a number of environmental benefits as well to these  
4339 recycling programs. They keep the fly ash out of landfills,  
4340 they reduce construction-side carbon emissions, and improve  
4341 air quality.

4342         So recycling fly ash has significant economic benefits.  
4343 in my district alone 12,000 tons of fly ash are exported for  
4344 recycling each month. So by recycling the coal ash we get

4345 the best of both worlds; a reduction in the health and  
4346 environmental threat posed by disposal of fly ash and the  
4347 economic benefits and jobs that our Nation desperately needs.

4348         So by ensuring that recycled fly ash is not classified  
4349 as a hazardous material under Subtitle C of the Solid Waste  
4350 Disposal Act, we can encourage our industries to do all that  
4351 they can to protect the environment and create jobs.

4352         We need to learn from the lessons of the past spills  
4353 that poured billions of gallons of coal as sludge into  
4354 surrounding communities, destroying houses, wildlife, and  
4355 putting the public health at risk.

4356         Mr. {McKinley.} Would the lady yield?

4357         Ms. {Castor.} This is one way to reduce the risk of an  
4358 environmental and health catastrophe of that magnitude from  
4359 ever occurring again. So my substitute instead would spur  
4360 fly ash recycling but allow a consistent, allow consistent  
4361 national oversight, basic standards, and protection of  
4362 communities where they want to store the coal waste in large,  
4363 dangerous ash ponds like the ones that led to the catastrophe  
4364 in Tennessee in 2008.

4365         I urge my colleagues to adopt my amendment and--

4366         Mr. {McKinley.} Would the lady yield?

4367         Ms. {Castor.} Yes. I yield to the gentleman from West  
4368 Virginia.

4369 Mr. {McKinley.} You made reference, and I do appreciate  
4370 your support of not having it treated as--under Subsection C,  
4371 but you made reference back to the problem they had, serious  
4372 problem they had in Tennessee.

4373 Do you have a copy of a report that says that that  
4374 material was toxic?

4375 Ms. {Castor.} There were--

4376 Mr. {McKinley.} Because there is none. You know that.

4377 Ms. {Castor.} --a number of reports--

4378 Mr. {McKinley.} Just--if you could give me one because  
4379 the EPA--no one has a report. That is part of this urban  
4380 myth that is out here about this issue. What killed the  
4381 marine life below was turbidity and the inability for  
4382 oxygenation in that water below. This is an engineering  
4383 issue that most of you don't deal with.

4384 But it was an easy out for you all to say that this was  
4385 toxic. They studied it. There is not one case of toxicity  
4386 in that fly ash that occurred at Kingston, but it was a very  
4387 unfortunate dam collapse that structural failure, and that  
4388 opened the door for someone, but it had nothing to do with  
4389 the chemical composition, and for you and others to continue  
4390 to say about the health and safety that I have heard all day,  
4391 I am really running out of patience with it.

4392 Ms. {Castor.} Well, thank you very much for the--

4393 The {Chairman.} The gentlelady's time is expired.

4394 Ms. {Castor.} If I could respond quickly. The CEO of  
4395 the TBA admitted that on a number of occasions they took an  
4396 inexpensive path when if there had been appropriate  
4397 standards, basic safety standards that catastrophe never  
4398 would have happened. So I think we want to empower our  
4399 national regulators to have the authority to ensure that our  
4400 public, the public health is protected and our communities  
4401 are protected.

4402 The {Chairman.} The gentlelady's time has expired.

4403 Who seeks time? The gentleman from Illinois.

4404 Mr. {Shimkus.} To speak against the amendment, Mr.  
4405 Chairman.

4406 The {Chairman.} Five minutes.

4407 Mr. {Shimkus.} Thank you, Mr. Chairman.

4408 Again, the Kingston failure was a government utility. I  
4409 just put that on the table.

4410 Mr. {Voice.} Federal Government.

4411 Mr. {Shimkus.} Federal Government utility. Thank you  
4412 very much, and the--a couple concerns. One is that in some  
4413 utilities 60 percent gets recycled, 40 percent does not.  
4414 This would then--how does it then classify that--the 40  
4415 percent that is not that goes into municipal solid waste?  
4416 That is this whole debate.

4417           Now, my colleague from Wisconsin, Tammy Baldwin, has  
4418 been working very diligently on this bill because she has got  
4419 a company that actually is in essence mining what has been  
4420 stored underground and using it now in recyclable aspects,  
4421 and that is why she is incentivizing this.

4422           This amendment omits other wastes that are tied to the  
4423 double language in Section 3001. It arbitrarily singles out  
4424 fly ash for protection. This amendment provides beneficial  
4425 reusers even less protection from federal hazardous waste  
4426 regulation than EPA's own Subtitle C and flies in the face of  
4427 the determinations by Carol Browner when she led the EPA.

4428           The whole reason we are here with this bill is because  
4429 simply prohibiting action under C is not enough, and that is  
4430 part of our debate and our language that we have is we still  
4431 move forward on structural integrity of sludge ponds and  
4432 groundwater monitoring. There is more that we are trying to  
4433 now do in conjunction with our colleagues on the other side  
4434 to--I don't know if we will be successful, but I think  
4435 everyone will agree we are trying to get to that point.

4436           A new C designation removes certain types of waste  
4437 streams that beneficial users could access to promote more  
4438 jobs in any one State and across the country. This kind of  
4439 uncertainty would increase consumer costs and won't power  
4440 people's air conditioning in the summer heat or heat in the

4441 winter.

4442           And finally, the economic analysis of Subtitle C and D  
4443 proposal that EPA has proposed could cost at least \$22  
4444 billion to the economy, and between at least 39,000 jobs, and  
4445 that is in 39 to 64 under Subtitle D and 183 to 316 if we  
4446 would move to Subtitle C. And that is the whole job debate  
4447 that we have been dealing with here before.

4448           I respect the amendment. I think we have moved pretty  
4449 far down the road to them just upset the entire apple cart as  
4450 we got a lot of stakeholders now moving close to a bipartisan  
4451 agreement. Again, I am not saying we are there, but this  
4452 definitely would stop the whole process.

4453           And with that, Mr. Chairman, I yield back my time.

4454           The {Chairman.} The gentleman yields back.

4455           The chair would recognize the gentleman from California,  
4456 Mr. Waxman.

4457           Mr. {Waxman.} I hear a lot of comments, but as I read  
4458 the amendment it says, ``The Administrator of the EPA may not  
4459 regulate fly ash waste that is beneficially reused as  
4460 determined by the Administrator as hazardous waste under  
4461 Subtitle C of the Solid Waste Disposal Act.'' I don't know  
4462 why anybody would object to that.

4463           I have heard discussion where the coal ash is toxic.  
4464 It is filled with arsenic and radionuclides and hexavalent

4465 chromium. I don't know why anybody is disputing whether it  
4466 is toxic or not. It is toxic, but that has nothing to do  
4467 with this amendment.

4468 I would like to ask the gentlelady from Florida about  
4469 her amendment. It seems to me the argument I hear over and  
4470 over again is we want this waste, if it can be beneficially  
4471 reused, to be reused, not just to be disposed of. What was  
4472 she thinking about in this amendment? Is there a concern  
4473 that it would be regulated even though it can be reused?

4474 Ms. {Castor.} That is the overriding concern that there  
4475 are a lot of the residuals before they ever reach the  
4476 disposal stream are reused. So I--this is a simple message  
4477 to the EPA as they go forward on their proposed rulemaking to  
4478 encourage the recycling of fly ash, coal fly ash that has  
4479 significant environmental benefits and very significant  
4480 economic benefits.

4481 Mr. {Shimkus.} Would the ranking member yield?

4482 Mr. {Waxman.} Yes. Certainly.

4483 Mr. {Shimkus.} I think the major problem with it is  
4484 strike all after the enacting clause and insert the  
4485 following. So what she is doing is this is the bill. Now--

4486 Mr. {Waxman.} So in other words you think this is a  
4487 substitute because it strikes all after the--

4488 Mr. {Shimkus.} Well, it is.

4489 Mr. {Waxman.} This amendment, the Castor amendment is--

4490 Mr. {Shimkus.} Well, again, I am not a legislative  
4491 guru, but I am thinking when it says strike all after the  
4492 enacting clause and insert the following, and it says  
4493 substitute for the amendment in the nature of a substitute--

4494 Mr. {Waxman.} I see. So it would be a substitute, and  
4495 the provision is not offensive to you but the idea that it  
4496 would be a substitute is what is troubling.

4497 Mr. {Shimkus.} I think, I mean, in consultations with  
4498 the chairman of the committee that if this wouldn't strike  
4499 the whole bill, this is what we are trying to do. I do have  
4500 concerns about what do we do with fly ash that is being  
4501 stored. I mean, I am talking about what Tammy Baldwin has  
4502 been addressing. She has got a company that actually mines  
4503 the coal ash. So how is that regulated when it is not  
4504 initially viewed, I mean, that is the only question I would  
4505 have. How would--would that fall under other provisions  
4506 since at one time it wasn't beneficial use because they  
4507 didn't have a buyer for the fly ash.

4508 But, you know, my advice from counsel is saying that if  
4509 we could somehow strike all after, you know, strike the  
4510 strike after all after the enacting clause and insert this, I  
4511 don't--it just reaffirms what we have been saying for a long  
4512 time.

4513 Mr. {Waxman.} Reclaiming my time, I hear what the  
4514 gentleman has to say, and I gather you are still having  
4515 conversations with Ms. Baldwin on the subject?

4516 Mr. {Shimkus.} No. I am just using her as an example  
4517 of--that she has got a company that mines coal ash.

4518 Mr. {Waxman.} Oh.

4519 Mr. {Shimkus.} That is all.

4520 Mr. {Waxman.} I thought you were--

4521 Mr. {Shimkus.} No, no.

4522 Mr. {Waxman.} --in discussion with her. Well, I have  
4523 read what the provision is, and it makes a lot of sense to  
4524 me. I don't know what the other consequences--if it is a  
4525 substitute perhaps you can discuss it further with each other  
4526 because it seems to me not inconsistent with what I have  
4527 heard a lot of people say they are trying to accomplish in  
4528 this legislation.

4529 Yield back my time. Or yield to anybody who wants it.

4530 Yield it back.

4531 The {Chairman.} The gentleman yields back.

4532 Are there other members wishing to speak on the  
4533 amendment?

4534 Mr. Bilbray is recognized for 5 minutes.

4535 Mr. {Bilbray.} Yeah. Mr. Chairman, first of all, I  
4536 would just like to remind my colleague from California when

4537 he talks about the poisons in fly ash that, remember, our  
4538 Safe Drinking Water Act and report, the drinking water of  
4539 Washington, DC has detectable amounts of almost every one of  
4540 those components. So--and I don't think we would say this is  
4541 poison, even though it may have those elements in it.

4542 My question to the lady from Florida, is there a reason  
4543 why your amendment was modified to strike the words, has the  
4544 potential to be?

4545 Ms. {Castor.} The simple answer is yes, it was viewed  
4546 as too broad. As potential to be could allow coal residuals  
4547 that are--that do not ever, in fact, enter recycling to come  
4548 under that exemption, and I agreed with them, that is  
4549 probably not appropriate.

4550 Mr. {Bilbray.} Okay, but there is the flip side of it  
4551 now, too. This doesn't qualify if it is in the process of  
4552 being. It is--the stated terminology is that it is  
4553 beneficially reused. So in other words if I was collecting,  
4554 let's go back to the episode I had was environmental health  
4555 in San Diego. I had a guy collecting the sandblasting sand,  
4556 but because there were trace elements in it, it was illegal  
4557 for him to pick it up and transport it without all the  
4558 permitting as a hazardous waste disposal. He had to cite  
4559 where it was going to be disposed, so because he did not know  
4560 where it was going to go, he--the road that it was going to

4561 be paved had to be designated as a legal disposal site.

4562           So I think the problem is you have just gone too far the  
4563 other side of going away from a reasonable expectation that  
4564 it is going to be reused as a commodity for construction or  
4565 whatever, for recycling. So I think what has happened with  
4566 your amendment you have just gone from going too far one way  
4567 to going too far the other way, and I know your intention. I  
4568 appreciate your intention, and I think this is where the  
4569 wordsmithers didn't do you a service by cutting it back so  
4570 far.

4571           And I yield back.

4572           The {Chairman.} Are there other members wishing to  
4573 speak on the amendment?

4574           Seeing none, the vote is on the amendment. Those in  
4575 favor of the amendment will say aye. Those opposed say no.  
4576 In the opinion of the chair the no's have it. The no's have  
4577 it. The amendment is not agreed to.

4578           Are there other members wishing to offer an amendment?

4579           Mr. {Rush.} Mr. Chairman, I have an amendment at the  
4580 desk.

4581           The {Chairman.} The gentleman from Illinois, Mr. Rush.

4582           Mr. {Rush.} It is amendment number six.

4583           The {Clerk.} Amendment to the substitute to H.R. 2273  
4584 offered by Mr. Rush of Illinois.

4585 [The amendment follows:]

4586 \*\*\*\*\* INSERT 13 \*\*\*\*\*

|  
4587           The {Chairman.} The amendment will be considered as  
4588 read. Staff will distribute the amendment, and the gentleman  
4589 is recognized for 5 minutes in support of his amendment.

4590           Mr. {Rush.} Well, thank you, Mr. Chairman, and Mr.  
4591 Chairman, my amendment provides federal enforcement authority  
4592 so that if the EPA Administrator determines a violation of a  
4593 State coal combustion residuals permit program and the State  
4594 has not taken appropriate action to enforce such permit  
4595 program, with the essential such substance, the literature  
4596 may state such substance and enforce the requirements of such  
4597 permit program.

4598           As written, the current bill would put EPA in a position  
4599 of even having to--either having to withdraw an entire State  
4600 program or else do absolutely nothing if a company has been  
4601 found to be in violation of the laws that were enacted some  
4602 30 years ago. Currently many coal ash sites that violate  
4603 this law still continue to receive waste because States have  
4604 not enforced these standards.

4605           Mr. Chairman, due to a case in my own district in the  
4606 city of Crestwood, Illinois, where contaminated drinking  
4607 water was piped into the homes of my constituents for over a  
4608 period of 20 years between 1986, to 2007, without  
4609 intervention from either the State or federal EPA agencies.

4610 I am very sensitive and very concerned about this issue.

4611 I understand that many of my Republican colleagues do  
4612 not believe that the Federal Government should play any role  
4613 in setting standards or enforcing any type of regulation  
4614 except when it comes to individual marriage or women's  
4615 reproductive rights.

4616 However, many of my constituents believe that there is  
4617 no greater role for Congress to play than to protect their  
4618 lives and livelihoods by ensuring that all American citizens  
4619 have access to clean air and water.

4620 Mr. Chairman, I believe that it is a false choice to try  
4621 and frame these tremendously important policy decisions under  
4622 the paradigm of either clean air or water or jobs or  
4623 employment. As leaders it is our job and our responsibility  
4624 to find the right balance when questioning legislation so  
4625 that our constituents are not faced with these types of lose,  
4626 lose decisions.

4627 And I believe that my amendment will go a long way in  
4628 trying to make this legislation more valid so that at the  
4629 very least we allow the Federal Government to serve as the  
4630 last stop for the American people on these companies that  
4631 will seem to skirt the law without regard for families and  
4632 the communities that they harm.

4633 Mr. Chairman, many of my constituents do not have the

4634 money, do not have the influence that industry has, but they  
4635 still expect their representatives in Congress to protect  
4636 their interests.

4637         In fact, I would like to end with a quote from a letter  
4638 dated July 11 that my office received from a number of  
4639 American families who live by coal ash dumps all across this  
4640 country and who wrote to this committee to consider their  
4641 voices as we vote on this bill today. And it quote, ``Do our  
4642 lives matter to you? Is coal ash recycling more important  
4643 than our health or the quality of our drinking water?''

4644         The letter goes on saying, ``As you consider this  
4645 legislation please don't forget about us. We are not against  
4646 the coal industry. We simply want the laws that are supposed  
4647 to protect people to be enforced.''

4648         Mr. Chairman, my amendment would allow the Federal  
4649 Government to do precisely that, and so I urge all of my  
4650 colleagues to support this amendment, and with that I yield  
4651 back the balance of my time.

4652         The {Chairman.} The gentleman yields back.

4653         Other members--Mr. Shimkus is recognized for 5 minutes.

4654         Mr. {Shimkus.} Thank you, Mr. Chairman. To speak  
4655 against the amendment.

4656         The amendment is just another no confidence vote in the  
4657 States. The amendment allows the EPA to enforce and inspect

4658 against structures in a State who is operating their own  
4659 program if the EPA does not believe the State is taking  
4660 appropriate action.

4661 This EPA enforcement inspection authority would be on  
4662 top of that which is already afforded to a State, so there  
4663 would be concurrent authorities at the same time, of course,  
4664 making things more expensive in the process.

4665 Under the amendment in the nature of a substitute States  
4666 have inspection enforcement authority over their own  
4667 programs, but EPA can enforce in a State if an eminent hazard  
4668 is occurring. This amendment would remove that distinction.

4669 In addition, under the amendment in the nature of a  
4670 substitute the EPA has inspection enforcement authority in a  
4671 State in which the EPA is operating the program in citizen-  
4672 suit provisions under Section 7000 to allow any person to sue  
4673 anyone for non-compliance with the Act. This does not mean  
4674 citizens can sue. It means anyone, including EPA or the  
4675 Department of Justice to sue for enforcement if the Act is  
4676 being violated.

4677 This amendment is a bigger government solution looking  
4678 for a problem, and then I would just refer back to the July  
4679 11 letter, 2011, from the Environmental Council of the  
4680 States. ``Dear Chairman Upton and Shimkus, the Environmental  
4681 Council of the States is writing in support of the approach

4682 of the Coal Residuals Reuse and Management Act as circulated  
4683 Friday, July 8, also referred to as the Shimkus amendment in  
4684 the nature of a substitute to H.R. 2272. The bill's approach  
4685 confirms to our policy resolution on this matter and ensures  
4686 that States will regulate coal combustion residuals under  
4687 federal standards with maximum of flexibility, preservation  
4688 of the rights of States to be more stringent, and in a manner  
4689 which will assure the quickest implementation to protect  
4690 human health and the environment.''

4691 ECOS members are the leaders of the States'  
4692 environmental agencies. I understand my colleague from  
4693 Chicago has a history of regulators not doing their jobs, but  
4694 in this case the States in totality support this piece of  
4695 legislation, and to create a duplicate system would actually  
4696 cause the bill to fail. And that is really the main intent  
4697 of--

4698 Mr. {Rush.} Would the gentleman yield?

4699 Mr. {Shimkus.} --the amendment is for the bill to fail.

4700 Yeah. I would be happy to yield.

4701 Mr. {Rush.} Yeah. I thank the gentleman, but I don't  
4702 think the gentleman fully understands what my amendment is  
4703 attempting to do, and I really am kind of offended as a  
4704 representative of those individuals from Crestwood, Illinois.

4705 First of all, Crestwood is not Chicago, and Crestwood is

4706 a suburban area in Chicago, and Crestwood in spite of the  
4707 citizens of Crestwood, in spite of reassurances by the State  
4708 EPA, in spite of the--being lied to by the local lumbermen,  
4709 these citizens was drinking contaminated water for over 20  
4710 years. And as a result of this the incidence of cancer is  
4711 greater in that community. We are trying to determine the  
4712 causal affect, but nobody can deny that the incidence of  
4713 cancer is--has increased in this village of Crestwood.

4714 And lastly I might add that there is a problem. The  
4715 administration there, the mayor and his administration, they  
4716 are under a criminal investigation as we speak. So there is--  
4717 -this is not a solution looking for a problem. This is a  
4718 problem that--

4719 Mr. {Shimkus.} Reclaiming my time because I--

4720 Mr. {Rush.} The same thing--we both--

4721 Mr. {Shimkus.} Yeah, no, and I am not arguing.

4722 Mr. {Rush.} Failed to come in and investigate, failed  
4723 to look at this matter, and for 20 years these folks were  
4724 drinking dirty water. Now, how would you like to be drinking  
4725 dirty water?

4726 Mr. {Shimkus.} Yeah. No, and I am just going to  
4727 reclaim my time, because I am not disputing any of the facts  
4728 of the inability of the State regulators or the local  
4729 leadership or the local government to affect that area. What

4730 I am telling you now is that I believe that the Illinois  
4731 Environmental Protection Agency is best prepared to address  
4732 and regulate coal combustion residuals under the municipal  
4733 solid waste provisions, which we have municipal solid waste  
4734 facilities all over--

4735 Mr. {Rush.} They failed for 20 years.

4736 Mr. {Shimkus.} Well, and that is--that was then, this  
4737 is now, and this kills the bill, and I yield back my time.

4738 The {Chairman.} The gentleman's time has expired.

4739 Are there other members wishing to speak on the  
4740 amendment?

4741 Mr. Towns.

4742 Mr. {Towns.} Yes. Thank you very much, Mr. Chairman.

4743 First of all, I support the amendment. You know, when  
4744 he talks about the Crestwood, Illinois, situation, and there  
4745 is other situations in this Nation that we won't go into at  
4746 this moment. But many of the environmental statutes this  
4747 committee has established allows States to assume primary  
4748 authority for implementation and enforcement.

4749 Usually we provide authority for EPA to ensure the law  
4750 is complied with, even if the program is run by a State.  
4751 When Congress omits that authority, one of the issues we see  
4752 is that unless EPA wants to pursue that, many refer to it as  
4753 the nuclear option and withdraw approval for a State plan,

4754 there is very little the agency can do to address law  
4755 breaking, and that is sad.

4756         This amendment would create flexibility so that EPA can  
4757 step in where necessary to address a bad actor without  
4758 calling into question an entire State program. I want to  
4759 make that clear.

4760         But it is a tailored amendment and does not created far-  
4761 ranging EPA authority. EPA would only have authority to  
4762 address violations of State permits programs and only be able  
4763 to enforce the requirements of those programs.

4764         It will also help protect human health and the  
4765 environment and prevent situations like what exists in  
4766 Crestwood, Illinois, and in a lot of other places throughout  
4767 the United States of America by ensuring that the Federal  
4768 Government can enforce requirements. If a State lacks the  
4769 resources or is otherwise unable to enforce it, let me stop  
4770 at this point and say I encourage my colleagues to vote yes.  
4771 I think that our main responsibility is to try and prevent  
4772 and save lives. I think that is really why we are here, and  
4773 I think we should not lose sight of that, and I think this  
4774 amendment goes a big step in the right direction. It is not  
4775 a solution to the problem, but I tell you now it helps the  
4776 problem, and I hope that my colleagues will understand that  
4777 and be supportive of this amendment.

4778 I would like to commend the gentleman from Illinois,  
4779 Chicago, for this tremendous amendment.

4780 On that note I yield back.

4781 The {Chairman.} The gentleman yields back.

4782 Are there other members wishing to speak on the  
4783 amendment?

4784 Seeing none, the vote will occur on the amendment.

4785 Those in favor of the amendment will say aye. Those opposed  
4786 will say no. In the opinion of the chair the no's have it,  
4787 and the amendment is not agreed to.

4788 Are there other members wishing to offer an amendment to  
4789 the bill?

4790 Seeing--

4791 Mr. {Towns.} I have an amendment.

4792 The {Chairman.} Okay. I would just ask the gentleman  
4793 might be quick on the amendment. Votes have just been called  
4794 on the--

4795 Mr. {Towns.} I would definitely be quick.

4796 The {Chairman.} The clerk will read the title of the  
4797 bill of the amendment.

4798 [The amendment follows:]

4799 \*\*\*\*\* INSERT 14 \*\*\*\*\*

|  
4800           The {Chairman.} The amendment to be considered as read.

4801 The gentleman is recognized for 2 minutes.

4802           Mr. {Towns.} Right. I will do it.

4803           The {Chairman.} In support of his amendment.

4804           Mr. {Towns.} The amendment pushes the effective date  
4805 out of 90 days after the Administrator can certify that no  
4806 vulnerable population will be adversely impacted by the  
4807 enactment of this act. Vulnerable population is defined as  
4808 follows.

4809           The term, vulnerable population, means a population that  
4810 is subject to a disproportionate exposure to or potential for  
4811 a disproportionate adverse affects from exposure to coal  
4812 combustion residuals, including infants, children,  
4813 adolescents, pregnant women, including the affects of fetal  
4814 development, the elderly, individuals with pre-existing  
4815 medical conditions, workers, and members of any other  
4816 appropriate population identified by the Administrator based  
4817 on consideration of socio-economic status, racial ethnic  
4818 background, culturally-influenced dietary, or other practices  
4819 or factors.

4820           I think that is enough to convince the members to vote  
4821 for this amendment.

4822           The {Chairman.} I am not sure that it was enough, but

4823 is there any--the gentleman yields back.

4824 Are there any members--Mr. Shimkus.

4825 Mr. {Shimkus.} Yeah, just briefly in opposition to the  
4826 amendment.

4827 The amendment does not allow a replacement regime of  
4828 some nature to apply if EPA makes a determination of the  
4829 adverse impact, leaving the people the amendment is trying to  
4830 protect even more vulnerable.

4831 And I will just go back. I think one of the reasons why  
4832 ECOS supported this, it is in the last line of the second  
4833 paragraph, it says, ``And in a manner that will assure the  
4834 quickest implementation to protect human health and the  
4835 environment.''

4836 So what the State regulators are saying by giving us the  
4837 authority, by giving us the rules of the road, we can make  
4838 sure that our public will be safer in the quickest amount of  
4839 time, and so this delays and obfuscates the whole purpose of  
4840 the bill, and I would ask for a defeat of the amendment.

4841 I yield back my time.

4842 The {Chairman.} The gentleman yields back.

4843 Other members wishing to speak on the amendment?

4844 Seeing none, the vote occurs on the Towns amendment.

4845 Those in favor say aye. Those opposed say no. In the  
4846 opinion of the chair the no's have it. The amendment is not

4847 agreed to.

4848           I would note that we have a series of amendments on the  
4849 House Floor. It appears as those we have one amendment  
4850 remaining, which is still being drafted and will be offered  
4851 tomorrow, and so--but I did make the announcement that we  
4852 would come back at 2:30 tomorrow, but I forgot that we have  
4853 four panels before Chairman Pitts' subcommittee on IPAB, so  
4854 we will come back at 3:30 tomorrow to conclude what should be  
4855 the last amendment and then the final passage of the bill in  
4856 full committee.

4857           So at that point I will ask that we adjourn until 3:30  
4858 tomorrow.

4859           [Whereupon, at 5:00 p.m., the Committee recessed, to  
4860 reconvene at 3:30 p.m., Wednesday, July 13, 2011.]