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4 MARKUP ON

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

6 ON THE NATION ACT OF 2011; AND

7 H.R. 2273, THE COAL RESIDUALS REUSE AND MANAGEMENT ACT OF

8 2011

9 WEDNESDAY, JULY 13, 2011

10 House of Representatives,

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The committee met, pursuant to call, at 4:12 p.m., in

14 Room 2123 of the Rayburn House Office Building, Hon. Fred

15 Upton [Chairman of the Committee] presiding.

16 Members present: Representatives Upton, Barton,

17 Stearns, Whitfield, Shimkus, Pitts, Bono Mack, Walden, Terry,

18 Myrick, Sullivan, Murphy, Burgess, Blackburn, Bilbray, Bass,

19 Gingrey, Scalise, Latta, McMorris-Rogers, Harper, Lance,
20 Cassidy, Guthrie, Olson, McKinley, Gardner, Pompeo,
21 Kinzinger, Griffith, Waxman, Dingell, Markey, Pallone, Rush,
22 Engel, Green, DeGette, Capps, Doyle, Schakowsky, Inslee,
23 Baldwin, Ross, Butterfield, Barrow, Matsui and Castor.

24 Staff present: Michael Beckerman, Deputy Staff
25 Director; Mike Bloomquist, Deputy General Counsel; Maryam
26 Brown, Chief Counsel, Energy and Power; Patrick Currier,
27 Counsel, Energy and Power; Andy Duberstein, Special Assistant
28 to Chairman Upton; Cory Hicks, Policy Coordinator, Energy and
29 Power; Kirby Howard, Legislative Clerk; Heidi King, Chief
30 Economist; Alexa Marrero, Communications Director; Dave
31 McCarthy, Chief Counsel, Environment and Economy; Carly
32 McWilliams, Legislative Clerk; Jeff Mortier, Professional
33 Staff Member; Tina Richards, Counsel, Environment and the
34 Economy; Jen Berenholz, Democratic Chief Clerk; Jacqueline
35 Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and
36 Environment Staff Director; Caitlin Haberman, Democratic
37 Policy Analyst; and Karen Lightfoot, Democratic
38 Communications Director and Senior Policy Advisor.

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39 The {Chairman.} I would recognize Mr. Shimkus to
40 withdraw his substitute and offer a revised version, and I
41 would recognize him at this point.

42 Mr. {Shimkus.} Thank you, Mr. Chairman.

43 Mr. Chairman, I withdraw the pending amendment in the
44 nature of a substitute.

45 The {Chairman.} The amendment is withdrawn. Mr.
46 Shimkus?

47 Mr. {Shimkus.} I have an amendment at the desk.

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

49 The {Clerk.} Is it the amendment in the nature of the
50 substitute, sir?

51 Mr. {Shimkus.} Yes.

52 The {Clerk.} Amendment in the nature of a substitute to
53 H.R. 2273 offered by--

54 [The amendment follows:]

55 ***** INSERT 1 *****

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56 The {Chairman.} Without objection, the amendment in the
57 nature of a substitute is considered as read. The staff will
58 distribute the amendment and the gentleman from Illinois is
59 recognized for 5 minutes in support of his amendment.

60 Mr. {Shimkus.} Thank you, Mr. Chairman, for recognizing
61 me to explain the substitute amendment.

62 I want to explain to my colleagues not only what this
63 substitute amendment does but what it does not do. This
64 amendment empowers States based upon a familiar and relevant
65 system to address the management and disposal of coal
66 combustion residuals, encourages new American job growth in a
67 beneficial use area, prevents increased cost to American
68 consumers and does it without expanding the size of the
69 government.

70 This substitute amendment creates the first-ever
71 statutory regime for coal combustion residuals. This
72 substitute amendment requires groundwater monitoring and
73 liners for structures defined as landfills, surface
74 impoundments and other land-based units. This substitute
75 amendment ensures corrective action when needed for
76 structures with coal combustion residuals. This substitute
77 amendment requires financial responsibility requirements to
78 ensure that the financial resources are there to clean up if

79 it is necessary. This substitute amendment contains more so
80 now I want to deal some other areas of the substitute.

81 Several members on both sides of the aisle have made
82 important suggestions that are improvements to the
83 substitute. Language was added to allow environmentally
84 protective continuance of the coal combustion residual reuse
85 activities. We strengthened the original structural
86 integrity language to allow States or EPA, depending upon who
87 is running the program to close not only high-hazard
88 impoundments that have structural problems that cannot be
89 fixed but also any other structure.

90 We added language to capture air and dust concerns. The
91 bill now allows for the detection of several constituents
92 that would indicate whether a leak was happening at the
93 structure. We clarified language on surface impoundments
94 that deals with closure plans and dewatering.

95 The members we worked with may not vote for this bill.
96 Some may. But we have made every effort over the last few
97 months to listen and make changes to address gaps in the
98 environmental protection. In all our work, however, we have
99 not compromised on a couple of principles. This substitute
100 amendment does not give EPA a new regulatory charge. It does
101 not impose an unfunded mandate on the States and it does not
102 handcuff economic growth and environmental protection.

103 I hope members will support this bill, and I know many
104 will, and if you don't, though, I want to understand a few
105 things. First, working to oppose this tacit support is
106 risking that coal combustion residuals be categorized as a
107 subtitle C waste, which I think most of us agree we do not
108 want to do. It is tacit support for higher energy prices and
109 lower job prospects. It is affirmation in the belief that
110 the Federal Government knows best and State civil servants
111 are incapable of doing what is right for their neighbors.
112 This is an imminently reasonable amendment on all fronts.
113 Unemployment is at 9.2 percent and 16.2 percent when you add
114 in those who gave up the search for work. This is not just
115 an environmental protection bill; it is real-life jobs
116 demonstration. The choice between jobs and Federal
117 Government power is yours.

118 I urge support for jobs and the environment and the
119 substitute amendment, and with that, Mr. Chairman, I yield
120 back my time.

121 The {Chairman.} The gentleman yields back.

122 The chair would recognize the gentleman from Texas, Mr.
123 Green.

124 Mr. {Green.} Thank you, Mr. Chairman, and first, I want
125 to thank the majority for working with us. I know it has
126 been a long process. Both Chairman Shimkus and I and

127 subcommittee had our first hearing on this. After hearing
128 the testimony, I said this is something we can work on and
129 compromise. Obviously that has taken much longer than most
130 of us thought, but I want to express my support for the
131 current amendment in the nature of a substitute because we
132 have gone through a number of drafts.

133 While I don't believe any amendment is perfect and no
134 piece of legislation we ever pass will achieve perfection,
135 this is a work in progress and really a great piece of
136 legislation. If I was the author, we would make it a little
137 different because this legislation represents what Congress
138 is supposed to do; we are supposed to legislate.

139 This year, we have spent a lot of time passing bills
140 that have little chance of being signed into law or even
141 being considered by the Senate. The amendment in the nature
142 of a substitute for us today is vastly improved over the
143 draft considered in the subcommittee markup. The legislation
144 includes additional assurances that States implementing a
145 coal ash permitting program must meet minimum standards under
146 RCRA to protect human health and the environment.
147 Additionally, this amendment includes a provision championed
148 by my colleague, Mr. Doyle of Pennsylvania, that will ensure
149 adequate closure standards for the surface impoundments
150 including closure plans and drainage standards.

151 I know there may be some additional concerns about this
152 amendment that could not be addressed in the time allocated
153 before the markup. I hope we can work together as we move
154 this legislation to the Floor on outstanding issues. And
155 again, I want to reiterate, the amendment is not perfect but
156 as part of legislating, we are moving this ball forward, and
157 I believe my colleagues on the majority side made significant
158 improvements in their first draft and they have made a great
159 good-faith effort in addressing my concerns.

160 And with that, Mr. Chairman, I yield back my time.

161 The {Chairman.} The chair would recognize the gentleman
162 from California for 5 minutes.

163 Mr. {Waxman.} Mr. Chairman, I appreciate that there has
164 been movement on the majority side to some of the concerns
165 that have been raised by member on the Democratic side. I
166 wish we had had more time to vet this bill. We had a
167 hearing, only one hearing, and it was on a very different
168 approach. We have not had a hearing on the proposal that we
169 are going to be voting on here today.

170 EPA talked to members this morning and gave a very quick
171 off-the-cuff evaluation of the legislation, and then they
172 sent to us a memo saying below are some examples of
173 circumstances where either existing landfill requirements
174 would be inappropriate for surface impoundments or would

175 otherwise cause the risk presented by surface impoundments to
176 be insufficiently or inappropriately addressed, and the
177 examples do not represent an inclusive test. They say there
178 may be other examples. But they say examples where existing
179 part 258 requirements are not appropriate or do not
180 adequately address surface impoundment risks, one, closure,
181 two, design requirements, three, inspection requirements to
182 surface impoundments, four, post-closure care requirements
183 different between surface impoundments and landfills.
184 Examples of risks that are not addressed in the current draft
185 for either landfills or surface impoundments, the runoff
186 requirements, the groundwater monitoring requirements, air
187 criteria. The draft legislation does not establish any
188 minimum criteria for recordkeeping and inspection. In
189 addition, the current draft fails to establish a substantive
190 safety standard that a State would be required to achieve to
191 protect human health and the environment.

192 Our legacy of this committee has always been to put in
193 place laws to protect the public health and the environment,
194 leaving a great deal of latitude to the States so that they
195 can go beyond the federal standard, but we didn't have the
196 States completely in charge as I fear will continue with this
197 legislation. We had a vigorous debate in other room on how
198 much EPA can do if the State is not doing an adequate job.

199 Mr. Chairman, your lawyers say that you have addressed it.
200 EPA lawyers and my counsel say it is not sufficiently
201 addressed.

202 Now, these are things we can continue to talk about.
203 These are things that ought to be fixed, in my view, but I
204 gather on the Republican side you don't want to fix it,
205 because as we are told, this is a different approach. Well,
206 I don't know why we need a different approach to
207 environmental laws than the approach we have taken in the
208 Clean Air Act, the drinking water law, RCRA and others.

209 So I acknowledge that we have moved. We haven't really
210 had a chance to engage fully on this legislation with EPA.
211 This is a major piece of legislation, and I am not sure it is
212 going to be effective, and I think these deficiencies raise
213 further concerns in my mind, so I want to just indicate to my
214 colleagues that the bill will certainly be going out of
215 committee but I am not prepared to vote for it. I am
216 prepared to continue to discuss it but I am not prepared to
217 vote for it. I want to share my views, and I wish we could
218 have further deliberations and not have to do things in such
219 a circuitous route that we are not really saying what some
220 people think we are saying because we don't want other people
221 to think that we are saying what we are being told we are
222 saying. That always makes me nervous.

223 I will vote no, and I yield back my time.

224 The {Chairman.} The gentleman yields back.

225 Are there other members wishing to speak? The gentleman
226 from Pennsylvania is recognized.

227 Mr. {Doyle.} Thank you, Mr. Chairman.

228 This isn't a perfect bill. I have been here 17 years.
229 I don't get to vote on many perfect bills. But sometimes you
230 can't let the perfect become the enemy of the good. We have
231 come a long way on this bill, and I appreciate the fact that
232 the majority has been willing to work with us and address
233 some of the concerns that we have in the bill.

234 We have made important changes to this bill on
235 provisions of the bill affecting wet impoundments. We have
236 actually got additional changes after the letter that Mr.
237 Waxman read from the EPA. We got further changes. We have
238 tightened the standards for closure of wet pounds. We have
239 tightened groundwater monitoring requirements. We didn't get
240 everything. EPA acknowledges that they would have liked to
241 have had more than we got in this bill, but on balance, I
242 believe from the conversations that we have had with EPA, and
243 you know, any time you have 10 or 11 people on the same phone
244 call, sometimes people take away different interpretations of
245 what they heard on the telephone. But I am convinced that
246 EPA does have the authority to step in if a State is not

247 fulfilling its requirements under the agreement to take this
248 program over. We are going to have an open process on the
249 Floor, the chairman tells me. I look forward to continuing
250 to work with my colleagues to improve this bill further but
251 we have come a long way, and I appreciate it, and I intend to
252 support the bill here in the full committee and move it to
253 the Floor and I look forward to working with my colleagues on
254 further changes to the bill to make it even better, and I
255 will yield back.

256 The {Chairman.} The gentleman yields back.

257 The chair would recognize the gentleman from California,
258 Mr. Bilbray, for 5 minutes.

259 Mr. {Bilbray.} Mr. Chairman, in the spirit of
260 bipartisanship, I will say something that I think both sides
261 will dislike.

262 I think one of the things that I favor of the approach
263 of this bill is that anyone who has ever worked with
264 environmental issues with any of the States realizes that the
265 most successful environmental regulations are those that
266 empower the local communities to address the problems, not
267 the Federal Government. Anybody can look at the condition of
268 the Potomac River and say I am not so sure you want the
269 people running the city, you know, cleaning up ours. In
270 fact, the difference is, as the gentleman from California

271 pointed out, the difference between the Clean Air Act and the
272 Clean Water Act is that we learned from mistakes of the Clean
273 Water Act and actually empowered the local States to
274 implement, develop the strategy under federal supervision or
275 approval but actually empowered the locals to take care of
276 their own environment, and the outcomes tend to be much
277 better than we have seen with the Clean Water Act, and I can
278 go through all of the shortfalls of the Clean Water Act even
279 though I have disagreed with some members of this committee
280 about implementation of the Clean Air Act. I think this bill
281 moves towards the empowerment.

282 And let me just say in closing, it is no secret that I
283 am not a real great fan of the coal industry but I darn well
284 want to point out that this is another instance where those
285 who are concerned about the environmental impact of coal have
286 to do a lot more than just damn coal and try to shut down
287 coal. It is a major energy source, major economic ace that
288 the United States has and been able to use for centuries and
289 that if you really want to avoid these issues, then you darn
290 well got to do more than just be anti-coal. You have to be
291 willing to go after technologies that can create robust,
292 large economically viable energy sources before you are ever
293 going to be able to do what you want to do with coal.

294 And so I have just go to say, I think this should be an

295 example to all of us that we are going to continue to address
296 these issues until we get aggressive about what we are
297 willing to do to create cost-effective energy in this country
298 rather than what we are willing to always be against, and I
299 yield back.

300 Mr. {Waxman.} Will the gentleman yield to me?

301 Mr. {Bilbray.} Yes, I will.

302 Mr. {Waxman.} We have always had the States doing the
303 job but minimum federal standards, and at the hearing we had,
304 I asked every single witness, do you think there ought to be
305 minimum federal standards, and they responded yes, there
306 should be. We have some standards set out in this bill but
307 it is not clear that they are going to be enforceable. For
308 example, we know whatever would apply to municipal solid
309 waste will apply here because we are saying whatever applies
310 to municipal solid waste will also apply here, but there are
311 differences between municipal solid waste and the kind of
312 waste that we are regulating under this bill.

313 Mr. {Bilbray.} Reclaiming my time. There may be
314 differences and those may want to be addressed in the
315 scientific aspect, but to point out to you, the standards
316 that are set sometimes by the Federal Government were
317 standards like secondary treatment requirement for the Clean
318 Water Act under the guise of the Clean Water Act when you had

319 the National Academy of Science and Scripps Institution of
320 Oceanography telling us the Federal Government's position was
321 going to hurt the environment. Nobody who drafted the Clean
322 Water Act, I assume, and maybe the gentleman from California
323 can clarify, ever meant that act to hurt the environment, but
324 because of the way the Federal Government is insensitive to
325 the community and the reality on the ground, you end up
326 having those problems.

327 Now, the same point was, the mandates for oxygenated
328 content that Washington put onto States like New York and
329 California have been proven by the National Academy of
330 Science to be detrimental to the environment, and that kind
331 of mandate from Washington should have never been put on to
332 the locals. The locals had the ability to address the local
333 environmental issue, and with that, I think that we have got
334 to avoid that. So hopefully this starts moving us toward
335 worrying more about outcome rather than process--

336 Mr. {Waxman.} Will the gentleman yield--

337 Mr. {Bilbray.} --of environmental strategy.

338 Mr. {Waxman.} Will the gentleman yield? I hear what
339 you are saying. What I am saying, however, is that we have
340 always let the States go beyond the minimum, and that is
341 where we get a lot of innovation that is directly related to
342 the--

343 Mr. {Bilbray.} Reclaiming my time. Sometimes, though,
344 the minimum that the Federal Government has set is
345 environmentally damaging and refuses to admit they made a
346 mistake. The problem with Washington, D.C., and federal
347 regulations isn't that we try new things or that we make
348 mistakes but when we try new things and make mistakes, we are
349 not brave enough to go back and correct it.

350 Mr. {Waxman.} Will the gentleman yield--

351 Mr. {Bilbray.} We just throw more money and more
352 regulations at it.

353 Mr. {Waxman.} --in the few seconds he has left? Right
354 now, existing law lets the States manage their programs. I
355 think the reason we have legislation is that we ought to have
356 more than just the States manage it because there have been--

357 Mr. {Bilbray.} Chicago in its wastewater treatment by
358 shipping it down the Mississippi rather than clean up their
359 mess is the reason why we have the Clean Water Act.

360 The {Chairman.} The gentleman's time is expired.

361 The chair would recognize the gentlelady from Wisconsin
362 for 5 minutes.

363 Ms. {Baldwin.} Thank you, Mr. Chairman, and I do want
364 to thank you and Chairman Shimkus for working with my
365 colleagues and me in trying to reach a bipartisan consensus
366 on this piece of legislation, and I also want to thank your

367 staff for their efforts in working across the aisle. When
368 all is said is done, I hope that we can build on this
369 experience as evidence that we can work together to try to
370 solve important and complex issues that come before our
371 committee. I also want to thank you for including additional
372 criteria into the bill, which my colleagues and I had asked
373 for, including financial assurance criteria, air criteria and
374 the revised language on surface impoundments.

375 Additionally, yesterday, I offered an amendment that
376 highlighted the Wisconsin Department of Natural Resources'
377 comments on EPA's proposed CCR rule. In those comments, they
378 noted that of all of the parameters studied in groundwater
379 monitoring, boron seemed to be the best indicator of
380 groundwater impacts around CCR landfills. I am pleased to
381 see that boron sulfate and other constituents were included
382 in groundwater monitoring requirements.

383 As this process moves forward towards the Floor, I hope
384 that additional commonsense criteria such as access
385 requirements, runoff control systems, surface water
386 requirements and recordkeeping requirements can be included
387 in the final version of this legislation.

388 And lastly, before committing to support this
389 legislation when it reaches the Floor, I will want to review
390 the technical comments that we are expecting from EPA in

391 regard to the full analysis of this latest version of the
392 bill. This is an important issue, and we have to get it
393 right for public health, the environment and the beneficial
394 reuse industry, and I guess I would be remiss if I didn't
395 once again at least briefly brag about Wisconsin's record in
396 that regard. We are really the gold standard in terms of
397 handling coal combustion wastes. There are no wet ponds on
398 Wisconsin. Our dry landfills are properly lined, covered and
399 monitored. There is a strong beneficial refuse program in
400 place. And one utility, We Energies, even achieved the
401 utilization rate of close to 110 percent last year. They
402 achieved this extraordinarily high rate because they are one
403 of the only utilities in the country that is currently
404 recovering coal ash from existing landfills and leading it to
405 beneficial refuse.

406 With that said, I thank the chairman and look forward to
407 reviewing those EPA comments prior to consideration of this
408 bill on the Floor, and I yield back the balance of my time.

409 The {Chairman.} If the gentlelady would yield?

410 Ms. {Baldwin.} I would be happy to yield.

411 The {Chairman.} I just want to reiterate what I said in
412 the backroom with a number of Republicans and Democrats in
413 the room, and that is, you know, we do expect this bill to
414 pass this afternoon out of this committee, and certainly I

415 want to congratulate both sides. I want to say that we have
416 been working on this since at least early March, if not
417 February, and Mr. Shimkus has done an outstanding job with
418 his patience, Mr. McKinley, all of us on both sides of the
419 aisle. I think we are in a far better position now than we
420 were even several weeks ago, and as I know the style of
421 Speaker Boehner, you look at any of the bills that we have
422 had up on the House Floor, this bill will not be under
423 suspension. Germane amendments have been allowed by Chairman
424 Dreier on virtually every single bill, which is why by the
425 end of this week we will probably have some 600 recorded
426 votes on the House Floor. A pretty schedule for not doing a
427 contract with America like we did back in 1994, but I am sure
428 that we will be looking at this bill.

429 Mr. {Waxman.} Will the gentleman or gentlelady yield to
430 me to ask the chairman a question?

431 Ms. {Baldwin.} Yes.

432 Mr. {Waxman.} We are going to report the bill out
433 today. We have done this in the past where we have reported
434 a bill out and then still had a hearing on it. I would like
435 to have a hearing on this bill maybe before it gets voted on
436 on the Floor, if that is possible, just so we get input on
437 this bill because the hearing we had I don't think was
438 adequate to talk about the views on this particular piece of

439 legislation.

440 The {Chairman.} I don't know. I don't know when the
441 leadership is going to schedule the bill for the Floor. I
442 doubt that it will be next week but I think that we will have
443 a chance to review what EPA says and have the--

444 Mr. {Waxman.} Well, why don't you just give me a
445 commitment to a hearing whenever?

446 The {Chairman.} I don't want to do that quite yet.

447 Mr. {Shinkus.} Reserving the right to object.

448 Mr. {Waxman.} I am not asking unanimous consent.

449 The {Chairman.} I see that the gentlelady's time is
450 expired so I will stop and just continue to listen. We will
451 look at different amendments as they may be prepared for the
452 Floor.

453 Are there other members wishing to speak on the
454 substitute?

455 Mr. {Dingell.} Mr. Chairman.

456 The {Chairman.} Mr. Dingell from the great State of
457 Michigan is recognized for 5 minutes.

458 Mr. {Dingell.} Thank you, Mr. Chairman.

459 I want to begin by thanking my colleagues, who showed a
460 remarkable level of patience in terms of working to try and
461 resolve the questions that are before us with regard to this
462 amendment. I want to say that I am sorry that I am not

463 satisfied that we have resolved the questions, and we have
464 not yet heard what I think is a clear enough statement of
465 either what the problems are that we are addressing or what
466 the problems are that we will be leaving unaddressed, and I
467 think that is unfortunate.

468 We are making a remarkable change in all of the
469 established environmental laws. When we addressed this the
470 other day, I pointed out that traditionally EPA had come
471 forward with rules and regulations to be met by the States.
472 The States then had to meet it and then they could conduct
473 their program, and if they didn't do it right, they would
474 lose control of the program. We came fairly close to doing
475 that but not close enough because it is unclear as to whether
476 or not EPA will have the authority to fully regulate the coal
477 ash and other similar substances in a proper way to assure
478 safety.

479 I would very much like to support this amendment and it
480 may well be that at some future time and enough changes will
481 have been made in it that I can. I intend to try and
482 research it, and I hope that we will be able to get enough
483 answers out of it as to what this amendment does that might
484 make it possible for me to support it, but I don't see that
485 happening at this particular minute.

486 In any event, we are down here where we are probably

487 going to adopt this. I have to say that I greatly regret
488 because I have always been curious, if you have a pattern of
489 law which works and a related matter comes up to be addressed
490 under similar law, I have always thought it made very good
491 sense for everybody to continue that same pattern of
492 regulation. If you don't, the lawyers and the courts,
493 everybody is going to wonder why is it that the Congress made
494 this change. They think we are smart enough to know why we
495 are making these changes. We have asked why it is that it is
496 necessary that we take this jurisdiction away from the EPA
497 and give it to the States. Let me say while we are giving
498 something back, we are saying we don't know exactly how much
499 of it we are giving back. And so I am not clear how much we
500 are giving back. I am not clear what embarrassments are
501 going to occur from this or exactly why it is.

502 I have a great distrust to being badly surprised by
503 changes in the law that are just made to satisfy some
504 political group and that clearly change the entire structure
505 of the government's regulatory system. I think that there is
506 a very strong possibility that this change will do it. I
507 think the amendment is better than the existing situation.
508 That is a small compliment. I suspect that the bill would be
509 better with the amendment than it would be without, and so I
510 applaud those things. But it doesn't leave me in a position

511 where I am able to support it, and I am very sorry about
512 that, and I hope that as matters go forward that my friends
513 on the other side of the aisle will work with us so we can
514 get a better understanding of this, and I don't think we have
515 a very good understanding, and so that we can begin to move
516 toward something where we can come out with a bill that will
517 get passed by the Senate, will get signed by the President,
518 and very frankly, will keep the record of this committee
519 which has always been to legislate very carefully and know
520 all the consequences of our legislative actions.

521 With that, I have to say I can't support the amendment
522 and probably can't support the bill, and with that, I yield
523 back the balance of my time.

524 The {Chairman.} The gentleman yields back.

525 Are there other members wishing to speak on the
526 amendment? The gentleman from West Virginia, Mr. McKinley.

527 Mr. {McKinley.} Thank you, Mr. Chairman. It is my
528 understanding they have delayed votes on the Floor until
529 5:15.

530 Mr. Chairman, I am very supportive of this substitute
531 amendment, because when I came here 6 months ago, you know,
532 as the sponsor of this bill, we were trying to remove a
533 stigma associated with fly ash. That is where it began.
534 Thousands of jobs could be lost. There are studies that

535 indicate that it could be 184,000 to 316,000 jobs could be
536 list of this bill weren't passed because the EPA was
537 considering putting this under subsection C, and we were
538 simply trying to prevent that from happening, protecting the
539 jobs. That is what this bill began was removing the stigma
540 so that when people make fly ash out of it, when they put it
541 in concrete, it does not carry that stigma of a hazardous
542 material.

543 Now, over the 6 months since I introduced the bill, I
544 have seen the process work here in Washington, and I am not a
545 very patient person but Congressman Doyle has taught me to be
546 a little patient. I am working on that, Congressman.
547 Because I have seen how the--we are actually reaching out
548 here in a way. We are getting some bipartisan support.
549 People are understanding that we can't afford to have this be
550 a hazardous material, and without passage of this bill, we
551 run the risk of the EPA condemning this product in subsection
552 C, and you have to go back and look at again the chart. All
553 these plants, all these facilities are creating fly ash. It
554 is not just the East. It is just not the Midwest. It is
555 from California all the way across. Forty-eight of the 50
556 States are creating fly ash every day. We have got to find a
557 way to handle this, and the adoption of this amendment goes
558 to the very heart of that. Voting against this amendment

559 allows the EPA more of an opportunity to make it a subsection
560 C and then we have some real jobs problems.

561 I have heard time and time again people talk about the
562 hazardous material. I am not going to deny that there are
563 some concerns but in the last few days we have been
564 discussing mercury. This is the characteristic of mercury
565 down here. This is the level. The level of mercury would
566 have to be 2,000 times more than is in fly ash now to reach
567 the level of toxicity. There is a scare tactic here. I
568 think in my heart there are people here that don't want us
569 burning coal, and this is a vehicle to make that stop burning
570 coal because the contaminants are no worse than soil in a
571 person's yard. This is another study that indicates the
572 toxicity level of fly ash versus soil. The soil is in the
573 dots. Fly ash is down below. In almost every case, it is
574 less toxic than is in your soil.

575 I am going to defend the coal industry all across
576 America. Twenty-five of our States make coal, mine it and
577 ship it to the 48 that burn it, and I think it is time we
578 stand up for those jobs and we have got an opportunity here
579 with this amendment, and I am very supportive of this. The
580 bill has come a long way. It was a very simplistic approach
581 initially but it has matured now into something that is far
582 more dynamic, far more possible of getting passed by the

583 Senate and being signed by the President, and I applaud all
584 the efforts, I applaud all the folks that have indicated from
585 the other side that they would support that. Yes, it is not
586 perfect but we are worried about 300,000 jobs being lost if
587 we don't do something, so a no vote here to me is embracing
588 the loss of jobs, and when we have the situation we have in
589 this country right now, we cannot afford that nor can we
590 afford any further attack on this war on coal. It has got to
591 stop. So I ask please that you look very seriously at
592 supporting this amendment and then passing the bill overall.

593 Thank you very much. I yield back my time.

594 The {Chairman.} The gentleman's time is expired.

595 Are there other members wishing to speak on the
596 amendment?

597 Mr. {Rush.} Mr. Chairman.

598 The {Chairman.} The gentleman from Illinois is
599 recognized for 5 minutes.

600 Mr. {Rush.} Mr. Chairman, we just got this about 5
601 minutes ago, no more than 10 minutes ago. We don't know what
602 it is in this bill, this amendment. We haven't had a chance
603 to read anything about this legislation, this amendment. And
604 Mr. Chairman, I really don't think that--I thought that this
605 committee--and I am proud of this committee and I am proud of
606 what this committee has been able to accomplish during the

607 years that I have been on this committee as a member, and the
608 one thing that I have always felt very proud of in terms of
609 this committee, in terms of this legacy and this history, and
610 that has been a committee that deliberated on the issues. It
611 is a deliberative body, a legislative body that takes its
612 work seriously and spends time on the difficult issues, the
613 complex issues that are before this committee, and Mr.
614 Chairman, I think that right now what we are trying to do, we
615 are trying to move legislation based on some politics, based
616 on the positions of a narrow political entity in this Nation,
617 and Mr. Chairman, it is forcing us to move with undue haste
618 in terms of deliberating on legislation, and Mr. Chairman, in
619 this instance, I know that haste will make waste. We are
620 going to regret the actions because we have not reached any
621 kind of consensus. We have not actually had a chance to
622 study the amendment, to read the amendment and to understand
623 what it is that we are voting on, and the majority is asking
624 us to come on and vote now, asking us to shoot first and ask
625 questions later.

626 Mr. Chairman, I am from a coal-producing State. I
627 certainly don't have--I have not declared any war on coal.
628 As a matter of fact, I am advocate for the coal industry, but
629 I do know that the coal industry, just like every other
630 industry in this Nation, has to be responsible and has to be

631 held accountable. There is no industry in this Nation that
632 operates that should be accountable to the American people
633 and to the consumers including the coal industry. I am not
634 just for giving the coal industry carte blanche because they
635 are having some difficulties to do anything and everything
636 that they want to the people of this Nation, to the
637 environment in this Nation, to the consumers of this Nation.

638 Mr. Chairman, my request simply is this. I know you all
639 got the votes. You are going to move this. You are going to
640 move it and you are going to vote on it and you are going to
641 create legislative fly ash because you are going to do it
642 with haste. I just simply request humbly, Mr. Chairman, that
643 at some point in time in the next few days--we will be here
644 next week--once you vote this out of this committee, would
645 you please allow the members of this committee on both sides
646 of the aisle to have a hearing to figure out what it is that
647 you are asking us to vote on today. You are going to pass
648 this, but let us come back after you pass it. Let us return
649 back to this room, this very room and let us have a hearing
650 so we will know what it is that we are voting on.

651 Mr. {Waxman.} Will the gentleman yield to me?

652 Mr. {Rush.} I yield to the ranking member.

653 Mr. {Waxman.} I think the purpose of a hearing is not
654 to find out what we voted on but if we are going to work

655 together as this bill moves forward to understand very
656 specifically what the bill does and doesn't do that so that
657 we can on a bipartisan improve the bill, and that is why I
658 would join in your request. We do have a light week next
659 week. Maybe that is something where the chairman can
660 accommodate us. But I join you in your request and I think
661 it would be helpful not just to understand what we are doing
662 but to make sure that what we are doing can be improved on as
663 we move forward. Thank you.

664 The {Chairman.} The gentleman's time is expired.

665 The chair would recognize the gentleman from Texas, Mr.
666 Barton.

667 Mr. {Barton.} Thank you, Mr. Chairman, and I am not
668 going to take 5 minutes.

669 I have not been a direct participant in the negotiations
670 on this bill. I have attended some of the things and I have
671 been made aware of the negotiations by staff. But just as a
672 general observation, I would like to say that, number one,
673 there is no full committee chairman on the Republican side
674 that is more interested in bipartisanship than you are. You
675 made it a de facto rule of the committee that bipartisan
676 amendments are given priority and are debated first, and your
677 inclination is to accept them if at all possible. In this
678 particular negotiation, there has been a very open-door

679 policy for any member that wished to participate on both
680 sides of the aisle, and I know for a fact that Mr. Doyle and
681 Mr. Green and Mrs. Baldwin have participated on the minority
682 side in addition to Mr. Waxman, and I know on our side all
683 the members that wanted to were allowed to, and it is obvious
684 that Mr. McKinley has had a great deal of input into this
685 compromise.

686 If we are really about bipartisanship and compromise,
687 this is a good place to start, Mr. Chairman. This bill, as
688 has been pointed out, is not the perfect bill but there is
689 nobody on either side of the aisle that can say with a
690 straight face that EPA has acted perfectly in anything in the
691 last several years, and this at least rebalances the equation
692 somewhat while still giving the EPA, I don't know if you
693 would say priority or final say if they feel it is necessary.

694 So I would hope that when it comes time for a vote that
695 members on both sides could vote for this product. I know
696 that what you said in those negotiations that were happening
697 as recently as 15 minutes ago was that the Speaker of the
698 House, John Boehner, has operated the Rules Committee in an
699 open fashion and that you were not aware of any amendment on
700 any bill that is germane to the bill that has been denied.
701 So if there is still work to be done, we have ample time
702 between now and when you decide to take the bill to the Floor

703 to do a bipartisan amendment or a series of amendments.

704 This coal ash issue is a real issue. It has real
705 economic impact, as Mr. McKinley has pointed out, and on the
706 minority side, the issues that are being addressed are, in
707 most cases, either district specific or at least State
708 specific to those members that are addressing them, and you
709 and Mr. Shimkus have had a very open mind to some of those
710 issues.

711 So again, if we are really about bipartisanship, Mr.
712 Chairman, and you certainly are, and Mr. Waxman indicates
713 that he is too, this is a good place to start. This is a
714 decent work product, and I think it is well deserving of
715 support on both sides of the aisle.

716 With that, I yield back.

717 The {Chairman.} The gentleman yields back.

718 I think we are getting close to voting on the
719 substitute. Are there other members wishing to speak on the
720 substitute? Seeing none, the vote now occurs on the
721 substitute offered by Mr. Shimkus. Those in favor will say
722 aye. Those opposed, say no. The ayes appear to have it.
723 The ayes have it and the substitute is agreed to.

724 Mr. {Shimkus.} Mr. Chairman, I would ask for a roll
725 call vote.

726 The {Chairman.} We will do that on final.

727 Are there other amendments to the substitute? Seeing
728 none, the question now occurs on favorably reporting the bill
729 as amended to the House. All those in favor will say aye.
730 Those opposed, say no. The ayes appear to have it.

731 Mr. {Shimkus.} Mr. Chairman, on that I ask for a roll
732 call vote.

733 The {Chairman.} Roll call vote is requested. The clerk
734 will call the roll.

735 The {Clerk.} Mr. Barton?

736 Mr. {Barton.} Aye.

737 The {Clerk.} Mr. Barton, aye.

738 Mr. Stearns?

739 [No response.]

740 The {Clerk.} Mr. Whitfield?

741 Mr. {Whitfield.} Aye.

742 The {Clerk.} Mr. Whitfield, aye.

743 Mr. Shimkus?

744 Mr. {Shimkus.} Aye.

745 The {Clerk.} Mr. Shimkus, aye.

746 Mr. Pitts?

747 Mr. {Pitts.} Aye.

748 The {Clerk.} Mr. Pitts, aye.

749 Mrs. Bono Mack?

750 Mrs. {Bono Mack.} Aye.

751 The {Clerk.} Mrs. Bono Mack, aye.
752 Mr. Walden?
753 Mr. {Walden.} Aye.
754 The {Clerk.} Mr. Walden, aye.
755 Mr. Terry?
756 Mr. {Terry.} Aye.
757 The {Clerk.} Mr. Terry, aye.
758 Mr. Rogers?
759 [No response.]
760 The {Clerk.} Mrs. Myrick?
761 Mrs. {Myrick.} Aye.
762 The {Clerk.} Mrs. Myrick, aye.
763 Mr. Sullivan?
764 Mr. {Sullivan.} Aye.
765 The {Clerk.} Mr. Sullivan, aye.
766 Mr. Murphy?
767 Mr. {Murphy.} Aye.
768 The {Clerk.} Mr. Murphy, aye.
769 Mr. Burgess?
770 [No response.]
771 The {Clerk.} Mrs. Blackburn?
772 Mrs. {Blackburn.} Aye.
773 The {Clerk.} Mrs. Blackburn, aye.
774 Mr. Bilbray?

775 Mr. {Bilbray.} Aye.
776 The {Clerk.} Mr. Bilbray, aye.
777 Mr. Bass?
778 Mr. {Bass.} Aye.
779 The {Clerk.} Mr. Bass, aye.
780 Mr. Gingrey?
781 Dr. {Gingrey.} Aye.
782 The {Clerk.} Mr. Gingrey, aye.
783 Mr. Scalise?
784 Mr. {Scalise.} Aye.
785 The {Clerk.} Mr. Scalise, aye.
786 Mr. Latta?
787 Mr. {Latta.} Aye.
788 The {Clerk.} Mr. Latta, aye.
789 Mrs. McMorris Rodgers?
790 [No response.]
791 The {Clerk.} Mr. Harper?
792 Mr. {Harper.} Aye.
793 The {Clerk.} Mr. Harper, aye.
794 Mr. Lance?
795 Mr. {Lance.} Aye.
796 The {Clerk.} Mr. Lance, aye.
797 Mr. Cassidy?
798 Dr. {Cassidy.} Aye.

799 The {Clerk.} Mr. Cassidy, Aye.
800 Mr. Guthrie?
801 Mr. {Guthrie.} Aye.
802 The {Clerk.} Mr. Guthrie, aye.
803 Mr. Olson?
804 Mr. {Olson.} Aye.
805 The {Clerk.} Mr. Olson, aye.
806 Mr. McKinley?
807 Mr. {McKinley.} Aye.
808 The {Clerk.} Mr. McKinley, aye.
809 Mr. Gardner?
810 Mr. {Gardner.} Aye.
811 The {Clerk.} Mr. Gardner, aye.
812 Mr. Pompeo?
813 Mr. {Pompeo.} Aye.
814 The {Clerk.} Mr. Pompeo, aye.
815 Mr. Kinzinger?
816 Mr. {Kinzinger.} Aye.
817 The {Clerk.} Mr. Kinzinger, aye.
818 Mr. Griffith?
819 Mr. {Griffith.} Aye.
820 The {Clerk.} Mr. Griffith, aye.
821 Mr. Waxman?
822 Mr. {Waxman.} No.

823 The {Clerk.} Mr. Waxman, nay.
824 Mr. Dingell?
825 Mr. {Dingell.} No.
826 The {Clerk.} Mr. Dingell, nay.
827 Mr. Markey?
828 Mr. {Markey.} Votes no.
829 The {Clerk.} Mr. Markey, nay.
830 Mr. Towns?
831 [No response.]
832 The {Clerk.} Mr. Pallone?
833 Mr. {Pallone.} No.
834 The {Clerk.} Mr. Pallone, nay.
835 Mr. Rush?
836 Mr. {Rush.} No.
837 The {Clerk.} Mr. Rush, nay.
838 Ms. Eshoo?
839 [No response.]
840 The {Clerk.} Mr. Engel?
841 Mr. {Engel.} No.
842 The {Clerk.} Mr. Engel, nay.
843 Mr. Green?
844 Mr. {Green.} Yes.
845 The {Clerk.} Mr. Green, aye.
846 Ms. DeGette?

847 Ms. {DeGette.} Aye.
848 The {Clerk.} Ms. DeGette, aye.
849 Mrs. Capps?
850 [No response.]
851 The {Clerk.} Mr. Doyle?
852 Mr. {Doyle.} Yes.
853 The {Clerk.} Mr. Doyle, aye.
854 Ms. Schakowsky?
855 Ms. {Schakowsky.} No.
856 The {Clerk.} Ms. Schakowsky, nay.
857 Mr. Gonzalez?
858 [No response.]
859 The {Clerk.} Mr. Inslee?
860 Mr. {Inslee.} No.
861 The {Clerk.} Mr. Inslee, nay.
862 Ms. Baldwin?
863 Ms. {Baldwin.} Aye.
864 The {Clerk.} Ms. Baldwin, aye.
865 Mr. Ross?
866 [No response.]
867 The {Clerk.} Mr. Matheson?
868 [No response.]
869 The {Clerk.} Mr. Butterfield?
870 Mr. {Butterfield.} No.

871 The {Clerk.} Mr. Butterfield, nay.
872 Mr. Barrow?
873 Mr. {Barrow.} Aye.
874 The {Clerk.} Mr. Barrow, aye.
875 Ms. Matsui?
876 Ms. {Matsui.} No.
877 The {Clerk.} Ms. Matsui, nay.
878 Ms. Christensen?
879 [No response.]
880 The {Clerk.} Ms. Castor?
881 Ms. {Castor.} Nay.
882 The {Clerk.} Ms. Castor, nay.
883 Mr. Upton?
884 The {Chairman.} Votes aye.
885 The {Clerk.} Mr. Upton, aye.
886 The {Chairman.} Are there members wishing still to cast
887 their vote? Mr. Ross?
888 Mr. {Ross.} Aye.
889 The {Clerk.} Mr. Ross, aye.
890 The {Chairman.} Ms. Capps?
891 Mrs. {Capps.} No.
892 The {Clerk.} Ms. Capps, nay.
893 The {Chairman.} Mr. Stearns?
894 Mr. {Stearns.} Aye.

895 The {Clerk.} Mr. Stearns, aye.

896 The {Chairman.} Dr. Burgess?

897 Dr. {Burgess.} Aye.

898 The {Clerk.} Mr. Burgess, aye.

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

900 Seeing none, the clerk will report the tally.

901 The {Clerk.} Mr. Chairman?

902 The {Chairman.} Let me just give one more--again, any

903 member wishing to vote? The clerk will report the tally.

904 The {Clerk.} On that, there were 35 ayes, 12 nays.

905 The {Chairman.} Thirty-five ayes, 12 nays. The bill is

906 favorably reported, and--

907 Mr. {Rush.} Mr. Chairman.

908 The {Chairman.} Just one second. And the minority is

909 recognized for the requisite number of days to file their

910 views.

911 Mr. {Waxman.} We wish to have the requisite number of

912 time for the minority to file our views.

913 The {Chairman.} And I will direct the staff to make any

914 typographical corrections as they may do, and the committee

915 is adjourned.

916 Mr. {Rush.} Mr. Chairman.

917 The {Chairman.} Mr. Rush.

918 Mr. {Rush.} I had a request that we have a hearing next
919 week. Are you taking that into condition?

920 Mr. {Shimkus.} If the gentleman would yield, it would
921 be just like the health care request for a hearing after that
922 was passed.

923 [Whereupon, at 5:00 p.m., the committee was adjourned.]