

ONE HUNDRED TWELFTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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**Statement of Rep. Henry A. Waxman**  
**Ranking Member, Committee on Energy and Commerce**  
**H.R. 1391, the “Recycling Coal Combustion Residuals Accessibility Act of 2011”**  
**Subcommittee on Environment and the Economy**  
**April 14, 2011**

On December 22, 2008, a coal ash impoundment in Kingston, Tennessee burst, releasing 5.4 million cubic yards of toxic sludge, blanketing the Emory River and the surrounding land, and creating a superfund site that could cost up to \$825 million to remediate.

On June 21, 2010, the U.S. Environmental Protection Agency (EPA) proposed regulations to ensure stronger oversight of coal ash impoundments in order to prevent accidents like the one at Kingston and to protect groundwater and drinking water from the threat of contamination.

Today, the Subcommittee takes up legislation to interfere with EPA’s efforts to regulate the safe disposal of coal ash under the Resources Conservation and Recovery Act (RCRA).

EPA has made two alternative proposals. Under one proposal, the agency could act under subtitle C of RCRA and require disposal of coal ash in double-lined landfills with groundwater monitoring. The wet impoundments, like in Kingston, would be phased out. Consistent safety standards would apply from state to state. And a basic level of protection from the toxic contaminants in coal ash would be established and federally enforceable.

Alternatively, EPA could act under subtitle D and set requirements for the disposal of coal ash that would look a lot like subtitle C with one major difference: the states could choose to implement the requirements or not.

The key to which alternative to finalize is a scientific one. If coal ash is toxic, then it needs to be regulated under subtitle C.

EPA has been examining this question. The agency has conducted a thorough scientific process based on data and using peer review. The agency has solicited public comment and is now reviewing those comments.

But this bill would cut that process off and prevent the EPA from reaching a science-based conclusion. It would substitute a political judgment for a scientific one. Instead of the science and the facts dictating the result, the legislation would enact a statutory prohibition on EPA regulation of coal ash as a toxic waste under subtitle C.

I hope that the subcommittee will look closely at this issue. We have the opportunity to foster safe management of these wastes and to encourage the beneficial use of coal ash to continue.

But we need to acknowledge that disposal without basic safeguards puts human health and the environment at risk. These wastes contain heavy metals such as arsenic, lead, boron, selenium, cadmium, chrome-6, and the list goes on. And yet they continue to be dumped in unlined pits.

Last Congress, we heard testimony about some of the devastating impacts contamination from these wastes has had. And we know that there are 49 “high hazard” wet impoundments of coal ash in this country today, nearly two and a half years after the Kingston tragedy. That continued threat must be addressed.

If we do not address this risk, by establishing enforceable federal standards, we risk more sickness, more contamination, more tragedies like we saw in Kingston, and more cleanup costs.

I am pleased that today we will hear from EPA on this subject. The agency’s testimony will help the Committee understand what would actually be required under the two alternatives EPA has proposed. And I also welcome our other witnesses.