

Subcommittee Continues Work Toward Pro-Jobs, Pro-Recycling Coal Ash Solution

January 22, 2015

Members and Stakeholders: Legislation Still Needed to Provide Certainty and Protect Jobs

WASHINGTON, DC – The Subcommittee on Environment and the Economy, chaired by Rep. John Shimkus (R-IL), today continued its multiyear efforts to find a permanent and workable solution for coal ash management and disposal, building off of the subcommittee’s negotiations and legislative work in previous Congresses. The subcommittee examined the final coal ash rule issued by the Environmental Protection Agency last month and discussed the continued need for legislation to provide regulatory certainty and protect jobs.

Members of the subcommittee expressed concern that EPA’s rule does not provide clarity for job-creators, and it could lead to increased litigation, uncertainty, and expense.

Chairman Shimkus stated, “The final rule lays out an entirely self-implementing program that will be enforced through citizen suits and will unavoidably lead to an unpredictable array of regulatory interpretations, as judges throughout the country are forced to make extremely technical compliance decisions that would be better left to a regulatory agency.”

Rep. David McKinley (R-WV), author of legislation in the 112th and 113th Congresses to address coal ash management, commented, “Job-creators detest uncertainty, and one thing is clear: this regulation does not provide certainty.” McKinley expressed particular concern over language in the rule that leaves the door open to an anti-recycling hazardous waste designation in the future. “How many times must there be a final determination that coal ash is not hazardous?”

Given the troubling gaps in EPA’s rule, members and stakeholders called for a permanent solution that reflects the language of legislation previously advanced by the subcommittee.

“While we acknowledge the amount of time and effort EPA put into drafting the final rule, because of the significant limitations of the rule we still believe that a legislative solution that sets out minimum federal requirements and allows the states to develop enforceable permit programs to implement the standards, is the best approach to dealing with the regulation of coal ash,” said Shimkus.

Thomas Easterly, Commissioner of the Indiana Department of Environment Management, testified on behalf of the Environmental Council of the States (ECOS) and voiced the group’s continued support for the subcommittee’s legislative approach establishing a federal-state partnership. “ECOS is concerned citizen suits will become the primary enforcement vehicle for CCRs under the final rule. As a result, the role of the state regulation, oversight, and enforcement would be significantly marginalized.... ECOS testified before this committee in April 2013 in support of the bipartisan efforts in the House and Senate to create a federal program that allows states to regulate coal ash management and disposal under a set of federal standards created directly by Congress and implemented by the states. Legislation could still be beneficial in several ways to achieving this goal,” said Easterly.

Michael Forbeck, testifying for the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), stated that legislation was still necessary to eliminate problematic dueling state and federal regulations. “Legislation would provide for the certainty of state primacy in implementation through state permit programs for CCR enforceable by the state, and provide a clearer and consistent understanding of the permitting and enforcement roles of the states,” said Forbeck.

Seminole Electric Cooperative CEO Lisa Johnson added, “For Seminole and other affected facilities, we are seeking regulatory certainty, especially related to this rule, so we can continue to provide safe, reliable and affordable electricity, while fully complying with all applicable rules, regulations and laws.”

Full committee Chairman Fred Upton (R-MI) concluded, “Our goal is to get the job done right, and we are willing to discuss further changes to the legislation to ensure we have a workable solution in place. We want to continue working with members in both bodies and both parties to achieve the best overall outcome.”

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