

Statement of Ranking Member Frank Pallone, Jr.
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
Markup of H.R. __, Improving Coal Combustion Residuals Regulation Act of 2015
March 24, 2015

Thank you, Chairman Shimkus.

This Subcommittee has now held three days of hearings this Congress on the important topic of coal ash, including a hearing with EPA just this afternoon. Unsafe disposal of coal ash presents serious risks to human health and the environment, and this Subcommittee should continue to hold hearings to understand these risks.

In January, this Subcommittee heard from EPA and stakeholders about the Agency's new final rule. After years of debate, at the Agency and in Congress, over the proper regulation of coal ash, the Agency had reached a verdict.

EPA's final rule reflects a tremendous effort, and it will, for the first time, provide the framework for addressing this serious environmental problem. This rule is the product of a robust public process, including field hearings and several rounds of public comment. It reflects the input of over 450,000 commenters, including states, industry groups, environmental groups, and individual concerned citizens.

In the end, EPA finalized a rule that addressed almost all of the concerns this Subcommittee has heard about for years.

Those in the coal ash recycling industry, who make things like concrete and wall board substituting coal ash for virgin material, had sought a non-hazardous rule under subtitle D of RCRA. That is what they got.

Those in the electric utility industry wanted a subtitle D rule that would not require them to retrofit their existing impoundments with liners. That is what they got.

States wanted a mechanism to set up their own programs to implement federal standards and to have EPA approve them. That is what they got.

The only stakeholders who really did not get what they sought in this rule were the environmental and public health advocates, who wanted a stronger, subtitle C rule with a requirement that the giant, unlined pits currently receiving this dangerous waste be retrofitted to protect groundwater.

The testimony at the hearing last week and earlier today reflected those truths. That testimony also raised serious concerns about this bill, and the ways it would undermine public health protections.

But still we find ourselves, just three hours later, marking up the legislation. This new proposal retains the problems of past proposals, which have been discussed extensively in this Subcommittee. Previous CRS reports on those proposals are still relevant, simply because the problems cited have not been addressed in the new bill before us.

This bill would create a new model of delegation to states with a sharply curtailed role for EPA. It does not include a legal standard of protection, a substantive EPA role in reviewing state programs, or EPA backstop enforcement authority.

The bill also falls short in terms of the technical requirements for coal ash disposal, because necessary health protections included in EPA's final rule are left to state discretion or left out entirely. Groundwater monitoring and protection, closure requirements, cleanup requirements – all could be weaker under this bill than under the final rule. If anything, we should be strengthening the protections in the final rule, not weakening them.

I think that this legislation is unnecessary, and dangerous for public health and the environment.

I applaud EPA for their hard work on the coal ash final rule, and I hope this Subcommittee can move forward in an oversight role as implementation begins.