

Opening Statement of the Honorable John Shimkus
Subcommittee on Environment and the Economy
Markup of H.R. ____, the Improving Coal Combustion Residuals Regulation Act of
2015
March 24, 2015

(As Prepared for Delivery)

In December of last year EPA put out its final rule for coal combustion residuals. In January we heard from the States and the utilities about some of the problems with the implementation of the final rule, in particular the fact that the rule is self-implementing, the only mechanism for oversight and enforcement is citizen suits, and State permit programs do not operate in lieu of the final rule. To address those concerns, we went back to the drawing board to find a solution that creates enforceable state permits but also takes into account the sound technical standards EPA established for coal ash in the final rule. The result of that effort was a discussion draft that will ensure every state has a coal ash permit program containing minimum federal standards that incorporate the requirements from EPA's final rule. We continue to work on a bipartisan basis with our colleagues in the House and our friends in the Senate. Last week we heard from the States and utilities and today we heard from EPA about the discussion draft. We also received technical assistance from EPA. The bill we will vote on this week reflects careful consideration of the comments and concerns we heard from stakeholders and EPA regarding the discussion draft.

The bill requires every state have a permit program and every permit program will contain minimum requirements based on EPA's final rule. Permit programs will address inactive surface impoundments in essentially the same manner as EPA dealt with them in the final rule in that they will have to be closed within 3 years or 5 years from the date of enactment or they will be regulated like an active disposal unit. We heard concerns the timing was not clear regarding when inactive surface impoundments that failed to meet the closure deadline would have to comply with all of the permit program requirements. The bill we will vote on today clarifies all of the permit program requirements will apply to inactive surface impoundments the day after they fail to complete closure by the deadline.

The compliance timeframes in the discussion draft are comparable to the deadlines in final rule but concern was expressed at the hearing that there were certain requirements in the final rule that would take effect on a significantly shorter time frame than under the legislation. The bill we will vote on changes the deadlines for certain requirements and requires owners and operators prepare fugitive dust control plans, begin conducting structural stability inspections, comply with the requirements for surface water protection and record keeping, and install a permanent marker on all surface impoundments within 8 months from the date of enactment – which makes compliance with these requirements directly in line with the time frames for compliance under the final rule.

The bill expressly protects the ability to bring citizen suits but by creating enforceable permits, it eliminates citizen suits as the only mechanism for enforcement of EPA's requirements for coal ash. The bill requires States to make information regarding groundwater monitoring, corrective action remedies, and structural stability as well as emergency action plans, fugitive dust control plans, and certifications regarding closure available to the public. States must also make final permit determinations publicly available and make all documents for permit determinations not only available to the public but also provide an opportunity for review and comment.

Because the requirements in the final rule will be implemented through State permit programs, the bill allows the implementing agency to provide certain flexibility that takes into account site-specific, risk-based factors.

We heard at the hearing that there is no standard of protection in this bill and the States can't – or won't – do the right thing with respect to regulating the disposal and reuse of coal ash. We heard by allowing States to incorporate the same flexibility they employ in other RCRA permit programs, that we are “weakening” the requirements of the final rule. The fact is however, that EPA relies on the States for the implementation and enforcement of RCRA and as we heard from the Environmental Council of the States and the Association of State and Territorial Solid Waste Management Officials at our hearing, States welcome the new minimum federal requirements and are up to the task of regulating coal ash.

This is a good bill. EPA developed technical requirements for coal ash that are protective of human health and the environment. This bill utilizes those requirements and makes them part of enforceable permits. I urge my colleagues to vote yes.

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