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## Lawmakers Plan Bill Giving EPA 'Solid Waste' CCR Enforcement Authority

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House lawmakers are poised to introduce a bill that would give EPA first-time authority to enforce solid waste rules for coal combustion residues (CCR) in an effort to reach a compromise with the agency to avoid more stringent hazardous waste CCR rules, which industry says would obliterate the coal ash recycling industry.

Rep. Heath Shuler (D-NC), the chairman of the House small business committee's rural development panel, said at a July 22 hearing on the issue that he and other lawmakers are developing legislation to give EPA authority to enforce CCR rules under subtitle D of the Resource Conservation and Recovery Act (RCRA).

The bill, if passed, could help avoid a showdown between industry and EPA over how to regulate CCR, though it could be opposed by environmentalists who favor regulating CCR under stricter subtitle C hazardous waste requirements.

In the wake of the massive 2008 Tennessee Valley Authority coal ash spill, EPA decided to regulate CCR and is taking comment on a June 21 proposal to either regulate disposed coal ash as a solid waste under subtitle D or as a "special waste" under more-stringent subtitle C rules for hazardous waste. Neither proposal would regulate ash if it is recycled. EPA is taking comment on the proposal until Sept. 20.

Industry is pushing EPA to regulate CCR under less-stringent subtitle D solid waste rules -- which states would oversee -- because they say subtitle C hazardous waste rules would stigmatize coal ash and damage the CCR recycling industry, which uses the ash in concrete and other building materials.

However, EPA and environmentalists say there is no proof of such a stigma and argue hazardous waste rules could actually motivate utilities to increase recycling to avoid costly new disposal requirements. The agency and activists have also raised concern that only states -- not EPA -- would have authority to enforce the solid waste rules.

Shuler says the legislation could be a way for all the parties to move forward on the issue. "We want to be able to work with everyone to get a compromise and I think a compromise is good at this point," he told *Inside EPA* after the hearing. He did not provide further details about the legislation and said he did not yet know whether the new authority for EPA would be limited to coal ash. But he said lawmakers were focusing on coal ash because of concern that new rules could harm small business.

The chairman also implied the legislation could prevent states from designating the waste as hazardous. "We have got to have some uniformity," Shuler said during the hearing, adding, "Because if one state . . . want[s] to decide it is hazardous waste, then ultimately it impacts everyone in the industry and we are talking about insurance, liability, litigation."

Shuler said he had discussed the issue with EPA, but Lisa Feldt, EPA's deputy waste chief, sidestepped the issue when questioned about it during the hearing.

### Avoiding Waste Stigma

Rep. Kathy Dahlkemper (D-PA) asked Feldt, "would it make sense for Congress to give EPA authority to regulate under subtitle D and create new disposal measures that can be enforced, at the same time avoiding the stigma of hazardous or special waste?"

Feldt did not directly answer, and instead said, "We currently propose two options in our rulemaking efforts and we are considering those options, and clearly we would provide any technical support necessary, but we have not decided on either of those options right now."

At least some in industry are backing the idea of legislation to give EPA subtitle D enforcement authority, though industry has argued in the past that EPA may have existing authority to enforce.

For example, Thomas Adams, the executive director of the American Coal Ash Association, said subtitle C regulation could “cripple” the recycling industry, which he said has many small businesses and helps the environment through avoided carbon emissions and other benefits. But he added, “We do know that there is a better way and we would like to suggest to you the better way is for Congress to provide subtitle D national enforcement authority to EPA.”

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Lisa Cooper, of PMI Ash Technologies, agreed, saying, “Jobs in our sector and deals are no longer out there. Everyone is in a wait-and-see mode. . . . You need to break this logjam. Please work on a bill that provides subtitle D regulations for coal ash but also provides direct enforcement authority similar to municipal solid waste.”

Cooper's comments appear to echo a push by industry earlier this year for EPA to address the enforcement issue administratively. At a meeting in April, the Edison Electric Institute and the Utility Solid Waste Activities Group met with EPA and White House regulatory review officials where they detailed a plan that would allow EPA to retain oversight of coal ash regulated under subtitle D.

According to documents presented at the meeting, the agency would retain authority under section 4010 (c) of RCRA to oversee state rules regulating solid wastes, much as the agency already does with municipal solid waste landfills and non-municipal solid waste landfills that may receive conditionally exempt small quantity generator hazardous waste.

However, at least one member of the industry witness panel at the small business hearing was not yet ready to back the approach. Robert Garbini of the National Ready Mixed Concrete Association, said, “We are still evaluating whether or not we want to see designation of EPA's control under subtitle D.”

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