

April 30, 2012 – VOLUME 9, ISSUE 4

## House to EPA: Leave fly ash alone

On April 18, the House attached a provision to the latest extension of surface transportation programs ([see related story](#)) that would prohibit the Environmental Protection Agency (EPA) from regulating fly ash as a hazardous waste.

The amendment, which is identical to the Coal Residuals Reuse & Management Act ([H.R. 2273](#)), was approved by voice vote. This marked the second time the House has approved the measure, having already passed it in October 2011 by a 267-144 vote.

### Come to Washington and meet your representatives!

There are several opportunities on the horizon for ACPPA members to make their voice heard in Washington.

Two of ACPPA's closest Washington allies are holding fly-ins in the coming month, and ACPPA members are welcome to come to the Capitol and add your voice to those calling on Congress to support viable long-term infrastructure programs and a pro-growth legislative agenda.

The National Utility Contractors Association is holding its [Annual Washington Summit Fly-In](#) on May 9.

The [Transportation Construction Coalition Fly-In](#) is taking place May 31.

Contact [Christian Klein](#) if you would like to attend either event.

Offered by Rep. David McKinley (R-WV) (a professional engineer who owned his own firm before coming to Congress), the provision would halt the EPA's plans to regulate coal ash as a hazardous waste. Industry groups believe the EPA proposal would have an adverse impact on concrete producers by removing fly ash, a long recycled element, from the supply chain, driving up consumer energy costs, and threatening jobs and economic growth. The McKinley amendment would also give states the option to implement their own coal ash management programs for EPA certification.

The pending House/Senate conference over the future of surface transportation programs will ultimately decide the measure's fate. Given the strong bipartisan support in the House and Senate (a bipartisan Senate bill ([S.1751](#)) was introduced last fall and has several co-sponsors), ACPPA is optimistic that the provision could ultimately be adopted in conference negotiations.

It is critical, however, that lawmakers hear from you about the importance of preserving the use of fly-ash for concrete production. Be sure to visit [ACPPA-Action.org](#) to urge your lawmakers to support the measure in conference.

## Conference call: House passes second highway extension in less than a month to set up Senate negotiations

After spending months pondering how to move forward on a surface transportation reauthorization bill, on April 18, the House finally passed legislation to set up conference negotiations with the Senate.

The bill ([H.R. 4348](#)), which passed with bipartisan support, extends surface transportation programs through Sept. 30. It also grants approval of the Keystone XL pipeline project and would prohibit the EPA from regulating fly ash as a hazardous material. The new legislation follows the enactment of another short-term extension passed at the end of March authorizing surface transportation programs through June 30.

While abandoning the five-year bill envisioned in the House's [original highway measure \(H.R. 7\)](#) due to lack of support from within the Republican conference, the move will use the extension as a shell to force a conference committee with the Senate to negotiate a final bill. In addition to Keystone, House leaders attached the RESTORE Act ([H.R. 3096](#)), which releases the monies collected from fines issued after the BP Deepwater Horizon oil spill to the Gulf Coast states.

On the House floor, three amendments were adopted by the chamber, including a modified version of the [RAMP Act \(H.R. 104\)](#) to tie the Harbor Maintenance Trust Fund to annual revenue, a [provision to prevent the Environmental Protection Agency from regulating fly ash as a hazardous material \(see related story\)](#), and language from H.R. 7 that would [speed environmental considerations](#) for surface transportation projects.

The uncertainty surrounding federal surface transportation programs has hurt construction contractors and suppliers by forcing delays on vital transportation improvements. In approving H.R. 4348, the House has recognized the ever-increasing pressure on the chamber to complete its highway measure and work with the Senate to produce a final bill.

While the approach may not be perfect, at this point, passage of H.R. 4348 seems to be the best way to keep the reauthorization process moving forward and restore near-term certainty to federal surface transportation programs. Conference negotiations will also involve another top ACPPA legislative priority: removal of the state volume cap on private activity bonds (PABs) for water and wastewater infrastructure projects as the Senate attached the provision to MAP-21.

Concrete pressure pipe manufacturers and the rest of the construction industry must keep the pressure on their representatives to approve a new highway bill. Be sure to visit [ACPPA-Action.org](#) to remind lawmakers of the critical need for the certainty a multiyear bill will bring to construction markets.

## NLRB posting requirement faces uncertain future

A federal court has blocked a National Labor Relations Board (NLRB) mandate that would require most employers to post workplace notices informing employees of their collective bargaining rights under the National Labor Relations Act (NLRA).

On April 17, the U.S. Court of Appeals for the District of Columbia Circuit granted an emergency injunction prohibiting the rule from going into effect on April 30, as was previously scheduled.

The injunction comes after a [March 2 ruling](#) from a lower court [holding](#) that the NLRB was within its rights to implement the law. Following the ruling, [the Coalition for a Democratic Workforce](#), of which ACPPA is a member, joined with others in the business community seeking the injunction while the case is appealed. The D.C. Circuit's decision means that the rule will no longer take effect on April 30. Oral arguments on the appeal are scheduled for September. Depending on the outcome, the earliest the rule could enter force would be in the fall.

### ***South Carolina District Court rejects posting mandate***

The injunction follows an April 14 [ruling](#) from another federal court, the U.S. District Court for South Carolina, which held that the NLRB does not possess the authority to mandate the posting. The South Carolina court's holding stated that Congress did not intend to grant the Board the authority to proactively regulate employers.

The NLRB has indicated that it will appeal the South Carolina judgment.

## **FTC settles price fixing and conspiracy charges with major ductile pipe company**

On March 20, Star Pipe Products, Ltd., agreed to a settlement with the Federal Trade Commission (FTC) over charges that it conspired with the two other ductile pipe manufacturers to drive up prices. Star joins Sigma Corporation as the second company to settle with the FTC in the latest crackdown on unfair and anti-competitive pricing.

In Jan. 2012, the FTC charged that, McWane, Inc., invited Star and Sigma to raise and fix prices for imported ductile iron pipe fittings. Between 2008 and 2009, the three firms allegedly exchanged information documenting the volume of their monthly sales to monitor whether the co-conspirators adhered to the terms of the arrangement.

The FTC designed the settlement to prevent a recurrence of Star's anticompetitive actions. Similar to the arrangement previously agreed to by Sigma, Star cannot maintain or participate in any further agreements that undermine the competitive nature of markets. The FTC's case against McWane remains ongoing. The agreement between the FTC and star was in the form of a consent agreement conditionally approved by the FTC in a 4-0 vote [announced](#) March 30. A consent agreement does not constitute an admission. The full text of the consent agreement was [published](#) in the *Federal Register* on March 26.