

July 29, 2011 – VOLUME 8, ISSUE 7

## Fly Ash Bill Moves to House Floor

The Energy & Commerce Committee advanced legislation to the House floor preventing the Environmental Protection Agency (EPA) from regulating Fly Ash as hazardous waste. The Coal Residuals Reuse and Management Act ([H.R. 2273](#)), which received strong bipartisan support, would require the EPA to defer to state regulations on the matter.

The bill would halt the EPA's current plan to regulate coal ash as a hazardous waste, which would have an adverse impact on the concrete production industry; removing a long recycled element out of the supply chain, driving up consumer energy costs, threatening jobs, and economic growth.

In a [July 21 letter](#), ACPPA Board members urged lawmakers to support H.R. 2273 as a way to ensure the ongoing beneficial use of coal combustion residuals and strengthen state regulatory authority over these materials in a manner that protects public health, the environment, and jobs.

The House Appropriations committee also took action to prohibit the EPA from regulating coal ash as a hazardous material when it approved its [draft legislation](#) funding the Interior Department and the EPA. In the proposal, the EPA is prohibited from using any federal funds to "develop propose, finalize, implement, administer, or enforce any regulation that identifies fossil fuel combustion waste as hazardous waste."

You can encourage your representative to co-sponsor the Coal Residuals Reuse and Management Act by simply [clicking here](#).

## House Appropriations Committee Approves Massive Cuts to Water Infrastructure

The House Appropriations Committee approved draft [legislation](#) that would dramatically slash funding for the Environmental Protection Agency (EPA). Unfortunately, a nearly \$1 billion hit is directed at the EPA's State Revolving Funds (SRFs), which provide investments in water infrastructure projects.

The draft bill would fund the SRF program at 2008 levels: \$689 million for the clean water SRF and \$829 million for the drinking water SRF, a \$967 million reduction from fiscal year 2011 spending levels. In setting funding levels, the committee report expressed concern that, "funding these accounts through regular appropriations is unsustainable," and encouraged examination of "funding mechanisms for the SRFs that are sustainable in the long-term."

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Though the committee's bill is likely to pass the full House in the coming weeks, it is dead on arrival in the Senate. ACPPA is reminding lawmakers of our nation's dire water infrastructure needs. The Association is also continuing its push for lifting the cap on private activity bonds for water infrastructure projects and other innovative financing methods that leverage private investment.

### ***Army Corps Budget Takes Hit***

On July 15, the House approved fiscal year 2012 funding for Energy, Water, and Related Agencies Appropriations ([H.R. 2354](#)) trimming \$89 million in civil works funding for the Army Corps of Engineers from 2011 funding levels.

Despite the cut, the funding level is \$195 million above the amount requested by the Obama Administration. The increase in funding is largely attributable to projects dedicated to flood control, including dam safety improvements, and efforts to advance navigation projects and studies. The bill does not fund all of the presidentially requested projects for the Army Corps – redirecting \$59 million to navigation and flood control activities.

However, much like the funding measure for the State Revolving Funds (see above) the legislation faces a near certain rejection by the Senate, leaving final Corp funding for fiscal year 2012 uncertain.

## **Support Builds for Government Contractor Withholding Tax Repeal**

Efforts to repeal the burdensome three percent government contractor withholding tax are gaining steam.

The repeal legislation in the House, [H.R. 674](#), now has 213 co-sponsors, just five shy of a majority. Meanwhile, more than a quarter of the Senate is co-sponsoring one, or both, of that chamber's bills ([S. 89](#), [S. 164](#)) to eliminate this ill-conceived law.

The onerous tax requires federal, state and local government entities whose annual expenditures exceed \$100 million to withhold three percent of all payments made to any individual or company that provides goods or services to the government. This amount is then sent to the IRS and credited against a government contractor's future tax liability. The tax was set to go into effect at the end of 2011, but has been delayed until January 2013.

This groundswell of support for repeal is driven by a barrage of grassroots action from ACPPA and countless other associations and businesses. Are your lawmakers among those backing this common sense reform to the tax code? [Click here](#) to send a note to your representative and senators urging them to eliminate this tax once and for all.

## **Administration Proposes Pro-Union Rules**

Confirming the business community's worst fears, the National Labor Relations Board (NLRB) and the Department of Labor (DOL) are again using the rulemaking process to circumvent Congress and implement big labor's policy priorities.

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On June 21, the NLRB issued a [notice of proposed rulemaking](#) (NPRM) that would alter existing regulations to speed up unionization elections. The proposed rule reduces the amount of time employees and employers may communicate prior to the election and limits the opportunity for full hearings on issues such as voter eligibility, appropriateness of the unit, and election misconduct. Most union elections take place within two months of a filed petition. The NPRM would shorten the timeframe to as little as two weeks.

Additionally, the [Department of Labor \(DOL\) issued an NPRM](#) proposing changes for what constitutes "persuader activity" for reporting under the Labor Management Reporting and Disclosure Act (LMRDA). The DOL proposes to broaden the scope of reportable activities by significantly narrowing its interpretation of the "advice exemption" of the LMRDA. The new rules will deter businesses from seeking outside counsel when presented with a union organizing drive out of fear that even that conversation may trigger disclosure of detailed information about the company's employees and finances – information that will become public.

The public may [comment on the proposed rules](#). [Click here](#) for the NLRB's summary of proposed changes.

### **Success! ACPPA Scores Victory as House Passes Bill to Rein in EPA**

On July 13, the House passed a bipartisan bill to halt the Environmental Protection Agency's (EPA) attack on state authority under the Clean Water Act (CWA). The Clean Water Cooperative Federalism Act ([H.R. 2018](#)) passed 239-184 following an intense lobbying campaign from ACPPA and our allies.

In recent years, the Obama EPA has used the CWA permitting process to block coal mines in Appalachia. However, commercial, residential and infrastructure construction projects also receive CWA scrutiny and are potentially affected by EPA's abuse of its authority.

ACPPA joined an ad hoc coalition of 121 organizations urging swift action on the measure. In a [July 12 letter](#), the coalition urged all members of congress to pass the legislation to "help put people back to work and create new jobs . . . by restoring the proper balance between EPA and the states in regulating the nation's waters."

The legislation, which now awaits action in the Senate, would:

- Amend the CWA to restore the long-standing balance between federal and state partners in regulating the nation's waters;
- Preserve the system of cooperative federalism established under the CWA, which gives states primary responsibility for water pollution control; and
- Prevent EPA from second-guessing or delaying a state's CWA permitting and water quality certification decisions if EPA has already approved a state's program.

Bipartisan cooperation, particularly on environmental issues, is rare in Washington's charged partisan environment. The fact that Rep. Nick Rahall (D-WV), the senior Democrat on the Transportation & Infrastructure Committee, played a lead role in winning passage shows just how excessive the EPA's powers have become.

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Despite the success in the House, the bill's future is far from certain. President Obama has threatened to veto the legislation should it pass the Senate.

### Highway Reauthorization Takes Center Stage on the Hill, but Outlook Still Uncertain

The week of July 4 is usually quiet in Washington, D.C. Not this year. Lawmakers cancelled their planned recess to focus on the debt ceiling, stayed in town and generated a flurry of activity on the highway reauthorization front. But, activity doesn't necessarily mean progress. Here's a quick look at what's been happening:

On July 6, Senate Environment & Public Works Chairwoman Barbara Boxer (D-CA) held [a press conference](#) to outline her highway and transit bill. She also sounded alarm bells about the consequences of congressional inaction on surface transportation reauthorization or letting highway and transit investment levels drop.

House and Senate Reauthorization Proposals At-A-Glance		
	Mica/House plan	Boxer/Senate plan
How many years does it cover?	Six (2012 to 2017)	Two (2012 and 2013)
What's the total value over that time period?	\$230 billion	\$109 billion
What would the average annual highway investment be in current dollars?	Around \$27 billion	Around \$41 billion

Boxer said that the EPW Committee's bill (the text of which hasn't been made public) would authorize \$109 billion over the next two years. That's essentially current funding (\$41 billion per year) plus an inflation adjustment. The problem is that's about \$12 billion more than the Highway Trust Fund (HTF) is expected to receive in user fee (gas tax, etc.) revenues over the next two years, leaving the Senate

Finance Committee with the difficult task of making up the difference in the middle of the worst budget environment in memory. Boxer has proposed using the draw-down of troop levels in Iraq and Afghanistan as an offset, pointing out that the wars are costing taxpayers \$12 billion per month. That's a long shot.

#### ***Inaction could cost 490,000 jobs***

Boxer also used the news conference as an opportunity to focus attention on the negative economic consequences of Congress's failure to put a new multiyear highway and transit bill in place this year. Due to the looming HTF revenue shortfall, unless Congress reauthorizes surface transportation programs and finds a new way to pay for them, annual spending will fall from around \$41 billion per year to approximately \$27 billion. Boxer cited a new analysis from the Federal Highway Administration (FHWA) illustrating the job losses in each state if investment levels fall to that level. The [FHWA document](#) estimates that 490,000 jobs could be lost nationwide in 2012 alone.

"The Senate is working on an approach that will immediately jumpstart the economy, but we are running out of time and must act quickly," Boxer said. "In contrast, the House has signaled that it intends to go in a direction that will result in overwhelming job losses in the construction sector, which has been devastated during the economic downturn."

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### ***The House hits back***

On July 7, House Transportation & Infrastructure (T&I) Committee Chairman John Mica (R-FL) held a press conference to [outline his own reauthorization plan](#). In contrast to Boxer's proposal, Mica would authorize highway and transit programs for six years (through FY 2017), but reduce annual funding to a level consistent with the revenues deposited into the HTF, which could mean a 30 percent cut. The total value of the package would be \$230 billion.

Because of revenue shortfalls, over the past three years Congress has transferred approximately \$35 billion in funding from the General Fund into the HTF. Mica clearly doesn't believe that's sustainable. In defending the decision to move a six-year plan with lower funding, Mica said that state Departments of Transportation and public transit agencies need the predictability of a longer-term transportation bill to plan major projects. He also pointed to House Rule 21, which he said, "Clearly states that we can only authorize programs within the limit of the trust fund."

Mica also discussed other planned program improvements, including consolidating or eliminating approximately 70 Department of Transportation programs, further streamlining the project delivery process, better leveraging existing federal resources, and attracting more private sector infrastructure investment.

### ***What does it mean?***

While we're glad to see the leaders of the two key committees finally talking about the highway bill, we're not much further along in the process today than we were at the beginning of the month. Here's why:

First, neither chairman has unveiled legislative language, which means there's nothing yet for the committees to mark up (however, we could see draft language from either or both sides of Capitol Hill any day). Second, the differences between the two proposals are enormous and point to challenges to come in conference even if both houses pass their own bills. Third, at least publicly, the process has thus far lacked the bipartisan, cross-chamber cooperation between committee chairmen, and in the House, the bipartisan cooperation among the majority and minority party that has characterized past reauthorizations. Fourth, any discussion about outlays is an academic exercise until the debt ceiling issue is resolved and we know what future federal spending will look like. Fifth, there are other key players in the process that aren't making highways a priority: House and Senate leaders need to schedule floor time and the House Ways & Means and Senate Finance committees need to weigh-in on the bills. There's no indication yet of that happening. In other words, we've a long way to go.

While we are pleased to see the process moving forward, we remain concerned about ensuring a program funded at the levels necessary to meet our national needs. ACPPA isn't giving up on a highway bill this year, but with about two months left before the fiscal year ends on Sept. 30, the clock is rapidly running down. It's up to all of us who will be impacted by this issue to make it a priority. If we don't, the highway program will again lapse and House leaders have made clear their unwillingness to use future extension bills to shore it up. That could leave us with the worst of both worlds: a \$27 billion annual funding program and no long-term certainty.

For the sake of our industry, take a minute to visit [ACPPA-Action.org](http://ACPPA-Action.org) and urge your representatives and senators to make a robust highway bill a priority.