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Industry and States Anxious Over Flakey Coal Ash Laws

On June 17, the Senate Environment and Public Works Committee (EPW) examined the new Environmental Protection Agency (EPA) rule regulating the disposal of coal combustion residuals (CCRs) by electric utilities. Witnesses included representatives from industry, the environmental community, and state-level environmental agency heads.



On Dec. 19, 2014, the EPA unveiled the [agency's first-ever regulations](#) regarding the disposal of coal residuals. The final rule was the culmination of extensive education efforts by industry groups, including ACPPA, about the impact EPA action could have on the ability of CCRs to be recycled for other uses, such as the use of fly ash to produce concrete.

In the end, the agency chose not to designate coal ash, a byproduct of combustion from coal-fired power plants, as a hazardous waste, much to the chagrin of environmentalists.

EPW Committee Chairman Jim Inhofe (R-Okla.) began the hearing by championing the importance of CCRs, especially fly ash, as a construction material. Due to fly ash's unique ability to enhance the physical and chemical properties of concrete, it is used throughout the construction industry in roads, bridges, dams and many other poured concrete structures. To drive home this point in his own testimony, Danny Gray, executive vice president of [Charah Inc.](#), routinely noted that fly ash was a resource, not waste.

Alexandra Dunn, executive director and general counsel to the [Environmental Council of the States](#), focused her remarks on the issue of duplicative federal and state laws. Many states already have their own permitting programs for CCRs, but current law does not allow the EPA to approve these state programs.

When the new EPA rule comes into effect, this may lead to redundant state and federal mandates, which put an unnecessary burden on businesses and strain limited government resources, Dunn explained. Instead of this convoluted system, she suggested legislation that would allow states to implement their own regulations subject to federal minimum standards. This sort of system of state and federal cooperation is already used for the Clean Water Act and Safe Drinking Water Act.

Witnesses, especially those representing business, also emphasized the necessity for regulatory clarity. Uncertainty in the regulation of CCRs – manifested by the agency's ability to change their classification from non-hazardous to hazardous waste – prevents long-term capital investments into disposal and recycling. A statutory definition of CCRs as non-hazardous waste would eliminate this uncertainty.

[ACPPA](#) and its industry allies will continue to work to preserve the beneficial use of coal ash. Congressional oversight of agency actions is critical, especially given the regulatory onslaught from the administration. [Weigh-in now](#) with your lawmakers to urge them to curtail EPA overreach using ACPPA's [grassroots action site](#).

EPA Report Suggests Hydraulic Fracturing Has Minimal Impact on Nation's Drinking Water

On June 5, the Environmental Protection Agency (EPA) released the draft results of a five-year, congressionally-requested study on the observed effects shale energy development is having on drinking water. So far, the extensive analysis indicates hydraulic fracturing activities have not led to widespread, systemic impacts to drinking water resources.

The assessment followed the water used for hydraulic fracturing from acquisition and usage to wastewater treatment and disposal. While it did identify potential vulnerabilities caused by shale energy development activities, the EPA's analysis noted some are not unique to the oil and gas industry and none had resulted in a major threat to the nation's water supplies.

The report's development benefitted from extensive stakeholder engagement conducted across the country with states, tribes, industry, non-governmental organizations, the scientific community and the public to ensure the draft assessment reflects current practices in hydraulic fracturing and utilizes all data and information available to the agency. The study will be finalized after review by the Science Advisory Board and a period of public review and comment.

The preliminary findings are a positive step in the overall effort to limit EPA overreach, but ACPPA members must continue to engage on the topic by [submitting comments](#) on the report.

For more information on the study, please visit: www.epa.gov/hfstudy



Congress Shifts into Gear on Highways

With the Highway Trust Fund (HTF) [set to go broke](#) by the end of July, lawmakers on both sides of the Capitol are scrambling to find long-term revenue for a multiyear highway bill.

On June 17, the [House Ways & Means Committee](#) examined options to return certainty to the federal highway program. Unfortunately, at the outset of the hearing, Chairman Paul Ryan (R-Wis.) immediately took a user fee increase off the table and laid the groundwork for another short-term extension paid for through general fund transfers. Nonetheless, former Missouri Governor Bill Graves, now [American Trucking Associations'](#) president, made the case for a gas tax increase as the most viable solution in the short-term and urged lawmakers to consider all options. Much of the conversation centered on public-



[Click here to check DOT's HTF ticker](#)

private partnerships (PPPs). While PPPs should have a place in the conversation, their use won't generate the revenue necessary to rebuild our crumbling infrastructure.

The following week, [House Ways & Means Committee's Select Revenue Measures Subcommittee](#) took a close look at using repatriation of overseas earnings to bolster the HTF. The controversial plan, which essentially would tax U.S. corporations' overseas profits, is a preferred method of several House Ways & Means Committee Republican members. However, witnesses raised issues about the efficacy of using repatriation for highway funding, particularly because the returns are fleeting and might not yield sufficient revenues. Participants also argued that any repatriation plan should be a part of a larger tax reform bill and that it would be a departure from the user fee principle of funding surface transportation projects.

Meanwhile, on June 18, the [Senate Finance Committee](#) held its own hearing to learn about solutions to the HTF's revenue crisis. While former Department of Transportation Secretary Ray LaHood argued for a gas tax increase, a representative from the conservative Heritage Foundation [asserted](#) that Congress should ensure all user fee revenues go to highway infrastructure (as opposed to bike paths, trails, museums, etc.) and, in the long-term, consider "devolving" responsibility for surface transportation funding to the states. Both are "red herrings" as the last highway bill (MAP-21) significantly decreased the amount of money allowed for non-surface transportation functions and "devolution" is unworkable as states will be forced to make up the lack of federal funding through higher taxes.



A week later the [Senate Finance Committee](#) met again, this time it was their turn to hear testimony on state innovations in highway spending, namely public-private partnerships ("PPPs" or "P3s"). At this June 25 meeting, former Indiana Governor Mitch Daniels was among the witnesses who supported P3s. The issue remains that P3s will need to be a complement to a more complete revenue stream, not replace it.

These hearings come as the [Senate Environment & Public Works](#) (EPW) Committee approved the DRIVE Act, a 6-year, \$275 billion highway reauthorization bill, sponsored by EPW Chairman Jim Inhofe (R-Okla.) and Ranking Member Barbara Boxer (D-Cal.). While the bipartisan legislation received unanimous committee support, it's still unclear how the bill will be funded.

Senate Bonus Depreciation Legislation Introduced

On June 24, two senior Senate Finance Committee members introduced separate bonus depreciation bills. Reinstating this capital investment incentive is one of ACPPA's top tax priorities.

Sen. Pat Roberts (R-Kan.) unveiled a proposal to permanently reinstate 50 percent bonus depreciation ([S. 1660](#)), which is a companion to Rep. Pat Tiberi's (R-Ohio) House bill ([H.R. 2510](#)). Meanwhile, Sen. Debbie Stabenow (R-Mich.) introduced legislation to reinstate bonus depreciation for 2015 and 2016 ([S. 1667](#)).

At the end of 2014, 50 percent depreciation bonus depreciation expired, along with numerous other so-called tax "extenders," including the research & development tax credit. Typically, Congress considers "extenders" at the end of the year, but ACPPA is urging immediate action so that businesses can fully take advantage of these important, growth creating provisions.

Pressure Pipe Post

ACPPA's Monthly Source for Industry News

June 2015

To keep members aware of the activities of government and standards organizations, we regularly sweep public databases and publications for the industry-specific terms indicated below. We then provide our members with links to documents identified in the search. Please note that in some cases the URLs may link to subscription-only databases. The purpose of this service is to identify emerging threats and trends as well as opportunities for collective action by ACPPA.

NEWS RESULTS

PVC Pipe

PVCPA Publishes Environmental Product Declaration for Water, Sewer Pipes

06/1/15 http://www.mswmag.com/online_exclusives/2015/06/pvcpa_publishes_environmental_product_declaration_for_water_sewer_pipes

The Uni-Bell PVC Pipe Association (PVCPA) has published the first North American industry-wide environmental product declaration (EPD) for water and sewer piping, and it has been verified by NSF Sustainability, a division of global public health organization NSF International.

Statements at Industry Conferences Could Be Actionable

06/1/15 <http://www.responsemagazine.com/drma/statements-industry-conferences-could-be-actionable-8606>

In *Underground Solutions Inc. (USI) v. Eugene Palermo*, a federal district court considered whether the alleged false statements by a competitor's paid spokesperson at an industry conference about a company's product could form the basis for business tort and false advertising claims brought under California law.

Coal and Fly Ash

Industry officials push for congressional fix for EPA's coal ash disposal rule

06/17/15 <http://www.elp.com/articles/2015/06/industry-officials-push-for-congressional-fix-for-epa-s-coal-ash-disposal-rule.html>

Two witnesses from the power and coal ash recycling industries told a U.S. Senate committee on June 17 that more work needs to be done on a final coal combustion waste rule issued last December by the U.S. Environmental Protection Agency so that the rule works for industry.

The New Coal Combustion Residuals Rule - An Implementation and Enforcement Nightmare

06/15/15 http://www.martindale.com/environmental-law/article_Breazeale-Sachse-Wilson-LLP_2208058.htm

Almost five years after the proposal, EPA has issued its final rule regarding the disposal and beneficial use

of coal combustion residuals (CCRs). The rule establishes federal standards for landfills and surface impoundments in which CCRs are disposed.

Ash cleanup suit dismissal reversed

06/14/15 <http://www.roanecounty.com/content/ash-cleanup-suit-dismissal-reversed>

A lawsuit filed against Jacobs Engineering Group is headed back to U.S. District Court in Knoxville. The Sixth Circuit Court of Appeals reversed Chief U.S. District Judge Thomas Varlan's decision to dismiss the lawsuit.

Appeals Court Gives Coal Ash Cleanup Workers Second Legal Chance

06/4/15 http://www.knoxnews.com/news/watchful-eye/appeals-court-gives-coal-ash-cleanup-workers-second-legal-chance_61628194

A federal appeals court is resurrecting legal action by workers who claim a company hired to clean up the massive coal ash spill in Roane County lied about the danger of their work and failed to protect them from toxic fly ash.

Coal Industry Fighting for Survival on 7 Fronts

06/1/15 <http://insideclimatenews.org/carbon-copy/01062015/coal-industry-fighting-survival-7-fronts>

When Duke Energy announced a billion-dollar plan to shut down a 50-year-old coal power plant, switching the 376-megawatt site over to cheap natural gas and clean solar, the company proclaimed the "end of the coal era in Asheville, N.C."

Underground Infrastructure

Geospatial Corporation's Smart Probe Device Accurately Maps Deep Electrical Conduits in Chicago

06/11/15 http://finance.azcentral.com/azcentral/news/read/30060166/geospatial_corporation's_smart_probe_device_accurately_maps_deep_electrical_conduits_in_chicago

Geospatial's Smart Probe allows the company to map various types of underground conduits and pipelines, no matter the material – metallic or non-metallic, size or depth. The Smart Probe is also ideal for mapping very deep pipelines under water as it doesn't require a data tether or any communication with the surface.

Reality Computing Goes Underground with Ground Penetrating Radar

06/3/15 <https://informedinfrastructure.com/15096/reality-computing-goes-underground-with-ground-penetrating-radar/>

Reality Computing helps teams using GPR to capture existing conditions underground and develop a digital map of that underground area.

Agencies Tackle Buried Infrastructure: Innovations and Technology to Manage Aging Pipes

06/1/15 <http://www.onvia.com/blog/agencies-tackle-buried-infrastructure-innovations-and-technology-to-manage-aging-pipes>

Underneath every town and city lays billions of dollars' worth of pipes, wire and tunnels, commonly referred

to as underground infrastructure. Built decades ago, tunnels for sewers, water, wastewater, electrical, utilities and telecommunications infrastructure are deteriorating at record speed.

Cement

Green concrete proves more durable to fire

06/22/15 <http://phys.org/news/2015-06-green-concrete-durable.html>

Concrete made using an industrial by-product has shown better fire endurance than traditional concrete when exposed to fires of nearly 1000 degrees Celsius.

Nano-additives That Double the Service Life of Concrete

06/10/15 <http://newslink.federallabs.org/2015/06/10/nano-additives-that-double-the-service-life-of-concrete/>

This approach involves a nano-sized additive that slows down the penetration of chloride and sulfate ions from road salt, sea water, and soils into the concrete.

Law: Witnessing History

06/8/15 <https://informedinfrastructure.com/15096/reality-computing-goes-underground-with-ground-penetrating-radar/>

Most civil contractors have experienced failing concrete compressive strength tests and faced the expensive and time-consuming prospect of removing and replacing the work. In this case, the court determined that the supplier had inappropriately added air entrainment to the mix, which caused the delamination and impacted the ultimate strength of the concrete.

Nuverra launches experiment to re-use oil drilling waste

06/8/15 <http://www.thedickinsonpress.com/energy/oil/3761968-nuverra-launches-experiment-re-use-oil-drilling-waste>

An oilfield service company says it can recycle Bakken drilling waste while protecting the environment, turning waste that would otherwise go to a landfill into material for roads or other uses.

Construction

Schumer Reveals: Hundreds of Millions of New Federal Dollars Now Available to Potentially Fund Bay Park Ocean Outfall Pipe

06/8/15 <http://www.schumer.senate.gov/newsroom/press-releases/schumer-reveals-hundreds-of-millions-of-new-federal-dollars-now-available-to-potentially-fund-bay-park-ocean-outfall-pipe-resiliency-project-needed-to-protect-communities-surrounding-reynolds-channel-senator-led-fight-to-secure-over-a-billion-in-federal-funds-for-bay-parkoutfall-pipe-is-final-piece-of-puzzle>

The Bay Park Outfall Pipe is needed to help build back Nassau Back Bay's natural, storm reducing wetlands crippled in the wake of Hurricane Sandy to prevent future environmental disasters and ensure the plant meets new EPA clean water regulations.

Water

America's Neglected Water Systems Face a Reckoning

06/10/15 <http://news.morningstar.com/articlenet/SubmissionsArticle.aspx?submissionid=209022.xml>

The very longevity that has bred such faith in America's water systems now threatens its future. Vast networks of underground pipes, often dating back to the 19th century, are nearing or are already past the end of their useful lives.

Spending bill blocks WOTUS rule, limits species listings

06/9/15 <http://www.agri-pulse.com/Spending-bill-blocks-WOTUS-rule-06092015.asp>

House Republicans turned up their attack on President Obama's regulatory agenda, releasing a new spending bill that would block the new Clean Water Act as well as proposed greenhouse gas regulations on power plants.

Pipeline

Daines calls for oversight hearing for nation's pipeline safety agency

06/17/15 http://helenair.com/news/local/daines-calls-for-oversight-hearing-for-nation-s-pipeline-safety/article_46ddd338-d17c-59f9-9c2d-1a5f9ca0606a.html

After two Yellowstone River oil pipeline breaks in five years, U.S. Sen. Steve Daines is requesting an oversight hearing on the Pipeline and Hazardous Materials Safety Administration.

Criticism of Keystone pipeline proving baseless, embarrassing

06/9/15 <http://www.washingtontimes.com/news/2015/jun/9/drew-johnson-criticism-of-keystone-pipeline-provin/?page=all>

Environmental activists are desperate for a new fight over the Keystone XL pipeline. They've chosen South Dakota as the next battleground.

REGULATORY RESULTS

Cement

Environmental Protection Agency | Final Notice | SIP Calls To Amend Provisions Applying to Excess Emissions

6/12/15 <http://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12905.pdf>

The EPA is clarifying, restating and revising its guidance concerning its interpretation of the Clean Air Act (CAA or Act) requirements with respect to treatment in SIPs of excess emissions during periods of SSM.

Legislative Results

Concrete

S.1524 | Introduced by Sen. Roy Blunt (R-MO) | Concrete Masonry Products Research, Education, and Promotion Act

6/8/2015 <https://www.congress.gov/bill/114th-congress/senate-bill/1524?q=%7B%22search%22%3A%5B%22%5C%22cement%5C%22%22%5D%7D>

This bill directs the Secretary of Commerce to issue orders applicable to manufacturers of concrete masonry products (concrete). Any such order must provide for the establishment of a Concrete Masonry Products Board to carry out a program of promotion, research, and information regarding concrete products. Manufacturers and importers shall maintain, and make available, specified records.

Water

S.1481 | Introduced by Sen. Richard Durbin (D-IL) | Urban Flooding Awareness Act of 2015

6/3/2015 <https://www.congress.gov/bill/114th-congress/senate-bill/1481/text?q=%7B%22search%22%3A%5B%22sewer+pipe%22%5D%7D>

To direct the Administrator of the Federal Emergency Management Agency to enter into an agreement with the National Academy of Sciences to conduct a study on urban flooding, and for other purposes.