

with their plan to designate fly ash as a hazardous material, all of these time-tested energy-saving uses would come to a halt.

The expense of handling the product would increase logarithmically, and so would our electric prices. By increasing the cost of power, it understandably causes the cost of producing American-made products to increase and put American businesses at another disadvantage against our foreign competition. This EPA rule will be an unmitigated job-killer.

Coal ash use and disposal has been studied by the EPA for over 20 years. The Resource Conservation and Recovery Act directed the EPA to study the “adverse effects on human health and the environment, if any,” of current practices for disposal and utilization of fossil fuel combustion wastes. The EPA’s conclusion was that these wastes do not warrant regulation under subtitle C. How many more reports need to be conducted by the EPA to show that fly ash is nonhazardous? Enough is enough.

According to various environmental groups, for every ton of cement manufactured, about 6.5 million BTUs of energy are consumed and about 1 ton of carbon dioxide is replaced. If we can replace that 1 ton with fly ash, we could save enough electricity to power an average American home for 24 days and reduce carbon dioxide emissions equal to a 2-month use of an automobile.

What’s ironic to me is that even the EPA’s headquarters right down the street from us was built with a significant amount of fly ash mixed into the concrete matrix.

The use of fly ash in concrete creates a stronger, lasting product by using less water. In using less water, we further reduce our environmental footprint.

I ask my colleagues to join me today in supporting my amendment.

The Acting CHAIR. The time of the gentleman has expired.

Mr. MORAN. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from Virginia is recognized for 3 minutes.

Mr. MORAN. Mr. Chairman, this amendment would stop EPA from identifying coal ash as hazardous waste and, therefore, prevent any regulation of that waste. The fact is that coal ash contains dangerous contaminants, such as mercury, cadmium, and arsenic, and we know those can be dangerous to public health. Without further guidance by EPA, this ash will continue to be stored onsite at many large power plants, where it leaches into the groundwater and into nearby streams. EPA has found a number of communities across the country where coal ash has contaminated drinking water sources poisoning people and wildlife.

Through its public rulemaking process, it’s been developing a rule. In fact, it has received more than 450,000 public comments. It’s had Web-based seminars. It’s done everything to get opin-

ion on both sides of this issue. It’s currently conducting risk and economic analyses of the options available.

Suspending work on a final regulation isn’t going to satisfy anybody. But it will ensure that you’re going to continue to have the coal ash at risk of contaminating drinking water, you are going to create uncertainty for power companies that burn coal, and you are going to eliminate potential markets for coal ash reuse. Potential users are not going to buy it if they think some day it might cause liability. The final EPA rule would eliminate that uncertainty, allow for coal ash to be properly stored and used, and eliminate the risk for health and the environment. That’s why the amendment should be defeated.

At this point, I yield the balance of my time to the gentleman from California (Mr. WAXMAN), the distinguished ranking member of the Energy and Commerce Committee.

The Acting CHAIR. The gentleman is recognized for 1½ minutes.

Mr. WAXMAN. I urge my colleagues to oppose this amendment.

I want to tell you a story. On December 22, 2008, in Kingston, Tennessee, a coal ash impoundment structurally failed, and they released 5.4 million cubic yards of toxic sludge. This sludge blanketed the Emory River and 300 acres of surrounding land, creating a Superfund site that could cost up to \$825 million to remediate. If this coal ash had been stored safely, this tragedy would never have happened. The wastes are dangerous. What EPA has tried to do is to make sure that the hazardous waste is disposed of safely to protect the health of communities.

And I find it somewhat amazing to hear the author of this amendment say that EPA is acting on an ideological agenda. How ideological do you have to be to act when you have an example of a terrible amount of coal ash poisoning areas and threatening drinking water? Is that ideological when they want to make sure that it’s safeguarded and disposed of in a proper way? That’s not ideological. That’s the kind of thing we want EPA to do. So I would urge opposition to this amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from West Virginia (Mr. MCKINLEY).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. MCKINLEY. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from West Virginia will be postponed.

AMENDMENT NO. 545 OFFERED BY MR. POMPEO

Mr. POMPEO. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill (before the short title), insert the following:

SEC. ____ None of the funds made available by this Act may be used to carry out any of the activities described in section 6A of the Consumer Product Safety Act (15 U.S.C. 2055a).

The Acting CHAIR. Pursuant to the order of the House of February 17, 2011, the gentleman from Kansas (Mr. POMPEO) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Kansas.

Mr. POMPEO. Mr. Chairman, I yield myself 2 minutes.

This amendment is actually pretty straightforward. It’s pretty simple. The Consumer Product Safety Improvement Act of 2008 called for the creation of a public consumer information database. And last year, the agency adopted a database rule that fails to uphold the statute. The statute required that the agency not allow materially inaccurate information to be on the publicly available database, and yet the rule, as promulgated, actually requires the agency to post materially inaccurate information. Indeed, it requires the agency to post that material and accurate information within 10 days. This will drive jobs overseas. It will increase the cost for manufacturers and consumers. The National Association of Manufacturers has announced its support for this amendment. The Home Appliance Manufacturers, the American Home Furnishings Alliance, the Consumer Specialty Products Associations all have recognized that this regulation is terribly onerous.

The request of this amendment is very modest. It does not ask that this go away. It just asks for a delay in implementation. It asks for some time for the committee to review this regulation and come up with a regulation that makes sense and is consistent with the statute. So I would urge the support of this amendment.

I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I rise in opposition to the amendment.

The Acting CHAIR. The gentleman from California is recognized for 10 minutes.

Mr. WAXMAN. I yield myself 2 minutes.

This amendment would deny the Consumer Product Safety Commission the implementation of a searchable public consumer safety information database. Now this database was part of a bill that passed this House by 424-1. We required a database, and CPSC is ready to release this database. It’s based on similar successful databases run at the present time by the Food and Drug Administration and the National Highway Traffic Safety Administration. It would allow consumers to report harms associated with consumer products and then to research risks associated with these particular products.

This is exactly what the American people want. They want information. They have a right to know. And, in fact, every opinion poll indicates this.

This amendment is a “keep the consumers in the dark” amendment. Parents want to know if a toy is dangerous. This amendment would take away their right to go to a database that would give them this information.

Now the claims against the database are pretty shocking. The manufacturers say, Well, this is going to be a problem because they’re going to put things on the database that are trade secrets or inaccurate.

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This is simply not the case. There is a safeguard. In fact, there are safeguards after safeguards to protect manufacturers.

The statute provides more procedural safeguards than any other public database at a Federal agency. Anonymous complaints are not allowed, only safety-related information will be included. Businesses get to see every report of harm before it is placed in the database. They have an opportunity to correct inaccurate information and to provide their own comments.

I reserve the balance of my time.

Mr. POMPEO. Mr. Chairman, I yield 1 minute to the gentlewoman from Missouri (Mrs. EMERSON).

Mrs. EMERSON. Mr. Chairman, I rise in support of this amendment. Having voted for the NHTSA Act, I want to say that the intent of this database was to provide consumers with information on dangerous products. Some people have compared the database to the one operated by the National Highway and Traffic Safety Administration. However, the two are very different because NHTSA’s database requires much more information about the actual product and is therefore much more reliable.

From a government perspective, we should be concerned that there will be inaccurate information on a “.gov” Web site. And at the end of the day, the most important factor is this: If the database isn’t accurate or reliable, it is going to be totally useless for consumers looking to avoid unreliable or dangerous products. It has already cost \$29 million. And I say, if you’re going to set up a database, do it right.

We, as a Congress, have a duty to fund things that are in the best interests of the American people, and the CPSC database is not. It should not go live next month with inaccurate information.

I strongly support this amendment.

Mr. WAXMAN. Mr. Chairman, I yield 1½ minutes to the ranking member of the subcommittee that has jurisdiction over this issue, the gentleman from North Carolina (Mr. BUTTERFIELD).

Mr. BUTTERFIELD. Mr. Chairman, I rise in opposition to the amendment. As part of the Consumer Product Safety Improvement Act, the Consumer Product Safety Commission was charged with creating a publicly available, searchable database for complaints regarding consumer products. The amendment offered by the gentleman aims to bar the Commission

from moving forward with this database.

The Food and Drug Administration and the National Highway Traffic Safety Administration both have publicly available databases for consumers to report harms or potential safety problems about cars and medical products. Those databases don’t provide any due process to manufacturers to contest those claims. However, this database provides exhaustive due process, including allowing manufacturers to refute “materially inaccurate” claims and, if found to be inaccurate, have the complaint removed. The Commission database also allows manufacturers to issue a response and have those responses appear along with the consumer complaint.

Mr. Chairman, I urge my colleagues to reject this amendment.

Mr. POMPEO. Mr. Chairman, I yield 15 seconds to my colleague from Texas (Mr. BARTON).

Mr. BARTON of Texas. Mr. Chairman, I would like to put in the RECORD a letter dated November 23, 2010, on this issue that I sent to the chairman of the U.S. Consumer Product Safety Commission, the Honorable Inez Tenenbaum.

I rise in strong support of the gentleman from Kansas’ amendment. He is exactly right on this, and we should support him.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, November 23, 2010.

Hon. INEZ TENENBAUM,
Chairman, U.S. Consumer Product Safety Commission, Bethesda, MD.

DEAR CHAIRMAN TENENBAUM: I am pleased the Commission delayed consideration of a proposed final rule on implementing the Publicly Available Consumer Product Safety Information Database. Implementing this database properly is very important and I write to clarify the intent of Congress when we passed the relevant provisions of the Consumer Product Safety Improvement Act of 2008 (P.L. 110-314). Several provisions of the staff-proposed final rule run contrary to the intent of Congress and the clear and unambiguous language of the Act.

By way of background, the House-passed version (H.R. 4040) of the database provision reported by the Energy and Commerce Committee by a 51-0 vote did not authorize implementation of a database remotely similar to the one set forth in either the Public Law or the proposed final rule. We had bipartisan agreement to evaluate the efficacy of, and only then improve, the Commission’s legacy Injury Information Clearinghouse database based on this evaluation. We provided first for an evaluation of the Commission’s current injury databases. Following this evaluation, the bill directed the Commission to submit a plan to Congress on the best way to maintain the publicly available information in a searchable Internet database. The bill also directed the Commission to provide its views on whether the database should include additional information, such as consumer complaints. The bill thus provided for evaluation and another opportunity for Congress to consider the best way of addressing the database. We clearly could have gone further and drafted the bill to require that the database include such information, but we rejected that approach. In fact, the then Committee Chairman and I both opposed—

and the Committee rejected—amendments during Committee consideration that would have mandated specific reporting requirements. We shared serious concerns that innocent companies should not suffer reputational harm from slanderous or inaccurate information in the publicly accessible database before the Commission verifies the accuracy of the information. Due process is important and we did not believe the amendment afforded adequate protection to those who could suffer harm from the disclosure of slanderous or inaccurate information.

Similarly, after the Senate passed its bill, the conferees reached a compromise between narrow House and the broader Senate database provisions to specifically balance the interests of consumers and companies. The approach we agreed upon carefully balanced the objectives of making reports of harm available to the public, ensuring the accuracy of the information, and preventing the disclosure of confidential information. The Commission staff proposal does not properly balance these interests and therefore does not comport with the intent of Congress. The proposal provides that the Commission would submit information where a specific product and manufacturer is identified to that manufacturer for review of potentially confidential information and to ascertain the material accuracy of the information. If a company provides evidence proving that either a breach of trade secrets would result from disclosure of the information or that the information is materially inaccurate, the Commission staff would review the evidence. According to the staff proposal, if the Commission cannot complete its review within 10 days, it would publish the information and remove it at a later date if warranted at the conclusion of its investigation. This process would provide little or no protection for confidential information and will encourage the publication of inaccurate and misleading information. Once the information is public, competitors can learn trade secrets and media can disseminate materially inaccurate information with little hope that the error could be rectified in the future. Congress did not intend such a result, and we went to great lengths to provide reasonable protection to manufacturers from the harm that such publication could entail. The Commission must follow the intent of Congress and allow such information to be withheld pending the completion of its investigation into confidentiality and accuracy.

I am also troubled by the proposed final rule’s expansion of the list of entities that may submit reports of harm to the database beyond those specifically enumerated in the law. Congress included an exhaustive and exclusive list of those who may submit reports for the database in section 6A(b)(1)(A) of the Act. Specifically, that section provides that the database shall include “Reports of harm relating to the use of consumer products, and other products or substances regulated by the Commission, that are received by the Commission from (i) consumers; (ii) local, State, or Federal government agencies; (iii) health care professionals; (iv) child service providers; and (v) public safety entities.”

In its first draft, the Commission staff sought to create a new category of “others” not contemplated by Congress, which included but was not limited to attorneys, professional engineers, investigators, non-government organizations (NGOs), consumer advocates, consumer advocacy organizations, and trade associations. In its most recent draft, the staff accepts that Congress enacted an exhaustive and exclusive list of reporters and removed the category of “others.” However, the proposal now simply redefines the term “consumers” to include attorneys, investigators, professional engineers,

agents of a user of a consumer product, and observers of the consumer products being used. Congress did not anticipate that the Commission would propose a definition of “consumer” that so radically departs from the common definition of consumer. If Congress had intended to expand the universe of reporters to include all of the entities identified in the most recent proposal, we would have made it explicit in the Act.

Finally, the proposal also expands the definition of “public safety entity” to extend beyond federal, state and local law enforcement entities, police, fire, ambulance, emergency medical services, and other public safety officials to now include consumer advocates, NGOs, consumer advocacy organizations and trade associations. Congress did not intend to include these additional entities as is clear by the plain meaning of the text. Accordingly, to comport with Congressional intent, the Commission must strike the expanded definitions of “consumers” and “public safety entity” before it finalizes the rule.

Thank you for the opportunity to clarify the intent of Congress in these matters. I look forward to working with you and the Commission on implementation of the CPSIA.

Sincerely,

JOE BARTON,
Ranking Member.

Mr. WAXMAN. May I inquire of the Chair how much time each side has left?

The Acting CHAIR. The gentleman from California has 7 minutes remaining. The gentleman from Kansas has 7¾ minutes remaining.

Mr. POMPEO. I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts (Mr. MARKEY) who authored this particular provision in the consumer product safety legislation.

Mr. MARKEY. I thank the gentleman from California.

This language is going to destroy the early warning system that has been put in place in order to give parents the information they need in order to protect their children. If this amendment passes, it will grant industry’s wish to once again make the government its secret partner in crime by keeping reports of serious injury or even death hidden from public view.

In 2000 and again in 2003, the Consumer Product Safety Commission documented cases of children suffering intestinal injuries after swallowing small but powerful magnets that had fallen out of toys. The public didn’t know, and the CPSC did nothing. By mid-2005, after more reports of safety concerns associated with the magnets and two reports of serious, life-threatening injuries, the public still didn’t know, and the CPSC still did nothing.

On Thanksgiving Day 2005, 22-month-old Kenny Sweet of Redmond, Washington, died after swallowing magnets that had fallen out of Magnetix toys. It was only after Kenny’s death and an additional four hospitalizations that the CPSC finally gave the public an inkling of what was going on. But it actually took until April of 2007—after 7 years of reports of risks, numerous se-

rious injuries and a death—before a full recall of all the products was undertaken. And that is not the only example of deaths and injuries that could have been avoided had parents known the risks to their children.

In all of these cases, we heard the same story. There simply aren’t enough resources for the CPSC to quickly and fully investigate every complaint. In 2005, the CPSC investigated only 1 percent.

This is a “no” vote. Otherwise, we are going to see that choking hazards and cribs that kill are once again hidden from public view.

Mr. POMPEO. Mr. Chairman, I urge regulatory sensibility in the support of this amendment, and with that, I yield back the balance of my time.

Mr. WAXMAN. Mr. Chairman, in my last 30 seconds, let me just say this is an issue of the public’s right to know. Let this database be available to them so they don’t go buy a toy that they could have checked out on a Web site and found out that it was poisonous.

I urge the defeat of this amendment. The Acting CHAIR. The question is on the amendment offered by the gentleman from Kansas (Mr. POMPEO).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. POMPEO. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kansas will be postponed.

AMENDMENT NO. 515 OFFERED BY MR. BISHOP OF UTAH

Mr. BISHOP of Utah. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill (before the short title), insert the following:

SEC. ____ . None of the funds made available by this Act may be used for the National Landscape Conservation System.

The Acting CHAIR. Pursuant to the order of the House of February 18, 2011, the gentleman from Utah and a Member opposed each will control 3 minutes.

The Chair recognizes the gentleman from Utah.

Mr. BISHOP of Utah. Mr. Chairman, the NLCS, which is a redundant administrative system, was codified by legislation. In the 110th session of Congress, the House passed an amended bill which went over to the Senate and died. In the 111th session, the Senate picked up that bill, stripped all the House amendments off and put it into the omnibus lands bill where, without any hearing or debate, it was hidden in the bowels and sent over to us where, once again, we had no hearings, limited debate, none of which was on this particular system.

This redundant system, since I have introduced a resolution to try and

streamline the Department of the Interior by streamlining those functions, I have heard some of the most amazing accusations of what would happen if we were to indeed do that, everything from having the sun come up in the west to the immediate beginning of the Mayan calendar.

Ms. BERKLEY. Mr. Chair, I rise in the strongest possible opposition to the Bishop amendment. As is the case with many of the cuts in this bill, and with many of the amendments offered, the goal seems to be to cut just for the sake of cutting. COPS funding? Cut it. Title Ten services for low-income women? Cut it. Head Start? Cut it. The list goes on and on.

I support efforts to reduce the deficit, and in that effort I have voted for some of the amendments offered this week. But the Bishop amendment goes too far, and in fact will have a devastating impact on Southern Nevada and many other communities across the nation that will cost us far more in the long run.

As an example, defunding the entire National Landscape Conservation System will require shutting down the Red Rock Canyon National Conservation Area, the stunningly beautiful natural wonder just outside of Las Vegas. More than one million local families and tourists visit this unique national treasure each year, taking advantage of the 13-mile scenic drive, visitor center, hiking trails, rock climbing, horseback riding, mountain biking and other recreational activities, and bringing valuable tourist revenue to our community as we work to recover from the economic downturn. Funding from the National Landscape Conservation System allows BLM to maintain the roads, trails and visitor center that make Red Rock accessible and that enable people of all ages and abilities to enjoy its beauty year-round. Passage of this amendment would eliminate this essential funding and force the shutdown of this jewel in the Nevada desert.

I strongly encourage the defeat of this short-sighted amendment.

Mr. BISHOP of Utah. With the time that we are at right now and with the further indication that during this session our committee will definitely review this particular administrative system for further investigation, I would ask, with permission of the Chair, to withdraw the amendment.

The Acting CHAIR. Without objection, the amendment is withdrawn.

There was no objection.

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AMENDMENT NO. 200 OFFERED BY MR. BURGESS

Mr. BURGESS. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end of the bill (before the short title), insert the following:

SEC. ____ . None of the funds made available by this Act may be used to pay the salary of any officer or employee of the Center for Consumer Information and Insurance Oversight in the Department of Health and Human Services.

The Acting CHAIR. Pursuant to the order of the House of February 18, 2011, the gentleman from Texas (Mr. BURGESS) and a Member opposed each will control 3 minutes.