

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 27, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Later today, the House Committee on the Judiciary (Judiciary) is expected to consider H.R. 2834, a bill to enact certain laws relating to the environment as title 55, United States Code, "Environment." This bill goes beyond merely codifying existing statutes and instead makes substantive changes to provisions of law within the jurisdiction of the Committee on Energy and Commerce (our Committee). Therefore, I respectfully request that you assert the Committee's jurisdiction so that we may formally review the bill and its potential impacts.

As outlined by the Office of Law Revision Counsel, the bill restates a number of environmental statutes, including the Clean Air Act, as a new positive law title of the United States Code, with amendments and corrections to remove ambiguities, contradictions, and other imperfections.¹ After introducing H.R. 2834, the sponsor stated that: "[t]he new positive law title replaces the existing provisions, which are repealed by the bill," but "[t]he bill is not intended to make any substantive changes in the law."²

¹ Under 2 U.S.C. 285(b)(1), the Office of Law Revision Counsel is required: "[t]o prepare, and submit to the Committee on the Judiciary one title at a time, a complete compilation, restatement, and revision of the general and permanent laws of the United States which conforms to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections both of substance and of form, separately stated, with a view to the enactment of each title as positive law."

² Rep. Tom Marino, *Introductory Remarks of Sponsor* (June 18, 2015) (online at www.congress.gov/crec/2015/06/18/CREC-2015-06-18-pt1-PgE931.pdf).

The Honorable Fred Upton
October 27, 2015
Page 2

While the bill is supposed to be purely technical in nature, it has come to my attention that the proposed changes made by the legislation are not.³

For example, the text of H.R. 2834 makes changes to the current Clean Air Act section 111, by omitting key language that was passed by both houses of Congress, was signed into law by the President, and appears in the Statutes at Large. Such changes could have serious implications for rulemaking at the Environmental Protection Agency (EPA), and would inject added confusion into the interpretation of an already complex law. Further, such changes are not merely technical in nature, and they represent substantive changes to the Clean Air Act. To that end, our Committee has jurisdiction over H.R. 2834 because the bill amends portions of the Clean Air Act, beyond the technical changes authorized in a positive law codification bill.⁴

By acting solely on H.R. 2834, Judiciary is, in effect, writing national policy on matters within our jurisdiction and running roughshod over the prerogatives of our Committee and the legislative process. Such policy decisions should be made through regular order, including full consideration by our Committee, not disguised as noncontroversial, technical changes to established law in a manner that could mislead Members of both parties.

While we may have different views on the substance of the bill, I hope you will agree with me that our Committee should, at a minimum, exercise its authority and formally review the legislation. Defending the jurisdiction of our Committee is one of the most important and least partisan responsibilities of the Chairman. I strongly urge you to take that responsibility seriously and request that H.R. 2834 be referred to the Committee so members can appropriately consider its provisions.

I look forward to your response.

Sincerely,



Frank Pallone, Jr.
Ranking Member

³ EPA Staff discussion with Energy and Commerce Democratic Staff (Oct. 23, 2015).

⁴ Energy and Commerce Committee Resolution and Oversight Plan, 114th Cong. (adopted Jan. 14, 2015)(sets forth jurisdiction of standing subcommittees, citing the Clean Air Act and air emissions as falling under the Subcommittee on Energy and Power); *see also* House Committee on Energy and Commerce, *Compilation of Selected Acts Within the Jurisdiction of the Committee on Energy and Commerce, Environmental Law Volume 1*, 107th Cong. (May 2001)(including the Clean Air Act, Clean Air Act Amendments of 1977 and 1990).