

COMPARISON OF COAL ASH STATUTORY AND REGULATORY OPTIONS

This table provides a comparison of four options:

- (1) EPA's proposed rule under subtitle C of RCRA;
 (2) EPA's proposed rule under subtitle D of RCRA;

- (3) HR 2273/S 1751 (McKinley Bill); and
 (4) S 3512 (Hoeven/Conrad/Baucus Bill)

Requirement	Subtitle C of RCRA (As Proposed)	Subtitle D of RCRA (As Proposed)	HR 2273/S 1751 McKinley Bill	S 3512 Hoeven/Conrad/Baucus Bill
1. Designation of coal ash	"Special Waste"	Non-hazardous	Non-hazardous	Non-hazardous
2. Req't to protect human health and the environment	YES	YES	NO	NO for major issues including dust control, structural stability of ponds, site location, closure, permit issuance, and state program implementation. ⁱ
3. Req't to address retired (legacy) coal ash sites	YES	YES, closure req'ts apply to retired units	NO	NO, if a coal ash dump does not accept waste after the date of enactment of the bill, <u>no</u> closure or post-closure care standards apply—even in the case of high and significant hazard dams or leaking landfills.
4. Specific req'ts to ensure structural stability of ponds (MSHA)ⁱⁱ	YES	YES	NO	NO, the bill does not incorporate the federal health and safety standards applicable to coal slurry ponds, which ensure structural stability and are directly applicable to coal ash surface impoundments. ⁱⁱⁱ
A. Frequency of Inspections for structural stability	YES	YES	NO, only annual inspection	NO, annual inspection only, and deficiencies don't need to be reported to the state or made public. No req't for operator to fix problems when discovered. ^{iv}
B. Emergency Action Plan	YES	YES	NO	NO, operators (even high hazard) do not have to prepare plans or coordinate with first responders.
C. Leachate collection system to capture chemicals that breach protective liners	New ponds are prohibited	YES	NO	NO, the bill explicitly exempts new ponds from installing leachate collection systems, even though all engineered landfills, including those for household trash, are required to install systems to prevent leachate from reaching drinking water sources. ^v
D. Engineering standards for new ponds	New ponds prohibited	YES	NO	NO. There is no requirement to comply with MSHA standards.
E. Req't to eliminate liquids from ponds upon closure	YES	YES	NO	NO. S 3512 does not require the elimination of free liquids from ponds at closure. ^{vi} Closure standards do not address liquid wastes, because the req'ts are based on municipal solid waste landfill req'ts only.
5. Req't to phase out existing coal ash ponds	YES	Phase out or retrofit with composite liner and comply with MSHA standards	NO	NO. S 3512 requires some unlined ponds that are leaking for 8-10 years after enactment to close, but closure can be delayed indefinitely if alternative onsite disposal site is not established by owner.
6. Req't to issue permits for coal ash ponds and landfills	YES and interim req'ts apply prior to permit issuance	No, but req'ts apply w/o permit six months after effective date of regulations	NO	YES, but S 3512 establishes <u>no deadline</u> for permit issuance, ^{vii} and no requirements apply prior to permit issuance (except groundwater monitoring). Therefore all operating standards and requirements are indefinitely delayed until state issues permits.

7. Requirement to control fugitive dust (wind dispersal of coal ash)	YES	YES	NO	NO, S 3512 does not establish any standard that operators must meet to prevent fugitive dust. S 3512's vague req't to "address" fugitive dust does not mandate the frequency of cover, establish a particulate limit for dust, or even require that fugitive dust be adequately controlled to protect health. ^{viii}
8. Closure requirements commensurate with municipal solid waste landfills	YES	YES	NO	NO. S 3512 does not establish meaningful closure req'ts because it exempts owner/operators from submitting closure plans and completing closure by a date certain. ^{ix} In addition, S 3512 does not require a state to consider health or the environment in setting method and date of closure. ^x
9. Financial Assurance req'ts commensurate with municipal solid waste landfill req'ts	YES	YES	NO	NO. S 3512 does not require a closure plan, ^{xi} which is the basis for calculating financial assurance (which must equal the cost of a third party safely closing the unit). Financial assurance must be tied to a closure plan so that changes at the facility are reflected in the financial assurance.
10. Req't to close dumps in unstable areas	YES	YES	NO	NO, S 3512 has no deadline for closure of ponds and landfills in unstable areas. ^{xii}
10. Public participation requirement in permitting and siting	YES	YES	NO	UNCLEAR, public participation req's are not specified, thus there are no specific guarantees of how public notice, comment or hearings will be administered. Unlike other environmental laws that guarantee specific rights to citizens, S 3512 allows States to determine the form and extent of public participation. ^{xiii}
11. EPA rule-making authority	YES	YES	NO	NO, S 3512 prohibits EPA from future rulemakings on coal ash. ^{xiv}
12. EPA enforcement authority	YES	NO	NO	NO (only upon specific request by state). ^{xv}
13. EPA inspection authority	YES	NO	NO	NO.
14. Public access to groundwater monitoring data	YES	NO	NO	NO, utilities can (and will) claim exemption from disclosure by asserting "Confidential Business Information" claims. Also S 3512 does not require internet posting of data. ^{xvi}
15. Req't to construct above the water table	YES	YES	NO	NO, S 3512 allows disposal in the water table if the site will not accommodate a 2-foot separation. No safety demonstration by licensed engineer is req'd. ^{xvii}

ⁱ See § 4011(c)(1).

ⁱⁱ Mine Safety and Health Administration (MSHA) Standards applying to coal ash slurry ponds.

ⁱⁱⁱ See § 4011(c)(1)(B).

^{iv} See § 4011(c)(1)(B).

^v See § 4011(c)(2)(A)(i).

^{vi} See § 4011(h)(2). S 3512 require only the "removal of liquid" not "the elimination of free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues." See EPA's proposed §257.100(c) at 75 Fed. Reg. 35252.

^{vii} See § 4011(c)(1)(E).

^{viii} See § 4011(c)(1)(D).

^{ix} See § 4011(c)(2)(A)(iii). Coal ash landfills and ponds are exempted from the municipal solid waste landfill closure requirements in 40 C.F.R. §§ 258.60(d) through (g).

^x See § 4011(h).

^{xi} See § 4011(c)(2)(A)(iii).

^{xii} See § 4011(c)(2)(B).

^{xiii} See § 4011(b)(2)(B)(iii)(III). In contrast, see, e.g., 40 C.F.R. Part 25, available at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=40:1.0.1.1.24&idno=40>.

^{xiv} See § 4011(i)(2)(A) and (E).

^{xv} See § 4011(i)(2)(C).

^{xvi} See § 4011(c)(1)(G).

^{xvii} See § 4011(c)(1)(C).