

June 5, 2012

Dear Senate Conferee:

The undersigned 140 public interest groups from the 14 Senate conferee states respectfully ask you to reject the controversial amendments added by the House of Representatives to their transportation bill. We urge you to move to produce a conference report that increases American jobs and improves transportation safety, without jeopardizing the health of our communities. The House bill irresponsibly burdens a bipartisan Senate transportation bill with three dangerous, controversial and unrelated provisions that attack our health and environment. These provisions include the removal of the EPA's authority to issue the first-ever national standards for coal ash, the evisceration of a public participation-oriented environmental review law (NEPA), and the automatic permitting of the Keystone XL pipeline. While we ask you to ensure that all three controversial provisions are not on the conference report, we ask specifically that the package not preempt national standards for the safe disposal of toxic coal ash.

Without national disposal standards, this voluminous waste will continue to be dumped in immense unlined ponds, like the one that collapsed in Kingston, Tennessee, and in unlined landfills. The nation's hundreds of coal ash ponds are subject to life-threatening catastrophic spills, and both ponds and landfills routinely poison drinking water sources when their cargo of toxic chemicals leaks into underlying groundwater.

Title V of the transportation bill would permanently remove EPA authority to establish consistent national standards for coal ash disposal, an unprecedented prohibition under the Resource Conservation and Recovery Act (RCRA). It would render totally moot EPA's two-year rulemaking process, which garnered broad public support in over 450,000 comments. Further, Title V:

- fails to phase out dangerous and deadly coal ash ponds like the one that collapsed in Tennessee;
- fails to guarantee citizens living near coal ash sites the right to participate in permitting decisions;
- fails to protect communities from dust blowing from sites;
- fails to set deadlines for permitting and cleanup standards;
- fails to ensure drinking water standards for arsenic, lead and other pollutants are met near ash dumps; and
- fails to address legacy pollution near coal-fired power plants.

Coal ash threatens the health of Americans in your state. In 13 of the 14 states represented on the conference committee, state regulations fail to require essential safeguards at coal ash ponds such as groundwater monitoring to detect leaks and composite liners to protect drinking water sources. In 12 states, these safeguards are also lacking for coal ash landfills. And despite the fact that coal ash has poisoned water with toxic chemicals at nearly 200 sites in the U.S., only 1 of the 14 states prohibits coal ash ponds from being constructed directly in the water table. Title V will not cure these dangerous deficits.

Damage from coal ash in our states is not hard to find. For example:

- Coal ash contaminated water at seven sites in Florida with hazardous pollutants such as arsenic, lead, cadmium, selenium and thallium.
- In West Virginia, where coal ash ponds have a combined capacity of over 12 billion gallons, deadly pollutants such as arsenic, thallium and antimony were found in water at seven sites.
- In Montana where coal ash is exempt from all state regulation, a leaking coal ash pond sickened people and triggered a \$25 million lawsuit. The leaking pond continues to poison water in a plume that stretches over a mile from the plant, threatening ranchers.
- In Alabama, where the average height of 18 coal ash ponds is nearly seven stories, there is no state oversight. No Alabama pond has been subjected to a state inspection in the past five years. Yet after inspection by federal contractors, five ponds were given poor ratings, and two had to make immediate repairs to improve stability.

These are only a few examples of how improper disposal of coal ash threatens our water, safety and health.

Title V, like the other two controversial provisions added by the House, provides significant benefits to polluters. The coal ash amendment specifically has been linked to the American Legislative Exchange Council's (ALEC) position on coal ash,¹ an entity that is fighting the coal ash regulation on polluters' behalf. Such a transparent corporate giveaway will create a dangerous public health loophole while jeopardizing the passage of transportation legislation that would provide broad benefits in our state. Please ensure that the transportation bill promotes the safety and prosperity of our communities, without harming our health and welfare.

Respectfully,

¹ ALEC, Economy Derailed: State-By-State Impacts of the EPA Regulatory Train Wreck 73-74 (2012), available at http://www.alec.org/docs/Economy_Derailed_April_2012.pdf (describing "tools for legislators" including model legislation prepared by ALEC titled "Resolution to Retain State Authority Over Coal Ash as Non-Hazardous Waste"). In early 2010, ALEC passed a "Resolution to Retain State Authority Over Coal Ash as Non-Hazardous Waste" ALEC, EPA's Regulatory Train Wreck: Strategies for State Legislators 45 (2011), available at <http://www.alec.org/docs/EPA-TRAIN-WRECK-2011-Final-Full-printres.pdf>.

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