

Senate Coal Ash Bill Leaves Americans in Harm's Way and Fails to Promote Recycling *Bill is less protective than EPA's subtitle D proposal and federal household waste regulations*



S.1751 endangers the health and safety of thousands of communities and hurts coal ash recycling. The bill would allow construction of ash dumps that don't meet drinking water standards for arsenic, lead, and other pollutants; allow indefinite operation of unstable and dangerous ash ponds; shut out citizens who live near coal ash sites from permitting decisions that affect their health and safety; allow states to waive any health and safety standards and require EPA to defer to those decisions, and prevent EPA from ever revisiting a coal ash rule even in the event of increased risk from ash dumps. This is a dangerous bill, and Congress must vote NO on S.1751.

Obama Administration Opposes the Bill in a Statement of Administration Policy: The Administration opposed HR 2273 (nearly identical to S.1751) stating that the bill is “insufficient to address the risks associated with coal ash disposal and management, and undermines the Federal government’s ability to ensure that requirements for management and disposal of [coal ash] are protective of human health and the environment.”¹

Coal Ash is Hazardous to Your Health

In 2010, EPA published a coal ash risk assessment that found extremely high risks to human health and the environment.² Chemicals in ash are some of the most toxic substances known to man, and if ingested or inhaled, they can harm every major organ. In fact, the cancer risk from drinking water contaminated by arsenic near some unlined coal ash ponds is 1 in 50, which is 2000 times the EPA’s regulatory goal for reducing cancer risk.

Coal Ash is a National Problem: Toxic Ash is the Second Largest Industrial Waste Stream in the U.S.

Coal ash is the abundant and dangerous waste left over after coal is burned. Our nation’s power plants generate enough coal ash each year (140 million tons) to fill train cars that could stretch from the North to the South Pole. Despite containing toxic chemicals like arsenic, hexavalent chromium, lead, mercury and selenium, coal ash has never been subject to federal protections, and state laws governing disposal are usually weak or non-existent. Across the U.S., billions of tons of ash have been dumped in over 1000 enormous and precarious ponds, pits, and landfills, putting our health at risk from large-scale disasters like the TVA disaster in Kingston, Tennessee in 2008 and gradual – yet equally dangerous – contamination as toxins in coal ash seep into drinking water sources. Over 137 sites have been contaminated by ash according to EPA and others.³

Why S.1751 threatens our health, environment and economy:

- **S.1751 will cost American jobs.** A recent study by a Tufts University senior economist found that a strong coal ash rule, such as the one proposed by EPA in 2010, would generate 28,000 jobs.⁴
- **S.1751 will hurt recycling.** S. 1751 allows the continued operation, indefinitely, of 676 coal ash ponds⁵ and permits the construction of new ponds. Once ash is dumped in water, it cannot be recycled. Thus the bill *discourages* recycling by encouraging dumping that takes billions of pounds of ash out of the recycling market.
- **S.1751 fails to address deadly threats posed by the nation’s coal ash ponds.** The bill lacks standards that would prevent another catastrophic disaster like the dam failure at TVA’s Kingston plant in December 2008 that flooded over

300 acres, swept away houses and cost more than \$1B to clean-up. Not only are there are no requirements to phase out wet storage, the bill explicitly allows coal ash ponds to contain more toxic sludge than they were designed to hold. §4011(c)(1)(B). It specifically exempts states from restricting the amount of stormwater and other liquids that enter a pond. §4011(c)(2)(H). The bill will not protect communities near ash ponds from structural failure because it does not incorporate the appropriate federal standards.⁶

S.1751 is weaker than regulations that apply to household waste landfills (RCRA subtitle D). The bill:

- **Fails to establish a standard for state coal ash programs that requires protection of human health and the environment.** Without such a basic standard, which applies to the regulation of *all other wastes* under the Resource Conservation and Recovery Act, states can ignore regulations without meaningful oversight by EPA.
- **Fails to require closure of coal ash dumps in dangerous areas.** Household waste rules require closure of dumps located in floodplains and unstable areas when a demonstration cannot be made that the units are safe. These are highly dangerous places for coal ash ponds containing *billions* of gallons of toxic waste held back by earthen dams, but the closure requirements do not apply to potentially deadly coal ash dumps. §4011(c)(2)(A)(ii).
- **Fails to require permits for coal ash dumps,** even though household garbage dumps must have such permits. States need only point to “any system of prior approval and conditions,” however fragmented and meaningless. §4011(k)(2). An enforceable permit, however, is essential to ensure safety, because permits translate disposal standards into the specific requirements applicable to each dump, taking into account site-specific factors.
- **Fails to establish the right of public participation in the permitting and authorization of state programs.** S.1751 only requires states to describe their “process.” There is no guarantee of any right of participation. Citizens are left without a voice. §4011(b)(2)(B)(iii)(III).
- **Fails to require state enforcement of safeguards.** The bill only requires states to *describe* their “process to enforce.” There is no requirement to actually enforce regulations. §4011(b)(2)(B)(iii)(II).
- **Prohibits EPA from providing technical assistance.** This prohibition supplants EPA’s critical role in protecting health. EPA routinely uses its expertise to investigate threats from hazardous substances. §4011(i)(2)(C). A citizen’s right to petition EPA to conduct a health assessment ensures that every citizen has access to protection from toxic releases. The bill removes this basic right.
- **Prevents EPA from ever regulating coal ash.** S.1751 gives nearly all authority over coal ash regulation to the States. EPA cannot ensure national consistency nor revisit the rules as coal ash becomes even more dangerous and voluminous. §4011(i)(2)(A).
- **S.1751 silences the voices of nearly half a million Americans.** EPA received more than 450,000 comments on its proposed coal ash rule. This monumental level of participation shows that this issue is of great importance to Americans nationwide, especially the hundreds of thousands already harmed or threatened by unsafe disposal.

Vote NO: S.1751 protects utility profits, not public health or taxpayers. The bill is about shielding utilities from their responsibility to operate dumps safely and cleanup sites they have contaminated. It applies fewer standards than are applicable to ordinary garbage dumps and contains few of the requirements set out in EPA’s subtitle D proposal, particularly for ash ponds. **This bill ignores the best available science, compromises health, and undermines the public rulemaking process, while actually hurting recycling.**

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¹ http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr2273r_20111012.pdf

² US EPA, Human and Ecological Risk Assessment of Coal Combustion Wastes, April 2010 (draft).

³ US EPA, Coal Combustion Damage Cases (2007), Earthjustice, EIP, Out of Control,(2010) available at <http://earthjustice.org/sites/default/files/library/reports/ej-eipreportout-of-control-final.pdf>, Earthjustice, EIP, Sierra Club, “In Harm’s Way,(2010) available at <http://earthjustice.org/sites/default/files/files/report-in-harms-way.pdf>

⁴ Ackerman, Frank. Employment Effects of Coal Ash Regulation (2011), available at http://sei-us.org/Publications_PDF/Ackerman-coal-ash-jobs-Oct2011.pdf.

⁵ <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys/index.htm>