



Hoeven/Manchin Senate Bill Threatens Safety: Fails to Protect Communities from Toxic Coal Ash Dumping

S.2446 guts EPA's coal ash rule, protects polluters instead of public health

The new Hoeven/Manchin coal ash bill *removes, delays and weakens* the public health and safety protections in EPA's new coal ash rule completed in December 2014. Almost identical to the McKinley coal ash bill, S.2446 is said to "improve" the EPA rule—but that's only if you are a utility who wants to delay cleanup of toxic ash, escape the new federal protective standards for drinking water, and avoid safe siting requirements for coal ash dumps. Coal ash, a waste containing some of the most harmful chemicals known to man (including arsenic, hexavalent chromium, lead, thallium (rat poison), and mercury) is dangerously dumped at more than 1,400 sites across the United States.

Despite the well-documented danger to public health and the environment, S. 2446 will:

- **ELIMINATE** the EPA rule's requirement to immediately clean up all toxic releases and notify the public;
- **ELIMINATE** the EPA rule's national standard for drinking water protection and cleanup of contaminated sites;
- **ELIMINATE** the rule's nationwide protective standards and allow each state to set different standards for disposal;
- **ELIMINATE** the EPA rule's requirement to close existing coal ash lagoons that are sited in dangerous and unstable areas, even after an owner/operator fails to make the required demonstration of safety;
- **ELIMINATE** the EPA rule's environmental and health protections for large coal ash fill projects;
- **ELIMINATE** the EPA rule's prohibition against siting coal ash dumps in floodplains;
- **ELIMINATE** all protective standards for coal ash waste piles nationwide;
- **SIGNIFICANTLY DELAY**, for up to six years, the requirement to close leaking and structurally unsound impoundments;
- **SIGNIFICANTLY DELAY** the application of safety, design, and operating standards for new lagoons and landfills;
- **SIGNIFICANTLY DELAY** the EPA rule's guarantee of public access to information regarding water contamination and assessments of dangerous dams;
- **SIGNIFICANTLY DELAY** critical requirements, such as inspections, control of fugitive dust, groundwater monitoring and cleanup requirements for all new coal ash lagoons and landfills;
- **SIGNIFICANTLY WEAKEN AND DELAY** the ability of citizens to enforce safety requirements;
- **PROHIBIT** effective federal oversight of state coal ash programs;
- **PROHIBIT** EPA enforcement of state program requirements unless invited by a state.
- **PROHIBIT** EPA from requiring financial assurance under RCRA to ensure utility companies are able to pay for the cleanup of spills and contaminated drinking water. The financial assurance provision in the bill does not cover spills or releases of hazardous substances.

S. 2446 Turns Back the Clock on Public Protection from Toxic Ash: On December 19, 2014, EPA issued the first-ever federal rule governing the disposal of toxic coal ash. Prior to the EPA rule, there were no federal standards requiring safe disposal of the second largest toxic industrial waste stream in America. The lack of federal standards has harmed the health and safety of American communities, including over 200 cases of water contamination, rampant degradation of air quality, and three major coal ash spills since 2008.

The EPA Coal Ash Rule is currently protecting hundreds of American communities: Coal plant owners have already established publicly accessible websites and fugitive dust control plans, initiated inspections and announced plans to close nearly 100 inactive coal ash lagoons by 2018. S.2446 will delay for years critical public health protections now in effect.

EPA's Coal Ash Rule Satisfied the Requests of Utilities, States and Recyclers: EPA finalized the weakest proposed regulatory option at the behest of the utility industry, states and recyclers. Pursuant to their requests, the EPA rule:

- **REGULATES** coal ash as a NON-HAZARDOUS solid waste under subtitle D of RCRA;
- **ENCOURAGES** states to establish their own coal ash management programs;
- **PROHIBITS EPA ENFORCEMENT AND OVERSIGHT** and permits enforcement only by states and affected citizens;

- **PROMOTES COAL ASH RECYCLING** by exempting beneficial uses of coal ash from regulation, including use in road construction, concrete, gypsum and many fill projects;
- **PROVIDES** utilities with an extended timeframe to close non-complying dumps (in some cases up to 14 years); and
- **ADOPTS THE WEAKEST REGULATORY OPTION.** In selecting “D Prime,” EPA allows the continued use of coal ash lagoons indefinitely to dispose of coal ash.

Congressional action is unnecessary: States are free to immediately create their own enforceable coal ash programs, including permit programs that are equivalent to the EPA CCR Rule. States do not need legislation to move forward.

S. 2446 is dangerous: The bill contains no minimum statutory requirements (no protective standard) for state programs. Since 2008, two coal ash dams failed and endangered lives, water supplies and rivers, at the cost of nearly \$4 billion. The 2008 collapse of a dam at TVA’s Kingston Plant was the largest toxic waste spill in U.S. history—100 times the volume of the Exxon Valdez oil spill. With 331 aging earthen dams rated “high” and “significant” hazard and over 1000 coal ash dump sites nationwide, the threat remains high that there will be additional water supplies tainted and another devastating and potentially deadly coal ash disaster.

S. 2446 provides no protection for the nation’s most vulnerable communities: Almost 70% of coal ash lagoons impact communities where low-income and minority populations are disproportionately represented.

Protection of public health and safety cannot wait, yet the proposed bill delays compliance with critical standards for years: Delay in implementing long overdue safeguards will have dire consequences because health risks from coal ash pollutants are severe, including cancer, neurological disorders, birth defects, reproductive failure, asthma, and other serious illnesses.¹ The threat is substantial, most coal ash dumps are currently unlined or have inadequate liners, and EPA found that over 100 coal ash dams were in “poor” condition.²

S. 2446 is bad for jobs and the economy: By reducing safeguards, the **S. 2446 will cost American jobs.** A study from Tufts University debunked the erroneous claim by USWAG that “300,000 jobs would be lost” if EPA regulated coal ash as hazardous waste. The Tufts study found that even the most stringent coal ash standards would generate a net increase of 28,000 jobs.³ Utilities cannot avoid the responsibility to manage their ash safely. In 2014 filings with the SEC, six utilities indicated that they will spend more than \$10 billion to clean up spills or contaminated water and to switch to safer dry disposal methods to prevent additional spills and releases. S. 2446 will increase the burden on American taxpayers by prohibiting EPA from completing federal requirements to ensure utilities have bonds sufficient to pay for cleanup of spills and contaminated water.

No legal standard for state programs to protect health and the environment: The Congressional Research Service (CRS) has three times found that McKinley’s coal ash bills, which are almost identical to S. 2446, cannot guarantee a minimum standard of protection nationwide. Like its predecessors, S. 2446 fails to establish a protective standard. The requirement to protect health and the environment is a basic tenet of federal environmental statutes, including the Clean Water, Clean Air and Safe Drinking Water Act. Without this standard, a patchwork of inadequate state coal ash programs will persist.

No meaningful guarantee for citizens to participate in permitting decisions that affect their health: S.2446 fails to mandate specific requirements for public participation in permitting decisions or in the creation of state programs. Public participation is required for all other state programs under the Resource Conservation and Recovery Act, the Safe Drinking Water Act and the Clean Water Act, established at 40 C.F.R. Part 25.

No guarantee for public access to critical health and safety data: The bill delays immediate public access to information about contaminated drinking water, unstable dams, and hazardous releases.

Americans want strong and consistent safeguards against toxic coal-ash pollution – that’s why they submitted more than 450,000 public comments during EPA’s process to put long-overdue protections in place. S. 2446 is not a solution—by threatening water, air quality and public safety, it fails to protect the health and safety of American communities and protects **only** the polluters.

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¹ See Physicians for Social Responsibility, Coal Ash: The Toxic Threat to Our Health and Environment (2010) at <http://www.psr.org/assets/pdfs/coal-ash.pdf>.

² <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/index.htm>.

³ Ackerman, Frank. Employment Effects of Coal Ash Regulation (2011), available at http://sei-us.org/Publications_PDF/Ackerman-coal-ash-jobs-Oct2011.pdf.