



The New Coal Ash Deregulation Act Is Worse Than the Old One

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Last Congress, the House passed coal ash legislation (H.R. 2273) that was described by the League of Conservation Voters as an “attempt to protect polluters instead of public health.” The Administration opposed the legislation because it failed to have “clear requirements that address the risks associated with the coal ash disposal.” After House passage, the Congressional Research Service released an analysis showing that the bill failed to provide protections that are standard in other environmental laws.

This Congress, Rep. David McKinley (R-WV) introduced a revised version of the legislation, which should be called the Coal Ash Deregulation Act. Some are now claiming that the new bill (H.R. 2218) offers greater protections for the public than H.R. 2273. In fact, the new Coal Ash Deregulation Act contains new loopholes that further undermine protection of public health and the environment. The modest improvements in H.R. 2218 – such as the addition of some deadlines for action and several contaminants to the groundwater monitoring requirements – are outweighed by the provisions that further delay cleanups of coal ash disposal sites.

H.R. 2218 allows disposal sites that are polluting groundwater to continue to operate. When EPA proposed regulations for coal ash facilities, one of the agency’s most important proposals was a requirement that unlined disposal pits install liners to prevent groundwater contamination. Not only does H.R. 2218 block EPA from requiring liners, a new provision in the bill allows coal ash disposal sites that are contaminating groundwater to continue to operate for years, if not indefinitely, without stopping the contamination. Under the new provision, unlined impoundments found to be contaminating groundwater within ten years of enactment of the legislation are given a ten-year deadline to contain and mitigate the contamination. Moreover, the operators of these disposal sites can obtain an open-ended extension of this deadline if there is no alternative disposal facility on the same property. If the contamination is discovered more than ten years after enactment of the legislation there is no deadline for cleaning up the contamination at all if there is no alternative disposal facility on the same property.

H.R. 2218 blocks citizen enforcement of safety requirements. The new bill significantly weakens the ability to enforce requirements for wet impoundments. Like last Congress’ bill, the legislation provides that wet impoundments are supposed to be designed in keeping with generally accepted good engineering practices. But a new provision in H.R. 2218 takes away the ability of citizens to sue to enforce the good-engineering requirement. The bill achieves this result by no longer applying the requirements for design of the impoundment to the owners and operators of the impoundment. Instead, these requirements apply only to the engineer who certifies the impoundment.

H.R. 2218 now limits the grounds on which EPA can find a state program deficient. H.R. 2218 contains a new provision that explicitly limits what EPA can consider when evaluating whether a state coal ash program is deficient. This provision bars EPA from finding a state program deficient on the grounds that it fails to protect human health and the environment. Further, the new bill makes clear that EPA cannot find a state program deficient on the basis of a failure to enforce against a single facility no matter how serious the violation is; instead, the bill provides that EPA cannot act unless the state fails to act on repeated violations or violations by multiple facilities.