



H.R. 2218 Allows Unsafe Disposal of Coal Ash

Committee on Energy and Commerce, Democratic Staff

H.R. 2218, introduced by Rep. David McKinley (R-WV), should be called the Coal Ash Deregulation Act. The legislation would block EPA regulation of the toxic components of coal ash. The legislation contains significant changes from the coal ash legislation considered last Congress that further undermine protection of health and the environment.

Background: The most significant risks from improper coal ash disposal are groundwater contamination, catastrophic impoundment failures, and localized air pollution. EPA has identified 27 proven cases and 40 potential cases where unsafe coal ash disposal has resulted in groundwater contamination or other serious problems. Environmental groups put the number of cases much higher. At these sites, coal ash has contaminated groundwater with arsenic, flooded private property, polluted lakes and rivers, and exposed families to particulate air pollution.

According to EPA, there are 676 existing coal ash impoundments, located in 46 states. There are also an unknown number of “legacy sites” that are no longer receiving coal ash but continue to pose risks to the communities in which they are located. Forty-five of the existing impoundments are currently considered “High Hazard,” meaning that failure of the impoundment will probably cause loss of human life.

H.R. 2218 Weakens Current Law: Under current law, EPA regulations would apply a number of safety requirements, such as liner requirements needed to prevent groundwater contamination, to existing disposal sites. H.R. 2218 blocks these requirements and does not require states to take comparable action. This means that existing coal ash disposal sites can continue in operation even if they are operating in an unsafe condition.

Under current law, EPA can require cleanup action of contaminated coal ash disposal sites. H.R. 2218 blocks this authority and allows any state-required cleanup to be delayed indefinitely if the owner or operator of the contaminated site meets certain loosely defined conditions.

H.R. 2218 contains no requirements for coal ash disposal sites that are no longer receiving coal ash for disposal. Yet the bill blocks EPA from taking any action relating to these potentially dangerous sites.

H.R. 2218 Does Not Ensure the Safe Disposal of Coal Ash: The bill does not establish a federal standard of protection for coal ash disposal programs. Other environmental laws require states to “protect human health and the environment” when operating a delegated program. Instead of following this model, H.R. 2218 would establish a list of requirements that are open to interpretation by the states. This means that no state program is held to any specific standard of performance and public health protections can vary widely between states. EPA is blocked from having any role in providing guidance, interpretation, or regulation to ensure consistent protection of human health and the environment.

H.R. 2218 Is Significantly Changed from Last Congress: There are several changes between H.R. 2218 and the House-passed coal ash legislation in the last Congress. The most significant changes create new loopholes that will delay cleanup of coal ash sites. A new provision could allow disposal facilities that are contaminating groundwater to operate indefinitely. Another new provision blocks citizen suits to enforce the requirement that wet impoundments meet structural integrity standards. A third provision provides that EPA cannot consider levels of groundwater contamination when examining whether a state program is deficient.