

NEW COAL ASH BILL FAILS TO PROTECT PUBLIC HEALTH AND SAFETY

Small Changes Cannot Cure Dangerous Deficiencies in H.R. 2218

The “Coal Residuals Reuse and Management Act of 2013” (“CRRM”) introduced by Rep. David McKinley (R-WV) fails to protect public health, safety and the environment from toxic ash disposal. Gross deficiencies identified by the Congressional Research Service (CRS), EPA and public interest groups **remain unaddressed** by HR 2218.

DEFICIENCIES OF H.R. 2218 INCLUDE:

NO PROTECTIVE STANDARD: While “protection of health and environment” is now mentioned in the bill, it has no legal import. EPA has no authority to review state programs prior to implementation to ensure protection of health and environment. Furthermore, a new section (§4011(d)) sets out criteria for state program deficiencies, which specifically does *not* include the failure to protect health and environment.

FAILURE TO DEFINE KEY TERMS: No definitions were added to HR 2218. “Structures” are still not defined to include all impoundments, landfills, and large structural fills. Consequently, States have unfettered discretion to exempt dangerous dumps. They can, for example, exempt existing surface impoundments and large fill projects.

NO HARD DEADLINE FOR PERMIT ISSUANCE: H.R. 2218 claims to set a seven-year “deadline” for permit issuance but it is only applicable when a permit application has been submitted, and there is no enforceable deadline for submission. This would arbitrarily – and dangerously – allow states to drag their feet and delay final permits at the peril of exposed communities. A state could allow an owner more than seven years to apply, after which there would be no deadline for permit issuance. Further, there is no prohibition against continuing to operate without a permit. Since most requirements in the bill are applicable only after permit issuance, the failure to set a hard and reasonable deadline for obtaining a permit is fatal to public safety.

INADEQUATE STRUCTURAL STABILITY STANDARDS: Critical gaps in safety protections remain, and many essential Mine Safety and Health Administration (MSHA) requirements remain entirely missing. Annual inspections and correction of hazardous conditions are *only* required after permit issuance for which there is no hard permit deadline. At best, inspections of high hazard dams under HR 2218 are not required until 2020.

NO FEDERAL BACKSTOP: EPA cannot enforce criteria if states are unable or unwilling to enforce program requirements. While HR 2218 includes a section entitled “Federal Backstop Authority,” the bill still provides *no authority*. See (§4011(e)(1)).

NO MEANINGFUL CLOSURE/CLEANUP REQUIREMENTS AT LEAKING DUMPS: Gaps were not closed on the loophole-ridden provision for cleanup and closure of leaking impoundments. Further, there is no requirement whatsoever to close leaking landfills that violate groundwater protection standards.

NO REQUIREMENTS APPLY TO LEGACY SITES: HR 2218 contains no requirements applicable to any dumps that cease receiving waste before enactment of the Act.

MINIMAL REQUIREMENTS FOR PUBLIC PARTICIPATION: HR 2218 contains no guarantee of meaningful public participation in permitting or establishment of state programs.

INADEQUATE REQUIREMENTS FOR CONTROL OF TOXIC DUST: HR 2218 does not establish requirements for suppression of airborne ash sufficient to protect public health.

LIMITED CITIZEN ENFORCEMENT: No requirements in the bill are directly applicable to owners and operators of coal ash dumps. It is entirely up to the states to issue permits that “incorporate” requirements of the criteria, so citizen suits against facilities depend entirely on permits, when and if they are ever issued.

PROHIBITS EPA RULEMAKING: HR 2218 prevents EPA from finalizing its proposed coal ash rule and prohibits EPA from ever regulating coal ash in the future, even if changes in the toxicity or volume of coal ash present new threats to human health and the environment.

Despite these huge gaps in health protections, Republicans are rushing to pass CRRM. Please oppose HR 2218, and support effective controls on the disposal of toxic ash to protect Americans from exposure to hazardous chemicals in their water and air.

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