



H.R. 1734 Threatens Safety: Fails to Protect Communities from Toxic Coal Ash Dumping

House bill guts EPA's coal ash rule, protects polluters instead of public health

The new McKinley Bill removes, delays and weakens the public health and safety protections in EPA's new coal ash rule.

Rep. David McKinley (R-WV-01) claims that his bill "improves" the EPA rule—but only if you are a utility who wants to delay the cleanup and closure of dangerous dams and landfills where coal ash is dumped. In many cases, the H.R. 1734 will delay critical health and safety requirements for more than 10 years. Coal ash, a waste containing some of the most harmful chemicals known to man (arsenic, hexavalent chromium, lead, thallium (rat poison), and mercury) is dangerously dumped at many of the 1,000 disposal sites across the United States. **H.R. 1734 will:**

- **ELIMINATE** the rule's ban on storing and dumping coal ash in drinking water;
- **ELIMINATE** the EPA rule's requirement to immediately clean up toxic releases and notify the public;
- **ELIMINATE** the rule's guarantee of public access to information regarding water contamination and assessments of dangerous dams;
- **DELAY** new health and safety protections- potentially for up to 10 years;
- **WEAKEN** the EPA rule's mandate to close inactive (contaminated and abandoned) ponds like the Dan River impoundment that burst last year; by extending the deadline for closure and allowing legacy ponds to operate without safeguards for at least 6 years;
- **DELAY** the closure of leaking unlined ponds that have contaminated water above health standards and allow such ponds to continue leaking for an additional 8.5 years;
- **ELIMINATE** the rule's national standard for drinking water protection and cleanup of contaminated sites;
- **PROHIBIT** effective federal oversight of state programs; and
- **PROHIBIT** EPA enforcement of state program requirements unless invited by a state.

H.R. 1734 Turns Back the Clock on Public Protection from Toxic Ash: On December 19, 2014, the 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 one of the largest industrial waste streams in America. The lack of federal standards has resulted in harm to 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.

EPA's 2014 Coal Ash Rule Satisfies Requests of Utilities, States and Recyclers: The EPA finalized the weakest proposed regulatory option at the behest of the electric utility industry, states and recyclers. EPA specifically adopted numerous recommendations offered by these interest groups. 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 of the rule only by states and affected citizens;
- **PROMOTES COAL ASH RECYCLING** by exempting beneficial uses of coal ash from regulation, including use in road construction;
- **PROVIDES** utilities with an extended timeframe to close non-complying dumps (in some cases up to 14 years); and
- **ESTABLISHES THE WEAKEST REGULATORY OPTION.** EPA chose the weakest of three regulatory options (C, D, and D prime, in descending order of protections). In adopting the "D Prime" option, EPA does not ban the continued use of ponds for the disposal of coal ash and non-coal ash waste and wastewaters.

H.R. 1734 is unnecessary: States are free to immediately create enforceable coal ash programs that are equivalent to the EPA CCR Rule. States do not need legislation to move forward.

H.R. 1734 is dangerous: The minimum statutory requirements in this bill are NOT the minimum federal requirements in the EPA bill. Since 2008, two coal ash dams have failed and endangered lives, water supplies and rivers, at the cost of nearly \$4 billion. The 2008 failure 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, the threat remains high that there will be additional water supplies tainted and another devastating and potentially deadly coal ash disaster.

No protection for the nation's most vulnerable communities. Almost 70% of ash ponds are located in communities where the majority earns incomes below the national average and where communities of color are disproportionately represented.

Protection of public health and safety cannot wait, yet the McKinley Bill delays compliance with critical standards for more than 10 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, given that most coal ash dumps are currently unlined or have inadequate liners, and EPA found that over 100 coal ash ponds were in “poor” condition.²

The McKinley Bill is bad for jobs and the economy. By reducing safeguards, the **McKinley bill will cost American jobs.** A study by a Tufts University senior economist debunked the erroneous claim by the Utility Solid Waste Activities Group (USWAG) that “300,000 jobs would be lost” if EPA regulated coal ash as hazardous waste. The 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 Securities and Exchange Commission, six electric utilities indicated that they will spend more than \$10 billion to clean up spills or contaminated groundwater and to switch to safer dry disposal methods in order to prevent additional spills and releases.

No legal standard for state programs to protect human health and the environment: The Congressional Research Service (CRS) has three times found that McKinley's coal ash bills cannot guarantee a minimum standard of protection nationwide. Like its predecessors, McKinley's 2015 bill does not establish a federal standard of protection for coal ash disposal programs. The requirement to protect health and the environment is a fundamental 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. The bill fails to mandate specific requirements for public participation in permitting decisions or in the creation of state programs. H.R. 1734 does not guarantee a public hearing on permit applications or mandate that basic 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, as established at 40 C.F.R. Part 25.

No guarantee for public access to critical health and safety data. H.R. 1734 does not guarantee public access to information about contaminated drinking water, unstable dams, and hazardous releases. Furthermore, the bill allows information to be withheld by a state if a utility claims the data are “Confidential Business Information.” This loophole will likely prevent or significantly delay the release of critical data to the public.

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. The McKinley bill is not a solution—by threatening water and air quality, H.R. 1734 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.