



Senate Bill Threatens Public Safety: Fails to Protect Communities from Toxic Coal Ash S.3512 Ignores 2008 Kingston Disaster and Fails to Protect Water and Air Quality



S. 3512 won't protect American communities from toxic pollution. Dangerous coal ash disposal affects thousands of U.S. communities. Coal ash contains arsenic, hexavalent chromium, lead, mercury and other hazardous substances that poison drinking water and air. Nearly 200 sites have been contaminated by coal ash in 36 states.¹ EPA found some coal ash ponds pose a 1 in 50 risk of cancer to residents drinking arsenic-contaminated water—a risk 2000 times EPA's regulatory goal.²

S. 3512 protects utility profits by creating a gaping public health loophole. The bill shields utilities from their responsibility to timely upgrade unsafe ash dumps, clean up sites they have contaminated, and close leaking and unstable ponds and landfills. S. 3512 ignores the largest environmental disaster in U.S. history, and does not require the phase-out, or even the safe maintenance, of coal ash ponds, like the one that collapsed and released over 1 billion gallons of toxic sludge in Kingston, Tennessee in 2008.³

Protection of public health and safety cannot wait, yet S. 3512 has no deadlines.

Under S. 3512, there are no deadlines for states to implement a permit program, even though there are over 1000 aging coal ash dumps, most of which currently lack adequate safeguards (such as liners and leachate collection systems) to prevent toxic chemicals from escaping and contaminating water. Delay in implementing these 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.⁴ Furthermore, after recent inspections by the EPA, over 100 decades-old coal ash ponds were rated to be in "poor" condition.⁵

S. 3512 is bad for jobs, the economy and recycling. Although the bill purports to support recycling and jobs, it actually hurts both:

- **S. 3512 will hurt recycling** by encouraging the continued operation of over 1000 coal ash ponds and permitting the construction of new ponds. Once ash is dumped in water, it cannot easily be recycled. Thus S. 3512 *discourages* recycling by encouraging dumping that ruins billions of pounds of ash annually for reuse. In contrast, whenever EPA has required safe disposal in dry engineered landfills under RCRA, the recycling rate of the waste has gone up, not down.⁶
- **S. 3512 will cost American jobs.** A recent study by a Tufts University senior economist found that a strong coal ash rule, such as the one proposed by EPA in 2010, would generate 28,000 jobs.⁷

S. 3512 endangers the health and safety of thousands of communities. By failing to address the mounting problems caused by dumping 100 million tons of toxic coal ash each year, the bill threatens Americans with more mammoth spills and more sites with poisoned air and water. Instead of solving a critical public health problem, S. 3512 blocks meaningful reform.

In S.3512, there are:

- **No firm closure dates for dangerous ash ponds and no operating standards to prevent another disaster.** S. 3512 allows the continued operation of dangerous ponds without closure dates and without enforceable engineering and inspection standards—even for immense high-hazard dams. The bill even fails to require modern engineering safeguards for new ponds⁸ and fails to require operators to address hazardous conditions at aging and unstable ash ponds.⁹
- **No future EPA rulemaking to control pollution from coal ash.** S. 3512 permanently and completely removes EPA's regulatory authority to respond to the health and environmental threats from the nation's second largest industrial waste. This is

unprecedented and dangerous, given the predicted increase in the volume and toxicity of coal ash due to more stringent Clean Air Act requirements.¹⁰

- **No requirement to effectively control fugitive dust.**¹¹ Toxic coal ash that becomes airborne threatens the health and air quality of surrounding communities yet S. 3512 does not require a permit to mandate the control of fugitive dust. The bill simply directs a state agency to address wind dispersal, but does not require that dust control measures be incorporated into a permit, nor does it provide a standard for air quality analogous to the EPA's proposed federal requirement that fugitive dust not exceed 35 ug/m3.¹² Because there is no requirement to establish fugitive dust standards in a permit, the requirement to control fugitive dust would not be enforceable through citizen suits. The bill does not even include the federal minimum "cover material requirements" mandated at municipal solid waste landfills.
- **No requirement to address coal ash ponds and landfills that no longer accept waste.** S. 3512 does not address any coal ash dumps, no matter how large or dangerous, if coal ash is not disposed in the pond or landfill after the date of enactment. Such dump sites, however, continue to present grave hazards through leaching of toxic contaminants or catastrophic collapse.
- **No deadlines for states to issue permits.** S. 3512 establishes *NO* dates by which states must issue permits -- thus states have no deadlines whatsoever for implementing the entire permit system on which the bill's requirements are based.¹³ Since almost all the bill's requirements are effective only through state permits, compliance with needed safeguards can be delayed indefinitely. Further, without a deadline for states to actually issue permits, EPA oversight is nearly meaningless, and citizen enforcement of standards is legally impossible.
- **No EPA enforcement of any coal ash standards.**¹⁴ S. 3512 prevents the EPA from enforcing any standards contained in the bill under state permit programs. If states are unable or unwilling to enforce the bill's requirements, the EPA is simply powerless to act to enforce the standards.
- **No legal standard to protect human health and the environment for many critical safeguards.** For many crucial safeguards, S. 3512 lacks a legal standard to protect human health and the environment, including in the areas of maintaining structural stability, closure of dangerous dumps, control of fugitive dust and the overall implementation of state programs. The requirement to protect health and the environment is a fundamental tenet of our federal environmental statutes, including the Clean Water Act, Clean Air Act and Safe Drinking Water Act. Without such a standard, the status quo of inadequate state programs can persist.
- **No meaningful guarantee for citizens to participate in permitting decisions that affect their health.**¹⁵ S.3512 fails to mandate specific requirements for meaningful public participation in permitting decisions or in the promulgation of regulations for a state permit program. The bill does not guarantee a public hearing on permit applications, nor does it include the public participation guarantees required for all other state programs under the Resource Conservation and Recovery Act (including for municipal solid waste landfill programs), the Safe Drinking Water Act and the Clean Water Act, established at 40 C.F.R. Part 25.
- **No guarantee for public access to groundwater monitoring data;** While S. 3512 purports to make groundwater monitoring data publicly available, it contains no actual requirements to accomplish this. The bill does not require electronic access or the provision of data free of charge. Furthermore, S. 3512 allows information to be withheld by a state if a utility claims the data are "Confidential Business Information."¹⁶ 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. S. 3512 is not a solution—by threatening water and air quality, it fails to protect the health and safety of American communities.

For more information: Dalal Aboulhosn (Sierra Club) – dalal.aboulhosn@sierraclub.org or (202) 675-6278; Andrea Delgado (Earthjustice) -- adelgado@earthjustice.org or (202) 797-5240; Lisa Hollowell (EIP) – hollowell@environmentalintegrity.org or (202) 263-4452; Alex Taurel, (LCV) – alex.taurel@lcv.org or 202-454-4606.

¹ <http://earthjustice.org/features/campaigns/in-harm-s-way-coal-ash-contaminated-sites>.

² U.S. Environmental Protection Agency, Human Health and Ecological Risk Assessment of Coal Combustion Wastes (draft). (April 2010).

³ <http://www.nytimes.com/2008/12/27/us/27sludge.html> and <http://www.nytimes.com/2009/01/07/us/07sludge.html?pagewanted=all>.

⁴ 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>.

⁵ <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/surveys2/index.htm>.

⁶ Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities; Proposed Rule 75 FR 35128 (June 21, 2010) at 35,186.

⁷ Ackerman, Frank. Employment Effects of Coal Ash Regulation (2011), available at http://sei-us.org/Publications_PDF/Ackerman-coal-ash-jobs-Oct2011.pdf.

⁸ For example, no leachate collection systems are required for new ponds. See §4011(c)(2)(A)(i).

⁹ See §4011(c)(1)(B), §4011(c)(2)(H).

¹⁰ See §4011(i)(2)(A).

¹¹ See §4011(c)(1)(D).

¹² Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities; Proposed Rule 75 FR 35128 (June 21, 2010).

¹³ See §4011(c)(1)(E).

¹⁴ See §4011(i)(2).

¹⁵ See §4011(b)(2)(B)(iii)(III).

¹⁶ See §4011(c)(1)(G)(iii).