

## New CRS Report Finds Coal Ash Bills Will Not Ensure Protection of Public Health

Report says S.3512's weaknesses are "unprecedented" in environmental law

On December 5, 2012, the Congressional Research Service Report (CRS) issued a report on pending coal ash legislation, entitled H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit *Program Under RCRA*. In sum, CRS unequivocally concludes that that the bills lack a clear purpose<sup>i</sup> and would not ensure state adoption and implementation of minimum standards "necessary to protect human health and the environment."<sup>ii</sup>

The unsafe disposal of coal ash has contaminated water with toxic pollutants at over 200 sites in 37 states—a threat to the purity of our drinking water and recreational waterways that S.3512 will exacerbate. The CRS analysis confirms our claims that S.3512 will not accomplish what sponsors say it will.

**"Unprecedented" Approach Fails to Ensure Protection:** CRS finds that S.3512's approach to regulation of coal ash is "unprecedented" in environmental law.<sup>iii</sup> The bill departs from benchmark environmental statutes in the following important ways:

**1. No Standard to Protect Human Health and the Environment**

"No clear standard of protection [is] established—Section 4011 includes no explicit statement to indicate that creation of the CCR [Coal Combustion Residuals] permit program is intended to meet a standard of protection."<sup>iv</sup>

**2. No Federal Backstop Authority**

"Given other limits to EPA's role in state implementation of a CCR permit program, EPA would have no federal backstop authority to implement federal standards comparable to its authorities established under other environmental law, including RCRA. Regardless of whether a state chose to adopt a CCR permit program, *EPA would have no authority to compel states to adopt and implement the program according to provisions in the proposed amendments to RCRA.*"<sup>v</sup>

**3. Broad State Discretion Equals No Federal Minimum Standards**

"Certain key directives specific to program implementation are either missing from or ambiguously defined in the Section 4011. It would appear that those missing/ ambiguous requirements would be subject to a state's interpretation of those requirements (e.g., a distinct definition of entities subject to the permit program and deadlines for existing facilities to obtain a permit). As a result, it cannot be determined whether CCR permit program implementation would create minimum federal standards, comparable to the MSW landfill criteria, to regulate CCR management."<sup>vi</sup>

**4. Coal Ash-Specific Risks Not Addressed**

"Neither the House bill nor S. 3512 includes provisions comparable to those proposed by EPA, in detail or scope, to regulate landfills and surface impoundments that receive CCR." "Absent the creation of standards applicable to CCR landfills and surface impoundments that address risks specifically associated with CCR disposal, the purpose of creating a CCR permit program is not clear."<sup>vii</sup>

**5. No Deadlines to Issue Permits or Compel Compliance with Permits**

"States must certify that they have a permit program that meets the permit program specifications within three years of enactment. However, no deadline is specified for states to issue permits or to compel owner/operators of CCR structures to operate in compliance with permit conditions."<sup>viii</sup>

**6. Bill Lacks Requirements to Reduce Threats from Ash Ponds and Toxic Dust**

CRS notes that for risks specific to the storage of coal ash slurry, like the impoundment that failed in Kingston, TN, and for the risks presented by airborne ash to neighboring communities, S.3512 contains "no similar requirement" to the regulations proposed by US EPA addressing these critical threats.<sup>ix</sup>

**7. States Not Required to Provide Safeguards for All Ash Dumps (including “Legacy” Sites)**

“[T]he applicability of any statutory standard would be subject to the state’s interpretation of what constitutes a structure. The term is defined only as a “landfill, surface impoundment, or other land-based unit” which may receive CCR. RCRA regulations generally explicitly define those terms and may include detail to assure that a particular type of waste disposal facility will be subject to the regulations.... *Given the flexibility a state may have to define a “structure,” it may be difficult to determine whether a state implementing a CCR permit program would adopt certain requirements comparable those common to its MSW permit program.*”<sup>x</sup>

**8. Unclear, Ambiguous, and Missing Standards Equals Uncertainty**

“Due to the questions regarding how states may implement it, a CCR permit program would be similar to the program to regulate Municipal Solid Waste (MSW) landfill criteria, only in states that choose to implement it as such. That level of uncertainty defeats the purpose of a permit program and would not be consistent with other permit programs created under RCRA.”<sup>xi</sup>

**Oppose S.3512 and Allow EPA To Complete its Coal Ash Rulemaking**

Recognizing the fundamental flaws that CRS points out in S.3512, we urge opposition of this dangerous bill and any efforts to allow the bill as a rider on any legislation. EPA must be permitted to finish its ongoing rulemaking that addresses the significant threats to public health and the environment posed by the dumping of toxic coal ash.

---

<sup>i</sup> Congressional Research Service, *H.R. 2273 and S. 3512: Analysis of Proposals to Create a Coal Combustion Residuals Permit Program Under RCRA*, (hereinafter, “CRS Summary”)(Dec. 5, 2012) (R42847).

<sup>ii</sup> CRS Report, “Summary.”

<sup>iii</sup> CRS Report at 2.

<sup>iv</sup> CRS Report at 30. Emphasis added.

<sup>v</sup> CRS Report at 2. Emphasis added.

<sup>vi</sup> CRS Report at 20.

<sup>vii</sup> CRS Report at 24. *See also* Appendix A of the Report.

<sup>viii</sup> CRS Report at 22.

<sup>ix</sup> CRS Report, Appendix A.

<sup>x</sup> CRS Report at 21-22. Emphasis added.

<sup>xi</sup> CRS Report at 21-22. Emphasis added.