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Study Finds State Protections for Coal Ash Grossly Inadequate

KY regulations lack critical safeguards for public health, allow operation of dangerous dumps

Washington, D.C. – A new study finds that state regulations regarding coal ash disposal are inadequate to protect public health and drinking water supplies for nearby communities. The information comes as federal regulations—the first of their kind—are under attack by a hostile Congress bent on derailing any effort to ensure strong, federally enforceable safeguards for coal ash, America’s second largest industrial waste stream.

Earthjustice and Appalachian Mountain Advocates (formerly the Appalachian Center for the Economy and the Environment) today released “State of Failure: How states fail to protect our health and drinking water from toxic coal ash,” an exhaustive review of state regulations in 37 states, which together comprise over 98 percent of all coal ash generated nationally. The study highlights the lack of state-based regulations for coal ash disposal and points to the 12 worst states when it comes to coal ash management and disposal: Alabama, Georgia, Illinois, Indiana, Kentucky, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Texas and Virginia.

There are currently nearly 700 coal ash ponds and hundreds of coal ash landfills in the U.S., most of which operate without adequate liners and water quality monitoring, and have been operating as such for decades. Most states do not require coal ash dumps to employ the most basic safeguards required at landfills for household garbage. Of the 37 states examined:

- only 3 states require composite liners for all new coal ash ponds;
- only 4 states require composite liners for all new coal ash landfills;
- only 2 states require groundwater monitoring of all coal ash ponds;
- only 4 states require groundwater monitoring of all coal ash landfills;
- only 6 states prohibit siting of coal ash ponds into the water table;
- only 17 states require regulatory inspections of the structural integrity of coal ash ponds.

State of Failure includes detailed information on basic disposal safeguards, such as groundwater monitoring, liners, isolation of ash from the water table, and financial assurance requirements in 37 states where coal ash is currently generated and disposed.

Coal ash is the toxic remains of coal-fired power plants; enough is generated each year to fill train cars stretching from the North Pole to the South Pole. This ash contains toxic metals, including arsenic, hexavalent chromium, lead, mercury, and selenium. Coal ash is commonly dumped into unlined and unmonitored ponds and landfills. There are well over a hundred documented sites where coal ash has contaminated drinking water or surface water.

The EPA is currently considering a federal proposal to regulate coal ash that includes two options: the first option would classify coal ash as hazardous waste, requiring water quality monitoring, liners and the phase out of dangerous “wet” storage of coal ash, such as the pond that collapsed in Kingston, Tennessee in 2008. The second option would continue to allow states to inadequately regulate coal ash by establishing only guidelines that states are free to ignore. Unsurprisingly, coal ash generators support the weaker option. The EPA, under pressure from industry, has postponed finalizing the coal ash standard until 2012.

But coal ash allies in the U.S. Senate and the House of Representatives are not content with delay. Two bills currently moving through the House seek to undermine any efforts by the EPA to set federal enforceable safeguards for coal ash disposal. Both bills require EPA to let the states – and the states alone – decide how to regulate ash, with little federal oversight.

However, Earthjustice and Appalachian Mountain Advocates reviewed state laws and regulations and found them grossly deficient. Kentucky is among the worst. Kentucky is fifth in the nation in coal ash generation, and it has 43 operating coal ash ponds—21 of which exceed a height of 25 feet or impound more than 500 acre-feet of ash. It should concern Kentucky residents that professional engineers did not design 20 of the state’s 43 dams nor did they construct 27 of them. Only 15 of Kentucky’s dams have been inspected by the EPA to date, and, by admission of the power plant owners, engineers do not presently monitor 30 of the 43 dams. Because state oversight is minimal and regulations do not require monitoring, the extent of contamination is largely unknown, but the EPA calculates **100 percent** of the toxic chemical releases to the land of arsenic, chromium and mercury come from disposal of coal ash in landfills and ponds.

“The level of threat to communities from coal ash in Kentucky, cited in this report, is both shocking and shameful, and the health of people all over the Kentucky may be suffering unnecessarily as a result of these toxic chemical exposures,” said Deborah Payne, MPH, Energy and Health Coordinator for the Kentucky Environmental Foundation. “When Kentucky’s utilities and state regulators fail to protect our communities from harm, it’s critical that we have federal oversight and protective standards.”

“This report proves unequivocally that state programs, without federal mandates or oversight, are a recipe for disaster when it comes to protecting our health and our environment,” said Lisa Evans, senior legislative counsel at Earthjustice and a co-author of the study. “Strong, federally enforceable safeguards are needed to guarantee that our drinking water remains free of arsenic, lead, mercury and other toxic metals found in coal ash. The myth that states are doing a good job protecting Americans from coal ash is busted.”

“The problem with relying on state regulations is that they are not designed for the unique problems of coal ash generally and coal ash impoundments particularly,” said Mike Becher, the Equal Justice Works Fellow at Appalachian Mountain Advocates. “While many coal ash impoundments are regulated by state dam safety programs, these programs were developed to deal with dams holding back water, not toxic substances. State solid waste programs, on the other hand, are not used to dealing with large impoundments and the threat of a catastrophic dam failure like the one seen in Kingston, Tennessee in 2008.”

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