Legislating Disaster

Solutions Abound, But Lawmakers Lead Nation to Environmental Cliff

In the aftermath of a major catastrophe, lawmakers and regulators should be held accountable to create new safety protocols to avert similar disasters in the future. Incidents like the Cuyahoga River catching fire and the Exxon Valdez oil spill prompted changes in how we protect our nation’s waters from industrial chemicals. The Buffalo Creek disaster in West Virginia in 1972 likewise prompted needed changes to the regulation of dams storing toxic materials. Similarly, we must demand changes to how coal ash is handled, following the largest toxic waste spill in our nation’s history.
In 2008, Kingston, TN, bore witness to one of the country’s worst environmental disasters when a 60-ft earthen dike holding back millions of tons of toxic waste collapsed in the middle of the night, days before Christmas. The resulting spill covered 300 acres in more than 1 billion gallons of toxic slurry. Homes and livelihoods were destroyed, and the massive billion-dollar cleanup effort remains ongoing. Worse still, Kingston’s coal ash dam was hardly unique, and more than 1,000 other impoundments across the country operate without basic safeguards that could prevent a similar accident. Unlike coal slurry impoundments, which contain coal waste from mining operations, coal ash dams are not subject to basic safety standards, including engineering and inspection requirements, such as those established by the Mine Safety and Health Administration.1

In fact, in almost every state in the nation, leaking ponds and landfills store coal ash—the byproduct of coal combustion. Coal ash is a toxic mixture that contains hazardous pollutants, such as arsenic, hexavalent chromium, lead and mercury.2 Utility companies capture this waste and dispose of it in landfills or mix the ash with water and dispose of it in large impoundments or ponds.3 Some coal ash is also recycled into products like concrete and wallboard, but the large majority of waste is dumped in ponds or landfills or makes its way to fill projects in your neighborhood or surface mines throughout the United States. Unfortunately, because the disposal is not subject to federal rules, many of the dumps are unlined, unmonitored, unstable, and leaking.4

**Slow to Act**

In light of the catastrophic 2008 spill, one would think that solving the problem of how to safely handle coal ash would be an urgent matter. After all, it is a miracle that the Kingston spill did not result in a large loss of life. Yet, the response from the U.S. Environmental Protection Agency (EPA) has been far from adequate. Progress on national coal ash regulations has lagged, despite the publication of a proposed rule in June 2010. While EPA stalls, the Congress’ response is worse still.

**Inadequate Congressional Action**

Last October, the U.S. House of Representatives passed a radical measure (H.R. 3409) that stripped EPA’s rulemaking authority over coal ash entirely, ensuring that a solution would never materialize. In addition to preventing EPA regulations, the bill placed no effective safeguards on the design, maintenance, and closure of the nation’s life-threatening coal ash impoundments; established no deadlines for the permitting of coal ash dumps; prevented EPA from enforcing state regulatory requirements; failed to address airborne toxic ash; and failed to impose a standard of health and environmental protection on state programs—a basic tenet of all of our federal environmental statutes since the 1970s. In December 2012, the Congressional Research Service issued a report on the coal ash legislation and unequivocally concluded that the bill lacked a clear purpose and would not ensure state adoption and implementation of minimum standards “necessary to protect human health and the environment.”5

An identical bill in the Senate, S. 3512, was sponsored by Sens. Hoeven (R-ND), Conrad (D-ND), and Baucus (D-MT). As a response to the Kingston disaster, this reckless bill was an insult to the many communities threatened by aging impoundments. There was no requirement to phase out disposal of ash in dangerous dams. In fact, S.3512 encouraged the expansion of coal ash ponds as a disposal method. Since coal ash is almost impossible to recycle once it is mixed with water, S.3512’s support for ash pond disposal would severely hamper the expansion of coal ash recycling. All told, S.3512 is a disastrous response to the nation’s coal ash problem.

**Issue of National Importance**

Coal ash contamination touches thousands of communities. This is especially worrying given that 70% of ash ponds are located in communities that have incomes below the national median, placing our most vulnerable citizens at risk. In September 2012, more than 300 state and national public interest groups signed a letter asking the Senate to vote against the Senate coal ash bill.6 EPAs comment period for a new coal ash rule attracted more
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I am certain that the proposed Senate bill S.3512 in its present form without specific requirements for review of design, stringent geotechnical and hydrological engineering requirements, and vigorous enforcement by a federal regulatory agency will result in a catastrophic failure of a coal ash dam containment structure that will result in extensive loss of life and severe environmental damage that will be irreversible. There are thousands of such structures in the United States at this time and the failure of one or more of these dams is assured unless strict engineering standards are imposed. These standards are not costly and in fact can result in economic savings to the industry by reducing liability and streamlining construction and maintenance costs. … I hope never again to see the result of inadequate and irresponsible regulation of a coal waste retaining structure as I did in 1972 on Buffalo Creek. I shall never forget the bodies wrapped in black toxic sludge or the faces and voices of the survivors who had lost all that was precious to them, forever.8

Serious Threat
Coal ash poses a serious threat to our national health and environment, yet the House and Senate bills ensured that this threat grows more dangerous each year. Not only would they remove EPA from its primary role of protecting health and the environment, they would fail to place reasonable and critical obligations on states to protect air, water, and public safety; yet undeterred by the threat to public health, safety, and the environment, the bills’ sponsors have vowed to reintroduce them in the new Congress.

The Kingston coal ash spill in Tennessee was a tragic event that deserves a national solution. Americans have spoken and it’s time for Congress and the Obama Administration to listen and deliver the safeguards needed to protect us from another disaster. The coal industry’s fabricated “War on Coal” is simply a pretext to deny the American public fundamental public health and safety protections. If the results of the 2012 elections in Pennsylvania, Ohio, and Virginia tell us anything, it is that you can challenge the coal industry’s adamant entitlement to pollute and still win the hearts and minds of citizens in our nation’s coal states. em

References
1. See 30 C.F.R. Part 77.