

A LITTLE MORE ARSENIC WITH THAT DRINKING WATER?

HR 2273 would:

- 1) allow construction of new coal ash disposal sites that are *designed* to violate federal drinking water standards for arsenic, cadmium, lead, and other toxins;**
- 2) allow states to waive all of the bill's standards – including the requirement to clean up polluted groundwater that violates federal drinking water limits – by simply determining they were “not needed” for coal ash management.**

Section 4011(c)(1)(2) requires “new structures and lateral expansions” to comply with the design requirements established for municipal waste dumps twenty years ago. These are supposed to prevent contamination of groundwater, but are based on outdated standards for arsenic and other toxic pollutants that are much less stringent than the Safe Drinking Water Act rules in effect today.

For example, the federal drinking water standard for arsenic, a known carcinogen, is 0.01 milligrams per liter. But under HR 2273, new or expanded ash disposal sites could be designed to allow arsenic contamination of up to .05 mg/liter – five times today's standard for safe drinking water. The bill's design standards for cadmium and lead are also based on much higher groundwater concentrations than the law allows today, and do not cover antimony or thallium at all, two toxic metals that have been shown to leach from coal ash sites and are subject to federal drinking water standards.

The bill does authorize states to require corrective action if a coal ash site causes contamination to exceed today's “maximum contaminant levels” (e.g., .05 mg/liter for arsenic), although it sets no deadline for cleanup. But why allow construction of new coal ash sites in the first place that are designed to leak arsenic and other toxins into drinking water at levels far above today's drinking water standards? The problem arises because HR 2273 – whether intentionally or carelessly – adopts design standards based on groundwater protection rules that are out of date and no longer considered protective.

Even more disturbing, the bill would allow states to waive *all* of HR 2273's design, groundwater monitoring, and corrective action requirements, based solely on a determination that they are, “not needed for the management of coal combustion residuals in that state.” § 4010(c)(3). There are no limits on this waiver authority in the bill – states are free to ignore federal requirements, even at coal ash sites that are known to have contaminated groundwater far above Safe Drinking Water Act standards. The EPA could theoretically review the state's waiver – but is given no real power to reverse it, since the bill requires EPA to “defer to state regulation of coal ash,” and expressly authorizes waiver of federal standards in the first place. § 4010(i)(2)(A).

The bill's sponsors – and the industry lawyers who helped carve these loopholes – should explain why monitoring and cleaning up contamination that violates Safe Drinking Water Act standards is “not needed” for coal ash management... and why people who live near these sites deserve less protection than those who do not.

HR 2273 vs. the Safe Drinking Water Act

HR 2273 Groundwater Protection “Design Standards” vs. Maximum Contaminant Limits for Pollutants

Pollutant	HR 2772 Groundwater Protection Standard Used in Design of New Ash Disposal Sites ¹	Safe Drinking Water Act Standard (Maximum Contaminant Level) ²	Health Effects ³
Arsenic	.05 milligrams/liter	.01 mg/liter	Skin damage or problems with circulatory systems, and may have increased risk of getting cancer
Cadmium	.01 mg/liter	.005 mg/liter	Kidney damage
Lead	.05 mg/liter	.015 mg/liter	Infants and children: Delays in physical or mental development; children could show slight deficits in attention span and learning abilities. Adults: Kidney problems; high blood pressure
Antimony	None	.006 mg/liter	Increase in blood cholesterol; decrease in blood sugar
Thallium	None	.002 mg/liter	Hair loss; changes in blood; kidney, intestine, or liver problems

¹ § 4011 (c)(2)(A)(i) of HR 2273 authorizes coal combustion waste disposal design standards for “new structures, and lateral expansions” that are based on, “the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations.” Part 258.40(a)(1) of these rules, established for municipal waste sites in 1993, authorize any design that ensures that, “the concentration values listed in Table 1 of the section will not be exceeded in the uppermost aquifer...”

Table 1 of part 258.40 may be found at: <http://cfr.vlex.com/vid/258-40-design-criteria-19818131>. It lists maximum contaminant levels for arsenic, cadmium, and lead that are much less stringent than those in effect today, which does not include drinking water standards for antimony and thallium, two toxic metals now subject to Safe Drinking Water Act health-based standards. The groundwater monitoring and corrective action provisions of HR 2273 do cite current Safe Drinking Water Act standards, though these “after the fact” requirements may come too late for citizens living near ash disposal sites designed to meet weaker standards. And § 4010(c)(3) allows states to waive these requirements, based solely on a determination that they are, “not needed for the management of coal combustion residuals in that State,” and without considering whether this decision would leave the public exposed to levels of pollution that violate the Safe Drinking Water Act.

EPA can “review” this determination (though it is not clear on what basis), but §4010(i)(2)(A) of HR 2273 provides that, “the Administrator shall, with respect to regulation of coal combustion residuals, defer to the states pursuant to this section.”

² United States Environmental Protection Agency, Safe Drinking Water Act standards and health effects, October 11, 2011, url: <http://water.epa.gov/drink/contaminants/index.cfm#List>

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