

Seven Key Differences between the EPA's Subtitle C and Subtitle D Options for Regulation of Coal Ash

1. Categorization of the Waste

- Under subtitle C, EPA would designate coal ash as “special waste,” which is a subset of hazardous waste. In every way, it would be regulated as a hazardous waste, but the regulations would be housed in a section entitled “special waste.” This name was adopted to lessen any adverse impact hazardous waste regulations could have on beneficial recycling of ash.
- In contrast, under Subtitle D coal ash would be classified a non-hazardous solid waste. Yet coal ash, in EPA's new leach tests, certainly behaves like a hazardous waste in terms of the deadly chemicals that leave the ash when exposed to water. In fact, EPA admits that for some coal ashes the levels of arsenic, barium, chromium and selenium leached from the ash exceed hazardous waste standards—sometimes by 100s of times. (For more information on EPA's testing of coal ashes, see http://www.earthjustice.org/library/reports/failing_the_test_5-5-10.pdf and www.earthjustice.org/coalash, hit “Failing the Test.”)

2. Federally Enforceable Standards

- Under EPA's subtitle C option, the proposed regulations are federally enforceable.
- In contrast, under the subtitle D option, the requirements are just guidelines and cannot be enforced by EPA. The guidelines can *only* be enforced by citizens via citizen suits, which is a wholly untenable way to regulate over 150 million tons of toxic ash in nearly 50 states.

3. Coal Ash Pond Phase-Out

- Under EPA's subtitle C option, waste ponds must be phased out 7 years after the effective date of the regulations. Utilities must cease disposal of wet ash in the impoundments after 5 years and have an additional 2 years to close the ponds.
- Under the subtitle D option, there is no prohibition of the storage of ash in waste ponds, although the guidelines do require either the upgrading or phase-out of existing unlined ponds.

4. National Minimum Standards

- Under the subtitle C option, the federal regulations establish a minimum national standard for coal ash disposal. Every state will have to adopt equivalent or more stringent regulations within 2 years of promulgation of the federal rule.

- Under the subtitle D option, the states do not have to adopt the guidelines, and EPA has predicted that approximately 50% of the ash generated in the US – about 75 million tons and growing-- will not be covered by the new requirements—because states will not adopt regulations that conform to the more stringent D guidelines.

Thus the states with the worst regulations—often the states that generate the most ash—are unlikely to improve under the subtitle D option.

5. Addressing Contamination from Old Dumps

- Under the subtitle C option, utilities would have to monitor all the ash dumps, active and inactive, on their property to determine whether these dumps are leaking. This requirement is called “facility-wide corrective action,” and it is required at all hazardous waste facilities.
- Under the Subtitle D option, utilities would not be required to look at old dumps—this leaves a huge loophole for old landfills and waste ponds. These old units, most never properly closed or monitored, may continue to poison groundwater and surface water.

6. Operating Permits

- Under the subtitle C option, all coal ash dumps will need state or federally-issued permits. Thus host communities will have a say in the facility siting and operating practices of the disposal unit, and states will have an effective mechanism by which to oversee ash disposal.
- Under subtitle D, EPA cannot require the state to issue permits and it has no authority to issue such permits itself. Thus the subtitle D option lacks an important and effective mechanism for public participation and state oversight.

7. Cradle to Grave Management

- Under the subtitle C option, EPA establishes regulations governing the “cradle to grave” management of coal ash. These regulations therefore address the generation, storage, transportation and disposal of coal ash.
- Under subtitle D, the guidelines only address disposal. Consequently important protections, such as the requirement to cover trucks carrying coal ash and the requirement that facilities have sufficient financial resources to address spills (financial assurance) are wholly absent.

For more information, see www.earthjustice.org/coalash or contact Lisa Evans, Senior Administrative Counsel, levans@earthjustice.org.