

## CRS Updates its Analysis of Pending Coal Ash Legislation

MARCH 28, 2013

On March 19, 2013, the Congressional Research Service (“CRS”) issued [a revision to its report](#) analyzing two bills introduced in the 112th Congress that would create a state permitting program for coal combustion residuals. The two bills – S. 3512 sponsored by Sen. John Hoeven (R-ND) and H.R. 3409 sponsored by Rep. David McKinley (R-WV) – would amend RCRA Subtitle D to include a new Section 4011, entitled Management and Disposal of Coal Combustion Residuals. The bills would allow – but not require – states to establish coal combustion residual permitting programs implementing standards established in the bills, including groundwater monitoring requirements and structural integrity standards for surface impoundments. CRS [initially published a report](#) critical of the bills on December 5, 2012, but updated it after certain lawmakers questioned the report, speculating that the report’s conclusions were politically motivated. The revised report is still critical of the proposed bills, although its conclusions have been slightly softened. CRS identified a number of shortcomings, including the lack of deadlines for program requirements, the vague role for EPA in addressing permitting program deficiencies, and the absence of any requirement for states or EPA to promulgate regulations requiring permitted sources to achieve a certain level of protection.

Neither Senator Hoeven nor Representative McKinley have reintroduced their bills in the 113th Congress, although both are expected to do so. The legislation was introduced in response to EPA’s [June 21, 2010 proposal](#) to regulate coal combustion residuals under either RCRA Subtitle C as special wastes or under RCRA Subtitle D as solid waste. EPA has not set a date to issue its final coal ash rule, but it is widely believed that the Agency will not do so before 2014.

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