

House Bill 6269  
Michigan State CCR Permit Program  
Legislation *Briefing Materials- September 26, 2018*

**Statement:**

Michigan utilities are committed to protecting the environment while providing reliable, affordable and cleaner energy to Michigan residents.

Since the state of Michigan has regulated coal combustion residual (CCR) management for 40 years, companies that operate coal ash disposal sites are subject to dual regulation under the United States Environmental Protection Agency (EPA) rule and the long-standing Michigan statute.

House Bill 6269 will strengthen the environmental protections required by the EPA for the management of CCRs. It will provide the state of Michigan local oversight to better address conditions unique to Michigan and ensure compliance with federal standards.

If enacted, the State of Michigan would need to apply and the EPA would need to approve the legislation ratified by the state of Michigan finding that it is "*as protective as*" the federal rule.

**Talking Points**

DTE and Consumers Energy are working hard to safely handle, store and dispose of coal combustion residuals (CCRs), commonly known as "coal ash."

When available, the preferred method of management is to beneficially reuse ash in applications like road base or cement.

- DTE and Consumers Energy work with marketers and manufacturers to recycle CCR for beneficial reuse, such as concrete as the preferred ultimate disposition of CCR.
- Recycling of coal ash reduces greenhouse gas emissions. Every ton of coal ash used to replace cement in concrete eliminates 1 ton of carbon emissions that would have been created to produce the cement.

Michigan's regulatory program for CCR landfills is robust. State regulators approve engineering plans, groundwater monitoring programs, closure plans and financial assurance for these facilities. Utilities are also required to perform regular inspections and third-party professional engineers inspect their sites annually for safety and stability. This regulatory framework would extend to CCR impoundments.

House Bill 6269 would not change utilities' aggressive strategies for the closure of CCR impoundments and compliance with federal and state CCR requirements.

**Q&A**

**Q. Will this proposed bill weaken the federal CCR standards?**

A. No, standards for CCRs are not being weakened in the proposed legislation. HB 6269 must contain all federal requirements or demonstrate alternate standards that "*are as protective as*" for the EPA to approve Michigan Dept. of Environmental Quality's (MDEQ) authority to administer the CCR program in lieu of the federal rule. In all cases, any state-specific variances from the federal rule have been reviewed and approved by EPA in support of the Municipal Solid Waste Landfill Rule that has been approved for nearly twenty-five years.

**Q. Why are DTE Energy and Consumers Energy supporting this legislation?**

A. DTE Energy and Consumers Energy are committed to protecting the environment while providing reliable, affordable and cleaner energy to Michigan residents. This bill would strengthen the environmental protections required by the EPA for the management of CCRs and provide direct regulatory oversight of the compliance schedule in a manner that protects human health and the environment and ensure fair and timely regulation for the utility.

**Q. Why is it better to have state oversight? What conditions are unique to Michigan?**

A. Michigan's geology makes it quite different from many other states. For example, with the Great Lakes and inland lakes, protection of water resources is a high priority. Also, some parts of the state have natural clay soil barriers that have been demonstrated to be protective of water resources and codified in state rule for alternative liner systems for Municipal Solid Waste Landfills. In addition, MDEQ is very familiar with CCR management since they have been regulated for 40 years.

**Q. How will the Michigan Department of Environmental Quality enforce the EPA approved program?**

A. This legislation includes the creation of the Coal Ash Care Fund that directs the state of Michigan's Treasury to collect fees in the amount of \$13,000 per year for each CCR unit upon receiving a Solid Waste Operating License. These fees will directly fund resources the MDEQ needs to administer state's CCR Permit Program.

**Q. How will the proposed state managed CCR permit program be "as protective as" the federal rule with respect to groundwater monitoring?**

A. Michigan's framework of water quality monitoring and criteria provide a layer of protection that is greater and more detailed than what the federal rule provides. The legislation utilizes the framework of evaluating water quality relative to the applicable water use based on location. In many cases, coal ash landfills and surface impoundments are located near surface water and Michigan's Part 201 environmental remediation program provides a robust, protective framework of evaluating water quality, especially relative to ground water potentially venting into surface water (aka groundwater surface water interface) not specifically addressed in the federal rule.

**Q. How often will MDEQ be required to evaluate the effectiveness of the compliance plans, groundwater monitoring, and corrective actions is they are necessary?**

A. MDEQ authorizes all activities under a solid waste disposal area license issued under the state's permitting authority. These licenses are renewed at least once every five years which includes a record review and determination if the current compliance plans, groundwater monitoring, and corrective actions are protective. Each coal ash landfill and surface impoundment that hasn't achieved closure by removal to an unrestricted threshold will be required to maintain an operating license through the active life of the unit and at least 30 years during the post-closure care period. Michigan restrictive covenant requirements also impose an additional 20 yrs of due care after the postclosure period has ended to ensure long term environmental stewardship.

**Q. What protective measures are in the statute to help ensure MDEQ wouldn't have to subsidize the cost of monitoring, closure, or remediation of coal ash landfills or surface impoundments?**

A. The existing state of Michigan solid waste statute requires financial assurance for coal ash landfills in Michigan, including costs for remediation. This legislation extends that requirement to all surface impoundments that have not completed removal of coal ash and contamination to an unrestricted threshold. The financial assurance must be maintained for at least 30 years into the post-closure care period. The adequacy of the remediation costs are reviewed at least every five years when the solid waste disposal area license is renewed.