

## White House, EPA at Odds Over Coal-Waste Rules

Agency's Move to Designate Ash as Hazardous Is Slowed by Regulatory Czar's Assessment of Impact on Industry

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The Obama administration is engaged in an unusual internal spat as the White House and Environmental Protection Agency tussle over how to handle millions of tons of waste from coal-fired power plants.

Utility and environmental groups are watching the coal-ash dispute as an indicator of the administration's pliability on the regulatory front.



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Awareness of potential coal-ash problems burst into the news at the end of 2008, when a dike broke at a pond near a power plant in Tennessee. Above, a home destroyed in the incident.

The White House has already backed several new environmental initiatives that have drawn sharp reactions from industry, particularly EPA findings last month that designated carbon dioxide as a dangerous pollutant.

But environmental groups are pointing to a flurry of industry meetings on the coal-ash issue as evidence that utilities and other companies are using a foothold within the White House to fight back against potentially far-reaching new rules.

The office of President Barack Obama's regulatory czar, Cass Sunstein, has held nearly 20 meetings with industry groups since October to discuss the potential impact of proposed EPA rules to treat coal ash and other coal byproducts as hazardous waste, according to White House records. Mr. Sunstein directs the Office of Information and Regulatory Affairs within the White House Office of Management and Budget.

Watchdog groups say it is unusual for the OMB to insert itself so prominently, and so early, into the process. In this case, the EPA has yet to publish its proposed new regulations for coal ash, a step that would then open the door to public comment and hearings.

"Industry is trying to influence the process in a back-door fashion," said Lisa Evans, a senior attorney for Earthjustice, an environmental organization.

Utility companies argue that a federal hazardous-waste ruling would impose huge logistical challenges and add potentially billions of dollars in new costs. Other industries warn that an adverse EPA ruling could jeopardize the use of coal ash in such construction materials as cement mix and wallboard.

Sediment can be seen in the Emory River as dredging machines pump it and ash into holding ponds to be removed from the water at the plant in Kingston, Tenn., in December 2009.



As the power industry has sought to cut air pollution from power plants, it has resulted in more pollutants remaining in the material left behind after coal is burned. It contains such toxins as arsenic, lead, chromium and selenium, which present health and environmental risks if released into ground water. The exact characteristics depend on the type of coal burned and methods used to capture soot and smoke.

EPA Administrator Lisa Jackson submitted her proposed rules on coal waste to the OMB for review in September, promising to issue her decision on the matter by the end of the year.

But last month, in the wake of the OMB meetings, the EPA said it was delaying its decision "due to the complexity of the analysis" required. All proposed rules are normally run by OMB for review.

Administration officials declined to elaborate on the discussions, but defended the ongoing review. "This has been a very regular, very normal deliberative process on a very complex rule," said OMB spokesman Thomas Gavin.

Each year, the waste left over from burning coal generates 125 to 130 million tons of ash and sludge -- enough to fill a million railcars. Currently, about 40% of that waste finds its way into new products and 60% is stored in ponds or pits, mostly on utility property.

There is no single, federal standard requiring that pits be lined to prevent the leeching of pollutants into ground water or streams, nor is there a common standard for pit or pond structures and monitoring.

"Most states have fairly good enforcement, but EPA is looking at doing something more," said Tony Earley, president of the Edison Electric Institute and also chief executive of DTE Energy. "We're worried about added costs."

The coal-ash issue burst into the news at the end of 2008, when a dike broke open at a pond near a power plant operated by the Tennessee Valley Authority, sending 5.4-million cubic yards of polluted water sweeping across 300 acres.

OMB's prominent involvement in the coal-ash issue has surprised some observers, who point out that the regulatory affairs office within OMB has largely stood aside as other huge regulatory matters, such as the

EPA carbon-dioxide ruling, have moved forward. The office of regulatory affairs within OMB was established in the 1970s to review all administration rules and regulations before they go into force.

Coal-burning utilities largely oppose the move by the EPA to establish a national rule under the 1976 Resource Conservation and Recovery Act.

"We think the issue of pond failures has to do with the structure of the ponds and not the material itself," said Bryan Hannegan, vice president of the environmental sector for the Electric Power Research Institute, a power-industry research organization based in Palo Alto, Calif.

The organization has told OMB that utilities could lose \$5 billion to \$10 billion of revenue each year if they no longer could sell coal combustion byproducts to industry. Furthermore, the organization says added storage costs could be a burden on power plants, especially those operating in deregulated markets, where they must compete against other forms of generation.

"We think 250 to 350 coal units could be shut down, in an extreme scenario, and drive up the cost of electricity," said Mr. Hannegan.

Environmentalists say such estimates are a scare tactic by the industry intended to intimidate the administration and EPA into softening the proposed rule.

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