

Federal Court to Require EPA to Regulate Coal Ash

OCTOBER 7, 2013

On September 30, 2013, the D.C. district court issued a non-final order in *Appalachian Voices, et al. v. Gina McCarthy*, a case brought by environmental organizations against EPA for failure to regulate coal ash under RCRA. The order states that the court will grant summary judgment to Appalachian Voices on their claim that EPA violated RCRA by failing to finalize a rule regulating coal ash, and will grant in part and deny in part summary judgment to Headwaters Resources, Inc. and Boral Material Technologies on their claim seeking a deadline for EPA to finalize the coal ash regulations. Based on the lack of detail in the court's order, it is not clear at this moment whether the court will issue a schedule for EPA to promulgate the coal ash rule. EPA issued a proposed rule setting forth options for regulating coal ash as a special waste under RCRA Subtitle C, or as a solid waste under RCRA Subtitle D, in June 2010. The final order setting forth the court's full decision, along with a memorandum opinion, will be issued by October 30.

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