

Environmentalists Announce Plan to Sue EPA Over Delayed Coal Ash Regulations

JANUARY 20, 2012

On January 18, 2012, several environmental groups, led by Earthjustice, filed a [notice of intent to sue](#) the EPA to force the agency to finalize its proposed rule determining how coal combustion residuals (commonly referred to as “coal ash”) will be categorized. Coal ash is currently subject only to state regulation. While environmentalists are leading the charge to finalize a federal coal ash rule, industry strongly opposes any federal rule that would deem coal ash a hazardous waste, as one of the alternative schemes originally proposed by EPA would do.

In 2010, the EPA proposed to regulate coal ash as either hazardous waste or solid waste under the Resource Conservation and Recovery Act (RCRA). After holding eight public hearings across the country and receiving more than 450,000 public comments, the agency decided to delay finalizing the rule. Environmental groups assert that coal ash (which can contain arsenic, lead, and mercury, among other pollutants) is toxic and advocate for strong federal regulations. These groups claim that current coal ash regulation is insufficient to protect public and environmental health.

Industry groups, however, have argued against a final coal ash rule that would implement a hazardous waste designation as it would undoubtedly eliminate the use of coal ash as a secondary material, due to the resulting stigma associated with a hazardous designation. Currently, coal ash is used in the construction and agriculture industries to produce concrete, drywall, and fertilizers. Roughly 40% (or approximately 56 million tons) of all coal ash produced in the United States is used beneficially as a secondary material. Industry groups point out that this secondary use saves resources and avoids the expense of landfilling.

The notice of intent to sue filed by environmental groups gives EPA 60 days to finalize the coal ash rule. If EPA fails to finalize the rule in 60 days, the environmental groups will file suit in federal court.

1 Min Read

Related Topics

Energy

Related Capabilities

Environmental

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.