



Daily News

EPA Urged To Force Stricter Ash Pond Water Permits Ahead Of Waste Rule

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Environmentalists are renewing calls for EPA to force states to update and strengthen water discharge permits for coal ash impoundments ahead of the agency finalizing a waste rule for the ponds, saying it would ensure strict controls are in place for the ponds until EPA issues a long-pending waste rule that it is aiming to finalize in December.

Updating current Clean Water Act National Pollutant Discharge Elimination System (NPDES) permits is almost as important as finalizing the waste rule and a related power plant effluent rule, says one environmentalist, because implementation of those rules could be delayed for months or years due to expected suits over the rules.

Advocates are arguing that the agency has not enforced a 2010 guidance specifically calling for such permit updates. The push, citing a memo drafted by then-EPA wastewater chief James Hanlon, comes as advocates are separately urging site-specific controls for power plants' scrubber wastewater, which are also called for in the memo.

In an April 23 meeting with EPA Region IV Administrator Heather McTeer Toney, several environmental groups urged the agency to "use the outline and direction in the Hanlon memo to require more current permits and guidelines, while we're waiting for [the national waste rule] to be finalized," a second environmentalist says.

The request is similar to environmentalists' request at a December 2012 meeting with officials from Region IV, which covers several Southeast states that are the site of more than 400 coal ash impoundments. EPA plans to address how to regulate such sites in its pending Resource Conservation & Recovery Act (RCRA) rule for coal ash, which under a proposed settlement agreement the agency is slated to finalize in December.

A federal judge recently [refused to approve](#) the agreement, faulting the pact for allowing extensions to the deadline without court approval, but sources say the decision is a minor setback and EPA has quickly revised the agreement to resolve the judge's concern.

Since the 2012 meeting with Region IV, the second source says, "we basically have heard and seen nothing" related to updated permits for coal ash ponds using the Hanlon memo, and so environmentalists are renewing their efforts.

The first source argues that states often do not update permits after they expire, instead opting to administratively renew the permit. "Or when they do issue the new permits, they do not go through the Hanlon memo analysis," the source says. "There has been all this focus on EPA's rulemaking. But the big question to me is, why is EPA not doing its current job?"

Effluent Limits

The memo calls for permitting authorities to "examine the impacts of a discharge relative to both numeric and narrative [water quality] criteria." After conducting an analysis to determine if the discharge has a reasonable potential to cause or contribute to an exceedance of the criteria, regulators should "establish water quality-based effluent limits where appropriate."

The memo outlines how states can translate narrative criteria for pollutants that can be present in coal ash, and also notes that seepage discharges to surface water through a shallow groundwater connection "have been controlled in a number of cases through [discharge] permit requirements to either use lined impoundments to prevent seepage or to install seepage interception systems."

Regarding scrubber wastewater, the memo says states are required to conduct best professional judgment (BPJ) reviews for the waste stream in lieu of the pending effluent limitation guideline (ELG) for the power sector, which is expected to set best available technology standards that must be incorporated in future permits.

Advocates are defending a landmark Kentucky trial court ruling backing their claims that regulators must conduct BPJ reviews in lieu of EPA's revised ELG, and one attorney earlier said that if the case is held up on appeal, it could inform other states' decisions about whether to require such reviews.

Highlighting the potential significance, the U.S. Chamber of Commerce backed the local utility's appeal, warning

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in an *amicus* brief that the lower court ruling would upend EPA's system for controlling power plant discharges and that relying on the Hanlon memo would be "unlawful 'regulation-by-guidance.'"

But the first environmentalist notes that after the revised ELG is finished by a September 2015 deadline, EPA likely must defend the rule in court. Then, states must incorporate technology requirements into permits after a compliance period of up to eight years.

"It's a long process to get there," the source says, adding that industry does incorporate expected requirements into planning processes, so the rule does "still have an impact, I don't want to minimize that."

'Special' Waste

At the recent meeting with Region IV, environmentalists also reiterated their call for coal ash to be regulated as a "special waste" under subtitle C of RCRA, which would allow for direct federal enforcement of any new requirements.

EPA has indicated that it is leaning toward a rule classifying the substance as a "solid waste" under RCRA subtitle D, a move favored by industry. But industry, states and environmentalists are all concerned that option would only allow for citizen suit enforcement of requirements, potentially creating a dual set of federal and state standards.

The first source says the enforcement aspect of a subtitle D rule is a major shortcoming. Citizen suit enforcement "is something the public should not have to rely on," the source says. "The citizenry ought to be able to rely on there being an adequate law enforcement process so that they and the waterways will be protected."

The source adds that the recent coal ash spill in North Carolina's Dan River underscores that the RCRA rule should address inactive sites that are no longer receiving new waste, given that the facility at issue in the recent spill was such a site.

"This is the country's largest utility, and this is its home state," the source says. "North Carolina isn't the largest state in the union, but it's not the smallest, either. You would think some lessons might be drawn from this experience." -- Lee Logan (llogan@iwpnews.com)

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