



POLLUTERWATCH

COAL-FIRED UTILITIES TO AMERICAN PUBLIC: KISS MY ASH

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Introduction

On the day that the EPA holds its final public hearing, in Knoxville, Tennessee, into regulating toxic coal ash, DeSmogBlog and PolluterWatch outline how lobbyists from the coal-fired power industry held dozens of potentially illegal meetings with White House staff to influence regulations long before the public got to have its say.

This report identifies the industry lobbyists involved and the utilities and trade associations they represent.

While all coal-fired power plants create mountains of ash, a handful of corporations have been linked to the hazardous coal ash sites reported by EPA and Environmental Integrity Project over the past year. Just three corporations, American Electric Power, Tennessee Valley Authority and Duke Energy are responsible for 10 or more dangerous coal ash sites, over 25 percent of the total nationwide. Eleven companies are responsible for 4 or more locations, more than 50 percent of those identified nationwide.

The Problem

Each year coal-fired power plants run by utilities across the United States generate nearly 140 million tons of coal ash, creating the country's second-largest stream of industrial waste, bested only by the enormous output of mining-related wastes.¹ Currently, about 60% of the waste is stored in (usually unlined) ponds or pits near the power plants, posing a threat to water supplies and nearby communities.²

EPA and environmental groups have identified at least 138 locations across the country where coal ash threatens public health and water supplies.³ Some of these power plant complexes contain multiple hazardous coal ash ponds, including seven ponds at Arizona Electric Power Cooperative's Apache Station Combustion Waste Disposal Facility in Cochise, AZ, three ponds at American Electric Power's Muskingum River plant in Waterford, OH and three ponds at Duke Energy's Buck power station in Spencer, NC.⁴

Coal ash storage is currently only regulated by individual state laws that have failed to adequately protect the public. There is currently greater oversight of household garbage than toxic coal waste.

1. <http://www.rollingstone.com/politics/news/12697/64853>

2. <http://www.cbsnews.com/stories/2010/08/13/60minutes/main6769847.shtml>

3. <http://www.desmogblog.com/toxic-coal-ash-threatens-least-137-sites-34-states>

4. <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/ccrs-fs/>

5. <http://www.charlotteobserver.com/2010/10/19/1771891/coal-ash-in-water-worries-officials.html>

6. <http://www.desmogblog.com/epa-ignores-tennessee-and-alabama-coal-ash-victims-nearest-hearing-260-miles-tva-disaster-site>

<http://blogs.wvgazette.com/coalatattoo/2009/12/14/remembering-the-kingston-tenn-coal-ash-disaster>

<http://www.epa.gov/osw/nonhaz/industrial/special/fossil/ccr-rule/ccr-hearing.htm>

7. <http://online.wsj.com/article/SB126300256672322625.html>

The Solution

Extensive science and the personal experiences of coal ash victims confirm that the only way to safeguard drinking water supplies and protect communities near coal ash impoundments is for the EPA to designate coal ash as hazardous waste and regulate it at the federal level. Individual state laws fail to adequately protect the public. Several ongoing water contamination cases exemplify the need to move rapidly to set standards and rein in the virtually unregulated threat from toxic coal ash.⁵

How Coal Ash Lobbyists Have Worked to Block Regulation

PUBLIC FEARS

One public hearing remains to solicit public input on federal proposals to regulate toxic coal ash—a waste product from coal-fired power plants. But coal industry lobbyists held dozens of potentially illegal meetings with the White House to peddle their influence long before the Obama administration opened the process to the public.

The public hearings held to date have been largely dominated by citizens calling for strong federal action—and plenty more of that sentiment will be on display today at the final hearing in Knoxville, Tennessee, when residents have the final word. Although an embarrassing afterthought on the EPA's part, the Tennessee hearing is critical to solicit input from the victims of the Kingston, Tennessee, TVA disaster in December 2008.⁶

But the coal industry's influence on the process was largely peddled behind the scenes, beginning over a year ago when lobbyists representing coal ash producers and users started swarming the White House to protect the coal industry from full responsibility for the potential health and water threats posed by its coal ash waste.⁷

At the time the lobbying spree began in fall 2009, the industry was facing a fast-tracked effort by the Environmental Protection Agency to finally declare coal ash as hazardous waste. It was a seemingly no-brainer proposition as the ash is laden with heavy metals like arsenic, lead, mercury and cadmium and a host of other radioactive and dangerous substances.



The massive lobbying blitz achieved in short order exactly what the industry wanted. It delayed federal regulation of the waste indefinitely and created a debate about whether federal oversight was even necessary for “coal combustion residues”—despite overwhelming evidence that existing state regulations are failing to protect the public.

This opened up further opportunities for industry lobbyists and front groups to continue polluting the agencies’ deliberative process. It also allowed more time for the front groups to try to convince the public that coal ash is somehow different from most other hazardous industrial wastes and warrants a less severe classification, despite its confirmed impacts on water supplies⁸ and human health.⁹

“BENEFICIAL USE”

Coal utilities have capitalized on the fact that coal ash is not regulated as hazardous waste, allowing them to sell some of it for profit for what the industry calls “beneficial use” purposes. In fact, 40% of all coal ash generated annually in the U.S. is sold to third parties who use it to make new products like cement, wallboard and bowling balls. (These third parties also have a valuable incentive to fight federal coal ash regulations.)

Perhaps anticipating that regulators might some day question the lack of adequate coal ash regulations, the coal industry developed a formal partnership with the EPA during the Bush administration called the “Coal Combustion Products Partnership” (C2P2). The relationship was so cozy during the Bush administration that it caught the eye of the EPA’s Inspector General, who began an investigation into C2P2 in June (the C2P2 website was shut down as a result).¹⁰

Last week, the Inspector General’s office released its final report criticizing the agency for failing to maintain objectivity and noting several instances in which EPA appeared to be endorsing certain commercial products made with coal ash, in direct violation of EPA’s ethics policies.¹¹

LESS OVERSIGHT THAN HOUSEHOLD GARBAGE

Coal ash storage is currently only regulated by individual state laws that have failed to adequately protect the public. And that is partly the result of industry meddling.

As Jeff Goodell wrote in Rolling Stone last Spring: *“...the coal industry has a long history of buying off state regulators with a junket to Vegas and a few rounds of golf. In short, the industry had it made. Nearly 300 billion pounds of coal ash simply vanished from view each year, with less oversight than household garbage.”*

The implications of such lax enforcement of coal waste was made painfully clear by the December 2008 Kingston TVA disaster, when an ash pond breach sent a wave of a billion-plus gallons of coal waste sludge into the Emory River, destroying homes and poisoning the water supplies of area residents.

In response to the Kingston TVA debacle, EPA Administrator Lisa Jackson promised during her confirmation hearing to act quickly and decisively to assess the science and stem the threat from coal ash with new federal regulations.¹² Jackson submitted a draft of the proposed rules to the White House Office of Management and Budget for review in September 2009, and announced her intention to issue a final proposal on new federal coal ash rules by the end of last year. Jackson’s proposed rule would designate coal ash as hazardous waste, phase out its disposal in wet storage ponds and set new requirements for storing and monitoring the waste in dry landfills.

That was when the coal lobbyists started booking meetings with the White House to raise objections, focusing their attention on the Office of Information and Regulatory Affairs within the White House Office of Management and Budget. Overseen by President Obama’s regulatory czar, Cass Sunstein, OMB is a favorite industry target to gum up the federal regulatory process because it is charged with reviewing EPA-proposed rules and is known to regularly solicit industry input in the process.

8. <http://www.desmogblog.com/toxic-coal-ash-threatens-least-137-sites-34-states>

9. <http://blogs.wvgazette.com/coalatattoo/2009/05/07/secret-epa-study-big-cancer-risks-from-coal-ash-ponds/>

10. <http://www.epa.gov/osw/partnerships/c2p2/>

11. http://www.eip.com/index/from-the-wires/wire_news_display/1283263024.html

12. <http://www.msnbc.msn.com/id/28653445/>



COAL LOBBYISTS TARGET THE WHITE HOUSE

Coal ash lobbyists enjoyed far more access to White House staff than environmentalists and academics, calling into question the industry's "undue influence" over the government's deliberative process.¹³

Between October 2009 and April 2010, industry representatives held at least 33 meetings with White House OMB staff, almost three times as many meetings as environmentalists and university scientists had on the coal ash issue.¹⁴

In the wake of the industry's lobbying blitz, EPA announced it was backing off Jackson's goal of producing a proposed rule by the end of 2009, "due to the complexity of the analysis" involved, the agency said.¹⁵

Soon after the first wave of meetings with industry, a second proposed rule emerged, one that would mandate liners on ash ponds to reduce the threat of water contamination somewhat, but continue to classify the waste as non-hazardous, largely leaving enforcement to the states and allowing the coal industry to continue selling the waste to third parties without risk of liability for damages it may cause.

As the Society of Environmental Journalists (SEJ) has pointed out, the second, industry-friendly option may have been produced illegally, since most federal agencies are required to gather evidence used to shape regulations in an open and fully transparent manner.¹⁶ But SEJ describes this particular lobbying blitz as "secret back-room meetings between White House officials and coal lobbyists" that may be in violation of the Administrative Procedure Act.

SEJ explains:

"In fact, off-the-record meetings between regulatory officials and those they regulate (called "ex parte" contacts) are illegal and can invalidate a rule. But the White House Office of Management and Budget (OMB), which has strict control of agency rulemaking, offers a convenient back-channel for industry groups to use in quashing or weakening regs they don't like. OMB's Office of Information and Regulatory Affairs (OIRA) is required to disclose the fact of those meetings, but not to disclose full details of what was discussed."

While the public may never know exactly what was discussed during these industry meetings with White House staff, the lobbyists' success is evidenced by the delays in EPA's efforts to finalize a proposed rule. Together with pressure from lawmakers held hostage to coal interests by campaign contributions, the industry's henchmen have delayed the effort to move forward on coal ash regulations, including winning extensions to the public comment period, which now closes on November 19, 2010.¹⁷

PROFILES OF COAL ASH LOBBYISTS

An analysis of the scant information available on the OMB website does offer a look at the individual lobbyists who carried out the industry's dirty work.

To get a sense for what these lobbyists might have told the White House, DeSmogBlog and PolluterWatch teamed up to shed some light on several of these individual lobbyists.

The Utility Solid Waste Activities Group (USWAG),¹⁸ is one of the main front groups representing coal ash interests. USWAG, which operates out of the offices of the Edison Electric Institute, has argued (with no independent substantiation) that disposing of coal ash as hazardous waste could cost the industry \$20 billion a year. USWAG lobbyists Jim Rower and Douglas Green were the only individuals granted two meetings with White House staff on coal ash, one on October 28, 2009 and another on April 2, 2010.

The American Coal Ash Association, the umbrella group for all coal ash interests including major coal burners Duke Energy, Southern Company and American Electric Power, as well as dozens of other utilities and industry groups, argues that a "hazardous" designation would wipe out the so-called "beneficial-use industry" that uses coal ash waste to make a variety of construction and household items. ACAA set up a front group called Citizens for Recycling First²⁰ to argue the industry's message that using toxic coal ash as fill and in other products is safe, despite extensive evidence to the contrary.

13. <http://www.nytimes.com/gwire/2010/05/07/07greenwire-epa-backed-off-hazardous-label-for-coal-ash-af-10431.html>

14. http://www.whitehouse.gov/omb/oira_2050_meetings/

15. <http://www.nytimes.com/gwire/2010/05/07/07greenwire-epa-backed-off-hazardous-label-for-coal-ash-af-10431.html>

16. <http://www.sej.org/publications/watchdog-tipsheet/will-off-record-white-house-meetings-with-coal-lobby-stifle-ash-regs>

17. <http://thehill.com/blogs/e2-wire/677-e2-wire/114979-epa-extends-comment-deadline-on-controversial-coal-rule>
<http://thehill.com/blogs/e2-wire/677-e2-wire/111613-conrad-brownback-press-epa-for-softer-rules-on-coal-byproduct->

18. <http://www.uswag.org/>

19. http://www.whitehouse.gov/omb/2050_meeting_102809/

http://www.whitehouse.gov/omb/2050_meeting_04022010/

<http://www.linkedin.com/pub/jim-rower/23/825/617>

<http://www.venable.com/douglas-h-green/>

20. www.recyclingfirst.org



The complete ACCA membership list is available via this [link](#).

A review of lobbying disclosure records reveals at least 30 lobbyists representing ACAA member companies who reported lobbying White House, Congressional and agency staff on coal ash issues in the first half of 2010:

Power company	Coal ash lobbyists
AMERICAN ELECTRIC POWER	Anthony Kavanagh Joseph Hartsøe Martin McBroom
SOUTHERN COMPANY	John L. Pemberton L. Ray Harry H. Adam Lawrence Kyle C. Leach James M. McCool Michæel J. Riith Jeanne H. Wolak Stoney G. Burke
DUKE ENERGY	Beverly Marshall Brian Vanderbloemen Toby Short John Hasbert William Tyndall
DOMINION RESOURCE	Bruce McKay Kelly Chapman Carolyn Perry Ann Loomis
FIRSTENERGY CORP.	Karen Hall Joel Bailey Anthony Alexander Jr.
XCEL ENERGY INC	John O'Donnell Stephen L. Plevniak Christopher Kearney
ALLIANT ENERGY CORP.	Zack Hill
AMEREN ENERGY (aka AMEREN SERVICES)	Joe Power Tom Horgan Shaun Garrison

While not a member of ACAA, it is worth noting that U.S. Chamber of Commerce lobbyist Ross Eisenberg also reported lobbying on coal ash in the first half of 2010.



Corporations with Big Coal Ash Problems

Greenpeace has compiled the locations of big coal ash problems across the United States ([link to spreadsheet](#)) and the corporations responsible for them. One hundred and thirty eight (138) dangerous coal ash locations have been identified by EPA and Environmental Integrity Project. Some of these power plant complexes contain multiple hazardous coal ash ponds, including seven ponds at Arizona Electric Power Cooperative's Apache Station Combustion Waste Disposal Facility in Cochise, AZ, three ponds at American Electric Power's Muskingum River plant in Waterford, OH and three ponds at Duke Energy's Buck power station in Spencer, NC.²¹

While all coal-fired power plants create mountains of ash, a handful of corporations have been linked to the toxic coal ash locations reported by EPA and Environmental Integrity Project over the past year. Just three corporations, American Electric Power, Tennessee Valley Authority and Duke Energy are responsible for 10 or more of them, equivalent to over 25 percent of the total nationwide. Eleven companies are responsible for 4 or more locations, more than 50 percent of those identified nationwide.

Summary, extracted from the Greenpeace spreadsheet:

- AMERICAN ELECTRIC POWER HAS THE BIGGEST PROBLEM WITH 16 LOCATIONS.
- 3 CORPORATIONS OWN MORE THAN 10 LOCATIONS, OR 26% OF THE TOTAL. 36 OUT OF 138 ON THE LIST
- 7 CORPORATIONS OWN MORE THAN 5 LOCATIONS; 41% OF THE TOTAL; 57/138
- 11 CORPORATIONS OWN MORE THAN 4 LOCATIONS; 53% OF THE TOTAL; 73/138
- 17 CORPORATIONS OWN MORE THAN 3 LOCATIONS; 66% OF THE TOTAL; 91/138

Parent company	Number of coal ash locations
American Electric Power	16
Duke Energy	10
Tennessee Valley Authority	10
Dynegy	6
Alliant Energy	5
NRG Energy	5
Progress Energy	5
E.ON	4
NiSource	4
SCANA Corporation	4
Wisconsin Energy Corporation	4
AES Corp.	3
Allegheny Energy	3
Basin Electric Power Cooperative	3
Berkshire Hathaway	3
Dominion	3
Southern Company	3

21. <http://www.epa.gov/osw/nonhaz/industrial/special/fossil/ccrs-fs>