

In Duke Energy's public comments on EPA's proposed coal ash rule¹, the utility advocated for the weakest regulatory option under the Resource Conservation and Recovery Act subtitle D. Language and points from Duke's comments are below in italics, followed by analysis and rebuttals.

- 1) *Allen Stowe, an Environmental Specialist for Duke Energy (Sept. 14, 2010): Stated that a RCRA subtitle C rule would "cripple CCR beneficial use, threaten jobs and increase electricity costs", that converting to dry handling within a 5 year deadline (per subtitle C) is impractical.*
 - a) The Subtitle C option establishes requirements that must be met, whereas Subtitle D includes many of these same standards as legally nothing more than "suggested guidelines" that states may, or may not, choose to follow—Does not ensure protections for communities and natural resources. There is no mandatory requirement for permits under Subtitle D, changing little from the status quo.
 - b) Both regulatory options exempt "beneficial uses" from any regulation under RCRA, industry is concerned that coal ash will stigmatized if it's designated a special waste.
 - c) Two South Carolina utilities, Santee Cooper and SCE&G have committed to converting all ash storage facilities to dry-state, lined landfills away from the river, independent of any regulations.
 - d) Summaries of the rules:
 - i) http://action.sierraclub.org/site/DocServer/coalashrule_SUMMARY.pdf
 - ii) http://www.southeastcoalash.org/?page_id=50

- 2) *Allen Stowe's (Sept. 14, 2010), comments at an EPA public hearing, "Environmental groups allege dozens of new damage cases, listing some Duke Energy facilities. The actual number of proven damage cases is quite small. The current total is twenty-seven (27) proven damage cases and forty (40) potential damage cases. A close examination of the facts reveals many flaws in the recent allegations made regarding damage cases. Many of the assertions in the reports are based on extremely flimsy evidence, with unfounded conclusions meant to scare the public"*
 - a) Even if there were only 27 damage cases from coal ash, that is too many. Nationwide there are over 200 proven damage cases where coal ash has polluted groundwater, surface water and air, many in the Southeast. It's hard to imagine a wet coal ash impoundment close to a waterway that will not leak.
 - b) Waterkeeper Alliance finds illegal pollution at 77% of the coal ash impoundments they sample.
 - c) Duke/Progress' own reporting shows that coal ash at all 14 of NC's coal fired power plants has violated groundwater standards for years. The state of North Carolina has filed lawsuits to stop this pollution at all of Duke's NC plants. DENR's **consent order** states²:
 - i) Continued operation of the Asheville plant in violation of groundwater standards and [N.C. law], without assessing the situation and taking corrective action, poses a serious danger to the health, safety, and welfare of the people

¹ <http://www.regulations.gov/#!searchResults;rpp=25;po=100;s=Duke;dktid=EPA-HQ-RCRA-2009-0640>

² http://portal.ncdenr.org/web/wq/hot-topics/asheville_riverbend_steamstadoes

of the State of North Carolina and serious harm to the water resources of the state.”

- d) A recent study³ shows that high concentrations of selenium is poisoning and deforming fish in Sutton Lake, which is managed as a public fishery.
- 3) *CCR's should not be listed as hazardous waste, because "CCRs rarely exhibit a hazardous waste characteristics" (Chris Hallman, Principal Environmental Specialist for Duke Energy comments)*
 - a) From EPA: Wastes that have not been specifically listed may still be considered hazardous waste if it exhibits one of the four characteristics, one of which is toxicity— “Toxic wastes are harmful or fatal when ingested or absorbed (e.g., containing mercury, lead, etc.). When toxic wastes are land disposed, contaminated liquid may leach from the waste and pollute groundwater”
 - i) Coal ash contains many toxic heavy metals found in coal, often at elevated concentrations, that leaches into the soil, ground and surface waters.
 - 4) *"Utilities have safely managed CCRs in hundreds of surface impoundments for decades" "Our surface impoundments are sound, and we are committed to continue operating them safely" (George Everette, Director of Environmental and Legislative Affairs for Duke oral testimony Sept. 10, 2014)*
 - a) Again, NC coal ash dumpsites have been polluting ground and surface waters for years. Duke Energy is supplying water to communities with affected groundwater near their Asheville and Sutton plants. The recent Dan River spill reminds us that these sites can and do pollute public waterways even when there is not a catastrophic dam failure like the one that happened in Kingston, TN in 2008.
 - b) Of those Duke impoundments EPA has rated on structural integrity (many are unrated) 6 have been designated as being in “poor” condition—5 at Cape Fear and 1 at Asheville (note: Do not know if problems here have been adequately corrected or not)
 - c) The Dan River site that failed on Sunday
 - 5) *Duke’s public comments claim that weaker regulations balance “affordability and reliability” but ignore the costs borne by the public when waste is externalized.*
 - a) According to a study⁴ by USDA Fish and Wildlife service, coal ash impoundments have caused \$2.3 billion in damages to fish and wildlife over the past 45 years and could cause \$3.85 billion in damages over the next 50 years.
 - b) The town of Flemington is paying \$472,000⁵ to run a municipal water line to the NC community of Flemington because of Duke coal ash contamination and Duke itself is paying \$2.25 million.
 - 6) *Pat McCabe (Sept. 14, 2010 oral testimony at EPA hearing) “We agree that disposal units that are not fully protective must either be upgraded or closed; however, there are many CCR surface impoundments which are perfectly safe”*
 - a) If you define “perfectly safe” as not illegally polluting water resources, then all Duke impoundments need to be upgraded or closed.

³ <http://www.starnewsonline.com/article/20131203/articles/131209935#gsc.tab=0>

⁴ <http://www.southeastcoalah.org/wp-content/uploads/2013/04/Lemly-and-Skorupa-Coal-Waste-Impacts-on-Wildlife-August-9-2012.pdf>

⁵ http://www.southernenvironment.org/newsroom/press_releases/duke_coal_ash_pollution_ruining_public_drinking_water_resource_in_wilmington/