

Investors Raise Coal Ash Disposal Issues with Coal Utilities

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by Amy Galland of As You Sow



As regulators debate emission caps and utilities install filters and scrubbers to reduce toxic particles from going into the atmosphere – we have to take a minute and remember that the coal problem isn't solved. These toxins go somewhere.

They go into the 130 million tons of Coal Ash produced every year in the United States. And this year, investors (yes, investors) are doing something about it and – as of May 4, 2010 – the EPA is too.

Coal ash is what's left over after burning coal for electricity and it contains arsenic, mercury, lead, boron, cadmium, and selenium. Coal ash is dumped into huge ponds, landfills and abandoned mines from where it can flow into the water table. A small percentage of the ash is “recycled” – sold and used in concrete, asphalt, drywall, bowling balls, embankments on golf courses, added to soil on farms, and as the base of animal feed lots – and all of this is [legal according to the EPA](#).

After a dam burst at a coal ash pond operated by the Tennessee Valley Authority (TVA) in December 2008 spilling 1.1 billion gallons of toxic sludge over local communities with clean up costs estimated at upwards of \$1 billion (not counting the over 50 lawsuits pending), the EPA decided to revisit regulating coal ash as hazardous waste.

And yesterday, May 5, 2010, almost one and one-half years after the TVA spill, the EPA opened a [90-day comment period for input](#) on regulating coal ash under the Resource Conservation and Recovery Act (RCRA). The more stringent of the options under consideration would label coal ash as “special” waste and set standards at the federal level. This waste designation would protect local communities and the environment, but industry claims it could cost coal-burning utilities [billions of dollars annually](#) and could even force plant closures.

While the government is in deliberations – investors decided to challenge the utility companies to disclose and improve their practices for storing coal ash so that the TVA disaster would not happen in their communities.

Shareholders do this by filing resolutions asking management to disclose information on its practices. Examples include asking companies to report on [greenhouse gas emissions, efforts to find alternatives to toxins in products, sexual discrimination policies, and codes of conduct](#). Proposals are reviewed by the company and the SEC and placed on the company's Proxy Statement. Everyone who owns stock in the company can vote on the issue.

Using your rights as a shareholder is a powerful tool – Nelson Mandela credited divestment from South Africa by socially responsible investors and shareholders (coordinated by the [Interfaith Center for Corporate Responsibility](#)) as being a significant force in abolishing white-minority rule in South Africa.

This year, three resolutions will be voted on asking the companies to disclose the risks related to coal ash disposal and re-use and what the companies are doing to mitigate those risks.

The vote on the first resolution, filed by [As You Sow](#) was held on April 27th at MDU Resources Group in Bismarck, North Dakota. Shareholders voted an astounding [25.6% FOR the resolution](#). This is a dramatic vote, as first-time environmental resolutions usually get 5-7% of the vote.

A majority vote is not needed for the company to respond to the will of its shareholders. One example is a resolution filed by As You Sow at Home Depot asking the company to phase out of selling wood from Old-Growth Forests. The resolution got the support of 11.8% of the shareholders and shortly thereafter, the company announced it would stop selling wood from endangered forests within three years! Later this year there are two more votes on coal ash – one, also filed by As You Sow, at CMS Energy on May 21st and a second, filed by [Green Century Capital Management](#), at Southern Company on May 26th.

Investors' activities don't end at the shareholder meeting. Afterwards, investors engage the company executives in dialogue to ensure that they act in the interests of their stockholders. If they don't, another resolution is filed the next year.

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Amy Galland is research director at As You Sow and Director of the Coal Program. [As You Sow](#) is a non-profit organization dedicated to promoting corporate accountability, social justice and environmental protection. Its Corporate Social Responsibility Program is one of the nation's leading proponents of shareholder advocacy and provides shareholder dialogue, resolution and solicitation management services to the non-profit socially responsible investment and foundation communities. As You Sow is based in San Francisco, California.