Residents, Activists Prod EPA for Coal Ash Rules

DYLAN LOVAN, Associated Press

LOUISVILLE, Ky. (AP) — Black dust from the giant coal ash heap across the street from Kathy Little's Louisville home swirls in the wind, coating her windows, her car, and blows indoors to settle on the furniture.

The ash blanketing Little's property is a byproduct of a nearby coal-burning power plant. Since it's full of fine particles of arsenic, chromium and other metals, the U.S. Environmental Protection Agency is considering classifying the ash as a hazardous material.

"It's a constant struggle and it's a sad situation because there's not a lot of people that know that goliath is over there," Little said of the ash dump near her home — at Louisville Gas & Electric's Cane Run Station.

Power plants in the U.S. produce about 140 million tons of the ash each year.

But for Little and many others around the country, it took a massive coal ash spill in December 2008 in eastern Tennessee to awaken to the environmental impact of the

gritty particles invading her home. The spill that year from a Tennessee Valley Authority storage pond poured more than 5 million cubic yards of ash into a river and spoiled hundreds of acres in a community 35 miles west of Knoxville.

The spill is considered one of the nation's worst environmental disasters and drew national attention to coal ash and its ominous-sounding ingredients. The EPA later declared that ash contaminants can leach into the ground and reach drinking water sources — creating health concerns. The agency says there are about 1,000 active coal ash storage sites in the U.S.

But two years after the agency proposed regulating coal ash as hazardous and placing restrictions on its disposal, the EPA has issued no ruling.

For Little — and the environmental activists who are just as alarmed — the EPA's ruling is taking too long. They say they're worried that the politically charged environment surrounding the EPA in a presidential election year could delay the ruling further.

"It's frustrating," Little said. "A lot of people don't realize the health impact on the neighborhoods that live immediately adjacent to these landfills."

In a statement to The Associated Press, the EPA declined to provide a timetable for a ruling on the regulation. The agency said it won't act until it reviews information about ash and some 450,000 public comments gathered in 2010 at hearings around the country.

Coal industry supporters and businesses that use the coal ash have argued that the substance is not dangerous, and the metals contained in the ash are found in low concentrations.

"There's more mercury in your compact fluorescent light bulbs than coal ash but we don't call them toxic," said John Ward, chairman of the pro-coal ash group Citizens for Recycling First.

Hoping to spur EPA action, a large coalition of environmental groups filed a lawsuit April 5 in federal court in Washington, D.C., exhorting a judge to compel the government agency to rule on coal ash. The groups from several states, including Kentucky, Maryland, North Carolina, Tennessee, Virginia, Illinois and Montana, also want a judge to declare the EPA in violation of a federal law that requires the agency to upgrade environmental regulations periodically.

They say in the suit that coal ash is "one of the largest and most toxic solid waste streams in the nation," and regulations have not been updated since the early 1980s.

The EPA said in its statement to AP that it is reviewing the lawsuit and "will respond as appropriate."

"There's an extraordinary amount of frustration because this is a festering

problem," said Stephen Smith, executive director of the Southern Alliance for Clean Energy based in Knoxville, Tenn. The group is one of 11 plaintiffs in the suit,

The ash, leftover from the coal-burning process, contains low concentrations of arsenic, boron, cadmium, chromium, lead, mercury and other metals, according to the EPA.

The EPA has said it would pick one of two options. One proposal would classify coal ash as hazardous waste, bringing it under direct federal enforcement. But the agency could also choose a second option, favored by the coal industry and electric utilities, classifying the ash as non-hazardous and leaving regulation of the substance to the states.

The suit says most of the nation's coal ash is currently stored in unlined or inadequately lined ponds, landfills, structural fills or mines.

Some companies use the ash as filler or in building materials such as drywall and concrete. They argue that a hazardous classification would harm sales since consumers would shy away from the products. Coal ash recycler Headwaters Resources in Utah says using coal ash in construction products keeps it out of landfills. Like the environmental groups, Headwaters also sued the EPA this month, urging more speed in the decision-making process.

Ward said the pro-coal ash industries want the EPA to move faster because the uncertainty is hurting the recycling market, as businesses are afraid to make future plans and customers are worried that a hazardous designation from the EPA could lead to potential liability problems.

More than 500 property owners in Tennessee whose land was damaged by the 2008 coal ash spill are suing the TVA, but they need a federal judge to declare the utility is liable for damages. The TVA has argued in court that the spill at its Kingston plant wasn't caused by negligence but a deep foundation failure. The utility has dredged more than 3.5 million cubic yards of coal ash from the Emory River and has spent $46 million in buying up some 900 acres near the plant from about 150 owners.

At the EPA's public hearings in 2010, hundreds of residents, business people, lobbyists and activists gave federal authorities a range of opinions on what should be done. A New Mexico rancher said the ash is killing his sheep, while numerous industry supporters, including Ward and the American Coal Ash Association, argued that the substance is not harmful. A tribe of southeastern Nevada Indians said birds on their land are being poisoned by water in coal ash ponds.

"We once hunted geese and ducks on our land, but no longer," said William Anderson, chairman of the Moapa Band of Paiutes. The tribe is also a party in the federal lawsuit against EPA.

Smith said he fears the Obama administration, facing an election year, may have decided to wait on new regulations.

"My view is EPA has made a political judgment on which regulations they want to keep on track and which ones they're going to kick down the road until they see a better moment," Smith said.

For Kathy Little and others living near the towering ash heap in Louisville, it's vexing to wait in seeming limbo.

The power plant near Little's home in Louisville is scheduled to stop burning coal in 2016, but she said she doesn't know what will happen to the giant ash pile.

She said before the Tennessee spill, she never worried about it "because I thought the government was taking care of me. I thought I was safe," Little said.

She paused and added: "How stupid was I?"

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