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1. COAL: TVA spill draws attention to regulatory loophole (01/06/2009)

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Electric power producers could face heightened government scrutiny and rising costs for the handling and disposal of coal ash under the new Congress and the Obama administration, including possible federal rules classifying the waste material as hazardous.

A push for tougher regulation of fly ash is expected in the wake of the largest coal ash spill in U.S. history late last month at the Tennessee Valley Authority's Kingston Fossil Plant in Roane County, Tenn.

The spill will be taken up by the Senate Environment and Public Works Committee in Washington this week as the panel expects to hear testimony from TVA President and CEO Tom Kilgore as well as from environmentalists and local emergency management officials.

TVA officials estimate that the Dec. 22 spill, caused by a break in a retaining wall for a 98-acre containment pond at the east Tennessee power plant, released 5.4 million cubic yards -- roughly 1 billion gallons -- of ash and water into a residential area and waterways. The spill destroyed wildlife habitat and compromised water supplies in the Tennessee River watershed, including the Emory and Clinch rivers.

A U.S. EPA spokeswoman confirmed last week that the agency is investigating whether the spill violated Clean Water Act provisions that prohibit unpermitted discharges.

But the agency will not hold TVA accountable for the release of toxic materials or hazardous substances, even though the ash material is known to contain as many as 23 heavy metals, including mercury, arsenic, lead and magnesium. EPA classifies utility fly ash -- which is produced during coal combustion and accumulates in a power plant's boilers -- as a special material that is not subject to hazardous-waste regulations under the Resource Conservation and Recovery Act, or RCRA.

EPA has long maintained that the ash material is not harmful to human health and has multiple beneficial reuses -- in the construction trades as well as for agriculture and cement manufacturing. According to industry estimates, U.S. utilities last year produced more than 130 million tons of fly ash, roughly 42 percent of which went toward "beneficial reuses."

Dave Goss, head of the American Coal Ash Association, which supports reuse, said he expects the heightened media attention from the TVA ash spill to fuel new demands among environmental groups and their allies in Congress to bring the material more squarely under RCRA, including reclassification of utility fly ash as a hazardous substance.

But Goss cautioned that such a move could create major disruptions within the utility sector. At minimum, he said, RCRA could require significant upgrades or even closures of roughly 600 utility landfills and containment ponds across the country. Labeling fly ash "hazardous" or "toxic" also would create difficult challenges surrounding the transportation, handling and disposal of the material, he said.

"I'd hate to begin to speculate the effect that would have," Goss said.

Other groups, such as the industry-backed Utility Solid Waste Activities Group, are also expected to push back against calls for tougher regulation of coal ash, as are most of the nation's large coal-fired utilities, which like TVA rely on landfills and retention ponds to store billions of tons of ash.

Frank Maisano, a utility lobbyist, said in a weekly industry e-mail that TVA's "isolated event should not be used as an excuse by interest groups to try to reverse the position of EPA and state regulators that coal ash does not warrant hazardous waste regulation."

"Any such reversal would be unwarranted and could result in increased electricity rates for customers," Maisano wrote.

But environmental groups, which have chafed at EPA's special treatment of utility coal ash since 2000, when the Clinton administration examined the issue, say they are prepared to make the case to Congress and the Obama administration and that the regulatory loophole should be closed.

Environmental lawyer Kevin Madonna said he has assembled a database of documented leaks and other problems at coal ash retention ponds nationwide that show the TVA spill is not an isolated event.

"What's happening in Tennessee right now," Madonna said, "is happening all over the country every day, just at a smaller scale."