

ENVIRONMENT

Critics: Regulatory 'shell game' allows AES to dump harmful coal ash pollution in White River

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The state is allowing AES Indiana to dump more than 1 million gallons of water contaminated with harmful coal ash pollutants directly into the White River every day, according to Indiana environmental groups who call the approval process a "contradictory shell game."

Indiana regulators recently renewed the utility's permit for its Eagle Valley plant in Martinsville. The environmental groups claim that permit violates a federal rule meant to help prevent and clean-up coal ash contamination across the country.

The Hoosier Environmental Council along with the Conservation Law Center is now challenging that permit — arguing that it actually enables the spread of pollution — with the Indiana Office for Environmental Adjudication.

"I'm sorry, but pumping contaminated groundwater into the river shouldn't count as clean-up," said Indra Frank, the director of environmental health and water policy at HEC.

Power play: Lawmakers plan for disposal of solar and wind systems, but not toxic coal ash

Critics claim the utility is skirting the rules by pumping water contaminated with coal ash from wells installed on the facility to stop the pollution. But then AES Indiana is running that water through the plant's cooling system before dumping it into the river.

"You can't have it both ways, but that's what's happening here," said Kim Ferraro with the Conservation Law Center at Indiana University. "There is a contradictory shell game being played here."

The Indiana Department of Environmental Management, the agency that approved the permit, said the renewal was issued “in accordance with all requirements and provisions of the Clean Water Act” and considered “applicable effluent” limits.

And AES Indiana said it meets all applicable requirements and that it’s “lawfully discharging” under its permit.

“AES Indiana, including its Eagle Valley Generating Station, takes pride in its compliance with the environmental regulations and permits,” utility spokeswoman Kelly Young said.

Clean-up measures cancelled out

Eagle Valley began operating in 1949 as a coal plant. It produced a lot of coal ash: nearly 3 million cubic yards of the toxic waste.

A byproduct from burning coal, the ash contains a dangerous mix of heavy metals and toxic chemicals such as arsenic, boron, lead and mercury. Indiana has the most coal ash ponds of any state in the country, and nearly all of them are leaking into the surrounding waters.

At Eagle Valley, the coal ash was mixed with water and stored in huge, unlined ponds in the floodplain of the White River, according to HEC.

The plant stopped burning coal in 2015 and began burning natural gas in 2018. But massive amounts of ash remain along the banks of the river. The site has had issues with coal ash in the past: A levee failed in 2007 and 2008, spilling more than 60 gallons of coal ash into the White River.

Testing in recent years has confirmed that the coal ash ponds are polluting the groundwater, which flows toward the White River.

That’s where the federal coal ash rule and wells come into play.

When contamination is detected, utilities must implement corrective measures to address it. Under the rule, those remedies must be protective of human health and the environment and also control the release in a way that reduces or eliminates further contamination from entering into the environment.

AES Indiana has established a correction plan for the facility. As part of that plan, the utility installed wells on the site that change the groundwater’s direction of flow to keep it from going into the White River. Instead, it pulls and pumps the water out.

“That would be fine if they would actually treat the water to get the contaminants out of it,” Frank said. “But that’s not what they are doing.”

Once the water has been pumped out, it’s being used in the plants’ cooling system. And after it cycles through there, the water is being discharged into the White River.

So the coal ash contaminants ultimately are still ending up in the White River, according to Frank, which provides drinking water to millions of Hoosiers.

“Pulling out the pollution from the groundwater does not comply with the [federal coal ash rule], if AES simply discharges the pollutants back into the river,” said Lisa Evans, an attorney who specializes in coal ash and works for Earthjustice, a nonprofit legal organization.

'Shell game' with two federal rules

IDEM, the state’s environmental regulators, approved a renewal of AES Indiana’s permit in March that allows this process to happen. That permit was approved under the Clean Water Act, which is different from the federal coal ash rule.

While the release of some limited levels of contaminants are allowed under the Clean Water Act, the coal ash rule requires reducing or eliminating the release of all coal ash contaminants, according to the Conservation Law Center.

It’s that tension between the two federal regulations that has the Hoosier Environmental Council and the Conservation Law Center appealing the permit approval decision.

AES Indiana, in its corrective action plan, lists the wells as a measure to help meet the federal coal ash rules. Then, in its Clean Water Act permit, the utility describes the wells as functioning to provide water for the cooling system.

Ferraro said the Clean Water Act is "very clear" that regulators "can't issue a permit that violates another law." IDEM is charged with protecting human health and the environment, and the attorney said it's the agency's responsibility to make sure permits comply with all relevant rules.

“Just because they have two departments in the state agency that deal with the two different regulatory programs, that doesn’t mean one doesn’t know what the other is doing,” Ferraro said. “I don’t think you can come to the same conclusion that IDEM seems to be doing here

by letting this problem go unaddressed just because there are two different programs at play.”

IDEM said it did not have any further comment given the pending appeal.

Eagle Valley: Customers paying for idled AES plant. They're also paying to buy power it should have produced

Now that permit challenge has been filed, the Office of Environmental Adjudication will set a schedule for moving forward with the case. While the OEA is an administrative process, it functions very similarly to a trial court.

Based on the decision, the case can then be appealed into the court system.

This case has the potential to set important precedent around the state, Ferraro said, which would make it clear that this type of practice is not acceptable as a corrective measure.

While coal ash ponds all across the state are leaking and contaminating waters, there are a few other locations both on the White and Wabash rivers where the IDEM has permitted the release of coal ash contamination into the waterways.

“Folks should be aware that the state agency we all fund with our tax dollars is allowing this to happen,” Ferraro said. “The point is to stop it from happening at Eagle Valley, but also to prevent it from happening in other places.”

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