

Gov. McCrory: Too Many Concerns With Coal Ash Bill For Full Endorsement, Signature

By Administrator

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RALEIGH, (SGRToday.com) - Citing his continuing concerns over the Coal Ash Management Act, Gov. Pat McCrory announced Tuesday he will let the bill become law without his signature.

In a statement, the governor pointed to constitutional, operational, and funding concerns.

The bill will become law on September 19. The governor's full statement is below.

Governor Pat McCrory announced today he will let the Coal Ash Management Act, passed by North Carolina's General Assembly Aug. 20, become law without his signature. The governor said that while the bill continues the aggressive approach his administration has taken to attack the coal ash issue, constitutional, operational and funding concerns with the bill prevent him from giving the bill a full endorsement.

"In just a year and a half, my administration has taken more action to address groundwater and coal ash issues than any previous administration in North Carolina history – much of the action being many months before the Dan River Spill in February," said Governor McCrory. "To ensure that we address the statewide issue of coal ash ponds, my administration drafted aggressive legislation that would result in the closure of all the state's coal ash ponds, close loopholes in state law to strengthen the state's ability to regulate coal ash ponds, strengthen the spill notification process to aid state emergency response, eliminate special exemptions for utilities and increase regulatory authority to ensure dam safety and protect water quality. While there are great pieces to this legislation, there are major deficiencies that need to be corrected."

Governor McCrory warned while the General Assembly was debating the bill, Senate Bill 729, that a portion of it may be unconstitutional due to the addition of a commission whose majority would be appointed by the Legislature.

"One of the major shortcomings is the formation of another unchecked, non-judicial commission that reports to no one, has no accountability, and adds another level of unneeded bureaucracy. That's no way to run an efficient government. The Legislature's duty is to draft and pass laws, not execute them. That is the executive branch's duty," continued Governor McCrory.

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Lt. Governor Dan Forest said he will join Governor McCrory in seeking an advisory opinion from the N.C. Supreme Court. The governor said this approach is an attempt to avoid a prolonged legal challenge over a “strong difference of opinion” and allow the court to clarify the constitutional issue while moving forward to clean up coal ash at the same time. If unsuccessful in obtaining guidance from the Supreme Court, Governor McCrory said he would move forward with a lawsuit to challenge the Legislature’s “encroachment upon the executive branch.” In the meantime, the governor will move to make his appointments to the Coal Ash Commission and allow the legal process to proceed.

Beyond the constitutional issues with the bill, Governor McCrory also pointed to what he said were funding and operational concerns, saying these parts could inadvertently impact the state’s ability to effectively regulate coal ash in the future.

Overall, administration officials have pointed out two categories of shortcomings in the bill:

Constitutional questions: The bill creates a Coal Ash Commission and gives a controlling majority of appointments (six) to legislators and three to the governor. The bill also requires the governor to issue an executive order, a clear separation of powers conflict.

Operational problems: The bill provides funding to cover the massive increase in work to regulate the closure of the ash ponds, but then explicitly restricts that funding to a smaller portion of the bill, leaving many critical tasks unfunded. Further, the bill requires DENR to submit a certain report by Oct. 1. However, it also requires the utility to provide to DENR that information on the same date.

On Feb. 2, state officials received notification that there was a release of wastewater into the Dan River at one of Duke Energy’s facilities near Eden, N.C. The spill, which released about 35,000 tons of coal ash and contaminated water into the Dan River, occurred because of a break in a stormwater pipe at a decades-old Duke Energy facility. In the short term, water quality testing showed spiked levels of contaminants. While drinking water supplies were not affected and no fish kills were observed, the spill coated the bottom of the river in ash for miles.

State officials plan long-term monitoring of the Dan River, and have partnered with the U.S. Environmental Protection Agency to hold Duke Energy accountable for violations of the federal Clean Water Act at the Eden facility and its 13 other coal plants in the state.

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Even before the Dan River spill, the McCrory administration had aggressively pursued coal ash regulation. In 2013 DENR filed lawsuits in cooperation with the N.C. Attorney General's office, alleging violations of state law regarding unlawful discharges and groundwater contamination at all 14 Duke Energy facilities. This action was unprecedented, even though the state, the utility and environmental action groups knew about groundwater contamination years before Governor McCrory took office.

Governor McCrory said when he visited the Dan River after the spill that his priorities were ensuring the health and safety of the public as well as the wildlife in the river and the surrounding areas. Those are still a priority, he said today, but another priority is making sure that a spill like Dan River never happens again.

"Most of the plan that passed the Legislature last month mirrored our plan closely, and there are numerous good points to the legislation, including closing loopholes made by the actions of previous legislatures and governors. It makes North Carolina the national leader in acknowledging and attacking the coal ash problem that has been building for more than half a century. I will let this bill become law because the positive parts of the legislation need to be implemented as soon as possible."

Senate Bill 729 will become law on Sept. 19.