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McCrory won't sign coal ash bill but will let it become law

By John Downey

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N.C. Gov. Pat McCrory says he will let the state General Assembly's coal ash legislation become law without his signature. But he will ask the N.C. Supreme Court for an advisory ruling on what he considers unconstitutional provisions in the bill.

If the court declines to issue an advisory opinion, McCrory says he will file a formal legal challenge to the law.

The bill adopted by the legislature last month is in many ways based on legislation McCrory proposed in the wake of a massive coal ash spill on the Dan River in February. A stormwater pipe below the main ash pond at Duke Energy's shuttered Dan River Steam Station caved in, spewing up to 39,000 tons of coal ash into the Dan.

The bill requires Charlotte-based Duke (NYSE:DUK) to close all of its 33 ash ponds in the state. It sets down some general rules about how the existing ponds are to be treated. At some ponds, the ash must be excavated and reburied in lined landfills to prevent toxins from leaking into groundwater and rivers.

'Major deficiencies'

The legislation also sets up a system for regulating future storage of ash from coal plants. But the bill does not require that all the ash be moved to lined landfills. Environmental groups contend the regulations do not go far enough and will not prevent additional groundwater and surface water contamination.

In announcing his decision to let the bill become law, McCrory said, "There are major deficiencies that need to be corrected."

He said those include insufficient funding for dam safety inspections and other enforcement issues. But his principal concern about the law involves the legislature's decision to set up a Coal Ash Management Commission outside the N.C. Department of Environment and Natural Resources and make it answerable to the legislature rather than to the governor.

Move ahead

Outlining his objections in a video statement (which can be seen below), McCrory said it is legislators' "duty to draft and pass laws, not execute them."

"I strongly believe the legislature's creation of the Coal Ash Management Commission violates the separation of powers clause," he said. "In an attempt to avoid a court fight, I will join with Lt. Gov. Dan Forest in seeking a advisory opinion from the N.C. Supreme Court."

If the court declines to make an advisory ruling, he said, "We will move forward in the courts and obtain a resolution."

But by letting the bill become law in the interim, he said, the state will be able to move ahead on enforcement of the legislation.

http://www.bizjournals.com/charlotte/blog/morning-edition/2014/09/mccrory-won-t-sign-coal-ash-bill-but-will-let-it.html?ana=e_clt_rdup&s=newsletter&ed=2014-09-10&u=NY9JIR5iHcE0R9fsLMwIPw09c54615&t=141035531&page=all