

# Coal Plant Shutdowns: The Tax Appeal Should Not Wait

## Environment & Energy Alert

Related People:  
Frank E. Ferruggia

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Nothing is certain except death and taxes, unless you own a coal-fired power plant with a shutdown in its future, in which case – with apologies to Ben Franklin – we would also add the certainty of a property tax appeal. Host communities typically rely on the hefty annual check paid by electric power plants for local property taxes. Obviously, if and when the plant shuts down, that check will be smaller. Before the breakers have been thrown, however, plant owners and operators can significantly reduce the cost of doing business by taking steps to reduce their property taxes.

In most states, property taxes are assessed by a local authority, based on the fair market value of the property and any improvements. How, then, is the value of industrial property that hosts a power plant determined? Generally, the price a reasonable seller of property will get from a reasonable buyer in an arms-length transaction is its fair market value. In some states, particularly those that regulate power generation, revenue-producing assets such as a coal-fired power plant are valued based on the amount of revenue the assets generate. In other states, the cap on the value of a plant is the amount a buyer would pay to build a replacement. Other states value a plant based on the actual sales prices of comparable units.

As the national energy resource mix has moved from coal (and oil) to natural gas, both the revenue generated by coal plants and their value in the market has dropped. Regardless of the manner of valuation, assessors can reasonably conclude that coal plants – and the equipment used to run them – may be worth less than the amounts they are currently assessed for property taxation purposes.

It is not just older plants lacking expensive pollution controls that are ripe for reassessment. The Sandy Creek coal-fired power plant near Waco, Texas, was completed in 2013 at a total cost of almost \$2 billion and appraised by the local tax district at \$900 million in 2014 and \$1.7 billion in 2015. In 2005, when planning for the Sandy Creek plant started, the “fracking” revolution had not yet begun, and there was no reason to expect natural gas prices to drop. Despite the significant investment to build the plant, and the devastating impact of a reduced valuation on the local school, community college, and county budgets, a [jury found](#) that by 2016, the plant was only worth half of its initial appraised values.

Unless a complete re-valuation is planned by the local taxing authority, the only way to reduce local property taxes is to file an appeal. This may alienate the local community. We have, in earlier

alerts, encouraged engagement between the owners and operators of coal plants and the local community, because such engagement may facilitate reasonable remediation obligations as the former coal plant properties are redeveloped. But, even if that strategy is adopted, a plant owner's right to challenge the plant's tax assessment is a valuable right that cannot be ignored. At the very least, a plant owner needs to know by how much the owner could reduce costs.

Thus, owners of coal plants (even if their plants are not scheduled for shutdown) should consult a tax appeal lawyer to review their assessments to determine whether filing an appeal is appropriate. McCarter's Real Estate Tax Appeal Group, led by partner Frank Ferruggia, represents clients at the national level in every sector of real estate, including energy companies and power generators, and has provided effective representation appealing the valuation of a closing nuclear power plant. It is important to note that deadlines vary by state, and if an appeal is not filed by the appropriate deadline, the right to appeal for that tax year may be lost.