

EPA Virtual Hearing on Rollback of Coal Ash (Part A) Safeguards How-To Guide on Preparing Testimony or Comment

On Tuesday, January 7, 2020, starting at 9amEST, the EPA is holding a “virtual” public hearing on its [proposed rollback](#) of critical protections for communities from toxic coal ash. Please read through this document for a few important tips and guidance pieces as you prepare your testimony.

Register to participate in the virtual hearing [HERE](#) through the EPA’s GoToWebinar website by January 3rd.

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Reading and Viewing Materials:

- Coalition fact sheet [HERE](#)
- Earthjustice press release [HERE](#), NRDC press release [HERE](#), SELC press release [HERE](#)
- Sierra Club AddUp public comment page [HERE](#)
- PBS NewsHour Segment on coal ash [HERE](#)
- Environmental Integrity Project Report on coal ash groundwater contamination [HERE](#)

Tips for your Testimony:

- **Time Limit is 5 Minutes:** all testimony will be limited to this timeframe
 - Remember this formula: 1 minute = 150 words / 5 minutes = 750 words
 - Write your comments down. You can simply read your comments into the speaker on your computer or the phone.
- **Make it personal:**
 - Use your comments to add a personal voice to this national problem.
 - Express your personal concerns about how coal ash pollution from coal ash pits or ponds is threatening your community or talk about the health risks to you and your family/friends from coal ash pollution.
 - Have you been personally affected by the impacts of toxic coal ash or water pollution?
 - Do you live near a coal ash pond that emits pollution into the air, toxic waste into a lake, river or stream, or poisonous chemicals into the groundwater?
 - Do you live near a high or significant hazard coal ash pit (one that contains millions of tons of toxic waste) that could experience a catastrophic failure? Check [HERE](#).

- Do you or a loved-one suffer from health issues, such as asthma, heart or lung disease, kidney disease, cancer, etc., which may have been caused by coal ash?
 - Are you a public health professional who sees impacts in your community?
 - Does a coal ash dump depress property values or the quality of life in your community?
 - Does a coal plant or coal ash pit disproportionately harm a low-income community or community of color where you reside?
 - Does a coal ash pit threaten aquatic life or wildlife or are you worried about ingesting fish from a waterway potentially contaminated by coal ash?
 - Does a coal ash pit degrade your recreational enjoyment of lakes, rivers and streams?
- **Include a few key facts:**
 - Don't worry about highly technical information. You do not need to be an expert to have opinions about the need to protect your health, the air you breathe, and clean water.
 - Below are sample talking points and fact sheets on the dangers of coal ash pollution from coal plants. Pick one or two facts to frame your personal comments.
 - Do tell EPA your particular concerns: about your community, about a particular water body, about a particular coal plant dumping waste into the waters you rely for drinking water or use for recreation, or about concerns over fugitive dust from a coal ash pit.
- **Demand that EPA do its job:**
 - EPA's duty is to protect your health and the environment from coal ash.
 - EPA's duty is to guarantee safe water, clean air, and a healthy environment -- free from toxic waste.
 - EPA's duty is not to protect polluters and ignore the damage to our health and natural resources.
 - According to an order from a federal court in August 2018, EPA must strengthen the 2015 coal ash rules, not weaken them!
 - EPA exists to serve and protect the American public. They should encourage public participation in their rulemakings and listen to the voices of all residents.

Overview:

President Trump and his EPA are giving fossil fuel companies and polluters exactly what they want by weakening or eliminating the safeguards put into place by the 2015 federal Coal Ash Rule. Those important safeguards are supported by sound science and common sense, but some electric utilities and the coal industry, in addition to President Trump, want to put polluter profits ahead of public and environmental protections. Under the proposed rollback, which was granted upon the industry's request, many of the provisions of the 2015 Coal Ash Rule would be weakened.

Summary of the Proposed Rollback:

The Trump EPA's [proposal](#) revises the 2015 coal ash rule to delay closure deadlines for leaking unlined impoundments (also known as "ponds" or pits) and for coal ash pits located in dangerous or prohibited areas, such as those pits built within five feet of groundwater, and pits in wetlands, seismic areas, fault zones and unstable areas. The proposal would extend the operating life of these dangerous pits up to 4.5 years from the date they were required to close under the 2015 rule, if the owner meets the requirements for extensions. For each coal ash pit that receives such an extension, this would allow an average of a million tons of additional toxic ash to be dumped in the leaking, unstable and dangerously-sited pit. The 2015 coal ash rule, in contrast, required polluters to begin closing unlined pits contaminating groundwater and pits in prohibited locations nine months ago, or by April 2019.

Trump's proposed rule also extends the deadline to close pits at power plants that are permanently ceasing operation. Under the proposal, the final closure of the pits can be as late as October 2023 (for pits 40 acres or smaller) or October 2028 (for pits larger than 40 acres), if the owner can show that there is no alternative disposal site for coal ash as well as all non-coal ash waste. The way that this standard is defined sets a low bar will likely be met by most closing power plants.

Lastly, the proposal would set a deadline (albeit unsatisfactory) for closure of all unlined ponds, as required by the federal appeals court in response to the major victory secured by environmental groups in August 2018. However, not only does the deadline allow industry to operate leaking pits for way too long, EPA also failed to address critical aspects of the federal court's order. EPA did not respond to the court's directive to strengthen the 2015 coal ash rules to regulate the many inactive ponds at inactive power plants (i.e., "legacy ponds"), which were exempted from the 2015 rule. EPA's failure to establish closure and cleanup requirements for more than 100 legacy ponds is a huge omission that leaves communities near these leaking ponds unprotected.

Background:

Coal-fired power plants in the U.S. burn more than 800 million tons of coal every year, producing more than 110 million tons of solid waste in the form of fly ash, bottom ash, scrubber sludge and boiler slag -- commonly known as coal ash.

Hazardous chemicals present in coal are concentrated in the ash when coal is burned.

Consequently, coal ash contains a toxic brew of carcinogens, neurotoxins, and poisons -- including arsenic, boron, hexavalent chromium, lead, lithium, mercury, selenium, and radioactive substances. This toxic pollution can cause cancer, heart disease, reproductive failure, and stroke, and can inflict permanent brain damage on children. When this toxic waste is dumped without proper safeguards, as has occurred for decades throughout the U.S.,

hazardous chemicals are released to air and water, harming nearby communities and fouling water resources.

Coal ash also harms aquatic life, wildlife and ecosystems. Selenium, a common coal ash contaminant is deadly to fish at very low levels, and the poison bioaccumulates in fish tissue. Extensive damage to aquatic life from coal ash contamination is well-documented [Read more about damage to aquatic life from coal ash disposal [HERE](#)].

A recent [report by the Environmental Integrity Project and Earthjustice](#) found that 92 percent of the coal plants with coal ash ponds reporting groundwater monitoring data pursuant to the Obama EPA Coal Ash Rule (2015) have contaminated groundwater with toxic pollutants exceeding federal health standards.

After decades of inadequate oversight by states and inaction at the federal level, EPA issued a final rule governing the disposal of coal ash from electric utilities in April 2015. The final rule establishes national minimum criteria for existing and new coal ash landfills and surface impoundments including a requirement that companies test the groundwater near their dumps to make sure hazardous chemicals are not leaking into drinking water sources. Importantly, the 2015 Coal Ash Rule also required all U.S. coal plants to prevent air and water pollution from coal ash landfills, pits and piles by suppressing dust, controlling polluted run-off, conducting inspections, monitoring groundwater, and cleaning up contaminated water.

Nevertheless, Trump's EPA continues to finalize and propose new rules to remove the commonsense safeguards put in place in 2015, which will once again put our water, air and public health at risk.

Call Out the Trump EPA's Failure to Hold an In-Person Public Hearing:

Breaking with decades of precedent, the Trump administration is refusing to hold an in-person public hearing on its proposed coal ash rollback. Despite a letter asking for such a hearing from 87 public interest groups, the Trump EPA has declined to hold even one in-person hearing. This is in sharp contrast to the Obama EPA, which held eight live public hearings, seven of them in affected communities outside DC. The Trump administration is not only quashing public displays of dissent and removing an important opportunity for the public to directly address the agency, its refusal to hold an in-person public hearing violates the Resource Conservation and Recovery Act. We hope that all speakers will mention this injustice in their oral comments.

Sample Testimony:

** Note this is approximately 250 words or about 2 minutes without adding personalization.*

Introduction

Hello, my name is *[your name]* and I am from *[your hometown]*. I am a member of *[organization]* and I am calling today to speak out in opposition to EPA's proposal to weaken the 2015 Coal Ash Rule safeguards.

While I appreciate this opportunity to comment, I strongly oppose EPA's failure to hold even one in-person public hearing on this proposal. This is a violation of law. By refusing to hold an in-person public hearing, the Trump administration is failing to encourage meaningful participation in agency rulemaking and is removing a critical right of the public to directly address EPA representatives. *[If you have attended EPA public hearings in the past, please say so and if you would have attended an in-person public hearing on this proposal, please state that now.]*

Not only is the Trump administration quashing the voices of the American public, its proposal is putting Americans in harm's way. This proposal removes critical toxic coal ash protections, when the science and court dictate that the Trump EPA must strengthen the 2015 coal ash rule and establish stronger safeguards that keep dangerous toxic substances out of our air, soil and water.

[Tell your personal story, especially how close you live to a coal plant or water or air polluted by that coal plant, etc. To find the closest coal ash pond to your community and find out how it is contaminating groundwater, go to www.earthjustice.org/coalash/map. Here you can find out how large the nearest coal ash pit is and how it has contaminated the groundwater near you. Name that plant in your comments, tell EPA how big that toxic waste dump is, and state that you want the pit closed as soon as possible for the protection of your community! You can also consult the national report [HERE](#) to find the nearest coal plant and see what toxic contaminants are in the groundwater near you (See Appendix A for list of plants).]

[Use the general talking points and background below to craft the remainder of your testimony.]

Conclusion

The 2015 coal ash rule is currently protecting thousands of American communities. Despite some weaknesses in the current rule, coal plant owners have already established publicly-accessible websites and fugitive dust control plans, completed hundreds of inspections, published critical groundwater quality data, identified over a hundred sites where cleanup of contaminated groundwater must soon begin, and disclosed the identity of leaking and dangerous coal ash ponds that must close. The commonsense standards of the 2015 rule -- which received more than a half-million supporting comments from the public -- are helping to protect clean water and safeguard public health.

President Trump's attempt to weaken this rule is nothing more than a total giveaway to the industry and must be rejected.

General Talking Points:

- Coal ash is the toxic waste left over from coal-burning power plants. For decades, coal ash was dumped into giant unlined pits, where toxic chemicals can seep into water and soil and blow into the air.
- Coal ash waste is filled with some of the deadliest known toxic chemicals, including heavy metals like arsenic, lead, lithium, cobalt, radium and hexavalent chromium. These toxics cause cancer, heart disease, reproductive failure and stroke, and can inflict permanent brain damage on children.
- Coal ash ponds or pits are the most dangerous method of disposing of coal ash. These pits leak hazardous chemicals into groundwater and nearby lakes, rivers and streams and their walls can fail catastrophically. In fact the largest toxic waste spill in U.S. history occurred in 2008 when a coal ash dam collapsed at the Kingston Fossil Plant failed in Tennessee, causing over a billion gallons of toxic sludge to flood 300 acres of river and shoreline, sweeping houses off their foundations. More than 40 cleanup workers died cleaning up the coal ash and hundreds were left sick. In 2014, a second spill in North Carolina at Dukes' Dan River Station fouled 70 miles of river in NC and VA. The longer these immense basins of toxic waste are allowed to operate, the more likely there will be another disaster.
- Children and the elderly are particularly vulnerable to coal ash exposure. More than 1.5 million children live near coal ash storage sites. Seventy percent of all coal ash impoundments disproportionately impact low-income communities and communities of color.
- Today, nearly 900 coal ash ponds or pits are spread across the nation, and at almost all coal ash ponds (92 percent of those regulated by the coal ash rule), owners found that coal ash is contaminating groundwater above federal health standards, making it unsafe to drink.
- Disposing of coal ash in water in unlined pits is an antiquated and unnecessarily dangerous way to handle toxic waste that puts our waterways, drinking water and lives in jeopardy. The intent of the 2015 coal ash rule was to move utilities to safer forms of coal ash storage, such as disposal in lined landfills. The Trump administration's proposal allows utilities to continue to operate dangerous dumps, despite the overwhelming evidence that these dumps are dangerous and deadly.
- Utilities have had more than enough time to prepare for closing dangerous coal ash ponds. They have been aware of the closure deadlines since 2014. They do not need more time to irresponsibly dump toxic chemicals in our communities, just because it's cheaper for them to do so.
- For decades, discharges of coal ash-contaminated water to reservoirs, lakes, rivers and streams have caused significant harm to fish and wildlife. The release of bioaccumulative toxins from coal ash, including arsenic, cadmium, chromium, lead, mercury, and selenium, has caused fish kills, deformities in fish and amphibians, and health hazards to people consuming contaminated fish.
- Selenium is a particularly dangerous contaminant because it is toxic to aquatic life at very low levels. In addition, selenium bioaccumulates in food chains and passes from parents to offspring in eggs, where it causes a variety of skeletal deformities and other

abnormalities in the developing embryos. This can lead to massive reproductive failure and local extinction of species.

- At least three toxins common to coal ash, including arsenic, methyl mercury, and selenium, can result in biomagnification in aquatic organisms, thereby increasing the danger of ingestion by humans and other animals.