EARTHJUSTICE NRDC

TOXIC COAL ASH IN DELAWARE

Addressing Coal Plants' Hazardous Legacy

For decades, utilities disposed of coal ash – the hazardous substance left after burning coal for energy – by dumping it in unlined ponds and landfills. Coal ash contains hazardous pollutants including arsenic, boron, cobalt, chromium, lead, lithium, mercury, molybdenum, radium, selenium, and other heavy metals, which have been linked to cancer, heart and thyroid disease, reproductive failure, and neurological harm. Industry's own data indicate that across the country 91% of coal plants are currently polluting groundwater above federal health standards with toxic pollutants.[1]

Coal ash is leaching unsafe levels of toxic pollutants into groundwater at 91% of coal plants in the United States.

Coal ash remains one of our nation's largest toxic industrial waste streams. U.S. coal plants continue to produce approximately 70 million tons every year.[2]

Despite EPA's 2015 Coal Ash Rule, which created the first-ever safeguards for coal ash disposal, many coal ash dumps remain unregulated due to sweeping exemptions for legacy coal ash ponds and inactive landfills. The exempted coal ash dumps are sited disproportionately in low-income communities and communities of color. The EPA will issue a proposed rule to address these exemptions in May 2023.

In Delaware, the utility NRG operates **a federally regulated coal ash landfill** containing nearly 1.5 million cubic yards of toxic waste at its Indian River Generating Station (Table 1). This dump has caused significant groundwater contamination. However, NRG has yet to complete a comprehensive cleanup to restore water resources despite the legal requirement to do so.

In addition, NRG is responsible for at least **two unregulated inactive coal ash landfills** that escape federal regulation (Table 2). NRG created at least two unregulated inactive coal ash landfills at one of its facilities (Table 2). This total is likely an underestimation, but the exact number is unknown because NRG was not required to report these sites. Evidence has already shown that coal ash has contaminated groundwater at these sites, but there are no federal monitoring or cleanup requirements.

These dumps are almost certainly contaminating water and threatening health and the environment; however, monitoring data are not currently available for most unregulated sites. As we anticipate EPA's proposed rule on legacy ponds and unregulated landfills in May 2023, a concern remains that the agency will not address coal ash that was dumped off site or used as fill.

Action Needed

The magnitude of harm from recklessly dumped toxic coal ash requires decisive action from federal and state regulators. Utilities must be required to comply with the law and immediately clean up their pollution.[3] EPA and states must make enforcement a priority and act quickly to ensure that utilities leave communities with sites that benefit rather than harm their health, environment, and economic status. EPA must swiftly strengthen the Coal Ash Rule to address the many legacy ponds and inactive landfills that are unregulated, and to prohibit coal ash used as fill unless protective measures are put in place, to ensure all Delaware communities are protected from coal ash pollution.

FOR ADDITIONAL INFORMATION

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Table 1: One Regulated Coal Ash Disposal Site in Delaware that Industry Acknowledges is Federally Regulated*

Coal Plant	City	Owner	Coal Ash Dumps	Groundwater Contamination from Coal Ash Magnitude of exceedance above federal health-based guidelines[4]
Indian River Generating Station	Dagsboro	NRG	1 landfill	Beryllium (x1), Boron (x3), Cobalt (x4), Lithium (x14), Molybdenum (x6)

* Energy Center Dover LLC's Dover Plant, located in Dover, DE, operates an inactive coal ash pond at the facility according to historical reporting to EPA, but the owners have not created a CCR Rule Compliance Data and Information website nor have they complied with the CCR rule's requirements that apply to this pond, including groundwater monitoring, closure, and corrective action

For more information on regulated coal ash dumpsites in Delaware, *see* earthjustice.org/coalash/map.

Table 2: Three Unregulated Coal Ash Legacy Ponds and Inactive Landfills in Delaware (ash dumps exempted from the 2015 Coal Ash Rule)[5]

Coal Plant or Landfill	City	Probable Owner / Source	# of Unregulated Ponds	# of Unregulated Landfills	Evidence of Site Contamination[6]
Indian River Generating Station	Dagsboro	NRG	0	2	Yes – EPA damage case

Endnotes

[1] Earthjustice and Environmental Integrity Project, "Poisonous Coverup, The Widespread Failure of the Power Industry to Clean Up Coal Ash Dumps," *available at* https://earthjustice.org/document/poisonous-coverup.

[2] American Coal Ash Association, 2020 CCP Production and Use Survey Report, https://acaa-usa.org/wp-content/uploads/2021/12/News-Release-Coal-Ash-Production-and-Use-2020.pdf.

[3] *See* endnote 1, *supra*, for more information re widespread utility non-compliance with the 2015 Coal Ash Rule.

[4] All data derived from the utilities' publicly accessible CCR Compliance Data and Information websites, and exceedances were calculated by Environmental Integrity Project.

[5] These data were developed by using EPA datasets relied upon in their 2007 and 2014 CCR risk assessments (Human and Ecological Risk Assessment of Coal Combustion Residuals) and comparing those datasets to the universe of regulated units.

[6] "EPA damage case" denotes a site where US EPA has found documented groundwater contamination from coal ash. See: https://www.regulations.gov/EPA-HQ-RCRA-2009-0640-12123.

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