

TRUMP ADMINISTRATION'S NEW RULE CIRCUMVENTS COURT ORDER TO CLOSE ALL TOXIC COAL ASH PONDS WITHOUT LINERS MADE OF PLASTIC AND CLAY

The Trump Administration has finalized another rule that further weakens protection from toxic coal ash pollution. The rule violates the 2018 order of the U.S. Court of Appeals, which requires the EPA to close all unlined coal ash ponds -- defined as those without a liner made of plastic and clay of certain technical specifications. The ruling ordered the EPA to strengthen, not weaken, the 2015 rule and to close unlined coal ash ponds.

THE PROPOSAL ALLOWS SOME UNLINED COAL ASH PONDS THAT THE COURT ORDERED CLOSED TO INSTEAD OPERATE INDEFINITELY

A [2018 order of the U.S. Court of Appeals](#) required the closure of *all* coal ash ponds without a liner made of plastic and clay meeting certain technical specifications due to the high risk of groundwater contamination posed by such toxic pits. The Trump administration came up with a strategy to get around the ruling by allowing these pits to remain open if the EPA determines that a list of specific toxic chemicals are not (yet) contaminating groundwater at levels above federal standards, and utilities claim the soil under them is not porous. Ultimately, this rollback will allow any utilities that apply for closure reconsideration to remain open during a potentially very long assessment process.

Continued operation of these unlined or inadequately-lined pits directly contradicts EPA's 2014 risk assessment that found a high risk of arsenic contamination from pits without a plastic and clay (composite) liner. EPA is also ignoring a wealth of recent groundwater [monitoring data](#) that revealed 92 percent of the industry's coal ash pits are leaking toxic contaminants, such as arsenic, cobalt, lithium, molybdenum and radium, above federal health standards.

EPA's new demonstration process would allow these unlined ponds to remain open for an unlimited time while EPA or state regulators evaluate complex information submitted by industry, including models purporting to show hydrologic impact, laboratory analyses, and other paper demonstrations. Neither EPA nor state regulators, however, have the necessary expertise to evaluate such highly technical demonstrations, nor is there an opportunity for meaningful public review. The proposal includes a two-step process, with the first step involving minimal information from the operator. EPA estimates that all initial applications will be approved, thereby delaying, at least temporarily, the requirement to close the unlined impoundments.

EPA ONCE AGAIN FAILS TO COMPLY WITH EXECUTIVE ORDER 12898, WHICH REQUIRES EPA TO ADDRESS DISPROPORTIONATE IMPACTS ON COMMUNITIES OF COLOR AND LOW-INCOME COMMUNITITES

The EPA determined that coal ash ponds are more likely to adversely impact communities of color, as well as low-income communities. Despite these admissions, EPA did not comply with E.O. 12898, which requires EPA to identify and address disproportionately high and adverse human health or environmental effects of the rule on minority populations and low-income populations. To fulfill its duties under E.O. 12898, EPA must concretely identify the potential environmental justice impacts of the Part B rule and then address these impacts – or explain why they cannot be addressed.

After the EPA began a wide-ranging assault on several coal ash protections, Earthjustice did research to find out how coal ash ponds nationwide affect low-income communities. Earthjustice identified 420 regulated surface impoundments that appear to be open and unlined (without a plastic and clay liner), failed one or more location restrictions, and/or are leaking per industry admissions.

An initial analysis using U.S. Census Bureau poverty data found that 248 of these units, or 59 percent, are located in counties where the percentage of individuals in households with an income of less than or equal to twice the federal poverty level is above the nationwide percentage. In addition, estimates of the low-income population within three miles of the ponds are higher than the national average for over half of the sites.

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