

USEPA's Proposed Federal Coal Ash Permit Program Leaves Communities Unprotected

Background: The Water Infrastructure Improvements for the Nation Act,ⁱ adopted in December 2016, authorized the Environmental Protection Agency to develop a federal permitting program for coal ash dumps throughout the country. In February, EPA published a proposed permitting program that would leave the proverbial fox guarding the hen house by granting ash dump owners “forever permits” – permits that never expire – with little-to-no permitting authority oversight and minimal opportunity for public participation. Among other flaws, the proposal would allow EPA to:

- Grant “**permits for life**” to all coal ash dumps, new or old, lined or unlined. Never-expiring permits are nearly unheard of for federal permitting programs; air permits, water permits, and permits for hazardous waste dumps all expire and must be reviewed and renewed.ⁱⁱ Even for regular trash dumps (municipal solid waste landfills), EPA regulations do not contemplate “permits for life.”ⁱⁱⁱ
- Issue permits with **little to no public participation**. For new coal ash landfills, EPA would issue permits with no opportunity for comment or public hearing. For “general permits” covering a yet-to-be-determined group of coal ash landfills and lagoons, EPA would deprive the public of the opportunity to comment on whether individual coal ash dumps meet the requirements for that permit. This is **less public process than permits for household trash dumps**, where EPA requires public input into permitting decisions.^{iv} For the subset of coal ash permits for which EPA would allow public input, EPA proposes weaker public process than for other waste permits – including no requirement to publish notice in local papers or on broadcast media.^v Granting disposal permits with no or minimal opportunity for public participation violates a key statutory requirement of the Resource Conservation and Recovery Act.
- Grant “**one size fits all**” permits for life to coal ash pits that **do not account for the highly variable risks of those ash pits**. Coal ash dumps pose unique risks that cannot be adequately addressed absent site-specific analyses tailoring permit conditions to that dump. For example, coal ash dumps located near densely populated areas may require additional protections, including setbacks from residential neighborhoods, air monitors, and truck washing areas, to ensure fence-line communities are not harmed by ash dust or other toxic coal ash releases.
- Automatically approve permits with **little or no review by the permitting agency**. For new coal ash landfills, EPA’s proposal calls for no permitting authority review, period. For “general permits” covering yet-to-be-determined coal ash landfills and lagoons, permits would be approved by default if EPA does not act within 45 days, allowing permit applications to be approved without any review or analysis whatsoever.
- Unlawfully allow EPA to **authorize “noncompliance”** with no restrictions on how long noncompliance would be tolerated or which safeguards a permittee could continue to violate. This provision could allow EPA to try to permit operators to violate the CCR rule and immunize them from liability for failing to comply with protections like conducting regular inspections of the ash dump, testing for water pollution, controlling fugitive dust, or halting further pollution.
- Fail, yet again, to take into account extensive recent industry-collected data revealing widespread and severe water pollution from coal ash dumps.

To make matters worse, EPA is **stifling public input** on this flawed proposal in multiple ways. First, EPA is holding only a **single “virtual” public hearing**, without any in-person hearings. Previous “virtual” public hearings have utilized systems that do not allow commenters or EPA staff to see each other and have cut off community members living near coal ash dumps without warning or opportunity to finish their thoughts. Second, EPA is **not providing non-English translations** of the proposed rule and other key documents. Many people living near coal ash dumps speak little or no English, including many residents of Waukegan, Illinois; Orlando, Florida; and Guayama, Puerto Rico, where a vast coal ash pile has harmed residents for decades. Without such translations, those community members are shut out of public participation on permits that will affect their lands and waters for generations.

How to comment or testify on the highly flawed coal ash permitting rule proposal:

- The public comment deadline for the coal ash permitting proposal is **Monday, April 20**. Comments, which must be identified by Docket ID No. EPA–HQ–OLEM–2019– 0361, may be submitted by uploading them to <https://www.regulations.gov>.
- EPA will hold a “virtual” public hearing on the proposal on **Wednesday, April 15**. To testify, you must register by 5pm ET on **Monday, April 13**. If you require an interpreter, you must request interpretation services by 5pm ET on April 1; if you require closed captioning, you must register by 5pm ET on April 8. Information on how to register and request those services, and a link to do so, is here: <https://www.epa.gov/coalash/forms/virtual-public-hearing-proposal-federal-ccr-permit-program#registration>.

ⁱ Water Infrastructure Improvements for the Nation Act (“WIIN Act”), Pub. L. No. 114-322, 130 Stat. 1628 (2016) (codified at 42 U.S.C. § 6945(d)).

ⁱⁱ 40 C.F.R. § 70.6(a)(2) (limiting the term of Clean Air Act (“CAA”) operating permits to five years, except for solid waste incineration units, for which the term may not exceed 12 years); id. § 72.69(b)(1) (limiting the term of CAA Acid Rain permits to five years); id. § 122.46(a) (limiting the terms of Clean Water Act (“CWA”) National Pollutant Discharge Elimination System permits to five years); id. § 270.50(a) (limiting the term of RCRA hazardous waste permits to ten years).

ⁱⁱⁱ See, e.g., 40 C.F.R. § 256.63(a) (directing states to hold a public hearing “[b]efore approving a permit application (or *renewal* of a permit)” for solid waste facilities) (emphasis added); 40 C.F.R. § 258.74(a)(2) (requiring that, if operators of municipal solid waste landfills rely on a trust fund for financial assurance, payments into the trust fund be made each year “over the term of the *initial* permit”) (emphasis added).

^{iv} See 40 C.F.R. § 239.6(a) (requiring states to make “documents for permit determinations” for municipal solid waste landfills available for public review and comment, and to have procedures to “ensure that permit determinations are considered”); 40 C.F.R. § 256.63(a) (requiring states to “hold a public hearing to solicit public reaction and recommendations on the proposed permit” for solid waste disposal facilities and that public hearings comply with the requirements in 40 C.F.R. § 25.5); 40 C.F.R. § 25.5 (requiring notice and relevant documents to be made available at least 30 days prior to the public hearing held for solid waste disposal facility permits under 40 C.F.R. § 256.63(a)).

^v See proposed revisions to 40 C.F.R. § 124.10.