

# Arsenic in groundwater? Virginia coal ash case before court

March 21 2018, by Denise Lavoie

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Virginia's largest electric utility asked a federal appeals court Wednesday to overturn a judge's ruling that the company is violating federal law by discharging arsenic through groundwater into surrounding waters from a coal ash storage site.

Dominion Energy argued before the 4th U.S. Circuit Court of Appeals that the judge's ruling was incorrect because [groundwater contamination](#) from solid waste such as [coal](#) ash is not regulated by the U.S. Clean Water Act. The utility said that's left largely up to individual states to regulate.

But a lawyer for the Sierra Club argued that the discharge of arsenic from Dominion's retired power plant in Chesapeake violates the Clean Water Act and Dominion's permit to operate a wastewater treatment plant.

The arguments came nearly a year after U.S. District Judge John Gibney Jr. found that arsenic is illegally flowing from a landfill and ponds where Dominion stores coal ash, the heavy metal-laden byproduct of burning coal to produce electricity. Gibney said the arsenic is being conveyed directly into groundwater and, from there, flows to surface water.

The judge did not impose civil penalties on Dominion, saying the discharge does not pose a threat to public health or the environment.

The case is being closely watched as major utilities are finding evidence

of groundwater contamination at coal-burning power plants across the U.S. where landfills and man-made ponds have been used for decades as dumping grounds for coal ash. Data the utilities were required to make public recently shows heightened levels of pollutants—including arsenic and radium in some cases—at plants in numerous states, from Virginia to Alaska. The pollution reports were intended as a first step toward cleaning up the contamination leaking from the ash pits.

Utility representatives have generally cautioned that further studies are needed to confirm the plants as the source of the pollutants and determine if public drinking water supplies are at risk.

In court Wednesday, Dominion's lawyer, Jeffrey Lamken, said Congress did not include static pollutants such as coal ash piles under the Clean Water Act. He said groundwater is left to the states and the Resource Conservation and Recovery Act, the main federal law governing the disposal of solid and hazardous waste.

But the Sierra Club's lawyer, Frank Holleman of the Southern Environmental Law Center, said arsenic is being discharged from an unlined pit, landfill and ponds into the Elizabeth River through the groundwater. He said those are all sources regulated under the Clean Water Act.

Judge Paul Niemeyer, one of three judges who heard the case, repeatedly challenged Holleman's argument, at one point saying the Clean Water Act was "not intended to regulate groundwater."

The panel did not indicate when it would rule.

Several months after his ruling last year, Gibney issued an injunction, ordering Dominion to test surface [water](#), [groundwater](#), sediment and aquatic life for arsenic for at least two years. The injunction also

requires Dominion to apply for a revised solid-waste permit from the state that includes corrective measures beyond simply capping the landfill.

The Sierra Club wants the 4th Circuit to order civil penalties against Dominion and to send the case back to the lower court to order a remedy that will ensure Dominion stops the discharge of [arsenic](#). Holleman said the group believes the only way to do that is to excavate the ash and bring it to a synthetically lined landfill.

Dominion has said that [coal ash](#) can be safely contained on site.

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