

Instead of removing toxic waste seeping into Illinois' only scenic river, power company wants to wall it off with rocks

Andrew Rehn, of Prairie Rivers Network, and Lan Richart, of Eco-Justice Collaborative, paddle near coal ash waste seepage on May 2, 2018, on the Middle Fork of the Vermilion River. (Zbigniew Bzdak/Chicago Tribune)

By **Michael Hawthorne**
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Tangles of rusty wire and jumbles of softball-sized rocks litter a stretch of the only national scenic river in Illinois, remnants from the last time a power company tried to wall off giant pits of toxic coal ash dumped into the floodplain.

Over time the natural flow of the Middle Fork of the Vermilion River undercut rock-filled wire baskets stacked along its banks, exposing steady trickles of pollution that stain the river metallic hues of orange and purple.

State regulators and industry engineers are worried that the meandering, fast-moving prairie stream is eroding its banks so quickly it could unleash a torrent of coal ash and water, similar to disasters in [Tennessee](#)

and [North Carolina](#) where makeshift dumps collapsed and caused millions of dollars in ecological damage.

But instead of making plans to dig out the toxic muck, like [companies in other states](#) have been forced to do, the latest owner of the Middle Fork ash pits wants to build an even bigger wall of rocks to armor a portion of riverbank more than six football fields long.

The [proposal from Texas-based Vistra Energy](#) would require the administrations of President [Donald Trump](#) and Gov. Bruce Rauner to exempt the company from several environmental regulations, including provisions of the [National Wild and Scenic Rivers Act](#), a 1968 law that calls for biologically and culturally significant streams to be “free of impoundments, with shorelines or watersheds still largely primitive.”

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While environmental groups agree that steps need to be taken to prevent the Middle Fork's banks from collapsing, they contend the company's proposed solution is too extreme and temporary at best. Emboldened by a string of legal victories involving coal ash dumps in other states, river advocates are urging a federal court to step in and order Vistra to move its waste away from the Middle Fork.

“This is a wild and scenic river that is going to naturally change its course and can't be stopped,” said Andrew Rehn, water resources engineer for the nonprofit [Prairie Rivers Network](#), the chief plaintiff in a [federal lawsuit against Vistra](#).

Located a few miles downstream from a popular kayak and canoe launch, Vistra's three coal ash pits were dug into the floodplain by Illinois Power, which built a coal-fired power plant next to the river in 1955 and sold it in 2000 to Dynegy, another Texas-based company.

By the time Dynegy shuttered the Vermilion Power Station in 2011, the pits swelled with enough water-soaked coal ash to fill the [Empire State Building nearly 2½ times](#).

Dynegy [knew more than a decade ago](#) that heavy metals found in coal ash were polluting the river, according to internal company documents. So did the [Illinois Environmental Protection Agency](#), but the state did little in response other than [file a 2012 complaint](#) that remains unresolved.

After a Tribune reporter and photographer paddled the river in May with Rehn and [two other river advocates](#), the state EPA dispatched investigators to take another look. The agency later [filed a new complaint](#) against Vistra, which completed a \$1.7 billion takeover of Dynegy in April.

A Vistra spokeswoman declined to answer when asked whether the company has considered resolving the case by moving its coal ash to a licensed landfill.

“Vistra knows firsthand the special meaning and natural beauty the state has to offer, as well as the

deserving pride that its residents have in it,” the company said in a [statement](#) that highlighted CEO Curtis Morgan’s ties to Illinois. “Rest assured: While Vistra inherited this site, as the new owner Vistra is committed to implementing an effective solution.”

The company must win approval from several state and federal agencies to line the Middle Fork with a new barrier, which at some points would extend into the river itself.

Sarah Keller, a regulatory specialist with the Army Corps of Engineers, said the federal agency considers Vistra’s proposal “environmentally beneficial” and is prepared to waive several restrictions on the amount of rocks and boulders the company can use to shore up the riverbank.

Before the Corps of Engineers can award the company a Clean Water Act permit, though, the Illinois EPA, the Illinois Department of Natural Resources and the National Park Service need to sign off on the project.

Career staff at the park service [already are on record](#) saying that armoring the riverbank isn’t the solution.

“The river would benefit greatly from the removal of the ash ponds, the associated embankments ... and all non-operational infrastructure that remains within the river corridor, and again urge you to address these issues,” the agency’s regional director wrote to the Corps of Engineers in 2016 while begrudgingly approving the emergency stabilization of another fast-eroding stretch of the Middle Fork.

State officials have said it could take at least another year to review Vistra’s proposed fix. But river advocates are urging Rauner and [J.B. Pritzker](#), his Democratic opponent in the November gubernatorial election, to promise they will take more aggressive steps to protect the river.

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“We have reached out to both campaigns requesting a meeting,” said Lan Richart, a former Illinois Natural History Survey ecologist who along with his wife, Pam, formed [another group](#) pushing Vistra to excavate the waste. “We totally support immediate action to shore up vulnerable areas but find the (current) proposal to be of a destructive scale and likely intended to be used as leverage to leave the coal ash in place.”

Neither Rauner, who won Vermilion County with nearly 70 percent of the vote in 2014, nor Pritzker have taken a stand on the issue. A Rauner campaign spokesman referred questions to the governor’s office, which said the state won’t be able to make a decision until it has analyzed studies submitted by Vistra; the Pritzker campaign did not return an email request for comment.

The Middle Fork ash pits are among [two dozen sites in Illinois](#) where energy companies have dumped coal ash for decades. Ten of the other sites pose a danger to the drinking water supplies of nearby communities, according to the Illinois EPA, but a state rule-making panel dominated by [Rauner appointees](#) has [repeatedly delayed action](#) on more stringent safety regulations.

Federal officials also have been slow to act.

Last month, a key federal appeals court [handed down a scathing ruling](#) that regulations adopted during the Obama administration weren't tough enough and did nothing to prevent leaks at scores of older ash pits like the ones next to the Middle Fork.

Though the court ordered the federal EPA to try again to address the hazards, the Trump administration is pushing to replace the Obama-era regulations with an even weaker set of rules.

"We don't have faith that the Trump administration will act in a way that protects our rivers," said Thomas Cmar, an attorney with the nonprofit group Earthjustice who argued the federal appellate case for environmental advocates and filed the separate lawsuit to protect the Middle Fork.

Legal pressure has worked in other states.

After a massive 2008 coal ash spill in Kingston, Tenn., another nonprofit group, the [Southern Environmental Law Center](#), began suing the region's utilities to force them to remove toxic waste from ecologically sensitive areas. Several have either been forced to begin cleaning up the waste or, in the case of all three South Carolina utilities, volunteered to do so.

"It doesn't take a rocket scientist, or a Yale-educated lawyer, to see these sites violate the Clean Water Act," said Frank Holleman, the lead lawyer in many of the cases filed in Southern states. "If ol' South Carolina can clean up this mess, surely the good state of Illinois can do it, too."

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