

EPA won't pay claims in mine spill that released 3M of gallons of toxic water

Magdalena Wegrzyn, USA Today, 1-13-17

FARMINGTON — The U.S. Environmental Protection Agency announced today that it will not pay more than \$1.2 billion in claims filed against it in response to the [Gold King Mine spill](#).

The EPA says the Federal Tort Claims Act prevents the agency from paying claims the result from "discretionary" government actions. Congress passed the law to allow government agencies — and in this case, contractors working on their behalf — to act "without the fear of paying damages in the event something went wrong while taking the action," according to a press release from the EPA.

An EPA agency official said paying the claims would discourage such cleanup efforts in the future.

The EPA says the work conducted at the Gold King Mine near Silverton, Colo., is considered a "discretionary function" under the law. Contractors on Aug. 5, 2015, breached the mine, which released more than three million gallons of toxic wastewater into a tributary that feeds the Animas River, which ultimately flows into the San Juan River and Lake Powell.

Federal lawmakers representing New Mexico decried the announcement, calling it a "shameful legal interpretation of liability."

Sens. Tom Udall and Martin Heinrich, New Mexico Democrats, and Rep. Ben Ray Luján (D-N.M.) issued a joint statement saying they would continue pushing for legislation to hold the EPA accountable. They also said it would be up to the courts to determine whether the EPA's defense is legitimate.

"We are outraged at this last-ditch move by the federal government's lawyers to go back on the EPA's promise to the people of the state of New Mexico — and especially the Navajo Nation — that it would fully address this environmental disaster that still plagues the people of the Four Corners region," the statement reads.

The statement points out that while the EPA has taken steps to clean up the mine, "no farmer has received a dime of compensation over a year later."

An EPA official says 73 claims related to the mine spill were filed under the Federal Tort Claims Act. Four were from governmental agencies and the rest were from individuals and companies.

The claims totaled more than \$1.2 billion, though the official said the federal agency did not evaluate the legitimacy of the claims and some were vague and for "extraordinarily" large sums.

The EPA official acknowledged the length of time it has taken the agency to make its announcement, adding "we spent a lot of time trying to see if there was any other way to address this because this is obviously an answer that leaves a lot of people unhappy who have been hurt."

Those who filed claims have six months from the date of denial to challenge the decision with the U.S. District Court.