

August 1, 2022

Michael Regan, Administrator
U.S. Environmental Protection Agency
EPA Docket Center, Office of Land and Emergency Management
1200 Pennsylvania Avenue NW
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Re: Call for Rulemaking to Stop Pollution from Legacy Coal Ash Ponds and Inactive Landfills

Dear Administrator Regan:

The undersigned 121 national, regional, and grassroots public interest groups and tribal communities from 30 states, the District of Columbia and Puerto Rico urge you to immediately undertake a rulemaking to strengthen the Coal Combustion Residuals (“CCR”) Rule¹ to stop toxic pollution from legacy surface impoundments and inactive landfills. Dangerous loopholes in the current CCR Rule leave hundreds of polluting coal ash dumps outside the scope of the federal rule. The drinking water, health, well-being, and environment of communities across the nation are harmed by the failure of the U.S. Environmental Protection Agency (“EPA”) to address these dangerous sources of pollution.

Regulations requiring cleanup and safe closure of all toxic coal ash dumps are urgently needed and long overdue. The CCR Rule currently has no provision specifically regulating coal ash disposed in more than 200 surface impoundments (“legacy ponds”) located at power plants that ceased generating electricity before the effective date of the rule (October 19, 2015). Similarly, the CCR Rule exempts coal ash landfills *at any location* from all regulatory safeguards if the landfills did not receive waste after such date. At least 285 inactive landfills are currently exempted. The CCR Rule’s dangerous loopholes leave nearly as much toxic coal ash unregulated as EPA currently regulates.

EPA has a legal duty to take immediate rulemaking action to protect human health and the environment

In August 2018, the D.C. Court of Appeals ordered EPA to address the looming threat posed by legacy ash ponds located at retired power plants.² The court directed EPA to establish stringent safeguards requiring the safe closure and cleanup at hundreds of abandoned toxic ash ponds. Yet four years have passed since the court demanded action, and there are still no protective safeguards for these festering, unlined ponds. EPA is now in clear violation of the court’s

¹ EPA, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals Generated by Electric Utilities, 80 Fed. Reg. 21,302 (Apr. 17, 2015) (“CCR Rule”).

² Utility Solid Waste Activities Grp. v. EPA, 901 F.3d 414 (D.C. Cir. 2018) (“USWAG”).

landmark order designed to close the loophole and tackle the cleanup of millions of tons of leaking coal ash.

Further, RCRA requires EPA to review and, if necessary, revise each regulation at least every three years.³ However, seven years after EPA issued the CCR Rule, the agency has failed to review its dangerous exemption of all inactive landfills and to revise the rule to ensure protection of public health and the environment. EPA is in violation of its statutory duty, and its inaction places hundreds of communities at serious risk of harm. On May 17, 2022, on behalf of six public interest groups, Earthjustice sent a Notice of Intent to Sue EPA over this violation.⁴

EPA must strengthen the CCR Rule to protect the nation’s drinking water and surface water

Across the nation, hundreds of old, leaking, unlined toxic coal ash ponds and landfills are releasing hazardous and radioactive substances and polluting groundwater, bays, lakes, rivers, and streams. Historically, coal plants used the cheapest, easiest – and most dangerous – method of disposal for their toxic waste: dumping it into unlined pits. The older the dump, the more likely the polluter avoided protective measures such as liners, leachate collection, and monitoring wells. These unlined ponds and landfills—containing nearly a billion tons of toxic waste—continue to release hazardous chemicals into our water and risk catastrophic spills. Federal rules requiring their safe closure and cleanup are long overdue.

Based on the utility industry’s own data, 91 percent of regulated coal ash dumps have severely polluted underlying groundwater with hazardous chemicals like arsenic, chromium, cobalt, lead, lithium, and radium to levels exceeding federal safe standards for drinking water.⁵ Hundreds of unregulated legacy ponds and inactive landfills are spewing the same hazardous chemicals, albeit with absolutely no cleanup requirements. For example:

- At NIPSCO’s Michigan City Generating Station in Michigan City, Indiana, an unregulated two-million-ton coal ash fill sits precariously behind corroding steel pilings on the shore of Lake Michigan. The toxic fill is leaking arsenic and other hazardous chemicals into the lake as well as into an adjacent creek used for fishing and boating.
- At TVA’s Bull Run Fossil Plant in Clinton, Tennessee, an unlined leaking landfill in use from 1982-2015 is contaminating groundwater with arsenic and boron, but it escapes EPA’s regulations and clean up requirements.

³ 42 U.S.C. § 6912(b).

⁴ Clean Power Lake County, Environmental Integrity Project, Hoosier Environmental Council, Indiana State Conference and the Laporte County Branch of the National Association for the Advancement of Colored People, Sierra Club, and Statewide Organizing for Community eMpowerment.

⁵ See, Environmental Integrity Project and Earthjustice, Coal’s Poisonous Legacy: Groundwater Contaminated by Coal Ash Across the U.S. (rev. July 11, 2019), <https://environmentalintegrity.org/wp-content/uploads/2019/03/National-Coal-Ash-Report-Revised-7.11.19.pdf>.

- At the Stanton Energy Center in Orlando, Florida, an immense 90-acre coal ash landfill is contaminating groundwater, but the landfill evades all federal requirements because the plant's owner, the Orlando Utilities Commission, stopped disposing of ash just 52 days before the effective date of the 2015 CCR Rule.
- In southeastern Puerto Rico, more than 2 million tons of coal ash was used for structural fill, embankments, and roads. In numerous areas coal ash is now exposed to wind and water near schools, hospitals, and homes, endangering the health of environmental justice communities.
- At Dynegy Midwest Generation's retired Vermilion Power Plant near Oakwood, Illinois, three legacy ash ponds, not explicitly regulated by the CCR Rule, spew toxic leachate into the Middle Fork of the Vermilion River, Illinois' only Wild and Scenic River.

The CCR Rule does not specifically require polluters to monitor the groundwater around the dumps at these and all other legacy coal ash ponds and unregulated landfills. Local residents are kept in the dark about the severity of the water contamination and the safety of their drinking water and water bodies.

EPA must act to protect environmental justice communities

Coal ash pollution is an environmental justice issue. Most coal ash dumps are located in low-income or BIPOC communities where residents suffer higher rates of cancer, asthma, and other adverse health effects, have poor access to health care, and have few or no resources to investigate environmental threats. The Biden administration has repeatedly announced its commitment to environmental justice and must demonstrate this commitment by promptly completing the necessary coal ash rulemakings to ensure environmental justice communities are protected from its toxic threats.

Stopping coal ash pollution has widespread support of environmental groups and environmental justice communities

The undersigned national, regional, and grassroots public interest groups represent hundreds of thousands of Americans concerned about coal ash pollution. While we applaud the EPA's recent actions to crack down on utilities violating the CCR Rule,⁶ it is vital for EPA to move further and faster to stop the imminent and continuing threat from legacy ash ponds and unregulated inactive coal ash landfills. Our nation's health and water resources depend on EPA's swift action to comply with the 2018 order of the U.S. Court of Appeals and the statutory requirements under RCRA. We urge you to act quickly and boldly to protect our communities.

⁶ We strongly support the Biden administration's interim and proposed decisions published on January 11, 2022, marking the first time the EPA cracked down on coal ash contamination. We strongly support the EPA's proposals to require prompt closure of dangerous ponds and applaud the EPA's first-time application of critical CCR Rule requirements, which, if finalized and applied nationwide, will protect communities across the nation from toxic coal ash pollution.

Respectfully submitted,

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