

April 17, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Submitted via www.regulations.gov

RE: Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure (EPA-HQ-OLEM-2019-0173; FRL-10005-81-OLEM)

Dear Administrator Wheeler:

The undersigned seventy-four organizations, on behalf of our millions of members and supporters across the country, appreciate the opportunity to provide these comments to the U.S. Environmental Protection Agency (“EPA”) on its proposed revisions for the Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure (“Part B Proposal”).

The dangers of coal ash to our health and the environment are increasingly better understood by experts and the public. As a result, some forward-thinking states have taken steps to prevent catastrophic failures of coal ash ponds and adopted safer methods to dispose of toxic coal ash waste in dry, lined landfills. These actions are in addition to the disposal standards adopted by the Obama administration in 2015 that addressed structural stability of dams impounding coal ash and established dates by which leaking, unstable, and dangerous coal ash ponds must close.

Unfortunately, the EPA is pressing ahead to gut the protections established by the EPA in 2015. The Part B Proposal marks the sixth attempted rollback of the 2015 rules and, if finalized, will allow utilities to keep dumping enormous quantities of toxic ash into unlined leaking and structurally unsound coal ash ponds, as well ponds located in the groundwater, floodplains and unstable areas. This change is a huge giveaway to polluters and endangers public health and the environment. It should be withdrawn immediately.

The Part B Proposal contains two very dangerous provisions.

First, the proposal allows some unlined coal ash ponds to operate indefinitely. Despite a 2018 federal court order requiring closure of all unlined coal ash ponds due to the high risk of groundwater contamination posed by such toxic ponds, the Part B Proposal would allow

operators of unlined ponds to develop an “alternate liner demonstration” that will allow them to avoid closure. Even though such pits have no actual liner, an operator could make a “demonstration” that the pit should be considered “lined,” and therefore not be required to close. Continued operation of these unlined ponds also contradicts both EPA’s 2014 risk assessment that found a high risk of arsenic contamination from unlined ponds and monitoring data revealing that 92 percent of the industry’s coal ash pits are leaking toxic contaminants, such as arsenic, cobalt, lithium, molybdenum and radium, above federal health standards.

EPA’s proposed demonstration process would also allow unlined ponds to remain open for an unlimited time while EPA or state regulators evaluate complex information submitted by industry, including highly technical models and other data purporting to show hydrologic impact. Neither EPA nor state regulators, however, have the necessary expertise to evaluate these complex demonstrations, nor is there an opportunity for meaningful public review.

Second, the proposal allows huge volumes of coal ash to be dumped in hundreds of dangerous ponds that were required to close by the 2015 rule. EPA is proposing to remove the 2015 rule’s prohibition on dumping additional toxic waste in ponds that are required to close because they are leaking hazardous chemicals, are structurally unstable, or are located in dangerous locations (in groundwater, wetlands, seismic zones, fault areas and unstable areas). Removing this prohibition would allow operators to continue dumping millions of tons of toxic ash in ponds in 37 states, including high-hazard ponds and ponds in floodplains, for up to 15 years, without limits on the amount of ash they could dump. All of this would be done without public input and potentially without even prior EPA or state approval and oversight.

EPA estimates that operators would dump an average of more than 600,000 tons in these dangerous ponds, but this appears to be grossly underestimated. And, according to EPA itself, this dumping will increase harm to health and the environment, disproportionately harm low-income communities and communities of color, result in fewer sites where coal ash is completely removed (i.e., resulting in more units closing with waste in place), and reduce safe recycling of coal ash into products like concrete, because enormous volumes of ash will be dumped in closing pits and thus be unavailable for reuse.

Finally it is worth noting that the Part B Proposal is inconsistent with a 2018 order of the U.S. Court of Appeals, which requires EPA to strengthen, not weaken, the 2015 rule and to close unlined coal ash ponds in unstable, high-risk areas, which jeopardize daily our nation’s waters from catastrophic spills and unchecked toxic pollution.

As you are well aware, the 2015 coal ash rule is currently protecting thousands of American communities. Despite some weaknesses, the rule has already identified sites where cleanup of contaminated groundwater must soon begin and disclosed the identity of leaking and dangerous coal ash ponds that must close. The common sense and hard-won safeguards of the 2015 rule -- which received more than a half-million supporting comments from the public -- are helping to protect clean water and safeguard public health.

We, therefore, urge the EPA to abandon this dangerous plan to roll back critical protections of the 2015 rule and instead act swiftly to strengthen much needed safeguards.

Sincerely,

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