



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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August 18, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

RE: *EPA Final Rule on “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure”* EPA-HQ-OLEM-2019-0172 and EPA-HQ-OLEM-2018-0524

Dear Administrator Wheeler:

I am disappointed that the Environmental Protection Agency (EPA) would finalize regulations that fail to address pervasive water contamination from unsafe coal ash disposal.¹ As the Chairman of the House Committee on Transportation and Infrastructure, which has primary jurisdiction over the water quality protection of our Nation’s rivers, lakes, streams, and other surface waters, I am deeply concerned that EPA’s proposal will continue to allow coal-fired electric utilities to contaminate local water sources, including groundwater, with the toxic residuals of coal, despite significant evidence on the adverse effects of these chemicals on human health and the environment. Your proposal, again, shows that the Trump administration prioritizes polluters over people and needlessly endangers the health and well-being of communities that live near coal-fired power plants.

Ninety-two percent of coal ash plants are contaminating groundwater with toxic chemicals above Federal health standards. Specifically, of 187 coal plants with regulated ash ponds and available data, 92 percent have one or more ash ponds leaking above Federal safe levels. The plants are located in 37 states.² These toxic pollutants include arsenic, a known carcinogen, and lithium, a neurotoxin, along with a host of hazardous substances harmful to human health, such as cobalt, molybdenum, and radium-224 and 226. The public now knows just how harmful these facilities are because industry data became available due to monitoring and disclosure requirements of the

¹ Pre-Publication of EPA Final Rule on “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure”. EPA-HQ-OLEM-2019-0172 and EPA-HQ-OLEM-2018-0524. Accessed at https://www.epa.gov/sites/production/files/2020-07/documents/pre_publication_copy_of_ffrl_10013_20_olem_adm_errornoteadded.pdf.

² Environmental Integrity Project & Earthjustice, *Coal’s Poisonous Legacy: Groundwater Contaminated by Coal Ash Across the U.S.* (Mar. 2, 2019, rev. July 11, 2019), <https://www.environmentalintegrity.org/reports/coins-poisonous-legacy>.

Federal Coal Ash Rule. Despite findings of nationwide groundwater contamination, the EPA is failing to take action, instead giving industry years to comply with the law and endangering generations of families that live near these facilities.

For more than a century, steam electric power utilities have disposed toxic coal ash in improperly designed storage facilities putting the health of local communities at risk. Yet, when the Tennessee Valley Authority (TVA) Kingston Power Plant experienced a catastrophic failure of its coal ash storage facility in 2008, the Obama administration undertook a comprehensive review of coal ash storage related to electric utilities. This effort resulted in the first-ever standards for disposal of coal ash in 2015.³ The 2015 Coal Ash Rule required critical safeguards, including groundwater monitoring, the shutdown of leaking coal ash “ponds,” including those in dangerous locations, the cleanup of contaminated water, and safe closure.

However, the Trump administration decided to rollback these critically needed requirements and proposed weakening the 2015 Rule leaving communities at risk. In July 2018, the Trump administration finalized the first of its multi-part rulemaking in which it extended deadlines for closing leaking coal ash ponds and ponds within five feet of groundwater, weakened drinking water protection standards for hazardous chemicals such as lead and molybdenum, failed to add boron to the list of pollutants driving cleanups of groundwater at contaminated sites, allowed suspension of groundwater monitoring in certain situations, and gave state officials discretion to determine whether sites are adhering to the rule’s requirements.

The rollbacks in the July 2018 Rule needlessly weakened the protection of human health and were ultimately ruled illegal in Federal court. In August 2018, the U.S. Court of Appeals for the District of Columbia Circuit held that the 2015 Coal Ash Rule was too weak and failed to protect human health and the environment as required by statute.⁴ The court ordered the EPA to protect against pollution from unlined and inadequately lined ash pits, as well as from legacy coal ash ponds that the EPA improperly excluded from regulation.

The Trump EPA has finally finalized regulations in response to the court order.⁵ However, this final rule, again, delays the closure and cleanup of hundreds of leaking, toxic coal ash ponds around the Nation. In revising the 2015 Coal Ash Rule, the Trump administration decided to allow for further delays of closure deadlines for leaking unlined ponds and for coal ash pits located in dangerous and prohibited areas, such as pits built within five feet of groundwater, and pits in wetlands, seismic areas, fault zones and unstable areas. This rule would extend the operating life of these dangerous pits up to 4.5 years from the date they were required to close under the 2015 Coal Ash Rule, if the owner meets the requirements for extensions. For each coal ash pit that receives such an extension, this would allow an average of a million tons of additional toxic ash to be dumped into leaking, unstable and dangerously sited pits. Sadly, if the Trump EPA would have allowed the 2015 Coal Ash Rule to go into effect, countless communities forced to live next to these dangerous, unlined toxic dumps would already be protected by their closure; now, thanks to the

³ <https://www.govinfo.gov/content/pkg/CFR-2015-title40-vol25/xml/CFR-2015-title40-vol25-part257-subpartD.xml>.

⁴ [https://www.cadc.uscourts.gov/internet/opinions.nsf/5A6D02C8038BA2CA852582F0004E0D37/\\$file/15-1219-1746578.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/5A6D02C8038BA2CA852582F0004E0D37/$file/15-1219-1746578.pdf)

⁵ Pre-Publication of EPA Final Rule on “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure”. EPA-HQ-OLEM-2019-0172 and EPA-HQ-OLEM-2018-0524. Accessed at https://www.epa.gov/sites/production/files/2020-07/documents/pre_publication_copy_of_ffrl_10013_20_olem_adm_errornoteadded.pdf.

Trump EPA, these communities will continue to endure unnecessary risks to their health and environment posed for years to come.

Despite a court ordering the Trump administration to strengthen deficiencies in the 2015 Coal Ash Rule, it has decided to further weaken the rule. Instead of protecting communities vulnerable to toxic pollution from coal ash ponds, the new regulations allow industry to continue polluting and contaminating. Industry continues to get away with cheap but dangerous coal ash dumping, which disproportionately harms residents of low-income communities and communities of color. As a result, Americans across the country are at risk of being contaminated by pollutants that cause cancer and neurological damage, among other harms.

We are in the middle of hurricane season for the Atlantic region. As hurricanes bear down on the Mid-Atlantic coast, communities near these coal ash pits are at risk for exposure to hazardous and toxic pollution as the pits are vulnerable to overtopping and entering local waterways. In 2018, during Hurricane Florence, coal ash pits at the Duke Energy H. F. Lee Plant in Goldsboro, NC began actively spilling into the Neuse River. Three coal ash basins at the Lee Plant held one million tons of toxic ash and were completely underwater. It is ridiculous that we continue to allow pits of toxic pollution to sit next to waterways that are sources of drinking water and necessary for local economies. Spills like the one at the Lee Plant are entirely predictable, and entirely preventable.

This rule is a complete giveaway to industry at the expense of human health. The EPA should go back to the drawing board and commit to adequately protecting the public's health and our environment from toxic coal ash water pollution. I will continue to hold the Trump administration and EPA accountable for their blatant disregard for the health and safety of Americans.

To that end, I am requesting answers to the following questions:

- 1) On July 31, 2019, Congressman Steve Cohen, several Members of Congress, and I sent a letter to you that included a number of questions. We received a response from EPA on November 1, 2019, that was not sufficiently responsive to our July 31st questions. Therefore, I resubmit the following questions:
 - a. What specific steps is EPA taking to protect vulnerable communities and sensitive environments from the serious and widespread groundwater contaminants revealed by industry data; and
 - b. How is the EPA incorporating the new evidence of widespread groundwater contamination into its proposed (and finalized) rulemaking process?
- 2) The 2015 Coal Ash Rule established a process for the accelerated shutdown of unlined or leaking coal ash ponds, or coal ash ponds located in high-risk locations. This 2020 Final Rule that replaces the 2015 Rule indefinitely delays actions to close these facilities, prohibits additional disposal of coal ash at these facilities, or require these locations to upgrade their storage facilities to eliminate the potential leaking or risk posed by these facilities.
 - a. Please identify all of the facilities that, under the terms of the 2015 Coal Ash Rule: (1) would have been required to be shut down; (2) would have been prohibited from receiving any additional coal ash at the facility; (3) would have required additional structural changes (including lining of the ponds or other efforts to prohibit the release of toxic chemicals from the storage facility into adjacent waterbodies or

- groundwater); or (4) would have been required to conduct additional action to continue operations; and identify the actions that would have been required.
- b. Please identify how the 2020 Coal Ash Rule will affect the activities or timelines for actions for each of the facilities identified in question 2(a).
 - c. Please identify EPA's assessment of the potential changes in the risk to human health and environment under the 2020 Coal Ash Rule for each of the facilities identified in questions 2(a) and (b).
- 3) In the 2018 U.S. Court of Appeals for the District of Columbia Circuit's ruling, EPA was also directed to promulgate a rule to address legacy impoundments (coal ash pits at coal power plants no longer operating). However, to date EPA has not started the rulemaking process to address legacy impoundments.
- a. When will the EPA complete this rulemaking to satisfy the order of the Court;
 - b. What resources has EPA devoted since August 2018 to develop a rule for legacy impoundments;
 - c. What steps has EPA taken to identify the universe of legacy surface impoundments;
 - d. What steps has EPA taken to identify the owners and operators responsible for these impoundments;
 - e. What steps has EPA taken to evaluate the risks to human health and the environment from legacy impoundments;
 - f. What steps has EPA taken to define the requirements that should apply to legacy impoundments to reduce such risks;
 - g. What steps has EPA taken to evaluate the disproportionate risk to low-income communities and communities of color from legacy impoundments; and
 - h. What is the schedule for this and any additional rulemakings concerning the Coal Ash Rule and what is the substance of these rulemakings?

Please respond to these questions by September 15, 2020. If you have any questions, please do not hesitate to contact Navis Bermudez at navis.bermudez@mail.house.gov.

Sincerely,



PETER A. DEFazio
Chair
Committee on Transportation and
Infrastructure



GRACE F. NAPOLITANO
Chair
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