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By Email

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Re: Request for Public Hearings and 120-Day Comment Periods for Proposed Rules regarding Coal Combustion Residuals Closure Deadlines (Part A) and Revision of Steam Electric Power Generating Effluent Limitations Guidelines

Dear Assistant Administrators Wright and Ross:

On behalf of the 87 undersigned public interest groups, we request that the U.S. Environmental Protection Agency (“EPA”) provide an in-person public hearing and 120 days for public comment for each of the following two proposed rules: the proposal to revise closure deadlines for Coal Combustion Residuals (“CCR” or “coal ash”) impoundments (referred to by EPA as the “Part A” proposed rule) and the proposed revision of Effluent Limitations Guidelines (“ELG”) for steam electric power plants.

Coal combustion residuals are one of the largest toxic waste streams in the U.S., and the failure to establish disposal standards for CCR and associated wastewaters has resulted in widespread contamination of the nation’s waters and damage to human health. Coal-fired power plants burn more than 800 million tons of coal every year, producing more than 110 million tons of industrial waste in the form of fly ash, bottom ash, scrubber sludge and boiler slag. Coal ash is a deadly brew of carcinogens, neurotoxins, and poisons—including arsenic, boron, hexavalent chromium, lead, radium, selenium and thallium. Hundreds of millions of tons of this toxic waste has been dumped in unlined and leaking pits (manmade impoundments or “ponds”) for decades harming nearby communities and fouling water resources.

A recent report by the Environmental Integrity Project and Earthjustice found that 92 percent of the coal plants reporting groundwater monitoring data from coal ash ponds pursuant to the 2015 CCR Rule¹ have contaminated groundwater with toxic pollutants exceeding federal health standards. Toxic pollution exceeding safe levels at the 246 plants, often by orders of magnitude, include arsenic, cobalt, lead, lithium, molybdenum, radium 224 and 226, selenium and other harmful pollutants.

Power plants are also by far the largest dumpers of toxic wastewater into rivers, lakes and streams across the country, responsible for 30% of all toxic pollution dumped into surface waters. Coal plant water pollution has made it unsafe to eat fish from many rivers, lakes, and reservoirs across the country, especially for children and women of childbearing age. EPA conservatively estimated that the 2015 ELG rule would create about half a billion dollars each year in benefits from improved human health, economic and recreational opportunities, and ecological conditions. Cleaner water also creates many incalculable benefits.

Consequently, there is widespread public opposition to EPA's recent proposals to delay closure of deadly, leaking coal ash ponds² and to weaken the critical protections established in the 2015 CCR and ELG rules.³ Correspondingly, there is intense public interest in participating in the rulemaking process – both through attending public hearings and submitting written comments. Thus we request that EPA facilitate such public engagement by holding true public hearings that affected communities can attend and by providing an extension to the written comment periods.

Request for Public Hearings

The 87 undersigned groups, on behalf of their millions of members, ask EPA to hold an in-person public hearing on each proposed rule. EPA has announced it intends to hold no in-person public hearings. EPA's failure to hold public hearings is unprecedented and contrary to law and public policy.

In lieu of public hearings, EPA is offering an opportunity to the public to call-in on a specified day to offer a comment for each proposal. While this is useful for those who cannot attend a public hearing, it cannot substitute for an in-person hearing.

A genuine public hearing serves many critical functions. It offers any member of the public the opportunity to speak directly to agency representatives, who are physically present in the room. It provides the public with opportunities to bring visual aids, such as maps, photos, contaminated water and soil, etc. The speaker also has the opportunity to

¹ *Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities*, Final Rule, 80 Fed. Reg. 21,302 (Apr. 17, 2015).

² *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*, Proposed Rule, 84 Fed. Reg. 65,941 (Dec. 2, 2019).

³ *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, Proposed Rule, 84 Fed. Reg. 64,620 (Nov. 22, 2019).

have family members or other representatives from the impacted community present as support. The agency, in turn, has the immeasurable and irreplaceable benefit of seeing the speakers and hearing their testimonies directly, which may be filled with emotion and urgency that cannot be conveyed in a phone call. Members of government agencies, elected officials, the press, and the general public similarly have the opportunity to gain such knowledge during a genuine public hearing. A call session is not an appropriate or legal substitute for in-person public hearings.

The CCR and ELG proposals are major rulemakings that will have long-term impacts on the health and environment of hundreds of communities across the nation. For decades, EPA, pursuant to statutory mandates, has held public hearings on rules such as these as a critical part of its rulemaking process. In fact, for the CCR rule proposed in 2010, EPA held a total of eight public hearings, including seven in impacted communities outside of the Washington, D.C. area.

Request for 120-Day Comment Period

A 60-day comment period for each proposal does not provide adequate time for meaningful public comment. These comment periods will run over the Thanksgiving and Christmas holidays, which shorten substantially the available working days. In addition, the two proposals involve many of the same impacted communities, public interest groups and experts, thereby severely taxing their ability to comment on both proposals simultaneously. In addition, the rules will also involve the same staff at regulated facilities and state agencies. EPA's expressed desire for the best and most comprehensive information possible to inform its final rules is not served by an abbreviated comment period. An adequate public comment period will foster robust and informed comment from all stakeholders, and thus result in better rulemaking.

In sum, we ask EPA to hold two true public hearings, in addition to call-in sessions, and provide 120-day comment periods for each proposal. This is essential to allow the public to describe the harms endured from coal ash pollution, to voice their views on how they can best be protected from toxic waste and to provide meaningful input. We ask EPA to take these reasonable steps and not deliberately silence the voices of Americans nationwide.

Thank you in advance for your prompt consideration of this request. We ask that EPA respond to this letter by December 11, 2019 by contacting Lisa Evans at Earthjustice, levans@earthjustice.org, 781-631-4119.

Respectfully submitted,

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