July 15, 2019

By Email

Peter Wright
Assistant Administrator
Office of Land and Emergency Management
Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW, Mail Code 5101T
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Re: Request for 120-Day Comment Period for Phase 2 Coal Combustion Residuals Proposal and for a Public Hearing in Guayama, Puerto Rico

Dear Assistant Administrator Wright:

On behalf of the 77 undersigned public interest groups, we respectfully request that the U.S. Environmental Protection Agency ("EPA") provide a minimum of 120 days for public comment for the upcoming Phase 2 proposed rule addressing coal combustion residuals ("CCR"). We also request that a minimum of two public hearings be held on this proposed rule, including one in Guayama, Puerto Rico.

Coal combustion residuals are one of the largest toxic waste streams in the United States, and the failure to establish disposal standards for CCR has resulted in widespread contamination. Our nation's 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 (collectively known as CCR or coal ash). Coal ash is a deadly brew of carcinogens, neurotoxins, and poisons—including arsenic, boron, hexavalent chromium, lead, radium, selenium and thallium. When this toxic waste is dumped without proper safeguards, as has occurred for decades throughout the U.S., hazardous chemicals are released to air and water, harming nearby communities and fouling water resources.

A recent report by the Environmental Integrity Project and Earthjustice found that 91 percent of the coal plants reporting groundwater monitoring data pursuant to the 2015 CCR Rule 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 and selenium and other harmful pollutants.

Consequently, there is widespread public opposition to EPA's recent efforts to weaken the protections established in the 2015 CCR Rule,[1] and there is intense public interest in participating in the rulemaking process - both through written comments and by attending public hearings. We respectfully request that EPA facilitate such public engagement by providing an adequate comment period and by holding public hearings that affected communities can attend.

Request for a 120-Day Public Comment Period

In a status report submitted on November 19, 2017 to the U.S. Court of Appeals (D.C. Cir.), EPA committed to providing a 120-day public comment period for its 2018 proposal to revise the CCR Rule. However, when EPA published its proposed rule on March 15, 2018, the agency reneged on that commitment and provided only 45 days for comment. This comment period was totally unreasonable in light of the proposal's sweeping scope and the radical changes it contained to weaken the CCR rule.

Furthermore, the short comment period imposed by EPA last March was unprecedented for this subject matter. For two related rules, EPA provided comment periods that were three times longer. In 2010, when EPA proposed the CCR Rule, the public had 195 days to comment from the prepublication announcement to the submission deadline. (Docket ID. No. EPA-HQ-RCRA- 2009-0640). In response, *more than half a million* Americans submitted comments. In 2013, for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, EPA afforded the public about 150 days to submit comments following the prepublication announcement. (Docket ID No. EPA-HQ-OW-2009-0819) There is no reason why EPA cannot allow the public a 120-day period to provide comments on the upcoming proposal to revise the 2015 CCR Rule.

This request is made even more urgent by the fact that EPA intends to publish five proposed rules in the month of July addressing CCR regulation.[2] EPA, in fact, has already signed the first proposed rule impacting coal ash on July 2, 2019.[3] The same public interest groups and impacted communities must therefore respond to several rules simultaneously or they will permanently lose the opportunity to participate in the rulemaking process. The overlapping comment periods are certain to overwhelm the resources of nonprofit public interest groups and impacted communities. The requirement

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[1] *Hazardous And Solid Waste Management System; Disposal Of Coal Combustion Residuals From Electric Utilities, Final Rule,* 80 Federal Register 21,302 (April 17, 2015).

[2] U.S. Environmental Protection Agency, Spring 2019 Agenda of Regulatory and Deregulatory Actions, *available at* https://www.reginfo.gov/public/do/eAgendaMain

[3] U.S. Environmental Protection Agency, Financial Responsibility Requirements Under CERCLA Section 108(b) for Facilities in the Electric Power Generation, Transmission, and Distribution Industry, EPA-HQ-OLEM-2019-0085, July 2, 2019, prepublication rule *available at* https://www.epa.gov/sites/production/files/2019-07/documents/pre-publication_copy_of_cercla_108b_electric_power_proposal.pdf

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to comment on several rules at once will also limit the availability of experts to engage in the process. EPA's decision to propose multiple CCR rules at the same time warrants the provision of a longer public comment period for the proposals.

Consequently, to provide the public with a meaningful opportunity to participate in commenting on EPA's Phase 2 CCR proposal, the undersigned groups respectfully request that EPA, at minimum, honor its commitment to the U.S. Court of Appeals for a 120-day comment period. The opportunity for public participation is mandated by Section 7004(b) of the Resource Conservation and Recovery Act, which states, in part: "[p]ublic participation in the development...of any regulation, guideline, information, or program under this Act *shall be provided for, encouraged, and assisted* by the Administrator and the States." 42 U.S.C. § 6974(b), (emphasis added). We ask that EPA follow this statutory mandate, promote public participation, and conduct its rulemaking in a fair and respectful manner to the Americans most impacted by coal ash disposal.

Request for Public Hearings

The 77 undersigned groups, on behalf of their millions of members, including 38 public interest groups in Puerto Rico, ask EPA to hold a public hearing on the Phase 2 proposal in Guayama, Puerto Rico. We assume EPA plans to hold one public hearing near its Washington, D.C. headquarters, as it did for its March 2018 Phase 1 proposal for CCR rollbacks.

The Phase 2 proposal specifically concerns the regulation of coal ash waste piles and the use of coal ash as fill. The adverse impacts of these practices are currently felt most directly by communities in and around Guayama, Puerto Rico, where the largest coal ash waste pile is located and where coal ash fill projects are rampant. The residents of southeastern Puerto Rico can speak directly to the harm caused by coal ash waste piles to their air, water and health. These residents can also speak to the harm caused by coal ash fill projects that contaminate their soil and air and pose hazards of direct exposure to their children. The communities that are most directly harmed by coal ash waste piles and fill projects in Puerto Rico, however, are low-income communities, and their members are unable to travel to the Washington, D.C. area for a public hearing. In the interest of fairness and to promote meaningful public participation, a public hearing must be held in Puerto Rico.

Last April, several residents of Puerto Rico met with you and EPA staff to present substantial evidence of harm to human health and the environment from the mismanagement of the AES coal ash waste pile and dozens of fill projects in Puerto Rico. This evidence included a public health study documenting the high incidence of disease in Guayama and photographic evidence of numerous uncovered "fill" sites. We appreciated both the opportunity to meet and the expression of concern the residents received from EPA officials. A public meeting in Guayama would provide an invaluable opportunity for EPA to learn much more about the adverse impacts experienced by residents of southeastern Puerto Rico. This information is critical to establishing a complete record upon which to base your upcoming rulemaking.

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In 2010, EPA set an important precedent by holding public hearings close to the communities impacted by coal ash disposal. In fact, in 2010, EPA held seven public hearings following the publication of its proposed CCR rule. EPA recognized that coal ash contamination was a nationwide problem, and these hearings allowed impacted communities to voice their concerns. EPA also recognized that coal ash disproportionately hurts low income and minority communities, and many impacted people do not have the resources to travel long distances to attend a public hearing. A single hearing in the Washington, D.C. area on the Phase 2 rule would deliberately silence these voices.

In sum, a 120-day comment period and the provision of at least one additional public hearing are essential to ensure that the public has sufficient time to provide meaningful input on the proposal and to allow all communities to describe the harms endured from coal ash pollution, and to voice their views on how they can best be protected from toxic waste. We ask that EPA take these two reasonable steps to allow these voices to be heard.

Thank you in advance for your consideration. Should you wish to discuss this request, please contact Lisa Evans, Earthjustice, levans@earthjustice.org, 781-631-4119.

Respectfully submitted,

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