

March 6, 2020

By Email

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Environmental Protection Agency
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Re: Request for Public Hearing and 120-Day Comment Period for Proposed Rule, “A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure,” EPA-HQ-OLEM-2019-0173 and Proposed Federal CCR Permit Program, EPA-HQ-OLEM-2019-0361.

Dear Assistant Administrator Wright:

On behalf of the sixty-six 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 on two proposed rules concerning the management of CCR: “A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure,” EPA-HQ-OLEM-2019-0173 (“Part B”), as well as the *Proposed Rule for Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program*, EPA-HQ-OLEM-2019-0361, published at 85 Fed. Reg. 9940 (Feb. 20, 2020) (“Federal Permit Program”) (together, the “proposed CCR rules”).

Coal combustion residuals (“CCR”) are one of the largest toxic waste streams in the nation, and the failure to establish disposal standards for CCR 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 dangerous 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,

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).

include arsenic, cobalt, lead, lithium, molybdenum, radium 224 and 226, selenium and other harmful pollutants.

Consequently, there is widespread public opposition to EPA's recent proposals to weaken the critical health and environmental protections established in the 2015 CCR rule.²

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 a substantial extension to the written comment period for each of the proposed CCR rules.

Request for Public Hearing

The 66 undersigned groups, on behalf of their millions of members, ask EPA to hold an in-person public hearing on the proposed rules. EPA has announced it intends to hold no in-person public hearings for either proposed CCR rule. Prior to the Trump Administration, EPA always afforded the public an in-person public hearing after publication of a proposed rule under the Resource Conservation and Recovery Act. The Trump 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 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.

We also note that EPA has scheduled the public call-in event on its Part B proposal to occur during the Jewish holiday of Passover. The majority of Jews in the U.S. observe the ritual dinner, known as the Seder, on the first and second days of Passover. Accordingly, we ask that EPA move the date of its public call-in event to a date that does not conflict with a religious holiday or schedule a second opportunity for the public to call-in later in April.

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).

Both proposed CCR rules 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

The Trump EPA is providing only a 45-day public comment period for the proposed Part B rulemaking. **This comment period is shorter than any period offered to date** by the Trump administration for the three previous CCR proposed rollbacks. The 45-day period does not provide adequate time for meaningful public comment. The comment period is likely to run concurrently with that of the proposed Federal Permit Program. The two CCR proposals involve many of the same impacted communities, public interest groups and experts, thereby severely taxing their ability to comment on both proposals simultaneously. Notably, many people affected by these rollbacks are not native English speakers. Neither of the two proposed CCR rules or key materials are translated into any other language. This creates a significant barrier for impacted communities whom the EPA has an obligation to ensure are included in the rulemaking process. Neither 60 nor 45 days provides nearly enough time for translations of the proposals to be made for these communities, let alone for them to draft comments. In addition, the proposed 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 this severely 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 at least one true public hearing, in addition to a call-in session, for each of the proposed CCR rules, as well as to provide a 120-day comment period for both proposed CCR rules. 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 March 13, 2020 by posting its decision on its CCR webpage.³ EPA has failed to provide the courtesy of a response to our previous two requests for public hearings and extensions of the comment period. At minimum, EPA owes the American people the courtesy of a response and an explanation regarding why it is unable or unwilling to grant this reasonable and fair request.

Respectfully submitted,

³ See, <https://www.epa.gov/coalash/coal-ash-rule>

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