

March 16, 2018

Mary Jackson
Materials Recovery and Waste Management Division
Office of Resource Conservation and Recovery (5304P)
Environmental Protection
Agency, 1200 Pennsylvania Avenue NW
Washington, DC 20460

jackson.mary@epa.gov
<http://www.regulations.gov>

Re: Request for a 45-day Extension of the Comment Period for Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule, 83 Fed. Reg. 11,584 (March 15, 2018), Docket ID No. EPA-HQ-OLEM-2017-0286

Dear Ms. Jackson:

On behalf of the 104 undersigned public interest groups, we request that the U.S. Environmental Protection Agency (“EPA”) extend by a minimum of 45 days the public comment period for the Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule, 83 Fed. Reg. 11,584 (March 15, 2018), Docket ID No. EPA-HQ-OLEM-2017-0286.

Coal combustion residuals (CCR) are one of the largest toxic waste streams in the United States. 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, hazardous chemicals are released to air and water, harming nearby communities. At least 414 coal plants, operating 922 coal ash landfills and surface impoundments containing hundreds of millions of tons of toxic waste, will be impacted by the proposed rule.

In a status report submitted on November 19, 2017 to the U.S. Court of Appeals (D.C. Cir.), EPA expressed its commitment to provide a 90-day public comment period on its proposal to revise the 2015 coal ash rule. EPA, however, has reneged on that commitment and is providing only 45 days for comment. This is totally unreasonable, because EPA’s proposal is sweeping in scope. The proposed rule encompasses myriad complex and radical changes to the 2015 CCR rule. Given the scope of the proposal, it is impossible for the public to respond fully, adequately and meaningfully in less than 90

days. The expansive proposal addresses four technically complex issues that were the subject of a 2016 judicial remand, seven major changes to the rule requested by the utility industry, and numerous far-reaching suggestions that fundamentally alter the 2015 rule. In addition, the proposal requests comment on at least a dozen direct questions, which require thorough and careful responses.

In its defense of the extraordinarily brief public comment period, EPA asserts that its proposal “minimize[s] potential confusion” because it is based on a 27-year old EPA rule and its 30-year old record for the regulation of household trash. EPA’s claim that application of household trash regulations to toxic ash disposal requires little public discussion is meritless. The fit is awkward at best and, in many instances, totally inappropriate and dangerous. At the very least, the application of household waste landfill regulations requires very close public scrutiny in light of the significant differences between these landfills and toxic ash disposal in unlined, water-filled pits.

Furthermore, EPA is proposing a significant weakening of the 2015 coal ash rule at the very time that an unprecedented amount of new groundwater data has become available to the public. On March 2, 2018, pursuant to the 2015 rule, groundwater monitoring data for every existing coal ash landfill and surface impoundment have been posted on publicly accessible compliance websites. These data contain information for many ash dumps that have never been monitored and contain information on the presence of certain hazardous chemicals, such as radium, cobalt and lithium, that have never before been collected. Such data identify significant new threats to public health from coal ash disposal, and these threats have great bearing on the technical adequacy and legal sufficiency of the proposed rule. However, the ability of the public to assess the new groundwater data requires time. For a single utility, Duke Energy, the new data encompass more than 25,000 pages. Assessing the significance of the data for even a subset of the 922 landfills and impoundments cannot be accomplished within 45 days.

The extremely short public comment period is unprecedented. For two comparable rules, EPA provided comment periods that were three times longer. In 2010, the public had 195 days from the prepublication announcement to the submission of comments for the proposed coal ash rule. (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 similar time period to provide comments.

Consequently, to provide the public with an honest and meaningful opportunity to participate in commenting on EPA’s proposal, the undersigned 104 groups respectfully request that EPA, at minimum, stand by its formal commitment to the U.S. Court of Appeals for a 90-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).

In addition, the undersigned groups, on behalf of their millions of members, request the addition of four public hearings on the proposed rule in the following locations: Chicago, IL; Pittsburgh, PA; Durham, NC; and Guayama, Puerto Rico. In 2010, EPA held seven public hearings following the publication of the proposed CCR rule. Coal ash contamination is a nationwide problem, so it is essential to hold multiple hearings to allow impacted communities to voice their concerns. Because coal ash disproportionately impacts low income and minority communities, many impacted people are unable to travel long distances to attend a hearing. A single hearing in Washington, D.C. will silence those voices.

In sum, an extension of the comment period and the provision of additional public hearings are essential to ensure that the public has sufficient time to provide meaningful input on the proposal, to assess the new evidence of groundwater contamination, and to allow communities to describe the harms endured from coal ash pollution and add their voices to how they can best be protected from toxic coal ash.

Thank you for your consideration of this request.

Respectfully Submitted,

Lisa Evans
Earthjustice
levans@earthjustice.org

Bridget Lee
Sierra Club
bridget.lee@sierraclub.org

Cindy Lowry
Alabama Rivers Alliance
clowry@alabamarivers.org

Pamela Kay Miller
Alaska Community Action on Toxics
pamela@akaction.org

Katie Huffling
Alliance of Nurses for Healthy
Environments
katie@enviRN.org

Jen Hilburn
Altamaha Riverkeeper
jen@altamahariverkeeper.org

Rachel Conn
Amigos Bravos
rconn@amigosbravos.org

Joseph Zupan
Amigos Bravos
jzupan@amigosbravos.org

Amy Adams
Appalachian Voices
amy@appvoices.org

Andrew Behar
As You Sow
Abehar@asyousow.org

Ann Mesrobian
Bastrop County Environmental Network
mesrobiana@gmail.com

Nelson Brooke
Black Warrior Riverkeeper
nbrooke@blackwarriorriver.org

Nancy Buermeyer
Breast Cancer Prevention Partners
nancy@bcpp.org

Kemp Burdette
Cape Fear River Watch
kemp@cfwr.us

Michael Mullen
Choctawhatchee Riverkeeper
riverkeeper@troycable.net

Mary Ellen DeClue
Citizens Against Longwall Mining
jwdmed@consolidated.net

Gregory T. Haugan, PhD
Citizens Climate Education
greghaugan@gmail.com

Ann Brewster Weeks
Clean Air Task Force
aweeks@catf.us

Jennifer Peters
Clean Water Action
jpeters@cleanwater.org

Katie Nekola
Clean Wisconsin
knekola@cleanwisconsin.org

Ruth Santiago
Comite Dialogo Ambiental, Inc.
rstgo2@gmail.com

Susan K Holmes
BE Cause
suzannkaye@sbcglobal.net

Sharyle Patton
Director, Biomonitoring Resource Center,
Commonweal
spatton@commonweal.org

David Caldwell
Broad River Alliance
broadriveralliance@gmail.com

Sam Perkins
Catawba Riverkeeper Foundation
sam@catawbariverkeeper.org

Kerwin Olson
Citizens Action Coalition of IN
kolson@citact.org

Ellen Rendulich
Citizens Against Ruining the Environment
emrrealty@comcast.net

Aimee Erickson
Citizens Coal Council
aimee@citizenscoalcouncil.org

Kathleen A. Curtis, LPN
Clean and Healthy New York
kathy@cleanhealthyny.org

Xavier Boatright
Clean Water for North Carolina
xavier@cwfn.org

Vernon Haltom
Coal River Mountain Watch
vernon@crmw.net

Clark Bullard
Committee on the Middle Fork Vermilion
River
cwbullard3@gmail.com

Vernon F. Kelley
Concerned Citizens of Giles County
vernonkelley@yahoo.com

Jesse Demonbreun-Chapman
Coosa River Basin Initiative
jesse@coosa.org

Tiffany Haworth
Dan River Basin Association
drba.nc@danriver.org

Rebecca Meuninck
Ecology Center
rebecca@ecocenter.org

Jennette Gayer
Environment Georgia
jennette@environmentgeorgia.org

Antoinette Stein
Environmental Health Trust
tweil@igc.org

Scott Strand
Environmental Law & Policy Center
sstrand@elpc.org

Jeannie Economos
Farmworker Association of Florida
farmworkerassoc@aol.com

Kay Ahaus
Greater Highland Area Concerned Citizens
kayahaus@yahoo.com

Emily Sutton
Haw River Assembly
emily@hawriver.org

Charlotte Brody
Healthy Babies Bright Futures
cbrody@hbbf.org

Diane Hofner
Concerned Residents of Portland, NY +
People Like Us
croplus@gmail.com

Frank Chitwood
Coosa Riverkeeper
riverkeeper@coosariver.org

Pamela J. Richart
Eco-Justice Collaborative
prichart@ecojusticecollaborative.org

Laurie Murphy
Emerald Coastkeeper, Inc.
laurie@emeraldcoastkeeper.org

Patrick MacRoy
Environmental Health Strategy Center
pmacroy@ourhealthyfuture.org

Lisa Hallowell
Environmental Integrity Project
lhallowell@environmentalintegrity.org

Katherine Cummings
Fall-line Alliance for a Clean Environment
(FACE)
katherine@katherinecummings.net

Oday Salim
Great Lakes Environmental Law Center
oday.salim@glelc.org

Theaux M. Le Gardeur
Gunpowder Riverkeeper
keeper@gunpowderriverkeeper.org

Lynn Nadeau
HeathLink
lynnnadeau@gmail.com

Tom Lent
Healthy Building Network
tlent@healthybuilding.net

Indra Frank
Hoosier Environmental Council
ifrank@hecweb.org

Emily Cleveland
Idaho Conservation League
ecleveland@idahoconservation.org

Tom FitzGerald
Kentucky Resources Council
FitzKRC@aol.com

Patricia Schuba
Labadie Environmental Organization (LEO)
prsmail@gmail.com

Ed Reynolds
Many Enviro
eanddreynoldsl@cox.net

Cheryl Nenn
Milwaukee Riverkeeper
cheryl_nenn@milwaueeriverkeeper.org

Neal Ullman
Montana Conservation Voters Education
Fund
neal@mtvoters.org

Beverly Braverman
Mountain Watershed Association, home of
the Youghiogheny Riverkeeper
mwa@mtwatershed.com

Rebecca Hammer
Natural Resources Defense Council
rhammer@nrdc.org

John Runkle
NC WARN
jrunkle@pricecreek.com

Michel Dedeo
Healthy Building Network
mdedeo@healthybuilding.net

Tim Maloney
Hoosier Environmental Council
tmaloney@hecweb.org

Mary Love
Kentuckians For The Commonwealth
mbloveky@yahoo.com

Petra Haynes
Labadie Environmental Organization
interpetra@aol.com

Madeleine Foote
League of Conservation Voters
madeleine_foote@lcv.org

Barbara Jennings
Midwest Coalition for Responsible
Investment
midwest.coalition@yahoo.com

Casi Callaway
Mobile Baykeeper
callaway@mobilebaykeeper.org

Anne Hedges
Montana Environmental Information Center
ahedges@meic.org

Julie Mayfield
MountainTrue
julie@mountaintrue.org

Kate Fulbright
NC Conservation Network
kate@nconconservationnetwork.org

James A. McGrath
New River Conservancy
hqbrtt@i-plus.net

George Santucci
New River Conservancy
george@newriverconservancy.org

Henry S. Cole, Ph.D.
Patuxent Riverkeeper
hcole@hcole-environmental.com

Kurt J. Weist
PennFuture
weist@pennfuture.org

Barbara Gottlieb
Physicians for Social Responsibility
bgottlieb@psr.org

Dean Naujoks, Potomac Riverkeeper
Potomac Riverkeeper Network
dean@potomacriverkeeper.org

Andrew Rehn
Prairie Rivers Network
arehn@prairierivers.org

Wendy Bredhold
Sierra Club
wendy.bredhold@sierraclub.org

Frank Holleman
Southern Environmental Law Center
fholleman@selcnc.org

Justin Bloom
Suncoast Waterkeeper
jbloom@suncoastwaterkeeper.org

Robin Schneider
Texas Campaign for the Environment
robin@texasenvironment.org

Jessica Keetso
Tó Nizhóní Ání
tonizhoniani@gmail.com

Vivian Stockman
OVEC-Ohio Valley Environmental Coalition
vivian@ohvec.org

David Masur
PennEnvironment
davidmasur@pennenvironment.org

Pam Nixon
People Concerned About Chemical Safety
pam@chemsafety.org

Phillip Musegaas
Potomac Riverkeeper Network
phillip@prknetwork.org

Shannon Anderson
Powder River Basin Resource Council
sanderson@powderriverbasin.org

Ted Schettler
Science and Environmental Health Network
tschettler@igc.org

Amelia Shenstone
Southern Alliance for Clean Energy
amelia@cleanenergy.org

Lisa Rinaman
St. Johns Riverkeeper
lisa@stjohnsriverkeeper.org

David Whiteside
Tennessee Riverkeeper
TennesseeRiverkeeper@gmail.com

Rob Walters
Three Rivers Waterkeeper
rob@threeriverswaterkeeper.org

Matthew Starr
Upper Neuse Riverkeeper (Sound Rivers
Inc.)
Upperneuserk@soundrivers.org

Lauren Hierl
Vermont Conservation Voters
lhierl@vermontconservationvoters.org

Larissa Liebmann
Waterkeeper Alliance
lliebmann@waterkeeper.org

Angie Rosser
West Virginia Headwaters Waterkeeper
arosser@wvrivers.org

Eric Frankowski
Western Clean Energy Campaign
eric@westerncleanenergy.org

Terri Pratt
Yadkin Riverkeeper
terri@yadkinriverkeeper.org

Rae Schnapp
Wabash Riverkeeper Network
raeschnapp@gmail.com

Katlyn Clark
Waterkeepers Chesapeake
katlyn@waterkeeperschesapeake.org

Cindy Rank
West Virginia Highlands Conservancy
clrank2@gmail.com

Bob LeResche
Western Organization of Resource Councils
dcohn@worc.org