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April 30, 2018

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

Re: Docket ID No. EPA-HQ-OLEM-2017-0286

Dear Ms. Jackson,

In 2015, Waterkeepers Chesapeake joined more than a half-million comments from people supporting the safeguards that U.S. Environmental Protection Agency (EPA) is now seeking to remove in its proposed rule. The 2015 coal ash regulations were imposed after lengthy negotiations with utilities, other industries and environmentalists. Relaxing those common sense, science-based rules now -- even as utilities are in the process of reporting the extent of coal-ash contamination and devising plans to address it -- would mean the lessons learned from the coal ash accidents in Tennessee and North Carolina are being ignored. The proposed rule ('revision rule') would once again put our water and public health at risk -- with more than 1.5 million children living near coal ash storage sites and seventy percent of all coal ash impoundments disproportionately impacting low-income communities -- this is a risk that the EPA should be unwilling to take.

Background

Coal-fired power plants in the United States burn more than 800 million tons of coal every year, producing more than 110 million tons of solid waste in the form of fly ash, bottom ash, scrubber sludge and boiler slag—commonly known as coal ash. Hazardous chemicals present in coal are concentrated in the ash when coal is burned. Consequently, coal ash contains a toxic brew of carcinogens, neurotoxins, and poisons—including arsenic, boron, cadmium, hexavalent chromium, lead, lithium, mercury, molybdenum, selenium, thallium, and radioactive substances. These toxics raise the risk for cancer, heart disease, and stroke, and can inflict permanent brain damage on children. When this dangerous waste is not disposed of properly, the toxic chemicals are released to air, groundwater, surface water, and soil.

For decades, billions of tons of coal ash have been dumped in unlined pits next to our lakes and rivers. Toxic chemicals from coal ash leak into those waterways and pollute groundwater and drinking water wells. Fugitive dust from coal ash dumps foul the air of nearby residents. And hundreds of aging earthen dams hold back billions of gallons of toxic sludge, threatening the communities that live downstream. This holds true for the Chesapeake Bay region.

Anacostia Riverkeeper
Assateague Coastkeeper
Baltimore Harbor Waterkeeper
Chester Riverkeeper
Choptank Riverkeeper
Gunpowder Riverkeeper
Lower James Riverkeeper

Lower Susquehanna Riverkeeper
Middle Susquehanna Riverkeeper
Miles-Wye Riverkeeper
Potomac Riverkeeper
Sassafras Riverkeeper
Severn Riverkeeper

Shenandoah Riverkeeper
South Riverkeeper
Upper James Riverkeeper
Upper Potomac Riverkeeper
Virginia Eastern Shorekeeper
West Rhode Riverkeeper



In 2015, the Obama administration adopted the first-ever national standards for the disposal of coal ash. The federal rule requires numerous critical safeguards, including regular inspection of ash ponds, monitoring of groundwater, shutdown of leaking dumps, shutdown of dumps in dangerous locations, cleanup when contamination is found, safe closure, and public posting of monitoring and inspection results. Following President Trump's inauguration, however, industry groups demanded EPA weaken the rule. EPA agreed and is now proposing the very changes industry so badly wants.

Trump's proposed revision rule clears the way for polluters, and polluter-funded politicians, to avoid the minimum national standards and employ their own weak standards for groundwater monitoring, coal ash cleanups, and several other core health and environmental protections included in the 2015 rule. As justification for the rollback, EPA points to millions of dollars of cost savings for owners of coal ash dumps. But the facts and science on which the 2015 rule was based have not changed. What has changed is the Trump EPA's prioritization of polluter interests over the protection of public health.

Deficiencies in EPA's Revision Rule

1. The revision rule weakens groundwater protections and removes protections for children's health.

Under the existing rule, ash pond closure and cleanup requirements are triggered when coal ash pollutants are found in groundwater at concentrations above groundwater protection standards (either the national drinking water standard that has been designated for a pollutant or the background level measured at the site). EPA is proposing to allow states to set different, less protective, standards for cobalt, lead, molybdenum, and lithium. Additionally, EPA deliberately excluded a requirement that states consider risks to sensitive subgroups—including children—when setting alternative standards. In 2014 EPA determined that the non-cancer risks from coal ash were highest for young children. Now, EPA is telling states it is okay to ignore those risks.

EPA is also suggesting owners and operators of coal ash dumps write their own standards for those pollutants without direct government oversight. We can expect states with bad track records of coal ash regulation and polluters who want to avoid costly cleanups to set weak standards. The proposal will lead to different groundwater protection standards in different states and even at different sites within a state. There will be no guarantee that the standards selected will be protective of human health. And the change could lead to polluters delaying or avoiding cleanups entirely.

2. The revision rule makes toxic cleanups discretionary.

EPA is proposing making cleanup of groundwater contamination discretionary—that is, to let polluters do nothing even where contamination above groundwater protection standards is found. EPA proposes that polluters be able to decide if cleanup is necessary, which will lead to fewer cleanups of toxic spills and leaks. States and the polluters themselves will have discretion to write off groundwater that is not currently being used for drinking water or which is already polluted by other sources. However, more than half the U.S. population, including 99 percent of the rural population, relies on groundwater for its drinking water supply.

3. The revision rule eliminates the requirement that leaking unlined ponds install liners or close.

EPA is proposing to eliminate the requirement that unlined coal ash ponds that leak toxic chemicals above groundwater protection standards install liners or close by a date certain. Instead, the proposal would allow state agencies, or the polluters themselves, to determine that closure of the unlined ponds is not necessary, even though the leak may be impossible to stop without a pond lining. In addition, EPA is proposing to remove the requirement that sources of coal ash pollution be controlled at all. Under the existing rule, polluters must take action to stop the release of toxic contaminants from a leaking pond or landfill if groundwater protection standards are exceeded. EPA is now considering making those source control measures discretionary.

4. The revision rule removes the requirement for polluters to respond immediately to coal ash spills.

The existing rule requires that polluters “immediately” act to control the release of coal ash pollutants into the environment in the event of a spill. Shockingly, EPA is proposing to remove that requirement altogether. Thus, the proposed rule no longer requires polluters to immediately contain the damage upon discovery of a spill, like the massive disasters that occurred in Kingston, Tennessee and at the Dan River in North Carolina.

5. The revision rule eliminates the requirement to close coal ash ponds that fail safety standards.

EPA is proposing to eliminate the requirement that coal ash ponds close if they fail to achieve minimum structural stability standards established in the 2015 rule. Instead, the proposal would allow state agencies, or the polluters themselves, to determine if closure is necessary. The requirement for ash ponds to demonstrate structural stability is a hallmark achievement of the 2015 rule, and this requirement will help prevent another disaster like the TVA Kingston or Dan River spills. Catastrophic failure of coal ash dams threatens lives and entire communities and ecosystems.

6. The revision rule allows coal ash dumps to continue to operate in dangerous locations.

Under the existing rule, coal ash disposal units that are located in areas where harm to health and the environment is likely must demonstrate by October 17, 2018 that they are not violating location restrictions or they must cease accepting waste and close. In other words, these areas—where the base of the dump is within five feet of an aquifer or in floodplains, wetlands, in unstable areas, fault zones, and seismic areas—are off-limits for coal ash disposal unless certain demonstrations of safety are made in October by the owner or operator. EPA is proposing to give polluters more time to close these dangerous dumps and is also considering significantly weakening all of the locational restrictions. Even coal ash dumps that are sitting in groundwater may no longer have to close by a date certain.

7. The revision rule allows political appointees to decide if a cleanup is adequate or even required.

EPA has proposed to allow directors of state agencies—political appointees, instead of professional engineers, to make at least 40 different technical determinations that would allow a facility to deviate from the requirements of EPA’s 2015 rule. Such determinations include whether a cleanup is adequate, whether a cleanup is even required, whether groundwater monitoring is necessary, whether alternative disposal capacity exists (and, thus, whether closure can be delayed), and whether post-closure monitoring can be terminated before 30 years. The proposal allows the potentially politically driven judgment of a state regulator to be substituted for the technical judgment of an expert or the wisdom of EPA in setting the standards. Like the other proposed changes, this is directly at odds with the justification for the existing coal ash rule—that state regulation was inadequate and that regulators had an incentive to exempt companies located within their jurisdiction from regulatory requirements.

8. The revision rule shortens the post-closure care period and lets polluters off the hook.

Given that threats to groundwater persist long after an ash dump stops receiving waste, the 2015 rule requires owners to conduct post-closure care activities for 30 years after an ash dump is closed. Post-closure care includes maintenance of the cover and leachate collection systems and continued groundwater monitoring, with cleanup required if contamination is found. EPA is now proposing to reverse course and allow states, or the owners themselves when there is no state permit program, to dramatically reduce the 30-year post-closure care period. Because hazardous chemicals leaking from ash dumps often move slowly through soil and groundwater, a short post-closure care period will mean that leaks go undetected and polluters avoid cleanup of their toxic messes.

9. The revision rule removes the requirement to post compliance data, leaving citizens in the dark.

One of the most important components of the 2015 rule is the requirement that owners and operators of coal ash dumps post certain information on publicly available websites. Internet posting is required for cleanup and closure plans, plans for controlling fugitive dust, inspection reports, and the results of groundwater monitoring. This posting allows folks who live and work near coal ash dumps to know that their communities are safe. However, EPA is considering eliminating important internet posting requirements, which will leave residents in the dark about coal ash pollution.

Conclusion

Power plants have had a free pass to pollute our water and have put the health of downstream communities at risk for far too long. The 2015 coal ash rule is currently protecting hundreds of American communities. Despite some weaknesses in the current rule, coal plant owners have already established publicly accessible websites and fugitive dust control plans, completed hundreds of inspections, and published critical groundwater quality data. The commonsense standards of the 2015 rule—which received more than a half-million supporting comments from the public—are helping to protect clean water and safeguard public health. EPA’s current

attempt to weaken this rule is nothing more than a total giveaway to the industry and must be rejected.

Sincerely,

Betsy Nicholas
Executive Director
Waterkeepers Chesapeake

Kathy Phillips
Assateague Coastkeeper
Assateague Coastal Trust

Fred Kelly
Severn Riverkeeper

Brent Walls
Upper Potomac Riverkeeper
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