

March 13, 2023

The Honorable Michael Regan
Administrator
U.S. Environmental Protection Agency
EPA Docket Center, OECA, Docket, Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: EPA Must Prioritize CCR Enforcement: EPA–HQ–OECA–2022–0981

Dear Administrator Regan:

The undersigned XXX public interest groups and public officials from XX states strongly urge the U.S. Environmental Protection Agency (EPA) to adopt coal combustion residuals (CCR or “coal ash”) as a National Enforcement and Compliance Initiative (NECI) for fiscal years 2024-2027. EPA must significantly increase federal enforcement of the 2015 CCR rule¹ to stop coal ash pollution and address widespread noncompliance perpetrated by U.S. power plants. A CCR enforcement initiative will go far to help EPA realize the goals set forth in EPA’s Strategic Plan, including tackling the climate crisis and addressing environmental justice.

It is essential that EPA immediately increase enforcement of the CCR rule in light of data revealing serious nationwide noncompliance. This need is urgent because of the potentially irreparable harm that coal ash is currently causing at hundreds of coal plants across the country. Industry-wide, coal plants are at a critical juncture as a result of EPA’s requirements to close leaking ash ponds and clean up dangerously contaminated groundwater. If EPA continues to allow U.S. utilities to proceed in gross violation of federal protective standards, these illegal actions will have dire consequences for our water resources, environment, and public health.

• Rampant violation of the federal coal ash rule is causing serious and widespread damage in overburdened and vulnerable communities.

Since 2019, EPA has known that 91 percent of coal plants are contaminating groundwater with high levels of hazardous chemicals that render the water unsafe for human consumption.² This contaminated groundwater may poison drinking water or flow to lakes and streams where the toxic chemicals poison fish and other aquatic life and ruin recreational waterways. Most of the nation’s 746 regulated and leaking coal ash dumpsites are located in communities of color and low-income communities.³ In addition, approximately half of the coal ash dumps are also located near communities that are overburdened and underserved according to the Center for Environmental Quality’s Climate and Economic Justice Screening Tool.⁴

¹ U.S. EPA, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities; Final Rule, 80 Fed. Reg. 21302, 21404 (Apr. 17, 2015) (hereinafter “CCR rule”).

² Environmental Integrity Project & Earthjustice, Coal’s Poisonous Legacy: Groundwater Contaminated by Coal Ash Across the U.S. ((Mar. 2, 2019, rev. July 11, 2019) available at <https://www.environmentalintegrity.org/reports/coal-poisonous-legacy/>

³ The 746 dumps are located at 302 plants, 68% of which are located in areas where the population surrounding the plant has a higher incidence of low-income residents and populations of color when compared to the state average. See Earthjustice database: <https://earthjustice.org/coalash/data-2022>.

⁴ 149 of 302 plants are located within a mile of a disadvantaged community as identified by CEJST at <https://screeningtool.geoplatform.gov/en>.

In 2022, a survey of coal plant compliance found that hundreds of utilities are in significant noncompliance with critical health-protective rules, including requirements to monitor groundwater, safely close leaking impoundments, and clean up contaminated water.⁵ Because the regulations governing coal ash are self-implementing, there is little or no oversight in most states. Environmental justice communities lack the resources to bring citizen suits to enforce the law, especially against multi-billion-dollar utilities with deep pockets and legions of lawyers, consultants and lobbyists. Consequently, these violations are unchallenged, and the harm continues unabated. Further, these overburdened and vulnerable communities lack the resources to purchase bottled water; test drinking water, air and soil; find alternative food sources if reliant on subsistence fishing; determine the extent of ash contamination; and move away from contaminated areas. For many, EPA enforcement against recalcitrant industry polluters is the only way to protect their health and environment.

• **Prioritizing CCR enforcement is in perfect alignment with EPA’s Strategic Plan.**

A CCR initiative is aligned with the powerful goals of EPA’s Strategic Plan to tackle the climate crisis, advance environmental justice, ensure clean water, and revitalize blighted communities.

1. Tackling the climate crisis

An essential EPA goal is to increase the resiliency of communities facing threats fueled by the climate crisis, including rising seas and rivers and the increasing intensity and frequency of storms. Flooding and hurricanes are significant threats to communities near hundreds of coal ash dumps built along the banks of rivers and lakes. Recent toxic spills resulting from storms, such as Hurricane Florence in 2018, demonstrate the vulnerability of ash dumps. Enforcement of the coal ash rule will ensure that these toxic dumps do not present long-term threats or cause irreparable harm to drinking water and waterways. EPA must act now to prevent toxic coal ash spills from becoming an inevitable result of the climate crisis.

2. Advancing environmental justice

Through enforcement of the CCR rule, EPA can achieve measurable environmental, public health, and quality of life improvements in the nation’s most overburdened, vulnerable, and underserved communities. Coal ash cleanup is vital to the protection of health and the environment of low-income communities and communities of color. Seventy percent of plants with plans to illegally close ponds with ash in or near groundwater are located in such communities.⁶ EPA intervention cannot wait to cure this injustice; toxic ash has already contaminated drinking water in numerous low-income communities and communities of color.

3. Ensuring safe and clean water for all communities

Industry data demonstrate that coal ash is contaminating groundwater with highly toxic chemicals in over 40 states and Puerto Rico. At most coal ash sites, the water is contaminated with carcinogens, neurotoxins, and chemicals that harm the reproductive system, including arsenic, boron, lead, lithium, molybdenum, and radium. At numerous sites, these toxic chemicals have contaminated drinking water supplies. This contamination will worsen unless EPA enforces

⁵ Environmental Integrity Project & Earthjustice, *Poisonous Coverup: The Widespread Failure of the Power Industry to Clean Up Coal Ash Dumps* (Nov. 3, 2022), available at https://earthjustice.org/sites/default/files/press/2022/coal-ash-report_poisonous-coverup_earthjustice.pdf

⁶ *Id.* at 5.

the federal rule. It is abundantly clear that utilities will not comply on their own in the absence of federal enforcement.

4. *Safeguarding and revitalizing communities*

In light of coal plant retirements and the mandated closure of nearly all ash ponds, EPA must act quickly to ensure that utilities leave host communities with sites that benefit rather than harm their health, environment, and economic status. Enforcement of the coal ash rule will help ensure safe closure of leaking toxic dumps and cleanup of existing contamination. Without enforcement, communities are left to struggle with continued chemical exposure and falling property values. Safe closure of toxic ash dumps benefits and revitalizes local communities by providing local jobs, boosting the local economy, and producing clean sites that can be redeveloped for commercial or recreational use.⁷ Because of the pace of closures, EPA's window to safeguard and revitalize blighted communities is closing rapidly.

• Federal CCR enforcement will ensure national consistency, promote a level playing field, and achieve nationwide compliance.

Because of the self-implementing nature of the CCR rule and the absence of federal permitting requirements, coal plant compliance with the federal rule is nearly non-existent across the country. Furthermore, States have taken regulatory actions that are contrary to the federal rule and EPA's clearly articulated enforcement positions on critical health-protective requirements such as safe closure and cleanup. Predictably, in states that depend more heavily on coal, and where coal ash pollution is most severe, state agencies have turned a blind eye to significant industry noncompliance. EPA enforcement is needed to set a consistent standard in all states.

In sum, establishing a CCR NECI will significantly advance environmental and climate justice. Prioritizing CCR Rule enforcement also ensures that the substantial resources EPA has invested in CCR Rule implementation translate into real-world, widespread improvements in reducing coal ash pollution. Increasing CCR enforcement is necessary immediately. Industry is proceeding now, in violation of the federal rule, to close coal ash ponds with toxic ash in contact with groundwater and in floodplains, which creates a long-term source of toxins to groundwater and a permanent hazard to drinking water and waterways. The longer EPA enforcement is delayed, the more hazardous contaminants enter our water, and the more difficult cleanup will be. In some cases, the damage will be irreversible. Unfortunately, this is no longer a matter of *preventing* hazardous chemicals from escaping coal ash dumps. EPA must move quickly to *stop* the flow of toxic releases from hundreds of leaking dumps and *require effective cleanups* before more vulnerable communities are irreparably harmed.

Thank you in advance for considering our time-sensitive and urgent request to establish CCR as an essential National Enforcement and Compliance Initiative for 2024-2027.

Respectfully submitted:

⁷ Earthjustice, *Cleaning Up Coal Ash For Good: How complete cleanup of toxic coal ash dump sites provides jobs, economic benefits, and redevelopment opportunities for host communities* (July 2021) available at https://earthjustice.org/sites/default/files/files/coal_ash_addendum_new_final_email.pdf; Union of Concerned Scientists, *Repairing the Damage: Cleaning Up Hazardous Coal Ash Can Create Jobs and Improve the Environment* (Oct 2021) available at <https://www.ucsusa.org/resources/coal-ash-cleanup-benefits#ucs-report-downloads>; Northern Plains Resource Council, *Doing it Right II: Job creation through Colstrip cleanup* (April 2019) available at https://northernplains.org/wp-content/uploads/2022/03/DIRTII_FINAL_WEB.pdf.