United States Senate
WASHINGTON, DC 20510

April 30, 2018

The Honorable Scott Pruitt
Administrator
U. S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20012

Dear Administrator Pruitt:

We are concerned about the U.S. Environmental Protection Agency's (EPA's) proposed changes to the disposal of coal combustion residuals (CCR) or "coal ash" rule. The 2015 rule established by the EPA sets minimum federal standards for CCR disposal to protect drinking water, human health, and the environment. Since the rule was finalized, Congress passed the *Water Infrastructure Improvements for the Nation (WIIN) Act* enabling, but not requiring, states to set up permitting programs at least as protective as federal requirements for the disposal of coal ash. In doing so, Congress confirmed that the CCR rule should be the starting point for state programs. We are concerned that the EPA's proposed changes weaken the rule's requirements.

Coal ash contains toxic metals that can cause cancer, heart damage, lung disease, kidney disease, and birth defects and even lead to premature death. More than 130 million tons of coal ash are generated each year in the United States. Although half of the coal ash produced is reused and repurposed as either a substitute for Portland concrete or gypsum wallboard, the other half must be disposed of as waste. The CCR rule represents a consensus among utilities, environmental groups, and waste facilities to implement common sense regulations for coal ash disposal. The rule was established to address the well-documented risks associated with coal ash landfills and surface impoundments based on multiple risk assessments and numerous damage cases.

Coal ash is more toxic than typical household waste. Regulating the disposal of coal ash requires steps beyond those intended for municipal solid waste landfills to address the particular threat of coal ash to groundwater, surface water, human health, and the environment. We urge you to keep protections in place that ensure that a qualified technical professional certifies all judgements. This will ensure decisions are made with appropriate expertise to protect human health and the environment.

We are concerned about proposed changes regarding groundwater monitoring. Groundwater supplies 51 percent of the drinking water for the United States, 99 percent of rural drinking water, and 64 percent of irrigation water to grow crops according to the Groundwater Foundation. The current regulation requires utilities to measure groundwater quality with monitoring wells for possible contamination from coal ash disposal sites and to remediate any pollution that is detected. The proposal allows alternative, and potentially weaker, standards for many contaminants, and provides broad discretion to states as to where groundwater monitoring is conducted and what remediation actions must be taken. The only way to ensure a CCR unit is not contaminating groundwater is to measure it. We urge the EPA not to allow states to suspend groundwater monitoring requirements.

Disposing of coal ash into unlined surface impoundments is an outdated method that contaminates groundwater and threatens human health and the environment. The EPA found that risk estimates for unlined surface impoundments were the highest of all CCR unit types and confirmed damage cases are dominated by such coal ash ponds. According to an EPA Risk Assessment, people living within one mile of unlined coal ash ponds have an elevated cancer risk. Given the risk posed by coal ash ponds, we hope the EPA will not weaken regulations pertaining to coal ash ponds.

The EPA also should not be encouraging the use of unencapsulated CCR in to retrofit coal ash ponds, build elevation, or manage storm water. We strongly support the beneficial reuse of CCR in construction projects where the coal ash is fully encapsulated (such as concrete). However, using coal ash as structural fill can contaminate soil and surrounding groundwater. Playground equipment in Pines, Indiana, had to be removed due to high levels of arsenic in the soil due to using fly ash as structural fill. The entire town is now a Superfund site. The EPA has confirmed coal ash fill sites that have contaminated groundwater in Indiana, Maryland, Michigan, North Carolina, Tennessee, Virginia, Wisconsin, Iowa, Illinois, Massachusetts, Ohio, and Pennsylvania.

We are concerned that EPA's proposed abbreviated process to address small CCR releases would not be able to prevent more catastrophic spills. Regulations to allow for immediate remediation of detected releases should not exempt facilities from further corrective action. Before the dike failure at Tennessee Valley Authority's (TVA's) Kingston Plant resulted in the release of 1.1 billion gallons of coal fly ash slurry over 300 acres, the TVA was aware of previous seepage from the dikes. However, TVA made the decision to patch the dikes rather than perform a more extensive repair. The current corrective action procedures were put into place to prevent catastrophic releases, not to be only used in the case of them.

The proposed changes could actually lead to a rise in electricity rates. Preventative measures costs in the 2015 regulation would be much less than costs to remediate a potential spill. In 2014, Duke Energy increased electricity rates for its North Carolina customers by $230 million in order to pay for remediation after 39,000 tons of coal ash spilled into the Dan River.

In the *WIIN Act,* Congress affirmed the 2015 CCR rule and the standards by which the EPA should judge state permitting programs. We urge the EPA to not weaken the first-ever federal regulation for the safe disposal of coal ash, which protects drinking water, human health, and the environment.

Sincerely,

RICHARD J. DURBIN
United States Senator

TAMMY DUCKWORTH
United States Senator

EDWARD J. MARKEY
United States Senator

THOMAS R. CARPER
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