November 19, 2010

The Honorable Lisa Jackson
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460


Dear Administrator Jackson,

We would like to begin by thanking the Agency for carrying out an open and robust comment period on the proposed coal ash rulemaking. We understand that you have heard thousands of speakers at public hearings across the country and will read tens of thousands of written comments. This is undoubtedly a daunting task, but these numbers highlight how important the issue of coal ash disposal is to citizens across the U.S., from Harriman, Tennessee to Perry County, to the hundreds of places coal ash is disposed, stored and reused.

Although many of us will submit more detailed comments for your review, we are coming together to submit this letter to voice our collective support for EPA’s promulgation of a rule under the authority of Subtitle C of the Resource Conservation and Recovery Act (RCRA).
Subtitle C provides the only effective option for protecting human health and the environment from the physical and the chemical dangers of coal ash. Subtitle D would allow EPA only to develop suggested guidelines for coal ash disposal, leaving citizens without federally enforceable rules and permitting individual states to opt out of the guidelines. As your analysis has already indicated, the majority of states are likely to ignore any EPA-developed disposal guidelines and would continue to allow dangerous coal ash dumping under current, inadequate state programs.

The untenable result under Subtitle D would be unequal and inadequate protection from a pervasive threat that plagues almost every state in this nation. The perilous reality, according to your agency’s own calculations, is that those states that currently fail to protect their citizens from the dangers of coal ash are the same states that, given the choice granted by Subtitle D, would ignore newly promulgated EPA guidelines. These are the exact same states that generate the overwhelming majority of the coal ash in the U.S. (approximately 80% of annual generation).

Furthermore, a Subtitle D scheme leaves vulnerable populations – low-income communities, communities of color and children – living near these disposal sites out in the cold. Selection of Subtitle D would create monumental disparity: those states that will not implement Subtitle D are also more likely to have higher percentages of vulnerable populations, putting them at greater risk. In other words, a weak EPA rule would apply new safeguards in states where coal ash presents a relatively small, or even non-existent, environmental justice problem, while failing to add protections in states where environmental justice communities are heavily impacted by coal ash disposal.

By comparison, Subtitle C offers a comprehensive, equitable and meaningful basis for coal ash regulation. Where Subtitle D proffers only guidelines, Subtitle C establishes federally enforceable safeguards codified in mandatory permits. Where Subtitle D only addresses disposal, Subtitle C covers the entire lifecycle of ash, from generation and storage to transportation, treatment and final disposal.

The breadth and federal enforceability of Subtitle C regulations are necessary because coal ash poses a very real danger. The catastrophic collapse of the dam at the Tennessee Valley Authority’s Kingston plant sounded a warning for the grave threats posed by the nation’s aging
fleet of coal ash impoundments – a great number of which are over three-decades old, not designed, built or constructed by professional engineers, and located in states where neither inspections nor evacuation plans have ever been required.

While the inundation of Harriman, Tennessee is a frightening example of the damage that unsafe coal ash disposal can cause, EPA must also consider the more pervasive and subtle danger that coal ash poses to our groundwater and surface water. Whether coal ash is stored in a landfill, pond, or mine, it poses a significant danger when its toxic constituents dissolve from the ash into water. The toxic chemicals in ash, such as antimony, arsenic, barium, lead, cadmium, chromium, manganese, mercury, molybdenum, and thallium, which readily leave ash and enter water, are known to cause serious health problems. Especially where there is prolonged exposure, these toxic metals can cause several types of cancer, heart damage, lung disease, respiratory distress, kidney disease, reproductive problems, gastrointestinal illness, birth defects, impaired bone growth in children, nervous system impacts, cognitive deficits, developmental delays and behavioral problems. In short, coal ash toxics have the potential to injure all of the major organ systems, damage physical health and development, and even contribute to mortality. And the threat of harm is significant – people living near some unlined wet ash impoundments have a 1 in 50 chance of getting cancer from arsenic-contaminated water. And human populations are not the only populations at risk – substantial threats are also posed to fish and wildlife when coal ash contaminants enter our water bodies.

The danger of contaminated water is not merely conjecture. Research by EPA, as well as two reports by the Environmental Integrity Project, Earthjustice and Sierra Club document 137 cases of surface or groundwater damage in 34 states. In the most recent report each and every one of the 35 sites studied show heavy metal contamination above federal drinking water standards. These results, in fact, are just a small percentage of the real damage occurring at coal ash disposal sites across the country. Many states do not require any on-site or off-site water monitoring, meaning that there is no source of monitoring data for investigators compiling damage cases.

Furthermore, the EPA’s latest scientific findings lend great urgency to the promulgation of federally enforceable standards. New EPA leach tests, specifically designed for coal ash, reveal
that toxic chemicals such as arsenic, chromium and selenium, can leak from coal combustion waste in concentrations far exceeding the threshold that the EPA uses to identify hazardous waste. Based on the toxic constituents of coal ash and its propensity to leach those harmful chemicals in prodigious amounts, there is no question that coal ash meets the hazardous waste listing criteria set forth in RCRA.

Opponents of coal ash regulation rest their case on the vague and flawed argument of stigma. The oft-repeated warning from the coal ash industry is that listing ash as a special waste will create a stigma, making it impossible to use ash beneficially. However, EPA has responded to this concern by proposing to list coal ash, only if disposed, as a special waste and to exempt coal ash entirely from regulation if beneficially used. History has demonstrated that if the cost of disposal rises, incentives for reuse increase. There is no reason this oft-demonstrated market behavior should not repeat itself here. We agree with the Agency’s analysis that regulation of coal ash disposal will increase beneficial reuse of ash.

In view of the immense amount of coal ash generated in the U.S. and its disposal and reuse in nearly every state and territory of the nation, it is essential that the EPA enact federally enforceable safeguards that protect the health and environment of every citizen equally and effectively.

Thus we respectfully ask the EPA for a strong rule that lists coal ash as a “special waste” under Subtitle C of RCRA and accomplishes the following:

- Incorporates the best available practices of preventative hazard design in storage and disposal facilities, including composite liners, leachate collection systems, long term ground water monitoring, dust controls, and corrective action; and
- Phases out as quickly as possible the wet storage of coal ash, the disposal of coal ash in mines and unprotected landfills, and the disposal or reuse of unencapsulated ash where it is exposed to surface or ground water.

As the American public reaps the substantial benefits of cleaner air accomplished by the requirements of the Clean Air Act, this Administration must ensure that the same harmful
pollutants captured in the flue gas of coal-fired power plants do not end up in our rivers, streams and drinking water.

Respectfully,

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