



The Honorable Senator James M. Inhofe
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

The Honorable Barbara Boxer
Ranking Member
Senate Environment and Public Works Committee
456 Dirksen Senate Office Building
Washington, DC 20510-6175

**Re: Environmental Groups Oppose Inclusion of Coal Combustion Residuals
Legislation in the Water Resources Development Act of 2016**

Dear Senator Inhofe and Senator Boxer:

The Environmental Integrity Project and the Waterkeeper Alliance are writing on behalf of individuals living near coal combustion residuals (“coal ash”) disposal sites to respectfully express our concerns about proposed Senate coal ash legislation, which may be included in the Water Resources Development Act of 2016, S. 2848 (the coal ash legislation may be included as Section 8001 of the Senator Inhofe’s proposed Amendment 4980 to the Act). More specifically, we believe the legislation as currently drafted would undercut the most important requirements of the U.S. Environmental Protection Agency’s (“EPA”) recent federal coal ash disposal rule and delay the closure and cleanup of ponds that have leaked toxic metals into groundwater. EPA’s rule, promulgated in April 2015, was the first federal rule regulating disposal of coal ash, one of the largest industrial waste streams in the United States. The rule requires owners and operators of coal ash disposal facilities to meet certain critical design, operating, notification, and other requirements to minimize risks to surrounding and downstream communities.

Until EPA promulgated its rule last year, oversight of coal ash disposal was left almost entirely up to individual states. Standards varied dramatically from one state to another, with many going to great lengths to completely exempt coal ash from even the most basic solid waste regulations. The result was predictable: leaking ash dumps caused environmental damage at hundreds of sites across the country. Catastrophic failures of neglected ash ponds buried homes and coated rivers with toxic slurry. These disastrous consequences of state-by-state oversight illustrate the critical importance of EPA’s coal ash rule, which established a clear set of minimum standards that apply to coal ash dumps, regardless of where they are located. These long-overdue regulations are the result of seven years of rulemaking and are based on the Agency’s review of public testimony and comments, groundwater monitoring data, and numerous scientific studies.

While individual states may choose to assume responsibility for implementing and enforcing the new standards, a state wishing to do so should adopt the critical elements of the EPA rule, which include monitoring requirements, public disclosure of monitoring results, the federal health-



based standards for cleanup, and deadlines for closing ponds that have caused groundwater contamination or fail to meet the structural stability requirements spelled out in the rule.

The Amendment would allow states to substitute their own programs for these transparent and enforceable federal requirements, so long as they are “as protective” as the EPA rule. Deciding whether a program is “as protective” as the very specific standards EPA has established will require interpretation on a state by state basis, leading to endless disputes over how risks are assessed, how much uncertainty to tolerate, how much monitoring is adequate, whether alternate parameters for measuring cleanup and risk are valid, etc. That is a resource-intensive process that may employ many consultants, contractors and lawyers, but will almost certainly result in fewer cleanups and keep leaking ponds operating much longer than the current rule allows. And we note that the legislation does not require the online posting of groundwater monitoring data that must now be purchased from state agencies through payment of fees that few citizens can afford.

We do not understand why this last-minute legislation is preferable to a rule requiring power companies to clean up groundwater they have contaminated until it meets federal drinking water standards and to close leaking or unsafe ponds. In contrast to the very public process used to develop EPA standards, no hearings have been scheduled that would allow for at least some discussion of the purpose of this specific legislation or how it might change critical requirements and deadlines of the EPA rule.

The proposed legislation:

1. **Could effectively remove the EPA rule’s federal minimum standards, which could lead to a patchwork of regulatory requirements that vary from one state to another;**
2. **Allows for disposal sites to operate without being subject to either EPA’s self-implementing standards or State-issued permits;**
3. **Fails to provide for public participation in EPA approval of State programs;**
4. **May weaken citizens’ ability to bring enforcement actions; and**
5. **Fails to require EPA or public review of the standards that will apply to an individual site.**

Decades of coal ash disposal in the absence of federal requirements led to well over 150 EPA-confirmed damage cases throughout the United States—the highest number of damage cases ever recorded by EPA’s waste division. EPA’s requirements—which were modest, industry-preferred Subtitle D requirements in the first place—were established to be minimum standards to prevent the kinds of adverse effects to health and the environment that occurred at these damage cases. Their efficacy is still being tested as the rule’s requirements have only just begun to take effect. The proposed legislation is unnecessary and it would perpetuate the nation’s struggle with coal ash pollution. Congress’s approval of a bill with all the deficiencies highlighted above would undermine the EPA rule’s most basic protections against the dangers of coal ash disposal. For all



of the reasons outlined above, we oppose the Amendment and all similar bills that do not correct these deficiencies.

Respectfully submitted,

A handwritten signature in cursive script that reads 'Eric Schaeffer'.

Eric Schaeffer
Executive Director
Environmental Integrity Project
1000 Vermont Avenue, NW, Suite 1100
Washington, DC 20005
Lhallowell@environmentalintegrity.org

Peter Harrison
Staff Attorney
Waterkeeper Alliance
180 Maiden Lane, Suite 603
New York, NY 10038

CC:

The Honorable Harry Reid, Minority Leader
United States Senate
United States Capitol Building, S-221
Washington, DC 20510

Members of the Senate Environment and Public Works Committee