

United States Senate

WASHINGTON, DC 20510

August 18, 2023

Administrator Michael S. Regan
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Dear Administrator Regan:

We write to provide comment on the U.S. Environmental Protection Agency's (EPA's) proposed changes to the coal combustion residuals (CCR), or "coal ash," rule for inactive, or "legacy," CCR surface impoundments and CCR management units. We appreciate EPA's efforts to close the egregious loophole exempting legacy CCR impoundments from compliance. Further, we support EPA's decision to expand regulations to include CCR management units in this rule. We urge EPA to expeditiously finalize these regulations and ensure the final rule takes further steps to protect our communities and the environment from CCR.

EPA's 2015 rule set national standards for the safe disposal of CCR from coal-fired power plants to protect drinking water, human health, and the environment. When not properly addressed, CCR impoundments threaten groundwater quality, and this risk grows over time. CCR contamination due to poorly managed and unregulated CCR impoundments is compounded by increasingly frequent and extreme weather events such as flooding and erosion, and many impoundments threaten precious water resources and habitats. While we are pleased with the expanded compliance requirements in this proposal, we remain concerned with aspects of CCR impoundment closures, particularly those sited in or close to frontline communities, and we remain concerned about gaps in regulation of both legacy ponds and legacy landfills.

Today, hundreds of CCR impoundments are exempt from the 2015 rule, an estimated 500 CCR impoundments still do not have a barrier to protect soil and groundwater quality, and 91 percent of coal plants required to monitor groundwater and report the data under the 2015 rule are contaminating groundwater. Frontline and overburdened communities are at much greater risk of exposure to the toxins leached into groundwater or spilled into surface water. This is a serious environmental justice issue, as an estimated 70 percent of CCR impoundments are sited in low-income areas and communities of color. We support increased monitoring of water resources, and urge EPA to apply the rule to all CCR impoundments in or near floodplains. We urge EPA to require, to the maximum extent practicable, CCR closure by removal and, where this is not possible, complete CCR encapsulation to prevent harm to public health and the environment. EPA also must impose strict constraints on the use of CCR so that only fully encapsulated CCR, such as in concrete, is permitted.

Enforcement of this rule must be robust and also should consider communities' cumulative burdens. For example, Illinoisans living within a mile of legacy CCR impoundments, when compared to the rest of Illinois, are more than three times as likely to have less than a high school education, in addition to living with higher than average exposure to harmful air pollutants, Superfund sites, facilities using extremely hazardous substances, and

hazardous waste facilities. These communities also are the most vulnerable to extreme climate crisis events. Industry must be put on notice that noncompliance will result in EPA enforcement action.

This proposal is an important step in the right direction, and EPA must take additional steps to strengthen community and environmental protections. We urge EPA to finalize the rule to cover CCR unit closures and CCR use, including all legacy ponds and landfills, and commit to using enforcement discretion to tackle the worst polluters. We look forward to working with the agency, the Biden Administration, states, and our constituents to ensure CCR does not pose the threat to future generations that it does today.

Sincerely,



Richard J. Durbin
United States Senator



Tammy Duckworth
United States Senator



Elizabeth Warren
United States Senator



Jeffrey A. Merkley
United States Senator



Dianne Feinstein
United States Senator



Chris Van Hollen
United States Senator



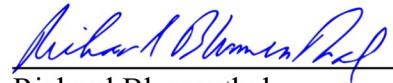
Sheldon Whitehouse
United States Senator



Benjamin L. Cardin
United States Senator



Bernard Sanders
United States Senator



Richard Blumenthal
United States Senator