

Comments/testimony of Daniel E. Estrin orally provided to EPA on 07/12/2023 at approximately 4:50 p.m. at a virtual public hearing regarding the proposed Legacy Coal Combustion Residuals (CCR) Surface Impoundments and CCR Management Units Proposed Rule. Commenters were limited to 5 minutes.

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Good afternoon, my name is Daniel Estrin and I'm the General Counsel and Legal Director of Waterkeeper Alliance. On behalf of 160 U.S. Waterkeeper groups – including Waterkeepers, Riverkeepers, Soundkeepers, Lakekeepers, and all other licensed Waterkeeper groups (some of which have or will testify today), and all of our respective individual members – I want to thank EPA for providing this opportunity for the public to comment on its Proposed Legacy CCR Surface Impoundments and Management Units Proposed Rule.

Myriad Waterkeeper groups and our members and communities have been adversely affected by coal ash pollution for far too long, and we applaud EPA's efforts to expand regulatory protections, even if it has taken far longer than we preferred. It is extremely important to the Waterkeeper movement and all of our members and supporters and our collective communities across the country that EPA finally gets this right.

We were a party to litigation against EPA that resulted in the [DC Circuit's 2018 ruling](#) vacating portions of the 2015 CCR Rule, and we appreciate EPA's efforts in the proposed rule to regulate many previously excluded older landfills and legacy ponds. The proposed rule would require monitoring, closure, and cleanup at dumpsites that were completely exempted from EPA's 2015 Coal Ash Rule, and for all coal ash at coal plants where only some dumpsites were regulated.

Many coal plant owners have avoided the 2015 Rule's cleanup requirements by blaming unregulated coal ash dumps at their sites for any groundwater pollution they detect. As a result of utilities gaming the system, groundwater remains contaminated by toxic coal ash at most coal plants across the country. The proposed rule would end this practice by requiring site owners to monitor and clean up all coal ash at a given coal plant, rather than requiring cleanup for some dumps on their properties but not others. This site-wide approach in the proposed rule will lead to much more effective cleanups.

We implore EPA to finalize a rule that maintains these proposed requirements, notwithstanding the strong opposition we expect you will receive from industry, which has been externalizing its operating costs at the expense of public health and our ecosystems for far too long.

We are, however, extremely concerned that the proposed rule might not extend regulations to **all** coal ash dumps across the nation. To achieve its mission of protecting human health and the environment, EPA must ensure the proposed rule addresses:

- All coal ash ponds, including those that did not have water in them when the original rule became effective in October 2015 and have not contained water since.
- Inactive landfills at former coal plant sites that are not producing power and do not also have legacy ponds.
- Coal ash that was used as construction fill at playgrounds, schools, and throughout neighborhoods.
- All coal ash stored in floodplains, on unstable ground, and in wetlands, regardless of whether it is situated within a power plant fence line.

With respect to this last point, we're sure you're aware that there are many coal ash dumps in floodplains around the country that are not situated within the site boundaries of power plants. These coal ash dumps are no less hazardous – and may often be more hazardous to people and wildlife due to lack of attention and regulation – than on-site dumps.

For example, one of our founding member groups, Hudson Riverkeeper, has been engaged for years working to address coal ash dumps in the Hudson River floodplain, including dumps contiguous with the Hudson River itself. One of these sites, Beacon Island, which is currently proposed as part of an expansion of the Port of Albany, contains approximately 2 million tons of coal ash that was deposited there by the nearby Albany Steam Station, but is not on the station's property. Groundwater is actively flowing through the site and into the tidal Hudson River, which is already a Superfund site, serves as a drinking water source for many communities, and is essential fish habitat.

It seems inconceivable that EPA might promulgate new coal ash regulations designed to fill the large gaps left by the 2015 rulemaking, but not address the elephant in the room: off-site coal ash dumps situated in floodplains of important waterways and drinking water sources such as the Hudson River. We strongly urge the agency to include regulation of these massive off-site toxic pollution sources in your final rule.

Thank you for your time, and thank you again for the improvements to the 2015 rule that you have proposed. It is our sincere hope that you will make the final rule even stronger, as we will be suggesting in written comments.