

March 23, 2020

By Email

Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
USEPA Headquarters
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Re: Request for Extension of Comment Periods for Proposed Rules in Light of National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Pandemic

Dear Administrator Wheeler:

The undersigned groups, representing millions of interested Americans, request that the U.S. Environmental Protection Agency (“EPA”) extend the public comment periods for two proposed rules pertaining to the regulation of coal combustion residuals (“CCR”). EPA recently published two proposals, “*A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments; Implementation of Closure*,” EPA-HQ-OLEM-2019-0173 (“Part B”) and the “*Proposed Rule for Disposal of Coal Combustion Residuals from Electric Utilities; Federal CCR Permit Program*,” EPA-HQ-OLEM-2019-0361 (“Permitting”), on March 3, 2020 and February 20, 2020, respectively. EPA set deadlines of April 17, 2020 for the Part B proposal and April 20, 2020 for the permitting proposal for submission of public comment.

Both of these proposed rules are complex and highly technical, involving subject matter that requires expertise in fields such as hydrogeology and engineering to fully evaluate and comment. The proposals also touch the lives of millions of Americans, because they address one of the largest toxic waste streams generated in the United States. Because EPA established public comment periods for the Part B and Permitting proposals of only 45 days and 60 days, respectively, 66 public health and environmental advocacy groups sent a letter on March 6, 2020 requesting a 120-day extension of the comment periods. EPA has not responded to this request.

We write now to supplement this request in light of the unprecedented national emergency brought on by the outbreak in the U.S. of the novel coronavirus. Comment deadlines on these coal ash rulemakings that were difficult to meet initially have now become impossible for many. The nation’s attention is focused on keeping its families healthy and safe. Many schools and daycares are closed, which means parents are focused on childcare. Nationwide, public health officials are urging aggressive social distancing to flatten the curve of infection and prevent our health care system from being overwhelmed with critically ill patients, which has resulted in widespread closure of offices and businesses. In increasingly large portions of the country, local governments have directed community members to remain in their homes except for essential

activities such as purchasing food and obtaining medical care. Many people have lost jobs and are facing tremendous economic hardships due to the COVID-19 pandemic.

Courts and government agencies throughout the country have extended deadlines in recognition of the profound disruption to the lives of all Americans that the pandemic has caused. The Internal Revenue Service granted a three-month extension on individual income tax filings. The U.S. Supreme Court has extended the deadlines for litigants nationwide to petition for a writ of certiorari by 60 days. Extensions such as these are critically important for millions of Americans, including staff and members of the undersigned organizations, who are attempting to stay healthy and safe and find a way to continue working under unprecedented conditions, while complying with critical mandates from federal, state and local officials.

It is unconscionable for EPA not to extend the comment deadlines for these proposed rules under these unprecedented circumstances. Many members of our groups will be directly harmed by the proposed Part B and Permitting rules, which would prolong and increase the risks to public health and safety from the operation of hundreds of dangerous, leaking coal ash dump sites nationwide and cause additional contamination of groundwater. Residents of impacted communities, including members of our organizations who would be directly harmed by the increased risks to their health and safety that these proposed rules would create, are entitled to an adequate and meaningful opportunity to comment on these rules under the Resource Conservation Recovery Act and the Administrative Procedure Act.

Moreover, a failure by EPA – whose central mission is to protect public health and the environment – to provide adequate time for the public to comment on proposed rules that would increase risks to public health during an unprecedented national public health emergency would also infringe on impacted community members' rights under the U.S. Constitution to due process of law. Families whose health is at risk from the current COVID-19 emergency would be deprived of critical statutory and due process rights if they are not given an adequate opportunity to comment on regulations that also threaten their health by reducing protections on unsafe coal ash disposal.

Thank you in advance for your prompt consideration of this request. We ask that EPA respond to this letter no later than March 27, 2020 and post notice of its decision in the dockets of both rulemakings and on its Coal Ash web site (epa.gov/coalash).

Sincerely,

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