

# Congress of the United States

Washington, DC 20515

October 21, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. EPA  
1200 Pennsylvania Avenue, NW  
Washington, D.C. 20460

Pete Lopez  
Regional EPA Administrator  
City View Plaza II Suite 7000  
#48 Rd. 165 km1.2  
Guaynabo, PR 00968-8069

Dear Administrator Wheeler:

We write to urge you to withdraw the Environmental Protection Agency's (EPA) July 30<sup>1</sup>, 2019 "Phase 2" proposal to weaken critical 2015 Coal Ash Rule safeguards for coal ash waste piles and sites where coal ash is placed on or beneath the ground.

Coal ash contains deadly toxic substances, including carcinogens like arsenic, cadmium and chromium, and neurotoxins such as lead, lithium and mercury, which have polluted air and water at hundreds of coal ash dump sites across the nation.<sup>2</sup> Decades of dumping have created hazardous leaking dumps at almost all U.S. coal powered electrical generation plants. In fact, monitoring data found that 91 percent of U.S. coal powered plants are currently contaminating groundwater with toxic substances above federal health standards.<sup>3</sup>

As you know, coal ash is either placed below ground in a landfill or dumped in piles. Coal ash waste piles, which can reach 12 stories high and can contain half a million tons of toxic waste, are above ground accumulations that are not covered with grass or soil. These piles are also more dangerous than landfills because greater amounts of toxic waste are exposed to wind and water, causing ash to become airborne and leach into groundwater. They are particularly vulnerable during storm events because of their instability.

Recognizing the danger of toxic waste piles, the EPA's 2015 Coal Ash Rule requires coal ash waste piles to comply with all the safeguards applicable to landfills. New waste piles must be lined, have leachate collection systems, and comply with siting restrictions. They must also minimize toxic dust, control polluted run-off, conduct frequent inspections, monitor groundwater, clean up contaminated groundwater, and provide the public with extensive information concerning compliance with these safeguards.

---

<sup>1</sup> Catherine Morehouse, EPA moves to roll back environmental protection requirements for utility coal ash sites, *available at* <https://www.utilitydive.com/news/epa-moves-to-roll-back-environmental-protection-requirements-for-utility-co/559904/>

<sup>2</sup> Christopher Mele, What is Coal Ash and Why is it dangerous? *available at* <https://www.nytimes.com/2018/09/21/us/coal-ash-spill-dam-breach.html>

<sup>3</sup> Steven Mufson and Brady Dennis, Report finds widespread contamination at nation's coal ash sites, *available at* [https://www.washingtonpost.com/national/health-science/report-finds-widespread-contamination-at-nations-coal-ash-sites/2019/03/03/d80c82e6-3ac8-11e9-aaac-69364b2ed137\\_story.html](https://www.washingtonpost.com/national/health-science/report-finds-widespread-contamination-at-nations-coal-ash-sites/2019/03/03/d80c82e6-3ac8-11e9-aaac-69364b2ed137_story.html)

Alarming, under the EPA's "Phase 2" proposal, toxic coal ash waste piles can escape these critical protective safeguards. Coal ash waste piles would no longer be subject to landfill requirements if a power plant owner claims that the ash pile is "temporary" and will be removed at some future date -- even hundreds of years from the creation of the waste pile. Consequently, the owner does not have to inspect the pile, monitor groundwater, execute a dust control plan, or clean up contaminated groundwater, among other safeguards.

In addition, the proposed rule change encourages the use of toxic coal ash as a cheap alternative to soil as a filler in construction and landscaping by removing all volume restrictions for such waste projects<sup>4</sup>. The proposal allows projects where coal ash is placed on land for any purpose, usually without barriers, to contain unlimited volumes of coal ash even when placed near drinking water wells, homes and waterbodies.<sup>5</sup> The proposed rule also subjects users to completing safety demonstrations only when coal ash is placed in inherently dangerous areas, such as within five feet of groundwater, in floodplains, and over sinkholes. There is no required notification to the public that such projects are occurring and no requirement to share demonstrations with the public unless directly asked. EPA data show there are many known re-use or fill projects using coal ash that have contaminated water, including drinking water in excess of federal safety standards.<sup>6</sup>

The 2015 Coal Ash Rule is currently the reason why hundreds of American communities are protected. Coal plant owners have already established publicly accessible websites and fugitive dust control plans, completed hundreds of inspections, and published critical groundwater quality data. The commonsense standards of the 2015 rule -- which received more than a half-million supporting comments from the public<sup>7</sup> -- are helping to protect clean water and safeguard public health.

Coal ash hits our most vulnerable communities, like the municipality of Guayama, Puerto Rico, the hardest. Seventy percent of ash dams are in areas where the household income is less than the national median. EPA's "Phase 2" proposal fails to address the direct impacts this pollution has on these communities. As such, we urge the EPA to withdraw this dangerous proposal to block federal safeguards for coal ash waste piles and construction projects that use toxic coal ash as fill, and instead commit to adequately protecting the public's health and our environment from toxic coal ash pollution by strengthening the underlying 2015 rule, as required by the U.S. Court of Appeals for the D.C. Circuit in its August 2018 ruling.

Thank you for your consideration of these comments.

---

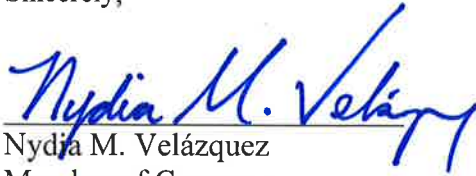
<sup>4</sup> EarthJustice, Trump EPA removes more critical toxic coal ash protections *available at* <https://earthjustice.org/news/press/2019/trump-epa-removes-more-critical-toxic-coal-ash-protections>

<sup>5</sup> Duke University, EPA's proposal coal ash amendments will boost risk of toxic contamination, study finds *available at* <https://phys.org/news/2019-10-epa-coal-ash-amendments-boost.html>

<sup>6</sup> *Supra*, note 4.

<sup>7</sup> EarthJustice, Trump Administration's new rule weakens toxic coal ash pollution safeguards, *available at* <https://earthjustice.org/news/press/2018/trump-administration-s-new-rule-weakens-toxic-coal-ash-pollution-safeguards>

Sincerely,



Nydia M. Velázquez  
Member of Congress



Diana DeGette  
Member of Congress



Steve Cohen  
Member of Congress



Darren Soto  
Member of Congress



Alexandria Ocasio-Cortez  
Member of Congress



Sean Casten  
Member of Congress



José E. Serrano  
Member of Congress



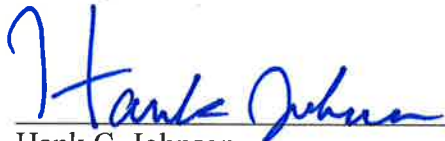
Alan Lowenthal  
Member of Congress



Gerald E. Connolly  
Member of Congress



Jan Schakowsky  
Member of Congress



Hank C. Johnson  
Member of Congress



Jared Huffman  
Member of Congress



Rashida Tlaib  
Member of Congress



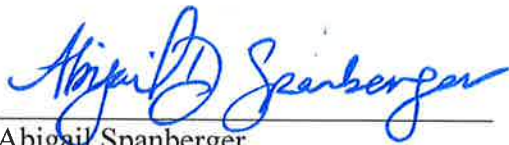
Barbara Lee  
Member of Congress



Mike Thompson  
Member of Congress



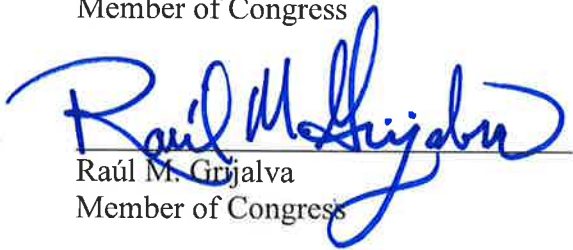
Ro Khanna  
Member of Congress



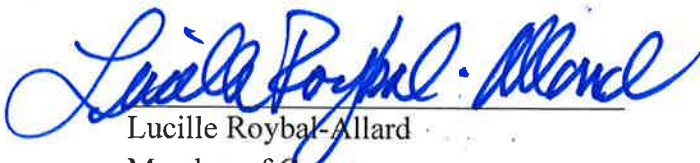
Abigail Spanberger  
Member of Congress



David E. Price  
Member of Congress



Raúl M. Grijalva  
Member of Congress



Lucille Roybal-Allard  
Member of Congress



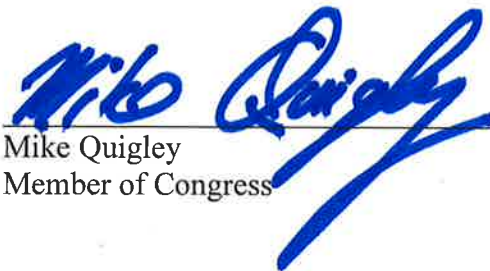
Earl Blumenauer  
Member of Congress



Yvette Clarke  
Member of Congress



Bill Foster  
Member of Congress



Mike Quigley  
Member of Congress



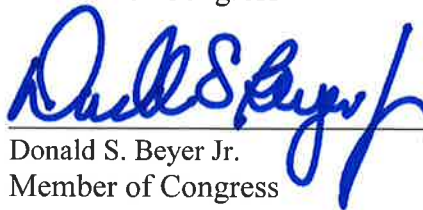
Alma S. Adams  
Member of Congress



Matthew A. Cartwright  
Member of Congress



Robert C. "Bobby" Scott  
Member of Congress



Donald S. Beyer Jr.  
Member of Congress

  
A. Donald McEachin  
Member of Congress