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March 2, 2009

Dear Administrator Jackson:

Coal combustion waste poses a serious threat to the environment and public health across the United States. Nearly a hundred million tons of toxic coal ash and related combustion wastes pile up in unlined ponds and pits across the United States every year. The disaster at TVA's Kingston plant dramatized the need for federal standards for safe disposal of these wastes, which are virtually unregulated by the U.S. Environmental Protection Agency (EPA). After eight years of counterproductive backpedaling, we are confident that you will chart a new, responsible course for the Agency by supporting the adoption of standards, whether reflected in legislation or new regulations, that reflect the gravity of the situation and are guided by a consistent set of principles. In this regard, we urge you to recognize the following:

- (1) The EPA has been weighing whether and how to regulate coal combustion wastes for at least a decade, while this toxic material has continued to leak or spill from unsafe dumpsites. Nearly five years ago, a coalition of 125 environmental groups petitioned the Agency to stop disposal of coal ash in the kind of wet "surface impoundment" that gave way in Kingston. The evidence is in, and the Agency needs to act now to regulate the disposal of coal combustion wastes under Subtitle C of the Resource Conservation and Recovery Act.
- (2) The EPA should consult with the Office of Surface Mining and other federal agencies as appropriate. But the EPA must assume the lead responsibility for writing the rules, as it is the federal agency with the broadest statutory mandate to protect both human health and the environment, and because it has the expertise and experience to write and enforce hazardous waste regulations.
- (3) Standards should be designed to protect both public health and natural resources, taking into account existing federal and state standards for protecting drinking water and aquatic life.
- (4) Regulations should apply to all forms of land disposal, not just surface impoundments, and should be designed to prevent slow leaks as well as catastrophic structural failures. EPA's 2007 "Human and Ecological Risk Assessment from Coal Combustion Wastes" documented the highest cancer risks from surface impoundments, but also found unacceptable health risks from clay-

lined coal combustion waste landfills leaking arsenic into groundwater. The same study showed that both impoundments and landfills threaten to overwhelm aquatic ecosystems with toxic levels of other heavy metals.

- (5) The wet storage or disposal of coal combustion waste should be phased out. All containment structures around coal combustion waste surface impoundments should be examined immediately to ensure their structural stability, and contained wastes should be transferred to lined and consistently covered landfills located outside of flood plains. Active surface impoundments should be closed and emptied within two years. Monitoring and cleanup standards should be required for impoundments that have already closed, and any remaining ash should be transferred to dry disposal sites within five years.
- (6) Coal combustion waste should be carefully analyzed to determine its toxic constituents and the likelihood that contaminants will leach under real world conditions. This characterization should include test measures called for in the National Research Council's 2006 report, Managing Coal Combustion Residues in Mines, and recommended by the EPA's own Science Advisory Board to evaluate the hazards of coal combustion waste at existing and proposed disposal sites.
- (7) The topography and hydrogeology of proposed disposal sites should be carefully examined to evaluate the likelihood that toxic metals and other contaminants will migrate offsite. Siting requirements should keep coal combustion waste landfills out of locations that are vulnerable to leaks, contamination, or major breaches of waste into the surrounding environment, such as flood plains, wetlands, sandy or gravel soils, shallow groundwater tables, active seismic fault lines, karst zones, and sensitive wildlife habitat.
- (8) Coal combustion waste disposal facilities should be designed to prevent offsite contamination. Standards should include placement of waste well above the water table, composite synthetic liners to prevent leaks, leachate collection systems to trap and treat any wastes that do escape, caps and covers to minimize the creation of leachate, and fugitive dust controls to eliminate dispersion of dust or fine particles. The discharge of any wastes into groundwater, surface water or air should be strictly prohibited.
- (9) Groundwater and surface water should be sampled to fully characterize baseline (predisposal) water quality and monitored above and below a disposal site and in likely pathways for offsite migration of toxic metals or other pollutants. Samples should be collected frequently enough to detect contamination and long enough to take into account that pollutants may be released over an extended period of time. Monitoring should be designed with clear corrective action standards to detect and prevent contamination from the full range of pollutants that are associated with coal combustion waste.

- (10) Site owners and operators should assume responsibility for monitoring of disposal sites for at least 30 years after closure, and for cleaning up any contamination that may result during that time. Owners or operators should be required to demonstrate that they have the financial means to meet these obligations and post appropriate financial assurance to ensure these obligations are promptly met.
- (11) Federally enforceable permits should be required for the construction or operation of new or expanded coal combustion waste disposal sites. The public should have the opportunity to participate in permit proceedings, submit comments, request a public hearing, and appeal a final decision by EPA or the authorized state agency.
- (12) Unsafe practices should not be sheltered under so-called “beneficial use” exemptions. In particular, the use of coal ash to “reclaim” surface or underground mines, including abandoned mines, should be subject to the same stringent standards to prevent offsite contamination that apply to land disposal facilities. As recommended by the National Research Council, the characteristics of both coal combustion waste and potential reclamation sites should be evaluated to determine whether minefilling is suitable for specific locations. EPA, in consultation with the Office of Surface Mining, should promulgate enforceable federal regulations governing the disposal of coal ash in mines.

We hope these principles provide a useful framework as the Agency moves forward to address this important issue. We also recognize that you have inherited a backlog of urgent environmental problems that need your attention.

But we feel confident that you will agree that it is important for the EPA to act as soon as possible. The Agency first recognized coal ash to be a contingent hazardous waste requiring safe standards for disposal in the regulatory determination dated March 5, 2000, which it posted on its website. That decision was based on years of study, and over the past decade, the evidence to support federal standards has continued to accumulate. For example:

- The number of damage cases where ground water and surface water have been contaminated by coal ash has more than doubled since the publication of EPA’s Final Regulatory Determination on Wastes from the Combustion of Fossil Fuels, 65 Fed. Reg. 32214 (May 22, 2000). This has occurred despite the fact that EPA has not searched independently for damage cases since 2000 nor has the Agency updated its damage case list since 2005. As a result, dozens of documented cases of substantial releases and contamination are absent from the agency’s list.
- Reports published by EPA’s Office of Research and Development indicate that coal combustion waste leaches hazardous constituents such as arsenic, cadmium, antimony, selenium and other pollutants in much greater quantities than was previously recognized in EPA’s March 1999 Report to Congress: Wastes from the

Combustion of Fossil Fuels. The Agency's Office of Research and Development has recognized that air pollution controls will transfer even larger quantities of heavy metals into ash, scrubber sludge, or other combustion wastes, and these will be dumped into impoundments or landfills that are not designed to contain toxic waste.

- EPA reports published in 2005 and 2006 have documented that the majority of states still lack regulations mandating basic safeguards at waste disposal sites, including liners and groundwater monitoring. *See U.S. Dep't of Energy & U.S. Env'tl. Prot. Agency, Coal Combustion Waste Management at Landfills and Surface Impoundments, 1994–2004* (Aug. 2006) *and DPRA Inc., Estimation of Costs for Regulating Fossil Fuel Combustion Ash Management at Large Electric Utilities Under Part 258* (prepared for the Office of Solid Waste, U.S. Env'tl. Prot. Agency) (Nov. 30, 2005).
- The National Research Council warned in 2006 that coal ash used to reclaim abandoned mines could release their toxic burden into groundwater or surface water, unless the federal government established safe standards for this practice.
- As noted above, the EPA's 2007 assessment estimated risks to both human health and aquatic life from surface impoundments and landfills to be well above levels that EPA generally considers "acceptable."

EPA's failure to act to prevent the hazards documented extensively in the Agency's own studies is difficult to understand. So is the Agency's refusal to respond to a Petition for Rulemaking submitted in February 2004 and signed by 125 environmental groups, which requested the prohibition of disposal of coal ash in water and the regulation of disposal sites under Subtitle C of RCRA. EPA has essentially done nothing to move toward regulation of the waste since the publication of a Notice of Availability in August 2007.

We hope that under your leadership, the Agency will put an end to this waiting game, and we are ready to do our part. In January of 2007, a coalition of more than forty environmental groups delivered a detailed model of coal combustion waste regulations that the Agency should use as a template for new federal regulations. Our proposal provides a good starting point, but should be supplemented to account for what has been learned from the disasters in Tennessee and Alabama, as well as EPA's Human and Ecological Risk Assessment and the documents cited above.

It is time to face the obvious: coal combustion waste needs to be regulated as the hazardous waste that it is, before even more damage is done. The evidence is in, and the time to act is now.

Thank you for considering our views.

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