

Congress of the United States
Washington, DC 20515

July 31, 2019

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Administrator Wheeler:

We write to express our deep concern regarding the Environmental Protection Agency's (EPA) failure to address pervasive water contamination from unsafe coal ash disposal.

In March 2019, a report was released on coal ash pollution revealing that at least 91 percent of the coal plants currently regulated by the federal Coal Ash Rule (242 of 265 plants in 39 states) have contaminated groundwater with high levels of toxic pollutants above federal health standards. These toxic pollutants include arsenic, a known carcinogen, and lithium, a neurotoxin, along with other hazardous substances that cause serious harm to human health, such as cobalt, molybdenum, and radium 224 and 226.¹ The report was based on industry data, which became available because of the monitoring and disclosure requirements of the federal Coal Ash Rule. Despite these findings of nationwide groundwater contamination, the EPA has failed to take any action to protect communities threatened by serious water pollution.

Electric utilities have been getting away with dangerous dumping of toxic coal ash for more than a century. Fortunately, in 2015, the EPA established the first-ever standards for the disposal of coal ash.² The federal Coal Ash Rule requires critical safeguards, including groundwater monitoring, the shutdown of leaking dumps and dumps in dangerous locations, the cleanup of contaminated water, and safe closure.

Despite these critically needed requirements and widespread evidence of contamination, it seems that the EPA is intent on weakening the new federal protections. In July 2018, the EPA finalized the first of its multi-part rulemaking to gut the 2015 rule. This rule diminishes health and

¹ <http://www.environmentalintegrity.org/reports/coals-poisonous-legacy/>

² <https://www.govinfo.gov/content/pkg/CFR-2015-title40-vol25/xml/CFR-2015-title40-vol25-part257-subpartD.xml>

environmental protections by extending deadlines for closing leaking coal ash ponds and ponds within five feet of groundwater; weakening drinking water protection standards for hazardous chemicals such as lead and molybdenum; failing to add boron to the list of pollutants driving cleanups of groundwater at contaminated sites; allowing suspension of groundwater monitoring in certain situations; and giving state officials discretion to determine whether sites are adhering to the rule's requirements.

The July 2018 rule and the additional rollbacks of coal ash protections that the EPA plans to propose this summer are both illegal and dangerous. In August 2018, the D.C. Circuit Court held that the 2015 Coal Ash Rule was too weak and failed to protect human health and the environment as required by statute.³ The court ordered the EPA to strengthen the Coal Ash Rule in critical respects. Specifically, the court ordered the EPA to protect against pollution from unlined and inadequately lined ash pits, as well as from legacy coal ash ponds that the EPA improperly excluded from regulation.

The EPA has since failed to revise the Coal Ash Rule as mandated by the court, allowing industry to continue polluting and contaminating hundreds of vulnerable communities located near coal plants. Industry continues to get away with cheap but dangerous coal ash dumping, which disproportionately harms residents of low-income communities and communities of color. As a result, Americans across the country are at risk of being contaminated by horrific pollutants that cause cancer and neurological damage, among other harms.

It is the EPA's duty to address this widespread contamination and ensure Americans have safe sources of drinking water, clean lakes and streams, and an environment free of toxic coal ash. To this end, the EPA must immediately refrain from efforts to roll back the Coal Ash Rule and must instead make good on its promise to expeditiously complete new rulemakings that strengthen the rule, as required by the D.C. Circuit Court. Secondly, the EPA must enforce the requirements of the Rule to require that contaminated sites are promptly and properly cleaned up.

We urge the EPA to protect the health of communities near the hundreds of contaminated sites identified by the industry's own monitoring data. Vulnerable communities are living with the devastating impacts of coal ash contamination every day, and we expect the EPA to live up to its statutory duty to protect human health and the environment from this toxic waste.

To that end, we are requesting answers to the following questions:

- 1) What specific steps is the EPA taking to protect vulnerable communities and sensitive environments from the serious and widespread groundwater contamination revealed by industry data?

³ [https://www.cadc.uscourts.gov/internet/opinions.nsf/0/5A6D02C8038BA2CA852582F0004E0D37/\\$file/15-1219-1746578.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/0/5A6D02C8038BA2CA852582F0004E0D37/$file/15-1219-1746578.pdf)

- 2) How is the EPA incorporating the new evidence of widespread groundwater contamination into its proposed rulemakings?
- 3) When will the EPA complete rulemaking satisfying the order of the D.C. Circuit Court?
- 4) What is the schedule for any additional rulemakings concerning the Coal Ash Rule and what is the substance of these rulemakings?
- 5) How is the EPA addressing industry noncompliance with the CCR rule?
- 6) What oversight is EPA providing to ensure that the cleanup plans currently required at more than 100 contaminated sites are effective and compliant with the 2015 Coal Ash Rule?

Please do not hesitate to contact Alex Schnelle in my office at 202-225-33265 or alex.schnelle@mail.house.gov, if you have any questions related to this request.

Most sincerely,



Steve Cohen
Member of Congress



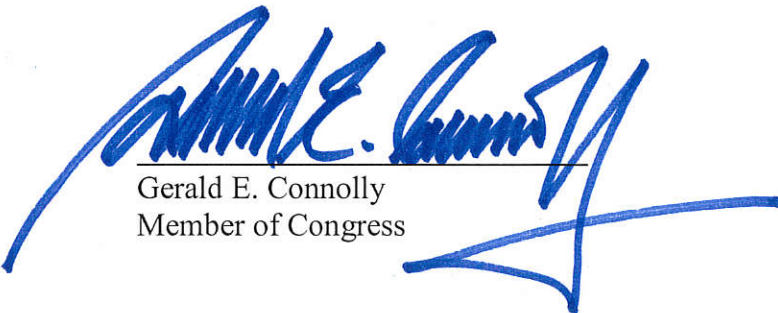
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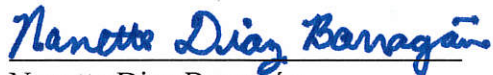
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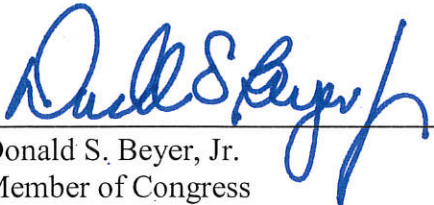
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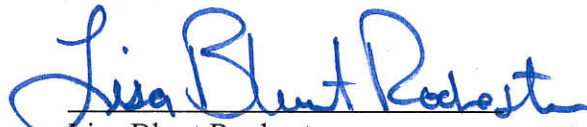
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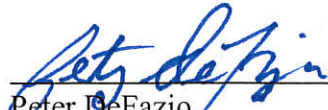
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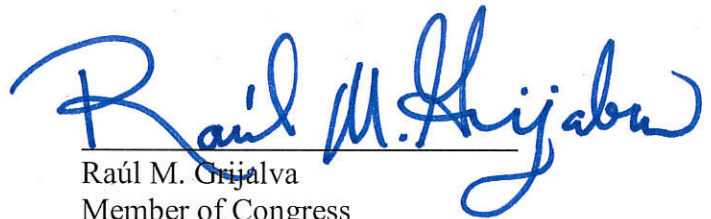
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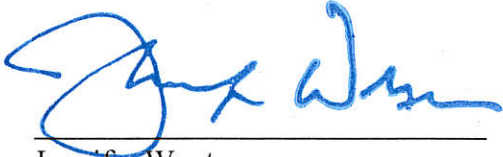
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