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Washington, DC 20460

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Re: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One); Proposed Rule

The American Coal Council (“ACC”) submits these comments in response to the Environmental Protection Agency’s (“EPA”) March 15, 2018 Federal Register Notice of its proposed rule (“Proposed Rule”) for Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; Amendments to the National Minimum Criteria (Phase One).

EPA has proposed these changes to coal combustion residuals (“CCR”) disposal regulations to: (1) address provisions of its April 2015 final CCR rule (“2015 Rule”) that were litigated and remanded back to the agency in mid-2016, (2) make changes due to the subsequent Water Infrastructure Improvements for the Nation (“WIIN Act”) legislation passed by Congress and signed into law by the president in December 2016, and (3) address a new issue regarding the use of CCR during certain closure situations. These proposed changes are important and will significantly impact the implementation, enforcement, and cost to comply with CCR regulations.

The ACC has been in existence for 36 years and represents the collective business interests of the American coal industry. Our members include mining companies and suppliers, transportation companies and terminals, electric utilities and independent power producers, industrial coal consumers, and many industry support services

providers. Since our member companies touch every aspect of turning one of America's most abundant resources into reliable and affordable electricity for the United States economy, our Association has first-hand knowledge of the direct and indirect impacts of new coal-related regulations and a unique, "boots on the ground" perspective. In addition to its use by the electric power sector, coal is utilized in the industrial production of cement and chemicals and is integral to the steel-making process. ACC's diverse membership base encompasses the entire coal supply chain, and it is from this broad perspective that we assess the impacts of new regulations impacting coal supply and use.

Regulatory Clarity and Certainty, and the Importance of Coal Generating Capacity

ACC's electric power sector member companies with coal generation assets would be directly impacted by this EPA Proposed Rule to amend the regulations for the disposal of CCR in landfills and surface impoundments, but the indirect impacts of EPA's Proposed Rule may affect the entire coal supply chain. In making these comments, ACC emphasizes the importance of EPA providing regulatory certainty and clarity and removing barriers or impediments that might cause CCR units to be prematurely closed. Any such premature closures will very likely result in shutting down the generating units for which such facilities store CCR, or possibly converting those generating units to natural gas. This will result in the loss of jobs throughout the coal supply chain.

Announced power sector coal retirements in the U.S. currently total nearly 111,000 MW (610 generating units), and of this amount nearly 76,000 MW (456 generating units) is attributed to previous EPA regulations and policies.¹ Approximately 69,000 MW of coal capacity has already retired and another 21,000 MW is expected to be shut down between 2018 and 2020.² In addition to the severe regulatory pressure, coal generation is pressured by current low natural gas prices and the continued building and use of less-efficient, intermittent wind and solar capacity due to federal subsidies and state renewables mandates.

Our nation cannot risk the loss of even more coal generation capacity.

Retention of the remaining U.S. coal fleet is essential to having adequate baseload generation and fuel source diversity to support electricity for American businesses and consumers supplied on-demand from a reliable and resilient grid. Coal has been the backbone of affordable and stable electricity costs for American consumers. It acts as a hedge against the impacts of spiking natural gas prices. Additional shutdown of coal

¹ American Coalition of Clean Coal Electricity, "Retirement of U.S. Coal-Fired Electric Generating Units", January 17, 2018 at <http://www.americaspower.org/issue/coal-fired-unit-retirements-2/>

² *Ibid.*

generation increases the likelihood that consumers will face higher and more volatile electricity prices and even electricity scarcity. From California in the west, to New York and New England in the east including during the recent “Bomb Cyclone”, there is abundant evidence that little or no coal use limits options for generators and increases prices for consumers.

CCR Compliance Deadline Extension is Critical

Compliance deadlines involving parts of the 2015 Rule that EPA is now proposing to amend are quickly approaching. It is therefore important that EPA extend upcoming compliance dates, including for the groundwater monitoring program and location restrictions to provide sufficient time to finalize the revisions. Compliance dates in the 2015 Rule will have passed before state CCR permit programs are approved by EPA or EPA issues its own permits.

The 2015 Rule did not provide for implementation through federal or state programs and thus was “self-implementing” in nature. As such, owners and operators of coal generating units would need to determine what was necessary to comply and to certify their compliance by posting information on a public website. To improve this regulation and make it more straightforward and cost effective to implement, EPA’s 2015 Rule should incorporate the risk-based elements of EPA’s Proposed Rule.

EPA’s design of the 2015 Rule excluded many of the site-specific, risk-based provisions common to other well-established state and federal solid waste programs. Instead of the common, risk-based management approach taken in many of these other programs, EPA chose a one-size-fits-all regime. The absence of site-specific consideration resulted in an inflexible rule. That inflexibility is problematic from a cost and compliance standpoint because it will cause excessively, unnecessarily high costs to comply.

EPA estimates the cost savings associated with the changes in this Proposed Rule at \$32 to \$100 million per year at a 7 percent discount rate and annualized over 100 years.

Without the extension of the compliance deadlines, owners and operators of affected CCR units will be put in the position of making major, irreversible operating decisions on the basis of the existing one-size-fits-all standard. The advantages of the risk-based performance standards in EPA Proposed Rule would be foregone. Without the extension of the deadlines, the premature closure of CCR units is far more likely as is the shutdown of the associated coal generating units that would be without disposal capacity. This would be unfortunate collateral damage to the coal fleet.

Extension of the compliance deadlines for the CCR regulations is also important in the context of EPA's plans to reconsider the Effluent Limitations Guidelines, and the coordination of these two rulemakings is extremely important to the power sector and to the preservation of the remaining coal fleet.

WIIN Act Should Spur EPA Changes

With the WIIN Act's enactment into law, new statutory provisions applicable to CCR facilities were established. This includes authorizing states to implement the CCR rule through an EPA approved program, and also authorizing EPA to enforce the rule and in certain situations act as the permitting authority.

This change means that EPA's original rationale for excluding the site-specific risk-based tailoring provisions from its 2015 Rule no longer exists. Thus, this change in the law should prompt EPA to finalize the proposed changes incorporating risk-based alternative performance standards as soon as possible.

EPA is also provided with inspection and enforcement authority for the CCR rule under the WIIN Act. This authority covers facilities operating under a permit program and also to those operating under a self-implementing program.

Boron and Other Constituents without MCL levels

There is no Maximum Contaminant Level ("MCL") for boron established by EPA and one is not necessary to meet the Resource Recovery and Conservation Act protectiveness standard. If boron is now added to Appendix IV, the cost of CCR compliance will be much more expensive and is thereby likely to increase the number of CCR unit closures. It may unnecessarily result in the shutdown of greater amounts of coal generating capacity. The Proposed Rule should also provide for alternative Groundwater Protective Standards for other Appendix IV constituents without established MCLs. Absent such provisions, even more CCR units will be forced to close based on the presence of constituents above background levels, and therefore even more coal generating capacity will be at risk.

Summary and Conclusions

Complying with EPA's 2015 Rule would be unnecessarily expensive and in many cases prohibitively so, and thus would have severe impacts for the nation's coal fleet and coal supply chain jobs. It is necessary and appropriate for EPA to make the changes discussed here to improve the Proposed Rule for more reasonable and appropriate implementation and administration of CCR regulations. Providing risk-based standards and incorporating them into the existing self-implementing rule as a first step is needed.

Otherwise, compliance deadlines will come and go before any proposed risk-based standards can be included in state or federal CCR permit programs – programs which have currently not been established. Under such unfortunate regulatory conditions, decisions made with regard to major plant capital expenditures and operating changes will not be positive for the remaining U.S. coal fleet. For all practical purposes, the absence of prompt EPA action to extend compliance deadlines will result in more regulatory-induced EPA shutdowns of coal capacity.

The American Coal Council urges EPA to proceed quickly to extend CCR rule compliance deadlines, adopt changes prompted by the WIIN Act, and address boron and other non-MCL constituents of Appendix IV as we respectfully suggest herein.