

TESTIMONY OF DAVID MCELLIS ILLINOIS LEGISLATIVE DIRECTOR, ENVIRONMENTAL LAW & POLICY CENTER IN SUPPORT OF PROPOSED RULE CHANGES FOR LEGACY COAL COMBUSTION RESIDUALS SURFACE IMPOUNDMENTS AND CCR MANAGEMENT UNITS

My name is David McEllis, Illinois Legislative Director for the Environmental Law and Policy Center (ELPC). ELPC is the Midwest's leading environmental legal advocacy and sustainability innovation organization. ELPC staff works throughout the Great Lakes states, in Washington D.C. and with Canada to protect the Great Lakes. ELPC appreciates the opportunity to testify in person on the proposed changes for legacy Coal Combustion Residual (CCR) surface impoundments and CCR management units for the disposal of coal combustion residuals or coal ash. ELPC believes this proposal is a big step in the right direction and a huge improvement on the 2015 coal ash rules. Polluters must clean up all of the toxic coal ash left behind at their facilities. While it is important to remove ash from all facilities, I will emphasize some of the specific risks of coal ash located near the Great Lakes.

The Great Lakes are a global gem, containing 21% of the planet's fresh water supply. 42 million people rely on the Great Lakes for safe drinking water. They provide a rich aquatic habitat for many species. They support a \$7 billion annual fishing industry, and Great Lakes recreation draws millions of tourists who boost the economies of shoreline communities. In short, the Great Lakes are where millions of people live, work and play.

Coal ash remains a critical issue across the Midwest Great Lakes states where ELPC works. Coal ash contains hazardous pollutants including arsenic, mercury, lead, and other heavy metals linked to many serious health issues. We know coal ash is harmful and we must prevent the contamination of groundwater, surface water, and drinking water. Polluters must properly clean up coal ash and keep it away from the water table. CCR sites are often found in communities with a history of pollution and large populations of economically disadvantaged people and disproportionately impact people of color. Cleaning up coal ash and implementing strong regulations are an environmental justice issue. We are glad the EPA is taking this issue seriously with the proposed rule changes.

In June 2022, ELPC issued a report focused on the threats to people, communities and businesses from high Lake Michigan water and wave levels, *Rising Waters: Climate Change Impacts and Toxic Risks to Lake Michigan's Shoreline Communities*. ELPC will submit a copy of the *Rising Waters* report along with our written testimony. Using NOAA's Enhanced Digital Elevation Model data, this report visualizes the extent and severity of inundation at 12 hot spots along Lake Michigan's shoreline and surrounding areas due to extreme weather events of the scale expected in the near future.

The *Rising Waters* report points to risks at these sites if Lake Michigan levels rise to exceed record flood levels. Lake Michigan experienced a dramatic swing from record lows in 2013 to near record highs in 2020, a six-foot difference in less than a decade. Climate scientists anticipate stronger storms and more unpredictable lake levels in the future, but many shoreline communities are not prepared. According to an EarthJustice study, there are 88 coal ash dumpsites located within 2 miles of one of the Great Lakes. ELPC's *Rising Waters* report specifically looked at 3 coal ash sites that sit on the shore of Lake Michigan that could potentially contaminate the lake. One of these sites is in Waukegan, Illinois, an environmental justice community just 40 miles north of Chicago. Our friends in Waukegan have fought for years to close this coal plant and are now fighting for the proper cleanup of the coal ash at that site. The *Rising Waters* report showed that under certain flood conditions, the Waukegan coal plant area containing ash could flood, causing contaminant leaching right next to Lake Michigan.

Risks from high lake levels include the possibility of flooding coal ash ponds, water infiltrating adjacent areas that contain coal ash, and toxic coal ash contaminating Lake Michigan. One of the main recommendations of the Rising Waters report is to reassess vulnerable sites and clean up toxic sites along the shoreline. Given the possibility of rising lake levels due to climate change and the potential for harm to such an important source of drinking water, proper closure and clean-up of CCR sites is vital.

ELPC appreciates EPA's proposal because it will ensure proper cleanup to protect communities and the Great Lakes.

This proposed rule closes a critical regulatory gap. Under the 2015 CCR rule, hundreds of coal ash ponds and landfills were exempted, which amounts to about half of the coal ash in the United States. Those dumps included legacy coal ash ponds and landfills that stopped collecting waste before October 2015. These legacy impoundments are more prone to leaks and structural issues than newer facilities. The proposed rule addresses some of those gaps, requiring closure and cleanup at many of the previously exempted sites. There are critical elements of the proposed rule, requiring site owners to monitor and clean up all coal ash at a given coal plant, as opposed to the piecemeal approach that had been in effect. Accelerating the monitoring and closure initiation will push for the start of cleanup of impoundments within a reasonable amount of time after the rule's adoption.

The rule is only as strong as the quality of enforcement. EPA must make sure that coal ash is not left in groundwater which could lead to leaching. EPA must tighten up requirements to determine the universe of covered coal ash ponds. Monitoring wells must be properly and sufficiently placed to capture the full extent of possible contamination. Clean-up plans must be comprehensive and designed for success.

The rule excludes dry ash ponds, and it also does not address coal ash that is used as fill offsite. EPA should not allow coal ash to be used as fill going forward. EPA should require the investigation and clean-up of all existing fill sites.

The proposed rule is a big improvement on the existing coal ash rule, but EPA should leave no stone unturned when looking for CCR. As the Rising Waters report shows, lake level scenarios could put Lake Michigan at risk of coal ash contamination. Complete site cleanup and closure of coal ash dumps and fill areas is the only way to stop toxic contamination and protect communities. Polluters must clean up this coal ash to protect the Great Lakes and communities like Waukegan, Illinois that have lived with the effects of toxic coal plant pollution for too long.

Thank you for your time. Again, ELPC appreciates the opportunity to testify in person today on this important issue.