

HENRY C. "HANK" JOHNSON, JR.  
4TH DISTRICT, GEORGIA

COMMITTEES:  
JUDICIARY  
ARMED SERVICES

**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-1004**

SUBCOMMITTEES:  
REGULATORY REFORM, COMMERCIAL,  
AND ANTITRUST LAW  
COURTS, INTELLECTUAL PROPERTY,  
AND THE INTERNET  
SEAPOWER AND PROJECTION FORCES  
INTELLIGENCE, EMERGING THREATS  
AND CAPABILITIES  
STRATEGIC FORCES

March 4, 2016

Honorable Martin R. Castro  
Chairman  
U.S. Commission on Civil Rights  
1331 Pennsylvania Ave., NW, suite 1150  
Washington, D.C. 20425

RE: Comment on Briefing for "Environmental Justice: Toxic Materials, Poor Economies, and the Impact on the Environment of Low-Income, Minority Communities"

Dear Commissioner Castro:

The constituents of Georgia have raised concerns<sup>1</sup> over the dumping of coal ash in sites not equipped to handle safely coal combustion residuals ("coal ash" or "CCR") thus exposing communities, the local environment, and groundwater supplies to potentially dangerous chemicals. I do not want Georgia residents, regardless of income level, to be unfairly and unreasonably exposed to toxic chemicals because the coal ash is being deposited in inadequately protected facilities.

In its final coal ash rule published on April 17, 2015, the Environmental Protection Agency ("EPA") exempted municipal solid waste ("MSW") landfills from the requirements of the coal ash disposal regulations ("CCR Rule").<sup>2</sup> Consequently, when coal ash is deposited in a MSW landfill, the federal safeguards are less stringent than if the coal ash was disposed in a new or existing coal combustion residual landfill or surface impoundment under the CCR rule. CCR landfills are specially lined with synthetic and natural materials to prevent toxins from leaching into the ground. These safeguards are not in place in most MSW landfills. While the EPA finally engaging in the coal ash debate is commendable, this gap in the rules risks exposing vulnerable communities to various health risks.

---

<sup>1</sup> Dan Chapman, *Southeast Georgia Landfill's Expansion Plan Spurs Toxic Concerns*, ATLANTA JOURNAL-CONSTITUTION, Jan. 31, 2016, <http://www.myajc.com/news/news/state-regional-govt-politics/southeast-georgia-landfills-expansion-plan-spurs-t/nqFtt/>; Dan Chapman, *South Georgia Community Up In Arms Over Coal Ash Landfill*, ATLANTA JOURNAL-CONSTITUTION, Jan. 25, 2016, <http://www.ajc.com/news/news/state-regional-govt-politics/south-georgia-community-up-in-arms-over-coal-ash-l/nqCBd/>; Willoughby Mariano, *Georgia's Coal Ponds A "Lurking Disaster"*, ATLANTA JOURNAL-CONSTITUTION, Nov. 7, 2015, <http://www.myajc.com/news/news/state-regional/georgias-coal-ponds-a-lurking-disaster/npGPj/>; Terry Dickson, *Wayne County Residents Worried About Republic's Plan To Bury Coal Ash At Landfill Near Jesup*, FLORIDA-TIMES UNION, Jan. 26, 2016, <http://jacksonville.com/news/georgia/2016-01-26/story/wayne-county-residents-worried-about-republics-plan-bury-coal-ash>.

<sup>2</sup> Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 40 C.F.R. §§ 257 & 261 (2015), <https://www.federalregister.gov/articles/2015/04/17/2015-00257/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric>

To be clear, I am not saying coal ash should be subject to unnecessary regulations that minimize its production or use. When coal ash is reused, it has numerous environmental, economic, and industrial benefits. The beneficial reuse of coal ash prevents this waste from going into landfills, wasting other natural resources, and reducing disposal costs. Over the past three decades, the EPA has exempted beneficial reuse of coal ash from both solid and hazardous waste regulation and the EPA's final coal ash rule codified this exemption into federal regulation. Under the final EPA rule, "beneficial uses" of coal ash in concrete, bricks, roofing material and wallboard are exempt from regulation. Furthermore, an EPA study of the encapsulated uses of coal ash concluded that, "environmental releases of constituents of potential concern (COPCs) from CCR fly ash concrete and FGD gypsum wallboard during use by the consumer are comparable to or lower than those from analogous non-CCR products, or are at or below relevant regulatory and health-based benchmarks for human and ecological receptors."<sup>3</sup> There are significant benefits to this industrial by-product including its reuse as a material in construction. However, I have concerns as to the coal ash that remains unused and its disposal in facilities not equipped to handle it.

The threat to communities near MSW landfills is growing because the CCR Rule encourages the closure of inactive coal ash surface impoundments and provides incentives for early closure of active coal ash impoundments. This has already resulted in a significant increase in the volume of coal ash being moved from impoundments to landfills – landfills that are not properly suited to house such an industrial by-product. There are plans in several states, including Georgia, Virginia, and South Carolina, to dispose of millions of tons of coal ash in off-site landfills. It is likely that substantial volumes of coal ash will continue to be disposed of in MSW landfills in the near future as active and inactive coal ash impoundments undergo closure.

Disposal of coal ash in a MSW landfill has already caused great harm to adjacent communities in the south due to the lack of proper safeguards. From 2009-2010, more than 4 million tons of coal ash from the disastrous spill<sup>4</sup> at the Tennessee Valley Authority's Kingston Fossil Plant was dumped in the Arrowhead Landfill – a MSW landfill in Perry County, Alabama.<sup>5</sup> Arrowhead's landfill permit failed to require adequate measures to minimize toxic fugitive dust, establish groundwater monitoring for common coal ash contaminants, address structural stability threats from waste piles, and prevent hazardous interactions between coal ash and municipal solid waste. These safeguards are still lacking at the landfill, which is currently permitted to accept coal ash from 33 states.

---

<sup>3</sup> U.S. Environmental Protection Agency, COAL COMBUSTION RESIDUAL BENEFICIAL USE EVALUATION: FLY ASH CONCRETE AND FGD GYPSUM WALLBOARD (Feb. 2014), <http://nepis.epa.gov/Exec/Query.exe/P100LD5E.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2011+1Thru+2015&Docs=&Query=&Time=&FindTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C11thru15%5CTxt%5C00000013%5CP100LD5E.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i+25&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionI&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>

<sup>4</sup> Samira J. Simone, *Tennessee Sludge Spill Runs Over Homes, Water*, CNN.COM, Dec. 24, 2008, <http://www.cnn.com/2008/US/12/23/tennessee.sludge.spill/>; Shaila Dewan, *Tennessee Ash Flood Larger Than Initial Estimate*, N.Y. TIMES, Dec. 26, 2008, [http://www.nytimes.com/2008/12/27/us/27sludge.html?\\_r=0](http://www.nytimes.com/2008/12/27/us/27sludge.html?_r=0)

<sup>5</sup> Shaila Dewan, *Clash In Alabama Over Tennessee Coal Ash*, N.Y. TIMES, Aug. 29, 2009, <http://www.nytimes.com/2009/08/30/us/30ash.html>

As a result nearby residents experienced severe respiratory problems, headaches, dizziness, nausea, vomiting, insomnia, and interference with outdoor activities, among other harms.<sup>6</sup> Residents of Uniontown, Alabama were also exposed to airborne coal ash, which contains several human carcinogens and other toxins associated with increased risks of skin, lung, and bladder cancers; neurological disease; and injury to the reproductive system, among other illnesses.<sup>7</sup> In the absence of federal safeguards, residents in Uniontown suffered and a feeling of distrust has permeated the community.<sup>8</sup> The surrounding community has an unemployment rate of 17 percent, is 70% African-American, and a third of all households are below the poverty line. Many of the residents feel they are being taken advantage of by more powerful stakeholders who do not live in the area. This is particularly egregious considering much of the coal ash is not from local producers, but is instead being transported in from out of state.

The lack of equivalent protections at MSW landfills to protect air, groundwater and surface water from coal ash contamination threatens the health and environment of communities throughout the United States where MSW landfills are receiving coal ash.

EPA recognizes this critical gap in protections at MSW landfills. In the preamble to its final CCR rule, EPA specifically, and strongly, recommended numerous ways that individual states should implement their municipal solid waste programs to make the MSW landfill standards more protective in the event coal ash is disposed in these landfills. However, as the shift to MSW landfills becomes more common, these sites and their governing rules must be reexamined to help safeguard communities. According to Section 4004(a) of Resource Conservation and Recovery Act (“RCRA”), EPA’s subtitle D regulations must be sufficient to prevent an unreasonable probability of adverse effects on human health and the environment.<sup>9</sup> To this end, I urge the commission to recommend that the Administrator protect Georgia constituents by amending the municipal solid waste landfill criteria to accomplish the following:

- (1) Incorporate the fugitive dust criteria of the CCR rule at 40 C.F.R. § 257.80 to effectively minimize coal ash from becoming airborne at the facility, including coal ash fugitive dust originating from the landfill as well as roads and other ash management and material handling activities.
- (2) Incorporate the relevant groundwater monitoring and corrective action requirements of the CCR rule at 40 C.F.R. §§ 257.90 -98 to ensure that releases of coal ash contaminants are promptly detected and remediated.
- (3) Require MSW landfills to evaluate coal ash for waste compatibility and placement by establishing a “CCR acceptance plan” maintained in the facility operating record that ensures the facility is aware of the physical and chemical characteristics of the coal ash and handles it with the additional precautions necessary to avoid dust, maintain structural integrity, and

---

<sup>6</sup> Gigi Douban, *Mixed Feelings For Landfill Run Deep In Alabama*, MARKETPLACE.COM, May 27, 2105, <http://www.marketplace.org/2015/05/27/business/mixed-feelings-landfill-run-deep-alabama>

<sup>7</sup> Julia Lurie, *Weird Ailments, Toxic Water, Dismissive Officials—and No, This Isn't Flint*, MOTHERJONES.COM, Feb. 29, 2016, <http://www.motherjones.com/environment/2016/02/environmental-racism-coal-ash-explainer>

<sup>8</sup> Shaila Dewan, *Clash In Alabama Over Tennessee Coal Ash*, N.Y. TIMES, Aug. 29, 2009, <http://www.nytimes.com/2009/08/30/us/30ash.html>

<sup>9</sup> P.L. 107-377 § 4004(a) (2002), <http://www.epw.senate.gov/rcra.pdf>

avoid compromising the gas and leachate collection systems of the landfill so that human health and the environment are protected.

- (4) Require public notifications equivalent to the coal ash rule to ensure impacted communities are able to access groundwater monitoring data, inspections, and other documents demonstrating compliance.
- (5) Require weekly and annual inspections of MSW landfills receiving coal ash that are equivalent to 40 C.F.R. § 257.84 and require owners and operators to remedy all deficiencies found at landfill inspections.
- (6) Restrict the siting of new MSW landfills and lateral expansions of MSW landfills to ensure the placement of coal ash above the uppermost aquifer as required by 40 C.F.R. § 257.60.

I am concerned Georgia residents, specifically those in low-income and minority communities, are facing a greater risk of toxic chemical exposure simply because the coal ash is being disposed of in inadequately protected facilities that happen to be in their neighborhood. On behalf of my constituents, it is critical that U.S. Commission on Civil Rights ("USCCR") underscore the importance of all communities receiving the same level of protection from coal ash and that the EPA can easily close this gap in protections by augmenting the federal rules applicable to municipal solid waste landfills.

Thank you for your consideration.

Respectfully,



Henry C. "Hank" Johnson  
Member of Congress