

December 19, 2009

Dear President-Elect Obama:

We admire your conviction to inspiring hope, to listening to people, and your commitment to leaving the world a better place than how we found it. It is with that spirit that we seek your help in establishing enforceable regulations for coal combustion waste (CCW). The National Research Council, the Clean Air Task Force, the Environmental Integrity Project, Earthjustice, Natural Resources Defense Council, the Sierra Club and many other environmental organizations have called for common sense regulations for the placement and disposal of CCW.

Last week members of your transition team met with the Green Group and discussed this important issue. The Green Group is planning to follow up with the United States Environmental Protection Agency (EPA) in January. Our grassroots groups are also working on this critical issue, and we felt it was important to demonstrate to you the far-reaching effects of CCW dumping on coalfield communities. This letter includes our concerns and lists nearly 40 grassroots groups impacted directly by CCW dumping.

We understand President Bush is poised to grant egregiously irresponsible rules that would legitimize the continued use of mine sites as open dumps for CCW. The draft mine disposal rule is part of a package of rushed actions the Bush Administration is expected to issue in the coming days.

These 11<sup>th</sup> hour rules gut consumer protection and environmental laws for the sake of special interests. The coalfield residents of the U.S. will be unfairly excluded from receiving the same basic environmental safeguards enjoyed by the rest of the country. Our nation's landscape has been left with a damaging legacy of acid mine drainage (AMD) caused by decades of coal mining. Allowing the unregulated dumping of toxic CCW into coalfield communities will leave a more deadly legacy for future generations.

Federal Registry: [Advance Notice of Proposed Rulemaking](http://bulk.resource.org/gpo.gov/register/2007/2007_12026.pdf)  
[http://bulk.resource.org/gpo.gov/register/2007/2007\\_12026.pdf](http://bulk.resource.org/gpo.gov/register/2007/2007_12026.pdf)

**We ask that you send this rule back to the OSM and EPA to ensure that all stakeholders, the effected citizens whose drinking water is at stake as much as the coal industry, have an equal say in the rule's construction from the ground up.**

We particularly seek your help in establishing common sense safeguards as recommended by the National Research Council of the National Academies of Science's report "*Managing Coal Combustion Residues in Mines*" (2006).

Damage is already occurring, especially in coalfield communities. Coal ash has poisoned surface water and groundwater supplies in at least 23 states. Significant pollution from mine disposal has been documented in New Mexico, Pennsylvania, West Virginia, Indiana and North Dakota.<sup>1</sup>

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<sup>1</sup> Earthjustice Fact Sheet, *Arsenic and Coal Waste*

In Pennsylvania alone there are over 120 mines where coal ash has been dumped and over six million tons of waste are disposed in the state's mines each year.<sup>2</sup> A 2007 report details findings based on several years of research of public files of CCW mine dump sites sanctioned by the Pennsylvania Department of Environmental Protection (PA DEP).

The report is summarized in Pennsylvania Minefill Report video:

<http://www.youtube.com/watch?v=I8MiKSaTm-U>

A complete copy of the Pennsylvania Minefill Report is at:

[http://www.catf.us/projects/power\\_sector/power\\_plant\\_waste/paminefill/](http://www.catf.us/projects/power_sector/power_plant_waste/paminefill/)

Consider this excerpt from the National Research Council of the National Academies' report "*Managing Coal Combustion Residues in Mines*" (2006):

... Coal combustion residue (CCRs) often contains a mixture of metals and other constituents in sufficient quantities that they may pose public health and environmental concerns if improperly managed. In a mine setting, subsurface water flow is the primary mechanism for transporting contaminants from CCRs to potential human and ecological receptors. Risks to human health and ecosystems may occur when CCR-derived contaminants enter drinking water supplies, surface water bodies, or biota. Impacts on downgradient water quality will depend on the concentration of the contaminant, the flow rate and volume of contaminated water entering the flow system, and the ability of the aquifer or receiving water body to dilute or attenuate the contamination. The concentration, volume, and flow rate of contaminated water, in turn, depend on the leachable mass of toxic constituents in the CCR, the emplacement design, and the local hydrogeologic setting. Of the three methods currently available for disposal of CCRs (surface impoundments, landfilling, and minefilling), comparatively little is known about the potential for minefilling to degrade the quality of groundwater and/or surface waters particularly over longer time periods. (NCR report at 3-4).

**Full text of the report:**

<http://books.nap.edu/openbook.php?isbn=0309100496>

Rules are a vital part of our democracy, providing important checks and balances. Rules are designed to keep people safe and hold all accountable. However, under the Bush Administration, rules have been ignored, broken and rewritten to protect the coal and utility industry pocketbooks. Real people have been put in harm's way. As a result of unregulated dumping of CCW from power plants - allowed by EPA under the current and previous administrations, communities are drinking water contaminated with toxic metals such as arsenic, mercury and chromium. In contrast, disposal practices that would be illegal for household garbage are allowed every day in the nation's coalfields. We are leaving a deadly legacy to the next generations, one that is growing as tighter controls of power plant emissions produce more toxic CCW than ever before.

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<sup>2</sup> *Id.*

We therefore respectfully request your Administration to join us in calling for the following safeguards in any draft national regulation of CCW placement in coal mines:

- Thorough and accurate characterization of all CCW;
- Thorough and accurate characterization of candidate CCW disposal sites (this is a critical component that has been neglected by state mining regulatory agencies to date), which is essential in identifying unsuitable sites;
- Isolation of the ash from all water sources;
- Long-term, comprehensive monitoring of all ash sites;
- Clear standards for corrective actions written into all permits;
- Sufficient bonding to cover monitoring and clean up costs;
- Encouraging instead of discouraging public involvement in all CCW permitting decisions;
- EPA enforcement of safeguards and transparency in the decision-making process;
- Full disclosure and assurances of the public's right to know.

**Coal mines should not be open dumps. And, yet this is exactly what the Bush rules will allow. The practice of dumping toxic CCW without controls endangers water supplies and violates the federal Clean Water Act, Resource Conservation and Recovery Act (RCRA), Surface Mining Control and Reclamation Act (SMCRA) and related state laws.**

The purpose of the nation's mining law is to ensure that coal mining is conducted in an environmentally responsible manner and that the land is reclaimed to "original use or better." (e.g.: "as required by SMCRA"). The proposed Office of Surface Mining (OSM) rule would turn the nation's coal mines into massive open dumps for non-mine generated industrial waste, a purpose outlawed by RCRA and never envisioned by the writers of SMCRA.

**Coalfield residents have a right to environmental justice and equal protection under the law:** The proposed rules will create a dangerous double standard that will allow disposal in coal mines with dumping in direct contact with ground water - a practice that would be prohibited under RCRA as open dumping that poses imminent and substantial endangerment to people and the environment if done anywhere else. As a result, residents of the nation's coal mining areas, which are predominately working class communities, share a disproportionate risk from contamination by increasing volumes of coal ash and scrubber sludge in direct violation of the nation's environmental justice standards.

Plans have been put into motion by the Bush Administration to strip the EPA of its authority to oversee any rule making or enforce any requirements involving the placement of CCW in coal mines transferring this authority permanently to the OSM. We see this as a dangerous step backwards for the following reasons:

- **Citizens have been left out of the rulemaking process:** The OSM worked heavily with state mine regulators with close ties to industry but left citizens out in the cold while drafting their mine disposal rule. Good communication with all stakeholders is key to creating good environmental regulations.

- **OSM does not have the technical expertise to deal with CCW:** The responsibility to oversee CCW disposal was shifted from the EPA to the OSM because the EPA would be considered too rigorous. Mining regulators are trained to deal with mine spoil and coal waste cleaned from the coal before it's shipped to a power plant. Yet they have failed repeatedly to do their job under SMCRA to prevent pollution from these mining-related wastes. Thus mining regulators do not possess the expertise or political will to prevent, much less respond to pollution from large volumes of coal ash and scrubber sludge that the new draft rule will allow to be dumped into mines.

CCW is very different from mine spoil and coal waste and requires a very different approach to prevent problems. EPA needs to be heavily involved in the drafting and enforcement of mine disposal regulations, as recommended by the National Academy of Sciences, since EPA is the federal agency established with the expertise for managing non-mine generated wastes.

- **Inadequate timeframe for monitoring CCW contamination:** The timeframe allowed under the draft rule to adequately determine that CCW has been properly isolated to prevent off-site contamination will likely be too short. Rather than ending the requirement to monitor when the surface of reclaimed coal mines are revegetated, long-term site maintenance and groundwater monitoring should be required as occurs when CCW is disposed in a properly regulated landfill.
- **Lack of adequate characterization of CCW:** Proper characterization of the CCW to be dumped in a mine needs to be required as CCW's vary widely depending on the coals, combustion methods, and pollution controls. The following toxic elements are commonly found in CCW in concentrated amounts: aluminum, antimony, arsenic, barium, beryllium, boron, cadmium, hexavalent chromium, cobalt, copper, lead, manganese, mercury, molybdenum, nickel, selenium, thallium, vanadium and zinc. SMCRA requires that measure be taken to ensure that "toxic producing" materials like CCW do not cause "toxic mine drainage." There is a scientific consensus that leach tests used by state regulatory agencies on CCW do not predict what these wastes will do in the environment, a crucially-needed step if CCW is dumped in close proximity to water in a coal mine.
- **Groundwater and surface water monitoring must be substantially improved:** Placement and spacing of monitoring wells need to be significantly upgraded to detect leachate movement. Upgradient wells and wells in the waste, known as "pore water wells" must be required. Upstream and downstream surface water monitoring must be required beyond mine boundaries. Flow volumes must be monitored so that the load of pollution moving away from CCW sites in mines can be documented and offsite water resources protected from "material damage." Adequate baseline data must be gathered prior to permit issuance. Monitoring must be frequent enough to characterize seasonal changes and performed at least quarterly.

- **Operators should be required to provide split-samples to host municipalities, citizen or environmental groups:** Additional checks and balances should come in the form of split samples that are tested by independent, certified labs of the host municipality's and/or citizens or environmental groups' choosing. Mine operators should be required to pay these expenses.
- **Cleanup standards are needed. A threshold of pollutant concentrations must be set in permits that, if surpassed, requires the pollution to be cleaned up, not just monitored.**
- **Lack of financial assurance:** The performance bond under SMCRA is not calculated to cover off-site damage associated with CCW disposal in mines, as required for landfills. The Office of Surface Mining and state agencies such as the Pennsylvania Department of Environmental Protection (PA DEP) have been leading the charge to permit unregulated dumping of toxic coal combustion wastes into coal mines and refuse to acknowledge the documented risks associated with CCW. The coal and utility lobbyists have convinced decision makers these toxic ashes are actually "beneficial."

The **National Academies of Science's** report eloquently summed up the issue of CCW, (also called 'coal combustion residues'), **"With regard to use of CCR's in minefills, the committee concludes that although potential advantages should not be ignored, the full characterization of potential risks should not be cut short in the name of beneficial use."** [NCR Report at 125].

Using a label of "beneficial use" provides a false sense of security and has led state and federal agencies to underestimate the serious damage caused by this unregulated dumping. We seek your help in recognizing this dangerous practice and ask you to include this issue in your upcoming agenda.

Please join us in calling for common sense, federal regulation to provide safeguards for all. Federal regulations are needed to protect our land, water, air and people from toxic coal combustion wastes, no matter where they are dumped or under what scheme their placement is justified.

Each generation leaves a legacy to the next. We have an opportunity to show the world that our generation got it right. We urgently need to take regulatory steps to stop this dangerous dumping. By doing so, we will be leaving a positive mark on our world. And in keeping with your mission, we will be leaving our earth better than we found it.

Respectfully submitted,  
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