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Re: Request for a 30-day Extension of the Comment Period for the Interim Final Guidance for State Coal Combustion Residuals Permit Programs. 82 Fed. Reg. 38,685 (August 15, 2017), Docket ID No. EPA-HQ-OLEM-2017-0458

Dear Sir/Madam:

On behalf of the 50 undersigned public interest groups, we request that the U.S. Environmental Protection Agency (“EPA”) extend by a minimum of 30 days the public comment period for the Interim Final Guidance for State Coal Combustion Residuals Permit Programs. 82 Fed. Reg. 38,685 (August 15, 2017), Docket ID No. EPA-HQ-OLEM-2017-0458.

Coal combustion residuals (CCR) are one of the largest toxic waste streams in the United States. U.S. coal-fired power plants burn more than 800 million tons of coal every year, producing more than 110 million tons of industrial solid waste in the form of fly ash, bottom ash, scrubber sludge and boiler slag (collectively known as CCR or coal ash). Coal ash is a deadly brew of carcinogens, neurotoxins, and poisons—including arsenic, boron, cadmium, hexavalent chromium, lead, mercury, selenium and thallium. When this dangerous waste is dumped without proper safeguards, hazardous chemicals are released to air, groundwater, surface water and soil, and nearby communities are harmed.

Pursuant to Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act, EPA has authority to approve state coal ash permit programs that may operate in lieu of the current CCR rule at 40 C.F.R. Part 257, Subpart D. Consequently, EPA’s approval of such programs will have a direct and permanent impact on the health, environment and economic well-being of thousands of American communities impacted by CCR disposal.

Despite the import of the approval process, EPA has chosen to eschew rulemaking in favor of adopting guidance to conduct these critical state program authorizations. And despite the widespread impact this process will have on affected communities, EPA would not share a copy of the draft guidance with public interest groups until the draft was made available for public comment on EPA’s website last week. EPA, however, shared and discussed the guidance with

other stakeholders as early as May 2017. Despite the filing of two Freedom of Information Act requests on May 17, 2017 and July 18, 2017, EPA never released the draft guidance directly to public interest groups, in violation of the legal requirement to do so.

Public interest groups need an additional 30 days to provide comments and participate meaningfully in the review process, which has, to date, been closed to their input. Furthermore, EPA published a press release on August 10, 2017 that stated there would be a 60-day comment period. This press release was published on EPA's website, and the 60-day comment period was reported widely in publications read by public interest groups.<sup>1</sup> Thus public interest groups and affected communities have been relying on EPA's official statement that the comment period would extend a full 60 days.

Consequently, in the interest of fairness and encouraging maximum participation from the public as well as affected communities, the undersigned groups respectfully request that EPA stand by its original announcement of a comment period for the full duration of 60 days. This will facilitate greater and more substantive public participation. Such participation is mandated by Section 7004(b) of the Resource Conservation and Recovery Act, which states, in part: "[p]ublic participation in the development ... of any regulation, guideline, information, or program under this Act shall be provided for, encouraged, and assisted by the Administrator and the States." 42 U.S.C. § 6974(b).

An extension of the comment period is imperative to ensure that stakeholders have adequate time to inform the agency of the full impacts of this proposal and provide advice on how their communities can be best protected from the disposal of coal combustion residuals.

Thank you for your consideration of our request.

Respectfully Submitted,

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<sup>1</sup> See: Rodriguez, Juan Carlos, *EPA State Coal Ash Permit Guidance Offers Flexibility*, Juan Carlos Rodriguez, Law 360 (August 10, 2017), available at <https://www.law360.com/articles/953038/print?section=energy>; Reilly, Sean, *EPA offers guidance to states that want to manage permitting*, E&E News Reporter (August 10, 2017), available at <https://www.eenews.net/eenewspm/2017/08/10/stories/1060058663>; *EPA Issues Guidance on State Coal Ash Management Permit Programs*, WEBWIRE (August 10, 2017), available at <http://www.webwire.com/ViewPressRel.asp?aId=212073>

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