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Honorable Lisa Jackson  
Administrator  
United States Environmental Protection Agency  
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*Via Federal Express*

March 8, 2010

Dear Administrator Jackson:

The U.S. Environmental Protection Agency (EPA) has identified 71 coal combustion waste sites that have damaged groundwater, surface water, or both. We have attached to this letter a new report by the Environmental Integrity Project and Earthjustice identifying an additional 31 cases, which were reviewed by a team of hydrogeologists, attorneys, and other experts based on data and other information publicly available in state agency files.

At least 15 of these contaminated sites have released arsenic, selenium, or other pollutants offsite in concentrations that exceed either drinking water or water quality standards, or both. The pollutant levels are alarmingly high. Arsenic in groundwater has been measured at levels up to 150 times the drinking water standard in groundwater onsite and more than 44 times the standard in contamination that was moved offsite. Selenium in one West Virginia stream, identified as "fly ash influenced" by the State, is more than 10 times the level the EPA considers safe for aquatic life. Contamination has forced closure of drinking water wells in several states. Members of a Moose Lodge in Montana were sickened by high levels of boron and sulfate from a nearby ash dump, while mercury levels 5 to 6 times greater than drinking water standards were recorded in private residential wells next to a Tennessee site.

At an additional 16 sites, groundwater monitoring near the waste unit consistently records monitoring levels many times the EPA's drinking water standards or health advisories. At 14 of these 16 sites, there is no offsite monitoring beyond site boundaries, so actual damage to drinking water and aquatic resources could be much greater than documented in this report.

The Administration has delayed proposals to regulate ash disposal sites while it tries to address allegations that regulation of coal combustion waste as "hazardous" could inhibit recycling of such material. We wanted to make you aware that two of the damaged sites identified in our report are "structural fills," which are among the largely unregulated practices the industry defines as "recycling." In one case, according to a state consent decree, ash was dumped directly into a wetland, and offsite groundwater has been contaminated with lead at concentrations above drinking water standards. While we strongly support responsible recycling and understand that some structural fill projects can be designed and managed safely, some practices that are advertised as "recycling" are clearly little more than a disguised form of land disposal without adequate safeguards. Indeed, the State of Illinois recently declared that one of the structural fills is nothing more than "an open dump," and advised residents living next to the site not to drink the water from their private wells.

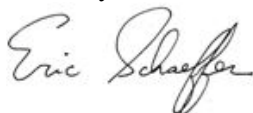
The EPA is required by law to evaluate actual and potential damage when determining how to regulate coal combustion waste. We respectfully request that the EPA analyze the information we have submitted and classify these sites as damage cases if the attached data prove to be correct. We also hope that the Agency will exercise its considerable discretion to obtain additional data on its own behalf and to require testing to determine the severity and scope of pollution at coal combustion waste sites.

Finally, the available data show that contaminated groundwater at more than a few of these sites flows directly into creeks, wetlands, and other waters of the United States. These hydrogeological discharges are prohibited under the Clean Water Act. (*See Hernandez v. Esso Standard Oil Co.*, 599 F.Supp.2d 175 (D.P.R. 2009) and cases cited therein). We appreciate the EPA's commitment to improve enforcement of laws that protect our nation's waters and ask the EPA to honor that commitment by stopping hydrogeological discharges of extremely toxic metals like arsenic, lead, and selenium from leaking ash ponds and landfills.

We have learned the hard way that once toxic metals are released to the environment, they are very hard to remove. Federally enforceable standards to protect our waters from the kind of damage documented in the attached report are long overdue. We believe these standards can and should encourage legitimate reuse of these wastes, while putting an end to the kind of dangerous and irresponsible practices that have created so many Superfund sites.

High-volume lobbying by various groups with a clear economic interest in opposing regulation is neither surprising nor should it obscure the very real damage caused by the EPA's failure to recognize and regulate coal ash hazards. We hope that President Obama's Administration will release its proposed rule without further delay.

Sincerely,



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