



Office of the General Counsel

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Mr. Lee Zeldin
Administrator, U.S. Environmental Protection Agency (EPA)
c/o EPA Docket Center
Office of Land and Emergency Management Docket
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Disposal of Coal Combustion Residuals from Electronic Utilities; Dkt. ID No. EPA-HQ-OLEM-2020-0107; Doc. ID No. EPA-HQ-OLEM-2020-0107-1376

Dear Mr. Zeldin,

Compelled by a concern for God's creation and for the common good, the United States Conference of Catholic Bishops (USCCB) submits this comment proposing a framework the EPA should adopt when weighing its many options for addressing the noxious effects of coal ash. The USCCB respectfully urges the EPA to revise the proposed rule to emphasize federal minimum standards for groundwater control and to prevent the most vulnerable from bearing the risks associated with a more flexible regulatory scheme.

The USCCB commends the EPA for its sustained efforts to address the risks posed by coal combustion residuals and to update its regulatory framework in light of evolving scientific understanding. We share the Agency's objective of ensuring that coal ash is disposed of or recycled in a manner that is both practical and reliably protective of human health and the environment. Achieving this balance is critical to advancing the common good, as effective regulation must account for operational realities while maintaining robust safeguards against foreseeable harm to communities and natural resources.

Introduction

The USCCB is a non-profit corporation whose members are the United States's active Catholic bishops who lead nearly 200 dioceses across the country. Each diocese includes parishes, schools, and social-service institutions that are embedded in communities facing the effects of environmental regulation, including coal ash management decisions.¹ These

¹ See generally, *Mapping the Coal Ash Contamination*, EarthJustice, <https://earthjustice.org/feature/coal-ash-contaminated-sites-map> (showing the many communities where coal ash fills exist and intersect Catholic dioceses).

communities have long motivated our earlier comments aimed at helping federal agencies minimize environmental harm to the vulnerable.² The Catholic Church’s approach to the environment is informed by the Church’s foundational teachings upholding human dignity and the common good. Pope Leo XIV recently reiterated that “care for our common home and our responsibility to the poor and future generations requires that the use of the goods of creation” respect the environment and prevent exploitation of the vulnerable.³ And Pope Leo’s immediate predecessor, Pope Francis, articulated in his encyclical (a pastoral teaching document), *Laudato Si’*, no. 49, that we must avoid “green rhetoric” that neglects the poor when addressing ecological concerns. He cautioned that “a true ecological approach *always* becomes a social approach; it must integrate questions of justice in debates on the environment, so as to hear *both the cry of the earth and the cry of the poor*.” This social approach not only finds support in our theology,⁴ but it also underpins the purpose of regulatory oversight, which similarly seeks to holistically preserve the common good by aligning the behavior of diverse stakeholders to achieve policy while minimizing foreseeable risk.⁵

The Resource Conservation and Recovery Act (RCRA), under which the EPA promulgates this proposed rule, embraces this purpose. It requires the EPA to oversee industry to mitigate risks arising from the disposal of hazardous wastes because Congress recognized that, absent such oversight, industry increasingly engaged in “inadequate and environmentally unsound practices for the disposal or use of solid waste.” Such practices created “greater amounts of air and water pollution and other problems for the environment and for health,” particularly from landfills.⁶ Guided by the RCRA’s strict command to craft solutions that ensure “no reasonable probability of adverse effects on health or the environment,” the EPA commendably focused for years on coal ash, which contains an abundance of toxic metals, including Mercury, that we have long warned affects the most vulnerable – especially mothers and their unborn children.⁷ Recently, the government has determined that chemicals in coal ash pose an even greater risk to health than previously known.⁸ And by the EPA’s own count, there

² See, e.g., March 28, 2023 Coalition Letter From Religious Organizations Addressing the EPA’s Proposed Soot Standard, <https://www.usccb.org/resources/coalition-letter-epa-administrator-comments-proposed-soot-standard-march-28-2023>; USCCB, Rulemaking Comment, April 25, 2018, <https://www.usccb.org/resources/EPA-comment-FINAL-4-25-18.pdf> (concerning the clean power plan); November 18, 2015, Oral Testimony from Cecilia Calvo on Behalf of Archbishop Thomas Wenski and Bishop Oscar Cantú, <https://www.usccb.org/resources/oral-testimony-epa-carbon-standards-federal-plan-cecilia-calvo-november-18-2015.pdf> (concerning carbon emissions).

³ *Magnifica Humanitas*, no. 84.

⁴ As Pope Leo XIV stated, “God will ask us if we have cultivated and cared for the world that he created (*cf.* Gen 2:15), for the benefit of all and for future generations, and if we have taken care of our brothers and sisters (*cf.* Gen 4:9; Jn 13:34). What will be our answer?” *Address of the Holy Father Leo XIV to the Participants in “Raising Hope,”* <https://tinyurl.com/5f44us49>.

⁵ *Ferebee v. Chevron Chem. Co.*, 736 F.2d 1529, 1540 (D.C. Cir. 1984) (emphasizing that environmental regulations broadly analyze costs and benefits to prevent foreseeable harm, and implying that litigation serves as a backstop).

⁶ See 42 U.S.C. § 6901(b)(3).

⁷ See USCCB Chairmen statement, March 22, 2019, <https://www.usccb.org/news/2019/concern-over-new-mercury-rule-expressed-chairmen-us-bishops-domestic-justice-and-pro-life>; USCCB, Rulemaking comment, March 18, 2019, <https://www.usccb.org/resources/DSD-MATS-Comment-Final.pdf>. (describing Mercury and air toxin health risks).

⁸ See, e.g., EPA, IRIS Toxicological Review of Inorganic Arsenic (January 2025), <https://iris.epa.gov/static/pdfs/0278tr.pdf>; Agency for Toxic Substances and Disease Registry, Toxicological Profile for Cobalt (October 2024), <https://www.atsdr.cdc.gov/toxprofiles/tp33.pdf>. Agency for Toxic Substances and Disease Registry, Toxicological Profile for Arsenic (August 2007), <https://www.atsdr.cdc.gov/toxprofiles/tp2.pdf>.

are more than 600 coal ash units that exist across dozens of states where these hazards fester.⁹ Now more than ever regulators must be engaged to ensure that caring for creation protects the “least of these” among us from coal ash’s health risks.¹⁰

Yet, the EPA’s proposed rule addresses these risks with a new strategy – one that further removes it from the RCRA’s wise charge to closely engage industry. Citing flexibilities granted by the WIIN Act, 42 U.S.C. § 6945(d), the EPA seeks to abandon the “one-size-fits-all” regulatory approach “necessitated by the previous statutory scheme.”¹¹ But while the proposed rule’s emphasis on regulatory flexibility certainly offers benefits, such as cost savings, without careful planning flexibility threatens in practice to shift the burden of risk too far. When federal environmental baselines are reduced and exemptions flourish, experience shows (including from the conduct motivating the RCRA) that the burden of risk is borne by vulnerable communities with the least capacity to respond. Indeed, Pope Leo XIV taught in his recent encyclical, *Magnifica Humanitas*, no. 84, that “true progress is not what increases the wellbeing of some by degrading ecosystems, shifting costs onto the most disadvantaged, or compromising the living conditions of those who will follow us.” Yet, this danger permeates through the proposed rule’s three key provisions.

(1) Overemphasizing Site-Specific Compliance Programs Creates Uncertainty for Vulnerable Communities and Industry Alike

Responding to industry comments calling for a more tailored approach to coal ash regulation, the EPA proposes a permitting program that almost entirely defers to state regulators. The EPA seeks to unrelentingly yield to site-specific conditions, which will supposedly avoid unnecessary restrictions and will purportedly facilitate the public being better informed about coal ash regulation through localized permitting.¹²

Although state programs indeed offer such efficiencies, these benefits only follow if states are consistently capable of enforcing the same rigorous standards the EPA has long applied. But as recently as 2024, the EPA denied at least one state’s – Alabama’s – permitting program because it found the program “significantly less protective of people and waterways than federal regulations” despite Alabama “large[ly] adopting the language in the federal [coal combustion residuals] regulations.”¹³ In other words, states are susceptible to the same stressors, such as underfunding, that can cause enforcement standards to lag despite adopting otherwise

⁹ EPA Sheet, https://archive.epa.gov/epawaste/nonhaz/industrial/special/fossil/web/xls/summarytable_073114.xls; see also *Mapping the Coal Ash Contamination*, Earthjustice (Aug. 20, 2019), <https://earthjustice.org/features/map-coal-ash-contaminated-sites>.

¹⁰ Mathew 25:40.

¹¹ 91 Fed. Reg. 18968, 18973 (April 13, 2026).

¹² *Id.* at 18997.

¹³ See *U.S. State of Alabama Coal Combustion residuals Permit Program, Final Denial*, https://www.epa.gov/coal-combustion-residuals/us-state-alabama-coal-combustion-residuals-permit-program?utm_source=chatgpt.com; See also, generally, 85 Fed. Reg. 1269 (EPA’s finding as to Alabama).

stringent rules.¹⁴ The solution is not for the EPA to wholly shift compliance oversight to state programs, but for the EPA to maintain robust federal oversight in partnership with the states.

The EPA recognized this principle in its recent Cumulative Impacts Study, which calls for the EPA to work “collaboratively with state, territorial, Tribal, and public health agencies” to address the community impact of environmental toxins.¹⁵ Necessarily, this project requires regulators to look beyond a single coal ash site and consider the multiple sources of health hazards, including how they interact across geography to affect socio-economics.¹⁶ But when the EPA overemphasizes site-specific compliance, it undermines this holistic approach and amplifies risk uncertainty. Industry faces risk uncertainty because permitting becomes hyperlocal. The EPA must remember that costs, timelines, and coal ash closure obligations might vary across sites. Given the long-term investment needed to remediate coal ash, industry will need to prepare for a broader range of outcomes, including inconsistency in the requirements it faces across states. The challenge of forecasting a broader range of outcomes may incentivize industry to cut corners.¹⁷ Vulnerable people face risk uncertainty too because the same inconsistency and corner cutting can cause contamination to go undetected until it manifests as harm to health.

The Tennessee Valley Authority’s Kingston Fossil Fuel Plant disaster, which helped precipitate the EPA’s first coal ash regulations, illustrates this point. In 2008, the bursting of a poorly reinforced dike caused over a billion gallons of sludge and coal ash to flow into the Emory River. Coal ash likely seeped into the water supply well before the disaster.¹⁸ State regulatory dysfunction was a key aggravator for the crisis. At the time, the EPA did not regulate coal ash. Instead, a Tennessee agency administered a permit program that consisted of limited inspections, changing regulations, and inconsistent enforcement.¹⁹ Consequently, Kingston’s mitigation standards grew careless in the face of a variable enforcement scheme that made compliance harder to forecast. When these conditions lead to disaster, families and communities bear the consequences in the form of health concerns, displacement, and loss of trust. These impacts undermine the common good.

To guard against this harm, the EPA should elevate the “existing groundwater monitoring and corrective action regulations,” described in the proposed rule, when considering the many

¹⁴ Naveena Sadasivam, *The EPA Wants to Shift Monitoring of Toxic Coal Ash to States*, Grist (May 13, 2026), <https://grist.org/regulation/the-epa-wants-to-shift-monitoring-of-toxic-coal-ash-to-states/> (Nick Torrey: “The state agencies ... we know that they are underfunded, underresourced).

¹⁵ EPA, *Interim Framework for Advancing Consideration of Cumulative Impacts* (November 2024), 56, <https://www.epa.gov/system/files/documents/2024-11/epa-interim-cumulative-impacts-framework-november-2024.pdf>.

¹⁶ *Id.* at 4.

¹⁷ See Drake, David F., and Robin L. Just. “Ignore, Avoid, Abandon, and Embrace: What Drives Firm Responses to Environmental Regulation?” in *Environmentally Responsible Supply Chains*, edited by Atalay Atasu. New York: Springer, 2016 (showing that firms will be incentivized not to comply with environmental regulation when encountering regulatory uncertainty, when regulations are imposed “asymmetrically” across regions, or when the cost of noncompliance is too low).

¹⁸ Thomas O. McGarity & Rena I. Steinzor, *The End Game of Deregulation: Myopic Risk Management and the Next Catastrophe*, 23 DUKE ENV’T L. & POL’Y F. 93, 105 (2012) (describing the pollution).

¹⁹ See, *id.* at 108-110.

alternatives it has posed for actualizing an effective state permitting program.²⁰ To avoid enforcement gaps like in Alabama and Tennessee, the EPA should ensure that it retains continuing oversight over state decisions analyzing site-specific water monitoring boundaries or site closure. The EPA should guarantee through continuing monitoring that, pursuant to RCRA’s requirements, states effectively mitigate against a reasonable possibility of adverse effects. For this reason, the USCCB also urges the EPA not to allow state permitting authorities to extend closure timelines.²¹ The longer coal ash sites remain active, as the Kingston disaster illustrates and the 2024 rules confirm, the likelier future exposure results from enforcement gaps.

(2) Proposed Exemptions Risk Shifting Unresolved Problems onto Future Generations

The Church has always held a special concern about the effects of consuming environmental resources, including the economic and social costs on future generations who might be impacted by present consumption. Pope Benedict XVI expressed in his encyclical, *Caritas in Veritate*, no. 50, that it “is incumbent upon the competent authorities to make every effort to ensure that the economic and social costs of using up shared environmental resources are recognized with transparency and fully borne by those who incur them, not by other peoples or future generations.” However, the proposed rule is replete with exemptions that might shift the risk of coal ash hazards to future generations. For example, the EPA proposes exempting coal ash sites from additional closure requirements if a state agency previously oversaw closure activities, or if a state agency will do so in the future.²² The EPA also plans to allow these so-called “deferral” closures to forgo “detailed technical requirements for groundwater monitoring system(s),” in favor of a scheme where industry must only prove that a regulatory authority “played an active role” in closure actions.²³ Such exemptions potentially delay final remediation, which shifts that burden to future generations.

The EPA acknowledges this possibility when considering an alternative proposal for longer deferral exemptions accommodating site-specific “equivalence” determinations.²⁴ It accepts that deferring compliance standards “may result in a greater potential for adverse effects on human health” long term.²⁵ But the EPA wrongly remains confident that such effects are minimized because “other regulatory authorities (e.g. state programs)” are adequate.²⁶ That conclusion does not follow from the EPA’s history overseeing struggling state programs and from uncertainties, described above, that result from overemphasizing site-specific compliance.

In fact, the EPA’s exemptions are likely to increase deleterious effects – not minimize them. The EPA proposes to rescind all requirements for Coal Combustion Residual Management Units,²⁷ to delay closure of coal ash sites to facilitate the extraction of “critical minerals,”²⁸ and to limit the definition of coal ash management unit “storage piles” to give

²⁰ 91 Fed. Reg. 18968, 18998 (describing a comprehensive monitoring program that should be maintained).

²¹ *See Id.* at 19008 (proposing to extend timeframes for all closures).

²² *Id.* at 18981, 18983.

²³ *Id.* at 18985.

²⁴ *See Id.* at 18986 (describing the equivalence standard).

²⁵ *Id.*

²⁶ *Id.* at 18984.

²⁷ *Id.* at 18988-89.

²⁸ *Id.* at 19008 (requesting “adequate time” to delay closures to extract lithium, cobalt, nickel, and rare earth metals).

industry flexibility and discretion to control releases.²⁹ Coal Combustion Residual Management Units remain a well-documented source of toxins and any effort to sustain them risks burdening future generations with health hazards that can (and should) be addressed today.³⁰

At bottom, the USCCB urges the EPA to revise these exemptions to promote safeguards and the expeditious closure of coal ash sites. Otherwise, the EPA must develop a better record supporting its incredible confidence that its exemptions will not burden the vulnerable with a “reasonable probability of adverse effects on health or the environment”, which is a standard it has failed to meet in the past. *See generally Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 425 (D.C. Cir. 2018) (rejecting coal ash regulations that failed, among other things, to establish an adequate record supporting health and safety).

(3) Expanding Coal Ash’s “Beneficial Use” Encourages Disposal Without Safeguards

The proposed expansion of “beneficial use” exemptions for the large-scale land application of unencapsulated coal ash raises substantial concerns about dust, runoff, and long-term social and water contamination. Such activities labeled as reuse might, in practice, resemble disposal without meaningful safeguards. For example, the EPA proposes eliminating a long-standing beneficial use criterion, which held that using more 12,400 tons of unencapsulated coal ash for non-roadway applications cannot qualify as beneficial use unless the user could prove that the risk of contamination was equal to or lower than analogous products made without coal ash.³¹ The EPA now finds that this empirical requirement “poses an unacceptable barrier to beneficial use,” especially when coal ash is used “correctly” and when states monitor closely.³² But if used incorrectly or if a state fails to monitor closely, then when impacts materialize, affected residents bear the burden of harm. Runoff from coal ash piles is frequent and can take time to cause harm to vulnerable people.³³ By eliminating a common-sense requirement that users prove that their use will not overtly risk harm, the EPA is effectively transforming the industry’s responsibility of prevention into a burden of harm to the community. In other words, if coal ash is used incorrectly or states fail to monitor upfront, those who suffer bear the burden of legal action to protect their basic living conditions only after harmful effects materialize long after exposure. The USCCB opposes the EPA eliminating this criterion and expanding other exemptions without appropriate standards that ensure harm is prevented – not simply shifted.

Recommendations

Although the USCCB applauds the EPA for its continuing interest in limiting the harms caused by coal ash, its newest proposal promoting flexibility will likely exacerbate and defer those harms to be addressed by the community. As a result, the EPA should expect to see a

²⁹ *Id.* at 19012-14.

³⁰ *See, e.g.*, EarthJustice, et al. Rulemaking Comment, September 15, 2025, 7-13, <https://www.regulations.gov/comment/EPA-HQ-OLEM-2020-0107-1362> (describing CCRMU leaks).

³¹ 91 Fed. Reg. 18968, 19009-11; 40 CFR § 257.53 (defining “beneficial use”, including its criterions).

³² *Id.* at 19011.

³³ *See, e.g.*, Schwartz, G. E., Rivera, N., Lee, S.-W., Harrington, J. M., Hower, J. C., Levine, K. E., Vengosh, A., & Hsu-Kim, H. (2016). Leaching Potential and Redox Transformations of Arsenic and Selenium in Sediment Microcosms with Fly Ash. *Applied Geochemistry*, 67, 177-185. <https://doi.org/10.1016/j.apgeochem.2016.02.013> (describing the conditions under which long-term toxins can easily leech into ground and water from coal ash piles).

proliferation of common-law claims for nuisance, trespass, and toxic exposure resulting from a proposed regulatory regime that might fail to prevent foreseeable harm. And when a regulatory regime increases reliance on after-the-fact litigation, it places affected communities in an adversarial position they should not have to occupy. It also exposes industry and government to costly toxic tort litigation and liability. Sound regulation should aim to reduce the conditions under which such disputes become inevitable.

Consequently, the USCCB recommends revising the proposed rule to better balance between the efficiencies that flow from flexibility and the government’s responsibility for protecting the vulnerable. At a minimum, the EPA should retain clear federal minimum standards that cannot be waived through site-specific discretion and better explain how it will maintain continuous federal oversight over state permitting programs. The EPA should also strictly limit when coal ash closures can be deferred and the presence of “storage piles.” Finally, the EPA should retain the current requirements regulating Coal Ash Residual Management Units and “beneficial use,” including any requirements that meaningfully prevent “use” from becoming a stalking horse for unregulated disposal. Doing so will not only minimize foreseeable harm to the community but will also advance environmental stewardship and the common good. Pope Leo XIV has reminded us that governments bear a special responsibility to develop and implement more rigorous regulations, procedures, and controls to mitigate environmental harm.³⁴

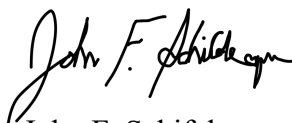
Conclusion

The USCCB respectfully urges the EPA to ensure that the flexible approach envisioned by the proposed rule does not come at the expense of the most vulnerable or the integrity of the environment. Where the EPA’s proposed rule increases the probability of harm to the common good or to the environment, the EPA should at a minimum retain the relevant restrictions until it fashions new rules that will not unjustifiably increase risk. Regardless, by maintaining strong federal minimum standards and preserving safeguards around coal ash management and beneficial use, the EPA can better fulfill its mandate under the RCRA to prevent foreseeable harm. Such an approach will promote effective stewardship of creation, protect human health, and advance the common good, while reducing the need for after-the-fact litigation.

Respectfully,



William Quinn
General Counsel
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³⁴ Address of the Holy Father Leo XIV to the Participants of the “Raising Hope for Climate Justice” on the Tenth Anniversary of the Encyclical *Laudato Si’*, at the Mariapolis Center (Castel Gandolfo, October 1, 2025), <https://www.vatican.va/content/leo-xiv/en/speeches/2025/october/documents/20251001-conferenza-mariapoli.html> (“Moreover, Pope Francis emphasized that ‘the most effective solutions will not come from individual efforts alone, but above all from major political decisions on the national and international levels (Laudate Deum, 69)’”).