

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LABADIE ENVIRONMENTAL ORGANIZATION,
DINÉ CITIZENS AGAINST RUINING OUR
ENVIRONMENT, HOOSIER ENVIRONMENTAL
COUNCIL, WATERKEEPER ALLIANCE, INC.,
and SIERRA CLUB,

Plaintiffs,

v.

ANDREW WHEELER, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY, in
his official capacity,

and

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Defendants.

Civil Action No. 1:20-cv-1819

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiffs Labadie Environmental Organization, Diné Citizens Against Ruining our Environment, Waterkeeper Alliance, Inc., Hoosier Environmental Council, and Sierra Club (collectively “Plaintiffs”) assert violations of the Resource Conservation and Recovery Act (“RCRA”) by Defendants Andrew Wheeler, Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (collectively “EPA” or “Defendants”) for refusing to hold an in-person public hearing and ensure adequate public participation on EPA’s proposed rollback to the 2015 Coal Ash Rule entitled: Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure, 84 Fed. Reg. 65,941 (Dec. 2, 2019) (“Part A Proposal”).

2. EPA refused Plaintiffs’ repeated requests for an in-person hearing and a longer comment period on the Part A Proposal, thereby impairing Plaintiffs’ and their members’ ability to effectively communicate their grave concerns about the Part A Proposal which would allow millions of tons of additional toxic coal ash to be dumped into leaking, unlined, and/or dangerously-sited ponds.

3. Coal ash generated by coal-fired power plants is one of the largest and most toxic solid waste streams in the United States. It contains contaminants that can cause cancer and other adverse health impacts including reproductive, neurological, respiratory, and developmental harm.

4. For decades, in the absence of national standards requiring safe disposal, coal ash was dumped in thousands of unlined and unmonitored lagoons, landfills, pits, and mines. The

result was the widespread release of dangerous pollutants from coal ash to water, air, and soil, endangering human health and the environment.

5. In 2015, after concluding that the “current management practice of placing [coal ash] waste in surface impoundments and landfills poses risks to human health and the environment,” EPA promulgated the Coal Ash Rule pursuant to the Resource Conservation and Recovery Act, creating the first-ever national regulations specifying environmental and public health protections from coal ash disposal after a long history of regulatory delay. *See* Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities, 80 Fed. Reg. 21,302, 21,451 (Apr. 17, 2015) (“2015 Rule” or “2015 Coal Ash Rule”).

6. Just a few years after the 2015 Rule was promulgated, at industry’s urging and contrary to a 2018 D.C. Circuit decision requiring more stringent regulation, EPA commenced a vigorous effort to weaken the 2015 Rule.

7. Within the eight-month period from July 2019 to March 2020, EPA proposed five significant new rulemakings that would weaken the environmental and public health protections in the 2015 Coal Ash Rule, as well as a related proposal that would roll back Clean Water Act treatment standards for coal ash discharges.

8. The Part A Proposal is EPA’s third set of amendments seeking to weaken the critical protections set forth in the 2015 Coal Ash Rule. The Part A Proposal would have adverse impacts on the environment and the health of individuals throughout the United States by allowing utilities to delay closing and therefore to dump millions of tons of additional toxic coal ash into leaking, unlined, and/or dangerously-sited ponds.

9. Plaintiffs' members derive recreational, scientific, aesthetic, commercial, life-sustaining, and spiritual benefits from groundwater, rivers, waterways, and other areas affected by EPA's Part A Proposal.

10. Despite the grave threats posed by the Part A Proposal to Plaintiffs and their members, and other communities impacted by coal ash pollution, EPA refused to hold an in-person hearing and only offered the public a "virtual," audio-only public hearing on the Part A Proposal. EPA's refusal to have an in-person public hearing on the Part A Proposal marks a clear reversal of its longstanding position that RCRA requires EPA to hold in-person public hearings on proposed coal ash regulations and amendments thereto.

11. While virtual public hearings can be an important supplement to in-person public hearings, they alone do not satisfy EPA's nondiscretionary duty under RCRA to hold a public hearing on regulatory changes and to provide for, assist, and encourage adequate public participation.

12. EPA further curtailed opportunities for public comment on the Part A Proposal by offering an insufficient comment period that ran over the winter holidays and coincided with the comment period for a separate but related coal ash regulatory rollback proposal.

13. Plaintiffs seek a declaratory judgment that EPA's refusal to hold an in-person public hearing and to provide sufficient participation opportunities on the Part A Proposal violated RCRA. Plaintiffs also seek injunctive relief compelling EPA to hold an in-person public hearing when it is safe to do so and to re-open the comment period on the Part A Proposal.

JURISDICTION AND VENUE

14. This action arises under the citizen suit provision of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(2).

15. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 6972(a), 28 U.S.C. § 1331, and 28 U.S.C. § 1361.

16. Plaintiffs have standing to bring this action on behalf of their members.

17. This Court may award Plaintiffs all necessary relief pursuant to 42 U.S.C. § 6972(a) and 28 U.S.C. §§ 2201-02.

18. Venue is proper because the RCRA citizen suit provision expressly provides that any action under 42 U.S.C. § 6972(a)(2) may be brought in the District Court for the District of Columbia.

19. By registered letter posted on February 7, 2020, and received on February 10, 2020, Plaintiffs gave notice of their intent to sue Defendants for their failure to perform mandatory duties under RCRA and have thereby complied with the sixty-day notice requirement of the RCRA citizen suit provision. *See* 42 U.S.C. § 6972(c); Notice Letter (attached as Ex. 1).

PARTIES

20. Plaintiff LABADIE ENVIRONMENTAL ORGANIZATION (LEO) is a grassroots, non-profit, non-partisan citizens group in Franklin County, Missouri focused on addressing public concerns related to coal ash and coal-fired power plant pollution. It was established in 2009, when electricity utility company Ameren Missouri proposed to build a coal ash landfill in the floodplain of the Missouri River at its Labadie power plant. LEO's mission is to inform and educate the community about environmental issues impacting their health and well-being, to inspire positive change, and to encourage practices for sustainability.

21. LEO members live, work and recreate near Ameren's coal ash ponds. LEO members are concerned about the unlined coal ash ponds at the Labadie plant which are leaking

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