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Coal Combustion Residuals/RCRA: Earthjustice Notice of Intent to Sue U.S. Environmental Protection Agency for Alleged Failure to Perform Nondiscretionary Duties

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Earthjustice on behalf of a number of environmental organizations sent a February 7th letter to United States Environmental Protection Agency ("EPA") Administrator Andrew Wheeler styled:

... 60-Day Notice of Intent to Sue for Failure to Perform Nondiscretionary Duties under the Resource Conservation and Recovery Act

The Notice of Intent to Sue ("NOI") alleges that EPA has failed to fulfill certain duties under RCRA related to public participation.

The NOI states that EPA has:

... failed to fulfill your duties under 42 U.S.C. §§ 6907, 6944(a), 6974(b) to hold "public hearings" and ensure "public participation" on EPA's proposal to revise closure deadlines for Coal Combustion Residuals ("CCR" or "coal ash") impoundments.

The NOI cites the EPA rulemaking styled as:

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).

Coal combustion residuals ("CCR") are generated from the combustion of coal for the purpose of generating steam to power a generator to produce electricity. CCR are also known as "coal ash." It can be disposed of by electric-generating units onsite, or sent offsite for disposal or beneficial use. If handled onsite, proper methods of disposal include landfills or surface impoundments.

Earthjustice describes the previously referenced Part A proposal as a major rulemaking involving CCR that will have adverse impacts on the environment and the health of individuals throughout the United States. The organizations object to EPA's sole use of a virtual public hearing to address the rulemaking. Also referenced is the 60-day comment period which is stated to have overlapped several holidays.

The NOI cites as arguments in support of alleged violations:

- Under RCRA, EPA and the Administrator have nondiscretionary duties to hold “public hearings” and to ensure “public participation” on the Part A proposal
- EPA has failed to hold “Public Hearings” on the Part A Proposal as required by RCRA
- RCRA’s public hearing requirement necessarily includes an “in-person” public hearing
- Participation at the January 7, 2020 virtual public hearing establishes that it does not satisfy RCRA’s public hearing and public participation requirements

A copy of the NOI can be downloaded [here](#).