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August 8, 2025

The Honorable Gary Palmer
Chairman
House Committee on Energy and Commerce
Subcommittee on Environment
Washington DC, 20515

The Honorable Paul Tonko
Ranking Member
House Committee on Energy and Commerce
Subcommittee on Environment
Washington DC, 20515

Dear Chairman Palmer and Ranking Member Tonko:

Thank you for the opportunity to testify before the Subcommittee on Environment on Thursday, June 26, 2025, at the hearing entitled, "A Decade Later: A Review of Congressional Action, Environmental Protection Agency Rules, and Beneficial Use Opportunities for Coal Ash."

This letter serves to transmit our official answers to the attached questions for the record.

Please contact Michelle Freeark (mfreeark@azgt.coop), or Carolyn Turner (cturner@azgt.coop) with any questions.

Sincerely,

Michelle R. Freeark
Executive Director of Regulatory Affairs and Corporate Services
Arizona Electric Power Cooperative, Inc. (AEPCO)

Enclosure

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Subcommittee on Environment
Hearing on
"A Decade Later: A Review of Congressional Action, Environmental Protection Agency Rules, and Beneficial Use Opportunities for Coal Ash"
June 26, 2025

Michelle Freeark
Executive Director of Regulatory Affairs and Corporate Services
Arizona Electric Power Cooperative (AEPCO)

Additional Questions for the Record

To The Honorable Morgan Griffith (R-VA):

1. Under the 2024 Coal Combustion Residuals Rule, the Environmental Protection Agency (EPA) created a category of regulated sites referred to as Coal Combustion Residual Management Units (CCRMU). In your opinion, what would be the least intrusive way to minimize any risk at these sites?

The 2024 Coal Combustion Residuals Rule (2024 CCR Rule) created a new, very broad category of units, known as Coal Combustion Residual Management Units (CCRMUs), that includes "any area of land on which any noncontainerized accumulation of CCR is received, is placed, or is otherwise managed," that is not already regulated under the CCR Rule as a CCR unit. 40 CFR § 257.53. The 2024 CCR Rule regulates these new areas, which range from 1 ton and greater, regardless of whether the disposal area is already closed under state oversight. 40 CFR § 257.50(d)(2). Setting aside the burden associated with determining where CCRMUs of 1 ton or greater have been placed, the large swath of CCRMUs comprise a hodge-podge of disposal areas of various sizes and volumes, regulatory involvement, site characteristics, hydrogeology, and terrain. Predictably, CCRMUs range vastly in risk – some of which pose no risk whatsoever.

For CCR as a solid waste, Congress's charge to EPA is to promulgate regulations containing criteria for determining which facilities can be "sanitary landfills" and not "open dumps" by ensuring that, at a minimum, such criteria shall provide that "there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility." 42 U.S.C. § 6944(a). The standard is known as the RCRA protectiveness standard. To the extent EPA relies on a risk assessment as a basis for regulation, it would be arbitrary and capricious to impose limitations or requirements beyond those shown by the risk assessment to be necessary to protect health and the environment. The risk assessment EPA relied upon for the 2024 rule did not account for the entire category of regulated units, in this case, CCRMUs, and took an unreasonable approach to what is acceptable risk. At present, "CCRMUs" should be reconsidered because these crucial prefatory steps have not occurred to allow EPA to properly regulate the CCRMU potpourri. Further compounding the problem, EPA did not omit beneficial use of CCR (not solid waste) that also should not be regulated as a CCRMU.

The least intrusive way to minimize risks posed by CCR disposal areas should be determined in a process that is not a one-size-fits-all, overly inclusive approach. Rather, the individual characteristics of the disposal area must be considered because the area may already pose little or no risk. EPA has the authority to establish such flexibility for states through regulation. States have specialized knowledge and experience from working with regional and local hydrogeology and terrain. States, through a state CCR program, are in the best position to assess the risks for a disposal area. That assessment would be tailored

to the unique attributes of the disposal area and other site-specific characteristics. Therefore, the owner/operator of the disposal area, together with the state regulatory agency, could craft a CCR management solution for the disposal area at issue, thereby assuring compliance with the RCRA protectiveness standard in an unintrusive manner. It is important to recognize that many areas now defined as CCRMUs were regulatorily closed *because the state already determined the site did not pose an unacceptable risk*.

Given current restraints on EPA's resources and the small number of states with EPA approval for CCR permitting programs, EPA may consider mechanisms to expedite the important work of a site-specific risk assessment to proceed in the interim in states that have demonstrable capacity to review risk assessments. For instance, states with current hazardous waste or municipal solid waste approval determinations have the expertise to implement EPA's risk assessment guidance, irrespective of an approved CCR permit program. Alternatively, the 2015 CCR Rule allows for licensed professional engineers to certify compliance documents, and EPA has used licensed professionals in the RCRA context in the past to reduce the paperwork burden that RCRA requirements impose on the states, EPA, and the regulated community. EPA found that state licensing board can investigate any complaints of negligence or incompetence, supporting the credibility of these licensed professionals. 71 Fed. Reg. 16,862,16,868 (Apr. 4, 2006). Finally, in establishing a Federal permitting program, as instructed in the WIIN Act of 2016, EPA could establish a clear process by which states can receive primacy over CCR permitting and make clear that they have the necessary authority to establish site-specific and risk-based considerations into their permits.

2. The EPA announced on March 12th, 2025, that it would attempt to complete a revised CCR Rule within a year. In subsequent court filings, EPA has committed to decide on the scope of rulemaking reconsideration by August 12th, 2025. In considering EPA's ongoing rulemaking, what are your thoughts on how EPA could establish nationwide minimum criteria for CCR unit closures?

Nationwide minimum criteria for closures must start with appropriately defining the disposal areas subject to the CCR Rule in the first place. EPA must conduct a new risk assessment to appropriately characterize the risks that may result from the current disposal practices for CCR and to provide a scientific basis for the development of regulations necessary to protect human health and the environment under the Resource Conservation and Recovery Act (RCRA). Without this finding, EPA has no foundation for adopting any measures, including closure and post-closure care requirements at the end of the life cycle of a disposal unit. Stated differently, EPA would be imposing limits or requirements lacking a basis to know whether they are needed to avoid any "reasonable probability of adverse effects on health or the environment," which is the statutory prerequisite for agency action. Therefore, the first step is for EPA to develop a risk assessment that encompasses all of the CCR disposal areas that EPA regulates, as described in response to Question 1.

EPA should not set closure criteria that dictate a certain type of methodology. Rather, closure criteria should be developed on a site-specific basis with the state regulatory agency through a state CCR permitting program. That agency would ensure that the closure plan is sufficiently protective based on the risk profile of the disposal area and site-specific characteristics. This would result in a closure plan that is supported by the groundwater monitoring data, the site conceptual model, and closure design options. Allowances should be made for beneficially used CCR to be removed from the disposal area because it is not a solid waste subject to regulation. This approach offers maximum flexibility for the owner/operator and the regulator to design a closure approach that is sufficiently protective and consistent with the RCRA solid waste regulations. This is consistent with EPA's longstanding policy to set high-level

goals that fulfill the statutory obligation of protectiveness, while allowing facilities flexibility to address highly variable site-specific conditions:

> The degree of investigation and subsequent corrective action necessary to protect human health and the environment varies significantly across these facilities. . . . To account for the variety of corrective action facilities and site-specific circumstances, EPA has emphasized a flexible, facility-specific approach to corrective action. Few cleanups will follow exactly the same course; therefore, program implementors and facility owners/operators must be allowed significant latitude to structure the corrective action process, develop cleanup objectives, and select remedies appropriate to facility-specific circumstances.

61 Fed. Reg. 19,432, 19,440 (May 1, 1996); *see also Am. Petroleum Inst. v. EPA*, 862 F.3d 50, 55, 60 (D.C. Cir. 2017) (invalidating RCRA regulations set "without regard to whether any incremental contaminants are significant in terms of health and environmental risks").