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EPA Issues First-Ever Rule Regulating Toxic Coal Ash, But Is It Enforceable?

Oakland, CA - After years of delay, the U.S. Environmental Protection Agency (EPA) made history today by issuing the first-ever rule designed to regulate the harmful effects of coal ash. While it's an important step forward, the rule does not go far enough to protect public health or the environment, declining to classify coal ash as hazardous waste, and sidestepping rigorous enforcement by delegating to state regulators.

As You Sow has been working with companies to address coal ash risks since 2009. Our shareholder resolutions on coal ash risk at [Consumers Energy](#) and [Montana-Dakota Utilities](#) were the first ever filed on the issue, and resulted in high levels of support, with both resolutions receiving over 40% of shares voted. Environmental resolutions that receive this level of support are significant, and send a strong message from investors that the industry's toxic coal ash management is inadequate, and poses a risk to communities, environments, and shareholders. Similar resolutions at Xcel Energy, PSE&G, FirstEnergy, Entergy, Dominion, and Duke Energy in 2011 and 2012 also received high levels of shareholder support.

"The investor response to our coal ash shareholder resolutions demonstrates that these risks were predictable and of strong concern to shareholders. Now, seven years after the TVA coal ash spill, regulators are finally catching up," said Andrew Behar, As You Sow CEO. "We need effective oversight to keep industry from taking risks that are dangerous to both communities and shareholder investments. Coal ash is stored in thousands of ponds, piles, and pools across the US. These are ticking time-bombs that could destroy nearby communities and shareholder value at any time. The EPA's new coal ash rules do not solve the coal ash problem."

Coal ash is a toxic waste product created in the process of burning coal for electricity. It contains numerous hazardous and carcinogenic chemicals such as arsenic, lead, and mercury. Living near coal ash dumps has been linked to heart disease, cancer, and respiratory disease. Utility mismanagement of coal ash waste has resulted in two major coal ash disasters, first in 2008 when the town of Kingston, Tennessee was buried when a dam holding back a coal ash was breached, and then a second disaster in 2014 when a Duke Energy drain pipe flooded toxic coal ash sludge into the Dan River in North Carolina. In addition to producing toxic waste that threatens communities, burning coal for electricity is one of the biggest global contributors to greenhouse gas emissions and climate change.

The EPA's rule suggests significant influence from the electric power sector, and does little to protect the public. The new rule effectively treats this hazardous, dangerous waste like normal household trash, and gives state regulators numerous opportunities to avoid strict enforcement. The new rule purports to increase inspections, to close impoundments that fail to meet engineering standards, to monitor nearby waterways, and to require liners for new coal ash ponds. But, in delegating enforcement to states, the most vulnerable communities are left unprotected, as local governments bow to business interests and decline to enforce the regulation stringently.

"Coal ash is extremely hazardous, as anyone impacted by coal ash spills or who saw the media coverage of Dan River this year knows," said Danielle Fugere, President and Chief Counsel of As You Sow. "Although not perfect, this rule underscores the fact that companies should be moving away from coal and its dangerous byproducts, like coal ash and carbon emissions. The path forward is clean, renewable energy, not coal and toxic coal ash."

In addition to our shareholder resolutions on coal ash, As You Sow is also party to a lawsuit with Duke Energy seeking information on the company's handling of coal ash, and how the company's business practices may have contributed to the devastating 2014 spill in Dan River, North Carolina.

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As You Sow is a nonprofit organization that promotes environmental and social corporate responsibility through shareholder advocacy, coalition building, and innovative legal strategies. For more information visit www.asyousow.org.