

**EPN COMMENTS ON 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**

January 31, 2020

Docket No. EPA-HQ-OLEM-2019-0172

The [Environmental Protection Network](https://www.epa.gov/environmentalprotectionnetwork) (EPN) submits the following comments regarding the decision of the U.S. Environmental Protection Agency (EPA) not to hold an in-person public hearing on the [proposed rollback of regulatory requirements governing closure of coal ash disposal units](#) (84 Fed. Reg. 65941, Dec. 2, 2019). EPN is comprised of almost 500 EPA alumni volunteering their time to protect the integrity of the EPA, human health, and the environment. We harness the expertise of former EPA career staff and confirmation-level appointees to provide an informed and rigorous defense against current administration efforts to undermine public health and environmental protections.

EPA's decision not to hold an in-person hearing marks a disturbing, inappropriate, and unlawful departure from the agency's historic practice. When required by statute, as in this case, and indeed in many cases even when not statutorily required, EPA has routinely held in-person public hearings to solicit the feedback of affected citizens, as well as various stakeholders, on proposed regulations. However, in three pending regulatory proposals regarding coal ash treatment and disposal (including the Part A CCR proposal, which this comment addresses), EPA is holding only a single online hearing and is not holding any in-person hearings.

Although online hearings importantly enable some who cannot travel to in-person hearings to participate in the public hearing process, online hearings are in many respects inferior to in-person hearings and do not, by themselves, fulfill EPA's legal duty to hold public hearings. As EPA's National Environmental Justice Advisory Council has advised: "[s]ocial media and technology ... should not take the place of face-to-face engagement with community members." (See <https://www.epa.gov/environmentaljustice/model-guidelines-public-participation>.)

1. Inadequacies of Solely Online Hearings for EPA and the Rulemaking Process

Many EPN members participated in public hearings while at EPA. We experienced first-hand the impact that an in-person public hearing can have on EPA personnel drafting regulations in Washington, D.C., remote from many of the people directly affected by the regulations. It can be extremely informative and helpful to the rulemaking process to hear directly from affected residents, who can highlight concerns about the impacts or weaknesses in proposed regulations that might not have been apparent to agency personnel. Listening to voices over a telephone line, without seeing the speakers and perhaps others who may have

traveled with them to the hearing, inherently lessens the impact of their input. In addition, in-person hearings provide an opportunity to engage in dialogue with members of the public, as required by EPA's regulations, 40 C.F.R. § 25.3(b), which cannot be replicated in an online setting. The in-person setting facilitates EPA personnel asking questions and engaging in back-and-forth discussion with public presenters, as well as having informal conversations with attendees during breaks.

While at EPA, we understood that a "public hearing" was an in-person event and that it was also the agency's interpretation of the term. In fact, EPA regulations and guidance direct EPA to use additional means of public participation to supplement, but not replace, in-person public hearings. See, e.g., 40 C.F.R. § 25.3(c), and EPA, Notice of New Public Involvement Policy, 68 Fed. Reg. 33946 (June 6, 2003) (the "development of new tools for public involvement ... should not limit the degree or types of public involvement already in use at EPA" at 33946; EPA should "provide increased opportunities for public involvement above and beyond the minimum regulatory requirements." at 33947).

Until the pending proposals for which EPA is providing solely online hearings, EPA has previously incorporated new technologies to supplement, but not replace, in-person public hearings. See 44 Fed. Reg. 10286 (Feb. 16, 1979) (toll-free telephone line for public comments in addition to in-person public hearing); 68 Fed. Reg. at 33946-47 (two-week, around-the-clock, online dialogue in addition to public comment process regarding development of updated public participation process). EPN sees no legal or policy justification for abandoning this well-established process.

2. Inadequacies of Solely Online Hearings for the Public's Ability to Participate Effectively

The public's ability to impact decision-makers is compromised by solely online public hearings. Some affected individuals lack internet access, which is required to sign up for and participate in online hearings. While affected individuals have effectively used visual aids at in-person public hearings, EPA's virtual hearing for the above-referenced proposal offers no such opportunity. Affected individuals have first-hand information or personal stories to share that can affect EPA's decision-making at an in-person setting, but lose some of their impact in the impersonal, austere context of an online hearing.

Our understanding, lawyers and non-lawyers alike, is that a public hearing involves an in-person dialogue between EPA and the public. We do not believe that a solely online hearing, without an in-person component, fulfills EPA's legal duty to conduct public hearings. Nor do we believe it to be sound public policy to eschew in-person hearings.

We are very concerned about and vigorously oppose EPA's decision not to hold any in-person hearings for the three pending regulatory rollback proposals regarding coal ash treatment and disposal. We urge EPA to reverse course and to provide in-person public hearings, in addition to the online hearings that have been held or scheduled, for each of the three rulemakings at issue.

Respectfully submitted,

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Environmental Protection Network