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*and U.S. Mail*

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**Re: Petition for EPA withdrawal of approval of Georgia's Partial Coal  
Combustion Residual (CCR) Permit Program under the Resource  
Conservation and Recovery Act, 42 U.S.C. § 6945(d)(1)(D) and (E).**

Dear Administrator Regan, Director Hoskinson, Acting Regional Administrator Gettle, Principal  
Deputy Assistant Administrator Breen:

The Southern Environmental Law Center, on behalf of itself and Earthjustice, Altamaha  
Riverkeeper, Chattahoochee Riverkeeper, Coosa River Basin Initiative, Georgia Interfaith Power  
& Light, and Sierra Club, hereby petitions the Environmental Protection Agency (EPA) to issue a  
notice of deficiencies with respect to the Partial CCR Permit Program of the State of Georgia and  
subsequently to withdraw approval of that program.

**I. Introduction.**

The 2015 Coal Combustion Residuals Rule (CCR Rule) prohibits the closure of coal ash  
impoundments when coal ash remains in contact with groundwater. 40 CFR § 257.102(d). The  
Resource Conservation and Recovery Act (RCRA), as amended by the WIIN Act in 2016,  
authorizes EPA to approve a state permit program or other system of prior approval and  
conditions regulating CCR units to operate in lieu of federal regulation of CCR units in the state  
if the EPA Administrator determines that the state program “requires each coal combustion  
residuals unit located in the State to achieve compliance with” the CCR Rule or state criteria at

least as protective as the CCR Rule. 42 U.S.C. § 6945(d)(1)(A) and (B). RCRA directs the Administrator to review an approved state permit program from time to time, as the Administrator deems necessary, thereby preventing states from operating approved CCR programs that do not ensure compliance with the CCR Rule or state criteria that are at least as protective as the CCR Rule's requirements. 42 U.S.C. § 6945(d)(1)(D).

In 2020, EPA approved Georgia's Partial CCR Permit Program to be operated by the Georgia Environmental Protection Division (Georgia EPD or EPD). Georgia EPD is operating its Partial CCR Permit Program in way that does not ensure compliance with the requirements of the CCR Rule or state criteria at least as protective as those in the CCR Rule. In fact, Georgia EPD has issued a state CCR Permit that blatantly violates the protective criteria of the CCR Rule by authorizing the closure of Georgia Power Company's unlined 1.1-million-ton Plant Hammond Ash Pond-3 (AP-3) in Northwest Georgia, which has coal ash submerged up to ten feet in groundwater.

Despite repeated calls by EPA for Georgia EPD to change course both before and after the issuance of the Plant Hammond AP-3 Permit, Georgia EPD has refused to revoke or modify that permit, effectively exempting Georgia Power Company from the protective requirements set out in the CCR Rule that prohibit ash impoundment closures with coal ash remaining in contact with groundwater. EPD is poised to propose similar unprotective state CCR Permits at other Georgia Power sites where substantially larger and more deeply submerged coal ash ponds are in the process of closure in place. Georgia Power is also proceeding as if the EPD has already issued those permits. There is no reason to expect that EPD will deviate from the course it followed with the Plant Hammond permit and allow coal ash to remain forever submerged in and in contact with groundwater, thereby contaminating the surrounding groundwater, rivers, and waterbodies in perpetuity. Only effective oversight and action by EPA will achieve compliance with the CCR Rule and RCRA, to ensure that the communities and water resources of Georgia receive the protections that the law guarantees them.

EPA must exercise its authority and proceed to withdraw its approval of Georgia's Partial CCR Permit Program as provided in RCRA, 42 U.S.C. §6945 (d)(1)(D) and (E). Georgia EPD has been steadfast in its open refusal to administer its Partial Permit Program in a manner that ensures compliance with the CCR Rule or state criteria at least as protective as the requirements in the CCR Rule. As detailed further below, the U.S. Court of Appeals for the District of Columbia in *Electric Energy, Inc. v. EPA*, No. 22-1056, -- F.4th -- 2024, WL 3211589 (D.C. Cir. June 28, 2024) (Attachment 1 hereto), has rejected the arguments that Georgia EPD relies upon to justify the Hammond AP-3 state CCR Permit approving closure of the 1.1 million-ton ash pond where, as EPA has noted, "approximately 10% of CCR remain[s] in contact with groundwater..."<sup>1</sup> Georgia EPD's actions are directly contrary to the protective standards explained repeatedly by EPA and set out in the plain language of the CCR Rule.

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<sup>1</sup> February 13, 2024 letter from Jeananne Gettle, EPA Region 4, to Hon. Jeffrey W. Cown, Director, GA EPD, p. 2 (Attachment 2 hereto) (hereinafter, "EPA 2024 Letter to Georgia").

## II. Discussion

### A. EPA approval of state CCR Permit Programs under the WIIN Act.

In 2016, Congress and the President authorized EPA to approve State CCR Permit Programs under the Water Infrastructure Improvements for the Nation (WIIN) Act, codified as part of RCRA, 42 U.S.C. § 6945(d). EPA approves such state CCR Permit Programs only if the Administrator determines that the state Permit Program standards “are at least as protective” as the Federal CCR Rule requirements, including those governing closure of coal ash impoundments under 40 C.F.R. § 257.102(d). 42 U.S.C. § 6945(d)(1)(B).

In 2020, EPA approved Georgia’s Partial CCR Permit Program. Georgia became one of only three states delegated with the authority to administer a state CCR Permit Program.<sup>2</sup>

### B. Georgia’s Hammond AP-3 State CCR Permit allows ash pond closure with coal ash submerged in groundwater, in violation of the Federal CCR Rule and RCRA, 42 U.S.C. §6945(d)(1)(B) and (D).

In November 2023, Georgia EPD issued a state CCR Permit for Georgia Power Company’s Plant Hammond Ash Pond 3 (AP-3) authorizing closure of a 1.1 million-ton unlined coal ash impoundment that is sitting up to ten feet deep in Georgia’s groundwater along the banks of the Coosa River in Northwest Georgia.<sup>3</sup> EPD issued the Hammond AP-3 CCR Permit under Georgia’s EPA-approved Partial CCR Permit Program. Although EPD issued that state CCR Permit in 2023, Georgia Power completed closure before it had even applied for the permit, and the final cover had been installed while the bottom of the waste pit remained submerged in groundwater. EPD had simply rubber stamped that closure when it issued the Permit in 2023.

The Hammond AP-3 CCR Permit is less protective of Georgia’s water resources and communities than the criteria for ash impoundment closures required under the CCR Rule. As set out in the Rule’s plain language and as EPA and the D.C. Circuit have explained, the CCR Rule prohibits the closure of CCR impoundments with coal ash submerged in groundwater. Georgia EPD was and is well aware of the shortcomings of this permit. Before and after EPD issued the Hammond AP-3 CCR Permit in November 2023, EPA in January 2022 and in

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<sup>2</sup> EPA, *U.S. State of Georgia Coal Combustion Residuals Program* (December 16, 2019), <https://www.epa.gov/coalash/us-state-georgia-coal-combustion-residuals-ccr-permit-program>. Georgia did not apply for EPA approval to run its state CCR Permit Program as to various provisions of the 2015 CCR Rule, including requirements for inactive impoundments at inactive facilities (or so-called Legacy impoundments); as a result, EPA’s 2020 delegation to Georgia is a partial one. For the reasons set forth in this letter, EPA should deny any application from Georgia EPD to administer a CCR Permit Program as to Legacy impoundments in Georgia, given EPD’s record of administering its current Permit Program in a manner that is less protective than required by Federal law.

<sup>3</sup> Georgia Environmental Protection Division, *Georgia Power Plant Hammond Ash Pond 3 Permit Information* (November 13, 2023), <https://epd.georgia.gov/hammond-ap-3-ccr-permit>; EPA 2024 Letter to Georgia, at p. 2 (“In the case of the Plant Hammond Permit, at the time of closure, approximately 10% of CCR remained in contact with groundwater...”).

February 2024 engaged in extensive communications with two successive Directors of Georgia EPD, questioning Georgia’s interpretation and application of the CCR Rule’s closure performance standards. Despite these warnings from EPA and extensive public comments making the same points,<sup>4</sup> EPD proposed and then issued its state CCR Permit authorizing closure of the waste pit with coal ash submerged up to ten feet deep in groundwater.<sup>5</sup> Georgia has steadfastly ignored calls from EPA and the public to revoke or modify the Hammond AP-3 CCR Permit, in open defiance of EPA and the minimum national criteria clearly and plainly set out in the CCR Rule, 40 C.F.R. § 257.102(d). Georgia EPD has announced no action since the D.C. Circuit issued its decision.

**C. EPA must issue a notice of deficiencies to Georgia and withdraw approval of Georgia’s Partial CCR Permit Program under RCRA, 42 U.S.C. § 6945(d)(1)(B) and (D).**

The record in Georgia is clear – EPD is operating a Partial State CCR Permit Program that is manifestly *less* protective than what the CCR Rule requires to safeguard groundwater and nearby rivers, waterbodies, and communities from unlined toxic coal ash impoundment closures. RCRA forecloses such rogue state CCR Permit Programs; they violate RCRA’s baseline requirement that regulatory criteria governing coal ash ensure that human health and the environment face “‘no reasonable probability’ of harm from [c]oal [r]esiduals spilling, leaking, or seeping from their storage units and harming humans and the environment.” *Electric Energy Inc. v. EPA*, 2024 WL3211589 at \*2 (*citing Util. Solid Waste Activities Grp. v. EPA*, 901 F.3d 414, 420 (D.C. Cir. 2018) (quoting 42 U.S.C. § 6944(a)).

EPA must therefore act for the same reasons that led EPA recently to deny Alabama’s application for a state CCR Permit Program. The environmental agencies of both states have issued state solid waste permits authorizing closure of coal ash impoundments with coal ash submerged in groundwater.

**i. EPA’s rejection of Alabama’s flawed CCR Permit Program.**

RCRA directs EPA to perform a critical gatekeeping function to ensure that state CCR permit programs are “at least as protective” of human health and the environment as the Federal CCR Rule, including the standards imposed on closure of coal ash impoundments. 42 U.S.C. § 6945(d)(1)(C).

On May 23, 2024, EPA denied Alabama’s application to administer a state Coal Ash Permit Program because Alabama’s program “is significantly less protective of people and

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<sup>4</sup> September 9, 2021 SELC comments to Georgia EPD on draft Plant Hammond AP-3 CCR Permit; September 10, 2021 Sierra Club public comments to Georgia EPD on Draft Hammond AP-3 CCR Permit; March 25, 2022 SELC supplemental comments to Georgia EPD on draft Plant Hammond AP-3 CCR Permit, <https://southernenvironment.sharefile.com/d-scdac49778d09459ea0a721134db06a8b>.

<sup>5</sup> January 11, 2022 letter from Carolyn Hoskinson, EPA Office of Resource Conservation and Recovery, to Hon. Richard E. Dunn, Director, GA EPD *re: Georgia Coal Combustion Residuals Permit Program*, Attachment 3 hereto (hereinafter “EPA 2022 Letter to Georgia”); EPA 2024 Letter to Georgia, Attachment 2.

waterways than federal law requires.”<sup>6</sup> Like Georgia EPD, Alabama allowed closure of unlined ash pits with coal ash in contact with groundwater, among other deficiencies.<sup>7</sup>

As EPA explained:

EPA can approve a state to implement a federally authorized coal ash permit program only if the state provides an equivalent or greater level of protection as federal law ... Under federal regulations, coal ash units cannot be closed in a way that allows coal ash to continue to spread contamination in groundwater after closure. In contrast, Alabama’s permit program does not require that groundwater contamination be adequately addressed during the closure of these coal ash units .... [<sup>8</sup>]

**ii. EPA must withdraw approval of Georgia’s Partial CCR Permit Program for the same reasons that resulted in EPA’s denial of Alabama’s CCR Permit Program application.**

In addition to forbidding the approval of less protective state CCR Programs like Alabama’s, RCRA also requires EPA to review a previously approved state CCR Permit Program so that the state CCR program “continues to ensure” that each coal combustion residuals unit in the state achieves compliance with the required protective standards, including those governing closure of coal ash ponds. 42 U.S.C. § 6945(d)(1)(D)(ii)(I), (B)(i)-(ii).

As detailed above, Georgia EPD has taken the same action that required the denial of Alabama’s CCR permit program application. Georgia EPD issued a state CCR Permit to Georgia Power that approves closure of the Plant Hammond AP-3 with coal ash submerged in groundwater, along the shores of the Coosa River.<sup>9</sup> Further, Georgia EPD is poised to propose issuing similar permits for other coal ash units in the state, including closure permits for Plant Scherer’s 16 million ton ash pond in Juliette, over 8 million tons of coal ash at Plant Yates near Newnan, and nearly 7 million tons of coal ash at Plant McDonough near Atlanta. Applications for ash pond closures that are deeply submerged in groundwater have been proposed since November of 2018 – nearly six years ago. Georgia Power is proceeding with those ash pond closures as if EPD has already granted those permits, even though the closures plainly violate the Federal CCR Rule.<sup>10</sup>

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<sup>6</sup> EPA, EPA Denies Alabama’s Coal Ash Permit Program Application (May 23, 2024), <https://www.epa.gov/newsreleases/epa-denies-alabamas-coal-ash-permit-program-application>.

<sup>7</sup> *See id.*

<sup>8</sup> *Id.*

<sup>9</sup> Georgia EPD, Georgia Power Plant Hammond Ash Pond 3 Permit Information (November 13, 2023) <https://epd.georgia.gov/hammond-ap-3-ccr-permit>.

<sup>10</sup> Georgia Public Service Commission, Semi-Annual Coal Combustion Residual Retirement Obligation (CCR-ARO) reports, Docket #43083 (includes timeline for ash pond closures and their particulars), <https://psc.ga.gov/search/facts-docket/?docketId=43083>.

The United States Court of Appeals for the D.C. Circuit recently confirmed EPA's application of the CCR Rule's requirements that prohibit ash pond closures with ash in contact with groundwater. This decision further establishes that Georgia EPD is operating a CCR permitting program that is less protective than the requirements of the Federal CCR Rule as shown by its issuance of the Plant Hammond AP-3 CCR Permit.

In *Electric Energy, Inc. v. EPA* (June 28, 2024), the United States Court of Appeals for the D.C. Circuit addressed industry challenges to EPA's actions enforcing the Federal CCR Rule. The court rejected the same arguments that Georgia EPD relied upon in issuing its Hammond Ash Pond 3 CCR Permit.

In particular, the D.C. Circuit addressed whether EPA improperly amended the 2015 CCR Rule governing coal ash pond closures without engaging in notice-and-comment procedures under the Administrative Procedure Act when it denied various power plant applications to continue dumping coal ash in unlined impoundments with coal ash submerged in groundwater. Rejecting industry arguments that EPA had adopted a new standard not contained in the 2015 CCR Rule, the D.C. Circuit held that "the 2015 [CCR] Rule, standing on its own, makes clear that operators cannot close their surface impoundments with groundwater leaching in and out of the unit and mixing with the coal residuals." *Id.* at \*6. The Court of Appeals held that EPA's coal ash dumping extension denials were "a straightforward application, not an amendment of the 2015 [CCR] Rule" and that "[n]othing in EPA's description of those [closure] requirements as a prohibition on closing coal residual units with 'coal ash in contact with groundwater' amends the 2015 Rule." *Id.*

In the course of its decision, the Court of Appeals specifically rejected two industry arguments, which Georgia EPD mimicked in authorizing the Hammond AP-3 impoundment to be closed with coal ash submerged in groundwater. The CCR Rule requires that free liquids be eliminated from the impoundment before the cap is placed on the closed impoundment. 40 C.F.R. §257.102 (d)(2)(i). In response to public comments pointing out that Hammond AP-3 was being closed with ash submerged in groundwater, Georgia EPD simply insisted that there were no free liquids in the impoundment because the coal ash had been dry stacked, therefore ignoring the presence of infiltrated groundwater in the impoundment and excluding groundwater from the meaning of "free liquids."<sup>11</sup>

In the same way, industry argued to the D.C. Court of Appeals that the 2015 CCR Rule did not encompass groundwater when it required the elimination of "free liquids." 2024 WL 3211589, at \*6. The D.C. Circuit rejected that industry argument and thereby Georgia EPD's position, concluding that "when groundwater makes its way into a coal residual unit, it 'readily separate[s] from the solid portion of a waste under ambient temperature and pressure,' becoming a free liquid" just as that term is defined in the CCR Rule itself. *Id.* (citing 40 C.F.R. § 257.53).

This conclusion—apparent on the face of the CCR Rule—was conveyed to Georgia EPD by EPA itself earlier this year. In its February 2024 letter to EPD, EPA noted that "the GAEPD's

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<sup>11</sup> Georgia EPD Response to Comments, Plant Hammond AP-3 CCR Permit, at p. 6 (November 13, 2023) (Attachment 4 hereto), <https://epd.georgia.gov/document/document/hammond-ap3-response-public-comments-finalpdf/download>.

Response to Comments includes statements regarding the closure performance standards related to closure in place, including interpretations of the term[] ‘free liquids’ that “do[] not appear to include free liquids derived from groundwater.” (EPA 2024 Letter to Georgia p. 2, Attachment 2).<sup>12</sup> Because “approximately 10% of CCR remained in contact with groundwater” at the time Hammond AP-3 was closed, “... free liquids were not eliminated prior to installation of the final cover system,” (EPA 2024 Letter to Georgia p. 2), therefore, the Hammond AP-3 CCR Permit is less protective than the CCR Rule criteria.

Second, in its Response to Comments accompanying the Hammond AP-3 CCR Permit, Georgia EPD again mimicked industry arguments, this time contending that when the 2015 CCR Rule requires control, minimization, or elimination of “infiltration” of groundwater into the closed coal ash impoundment, “infiltration” is limited to the “vertical percolation of precipitation into the ground” or other “downward entry of water into a soil (or sediment).” (EPD Response to Comments, Attachment 4 at pp. 4-5) (quotation omitted). Repeating the industry line, EPD concluded that infiltration “does not include the lateral flow of groundwater” and movement of groundwater through the sides and bottom of the unlined impoundment. *Id.* at p. 5.

Rejecting this limitation on the protections of the CCR Rule, the D.C. Circuit held that “[n]othing in the 2015 [CCR] Rule supports petitioner’s assertion that unit operators must minimize infiltration from only one direction – ... to the contrary, the mandate in section 257.102(d)(1) that units ‘control, minimize or eliminate ... post-closure infiltration of liquids into the waste’ appears in a set of requirements applicable to the closure of the coal residual ‘unit’ as a whole” under 40 C.F.R. §257.102(d)(1)(i) – such that the term “infiltration” is not limited to migration of water only vertically through the final cover system. *Electric Energy, Inc. v. EPA*, 2024 WL 3211589, at \*7.

This statement of the plain meaning of the 2015 CCR Rule is the same explanation that EPA conveyed to EPD in February 2024: “[T]he EPA has been clear that the term ‘infiltration’ as used in the federal CCR regulations, refers to any kind of movement of liquid into a CCR unit from any direction, including the top, sides, and bottom of the unit. In contrast, the GAEPD asserts in its Response to Comments document that infiltration ‘does not include the lateral flow of groundwater.’”

The D.C. Circuit summarized that “[a] unit operator closing a surface impoundment with waste saturated feet-deep in groundwater has neither eliminated ‘free liquids’ from the impoundment nor controlled infiltration of liquids’ into that unit” under the Federal CCR Rule closure performance standards imposed on all CCR units nationwide under 40 C.F.R. § 257.102(d). 2024 WL 3211589, at \*6. This is exactly the situation that Georgia EPD approved when it issued Georgia Power a closure permit for Hammond AP-3.

In sum, the industry rationales that Georgia EPD parroted in justifying the issuance of the Plant Hammond AP-3 permit have been rejected by the D.C. Circuit, EPA, and the CCR Rule itself.

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<sup>12</sup> Compare EPA 2024 Letter to Georgia at p. 2 (Attachment 2) with EPD Response to Comments, at p. 6 (Attachment 4).



**D. The Nation has reached a critical moment concerning EPA approval of state CCR Permit Programs, and EPA must engage in long-overdue administrative review of Georgia EPD's mishandling of its Partial CCR Permit Program.**

**The coming years are a critical moment.** It has been nearly a decade since the 2015 CCR Rule became effective, yet communities across the Nation remain at risk from the threats to human health and the environment posed by unlined coal ash ponds and landfills. As the D.C. Circuit recognized, “EPA has determined that coal residuals contain myriad carcinogens and neurotoxins that contribute to increased rates of ‘cancer in the skin, liver, bladder, and lungs,’ ‘neurological and psychiatric effects,’ ‘damage to blood vessels,’ and ‘anemia’ in people exposed to them.” 2024 WL 3211589, at \*1. These risks will persist so long as these unlined waste pits are allowed to perpetually contaminate groundwater and nearby rivers and waterbodies in the communities where they are located.

The invalid and illegal analysis and decision-making that Georgia EPD followed for the Plant Hammond AP-3 permit places Georgia's groundwater and neighboring communities at risk throughout the state. Georgia EPD is poised to decide on ash pond closures amounting to over thirty million tons of coal ash in communities in Georgia's central and western regions —at Plant Scherer in Juliette near Macon, Plant McDonough in Vinings in suburban Atlanta, and Plant Yates near Newnan. The unlined coal ash impoundments at these plants are even more deeply submerged in Georgia's groundwater and are also adjacent to major rivers and waterbodies.

Utilities across the country are retiring coal-fired electric generating units as the cost of generating electricity from coal becomes too expensive, as renewable energy production grows, and as the country works to reduce its air pollution and carbon emissions. At the same time, the deadlines in the CCR Rule have forced utilities to face up to closing their unlined CCR impoundments. Decisions are being made now and in the near future about how units will be closed and what utilities will do to clean up the legacy of contaminated groundwater and other pollution that emanates from these sites.

These are forever decisions. Utilities are deciding how to store millions of tons of coal ash permanently at hundreds of sites across the country. These sites are almost always on the banks of rivers, lakes, and coastal waterways. Many of these waterways and the surrounding groundwater are also drinking water sources. These coal ash sites become more vulnerable every day due to water level rise and the increasing severity and frequency of storms, flooding, and hurricanes. If coal combustion residuals are left in the unlined impoundments where they currently are stored without complying with the protective standards in the CCR Rule, the utilities will have created a series of disasters waiting to happen. These threats will exist in perpetuity, or subsequent generations will require their removal – resulting in wasted expenditures and years of unnecessary pollution and potential catastrophes.

Compliance with the CCR Rule must be required today to prevent disasters and toxic pollution tomorrow and in the decades to come. For example, the inadequate closure permit at the Plant Hammond AP-3 unlined impoundment allows up to ten feet of the 1.1 million-ton industrial waste pit to be submerged in groundwater, sitting atop porous karst limestone that is prone to sinkholes and located in Floyd County, which has experienced severe flooding,



prompting an emergency declaration by the Governor of Georgia in September 2022.<sup>13</sup> And this dangerously closed unlined coal ash impoundment sits along the shores of the Coosa River, awaiting the next severe flooding event in the region.

Years have passed while EPA has attempted to convince Georgia EPD to follow the law and protect Georgia's water resources and communities. The time for cooperative inter-agency talks is at an end. We urge EPA to enforce the standards imposed by RCRA to safeguard the integrity of the CCR Rule's nationwide minimum criteria for the safe handling and disposal of coal ash by issuing a notice of deficiencies and commencing the process of withdrawing EPA's approval of Georgia's Partial CCR Permit Program if Georgia EPD does not promptly correct all identified deficiencies. 42 U.S.C. §§ 6945(d)(1)(D)(ii) and (E)(i).

**Enforcement of the CCR Rule in States operating under EPA approval is important for environmental justice and climate change.** The dangerous and polluting storage of coal ash in violation of the CCR Rule is an environmental justice issue. *See, e.g.,* U.S. Commission on Civil Rights, *Environmental Justice: Examining the Environmental Protection Agency's Compliance and Enforcement of Title VI and Executive Order 12,898* at 194 (Sept. 2016).<sup>14</sup> Many, and perhaps most, of the unlined coal ash ponds nationwide are located among and near communities of color and communities with significant numbers of low-income families. *See, e.g., Poisonous Coverup* Report at 23 ("Seventy percent of the plants where coal ash might be left sitting in groundwater after closure are located in disproportionately low-income neighborhoods or communities of color, where residents typically lack resources to address noncompliance or test their water sources."). They are sometimes in rural communities that are sparsely populated and that do not contain well-resourced environmental or community groups. Many residents and farms near unlined coal ash storage sites depend upon wells for drinking water and/or irrigation. Nearby homes and farms are often the principal assets of many of the families living in the vicinity of unlined coal ash storage; and when the coal ash is not properly stored in safe and dry lined storage or otherwise in compliance with the CCR Rule, the presence of the old leaking unlined impoundments reduces property values and can make property unmarketable. Coal ash water pollution also often carries with it bromides that can cause the formation of carcinogens in treated drinking water.

For the most part, these communities are not in a position to fight large utilities and their lawyers, public relations staff, consultants, and lobbyists. Nor can they easily fight their own state's regulatory agency that is working in concert with the powerful utility. Over many years, these communities have often borne the brunt of being near a coal-fired plant, and they will continue to suffer the consequences of their proximity for decades to come if the coal ash storage sites are not cleaned up consistent with the CCR Rule.

Georgia EPD has demonstrated that it is not up to the task of faithfully and legally administering Georgia's Partial CCR Permit Program. If EPA fails to reign in previously approved dysfunctional CCR Permit Programs such as Georgia's, EPA will create a patchwork of

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<sup>13</sup> Gov. Brian Kemp Executive Order 09.04.22.01, Declaring State of Emergency for Severe Flooding in Chattooga and Floyd Counties, <https://gov.georgia.gov/document/2022-executive-orders/09042201/download>.

<sup>14</sup> Available at [https://www.usccr.gov/files/pubs/2016/Statutory\\_Enforcement\\_Report2016.pdf](https://www.usccr.gov/files/pubs/2016/Statutory_Enforcement_Report2016.pdf).

inconsistent and inadequate state agency regulation by approving state CCR permit program applications. Alabama has already attempted to do just that, with more to follow. It is critical that EPA demonstrate that not only will less protective and therefore illegal state CCR programs be denied authorization, but that previously authorized programs will be withdrawn if, as is the case in Georgia, they fail to comply with the minimum criteria imposed by the Federal CCR Rule. If EPA fails to act in Georgia, state permit programs will become in effect CCR Rule *exemption* programs, under which utilities like Georgia Power can obtain permits from state agencies like Georgia EPD that authorize blatant violations and evasion of the fundamental protective standards contained in the CCR Rule.

EPA must therefore provide Georgia EPD with a notice of deficiencies and subsequently withdraw its approval of Georgia's Partial CCR Permit Program if the State does not remedy these deficiencies.

Thank you for consideration of this petition. To protect the thousands of residents of the State of Georgia and communities across the Nation that rely on the safe handling and disposal of toxic coal ash as the law requires, we urge EPA to take immediate action.

Sincerely,



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Enclosures: Attachments 1 – 4 (hard copy for US Mail; for others, please use the following link <https://southernenvironment.sharefile.com/d-s0edd9cdfd5db437eb4c81653df7549e2>)