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15 December 2017

VIA E-MAIL (HARD COPY TO FOLLOW BY U.S. MAIL)

David K. Paylor, Director
James J. Golden
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219

Re: Dominion Has Failed to Assess 2.1 Million Tons of Ash at the Chesapeake Energy Center, as Required by Virginia Law

Dear Director Paylor and Mr. Golden,

We are writing regarding Dominion's "Senate Bill 1398 Response – Coal Combustion Residuals Ash Pond Closure Assessment" ("Response") pertaining to the Chesapeake Energy Center. We intend to submit a separate analysis of Dominion's Response as a whole at a later date.

As you are aware, Dominion stores coal ash at the Chesapeake site in an ash landfill, the Bottom Ash Pond, and in unlined coal ash lagoons referred to collectively as the "Historic Pond." The Historic Pond contains 2.1 million tons of coal ash, amounting to roughly *two-thirds* of all the coal ash at the site. Under 2017 Va. Acts ch. 817 (Senate Bill 1398) ("2017 Act"), an assessment and evaluation of closure options for "coal combustion residuals surface impoundments" are required. Contrary to these requirements, however, Dominion has assessed *only* the Bottom Ash Pond—containing only about *two percent* of the ash at the site—and has completely ignored the 2.1 million tons of coal ash in the Historic Pond.¹ Without a doubt, the Historic Pond constitutes a "coal combustion residuals surface impoundment." Dominion's failure to comply with the 2017 Act and conduct an assessment and evaluation of the Historic Pond is also particularly troubling in light of the decision of the U.S. District Court for the Eastern District of Virginia ("District Court") that arsenic from the ash landfill, the Bottom Ash Pond, *and* the Historic Pond is flowing unimpeded into the surrounding rivers in violation of the Clean Water Act. Moreover, the Historic Pond is not only unlined, but portions of the ash lie six

¹ Collectively, Dominion stores approximately 3.4 million tons of coal ash at the site—roughly 2.1 million tons in the Historic Pond, 1.2 million tons in the ash landfill, and between 72,000 and 84,000 tons in the Bottom Ash Pond.

feet below sea level—sitting in and saturated by groundwater. Clearly, an assessment of the Historic Pond is critical.

The 2017 Act requires “[t]hat every owner or operator of a coal combustion residuals (CCR) surface impoundment, as that term is defined at 40 C.F.R. 257.53, that is located within the Chesapeake Bay watershed shall conduct an assessment of each such CCR surface impoundment (CCR unit) regarding the closure of any such unit.” The Act specifies minimum requirements for such an assessment. In turn, 40 C.F.R. § 257.53 defines a “CCR surface impoundment” as a “natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.”² This definition clearly encompasses the Historic Pond. The District Court described the Historic Pond as follows:

The [Chesapeake Energy Center] burnt coal to make electricity, and created an enormous amount of coal ash. Dominion moved the ash from the plant to several on-site storage facilities. Between 1953 and 1984, Dominion kept the ash in three different settling ponds, collectively known as the Historic Pond. The Historic Pond does not have a liner beneath it. Dominion created the Historic Pond and engineered it with the express intention of using it for coal ash.

Sierra Club v. Va. Elec. & Power Co., 247 F. Supp. 3d 753, 756 (E.D. Va. 2017). Dominion admits these facts. Under the definition of a CCR surface impoundment, the three unlined settling ponds thus are “man-made excavations” or “diked areas” that Dominion designed to hold an accumulation of coal ash and liquids, as the coal ash was sluiced into the settling ponds. Dominion “treat[ed]” the coal ash in the Historic Pond through a settling process, and then “dispose[d]” of and “store[d]” nearly 30 years’ worth of coal ash solids and liquids in these settling ponds.

Because Dominion stopped using the Historic Pond in the 1980s, it is not an *active* surface impoundment, but rather an “inactive” surface impoundment. *See* 40 C.F.R. 257.53 (defining “inactive CCR surface impoundment” to mean a “CCR surface impoundment that no longer receives CCR on or after October 19, 2015 and still contains both CCR and liquids on or after October 19, 2015”). But for purposes of the 2017 Act, this distinction is irrelevant—the law requires an assessment for *every* “CCR surface impoundment.”

There is no legitimate basis for Dominion to assess and evaluate for closure only the Bottom Ash Pond while completely ignoring the Historic Pond. Under the “CCR surface impoundment” definition, there is in fact no difference between the Bottom Ash Pond and the Historic Pond. Both the Bottom Ash Pond and the Historic Pond were used to treat, store, and dispose of coal ash and liquids, both are unlined, and both sit in low-lying areas vulnerable to flooding and storm surges. In fact, the Bottom Ash Pond was constructed in an area that used to be part of the Historic Pond. By ignoring the Historic Pond, the 2.1 million tons of coal ash will serve as a perpetual source of arsenic flowing into the surrounding rivers. An assessment of the Historic Pond, as required under the 2017 Act, is essential.

² These federal regulations—the “CCR Rule”—have been expressly incorporated in the Virginia Solid Waste Management Regulations at 9 VAC 20-81-800.

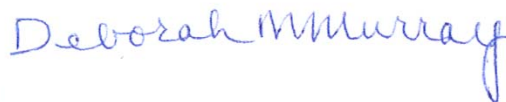
Dominion notes in its Response that it intends to propose additional corrective measures to address “site-wide groundwater impacts.” *See* Response Table ES-1 n.3, at ES-2; *id.* Table 1 n.3 at 1-1. That cannot excuse Dominion’s failure to assess the Historic Pond, however. Notably, the 2017 Act is not limited to groundwater impacts; it requires Dominion to “[i]dentify and describe any groundwater or surface water pollution located at or stemming from the CCR unit, including pollution identified through past monitoring, and evaluate corrective measures to resolve such pollution.” Moreover, the District Court has held that arsenic from the coal ash stored at the Chesapeake Energy Center, including in the Historic Pond, *is* polluting the surface waters. The 2017 Act also requires information about clean closure options and the long-term risks posed by “extreme weather events, flooding, hurricanes, storm surges, and erosive forces.” Dominion’s plan to address “site-wide groundwater impacts” will not satisfy any of these requirements.

In sum, Dominion cannot ignore the plain obligations imposed by the CCR Rule and the 2017 Act. By failing to assess the Historic Pond, Dominion’s assessment is flawed and incomplete, calling into question the sufficiency of the entire assessment. The 2.1 million tons of coal ash in the Historic Pond represent not only two-thirds of the coal ash at the Chesapeake site but also about 7 to 8 percent of *all* of Dominion’s coal ash in the state. Thus the failure to address the Historic Pond necessarily affects Dominion’s assessment of closure options not only at Chesapeake, but more broadly, including, for example, with respect to its consideration of a centralized landfill location or consolidated beneficiation facility.

Twice, we have urged DEQ to make clear to Dominion that the CCR Rule does apply to the unlined Historic Pond, apparently to no effect. Consequently, as it stands, the public and decision-makers lack critical information that the General Assembly determined was required for every one of the CCR surface impoundments in the Chesapeake Bay watershed, rendering Dominion’s assessment fundamentally flawed.

This issue can no longer be ignored. We request a meeting with DEQ as soon as possible to discuss these important issues and facilitate a path forward that will comply with all legal requirements. Thank you for your consideration.

Sincerely,



Deborah M. Murray
Nathaniel H. Benforado
Southern Environmental Law Center

cc:
State Water Commission
Matt Strickler, Incoming Secretary of Natural Resources

Molly J. Ward, Secretary of Natural Resources
Angela Navarro, Deputy Secretary of Natural Resources
Sen. Scott Surovell
Sen. Amanda Chase
Sen. Lionell Spruill, Sr.
Del. C.E. “Cliff” Hayes, Jr.
Del. Matthew James
Del.-elect Cheryl Turpin
Jan L. Proctor, City Attorney for the City of Chesapeake
Seth Heald, Chair Sierra Club Virginia Chapter
Kate Addleson, Director, Sierra Club Virginia Chapter