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VIA REGISTERED MAIL

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NOTICE OF INTENT TO SUE

RESOURCE CONSERVATION AND RECOVERY ACT
42 U.S.C. § 6972

Re: Former W. C. Beckjord Station Unlined Coal Ash Ponds ("Beckjord Dump") Presents an Imminent and Substantial Endangerment to Clermont County, Ohio's Public Drinking Water Supply Wells

Dear Parties:

In accordance with the citizen suit provisions of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. § 6972(a)(l)(B), the Clermont County Board of Commissioners (the "Commissioners"), through their undersigned counsel, give Owlfly, LLC, TBDA Investments, LLC, Commercial Liability Partners, LLC ("CLP"), New Richmond Development Corporation LLC ("NRDC"), and Duke Energy Beckjord, LLC and Duke Energy Ohio, Inc. (together, "Duke") (collectively, the "Polluters"), notice of their intent to file suit to abate conditions that currently present an imminent and substantial endangerment to public health

and the environment arising from the unlawful handling, storage, treatment, and disposal of Coal Combustion Residual ("CCR(s)") waste and other solid waste, including the federally non-compliant closure of the Beckjord Dump. Duke is a "past or present" owner, generator, and operator under 42 U.S.C. § 6972(a)(1)(B) whose historical handling, storage, and disposal of CCRs contributed to the imminent and substantial endangerment. Duke and its predecessor companies owned and operated the Beckjord plant for over 60 years, generated millions of tons of CCR, and disposed of such waste in unlined disposal areas (herein "ash ponds"), which established the conditions now constituting the imminent and substantial endangerment. Duke's liability is not extinguished by its transfer of the property to CLP and NRDC in 2018. Duke also continues to own a parcel at the Beckjord Dump.

While Clermont County has and maintains rigorous testing and treatment protocols that ensure all drinking water supplied to its residents is safe, this notice concerns the raw drinking water ***before*** such testing and treatment by Clermont County. As summarized below, immediate and substantial action is required to keep the natural supply of drinking water safe from harmful contaminants, which, if left unremedied by the Polluters, will require significant additional upgrades and/or treatment measures by Clermont County to continue to ensure the safety of residents' drinking water. The imminent and substantial endangerment, and the substantial costs to remedy it, must be addressed and borne by the Polluters, not the Clermont County taxpayers. Further, in accordance with the citizen suit provisions of RCRA, 42 U.S.C. § 6972(a)(l)(A), the Commissioners also give notice to CLP, NRDC and Duke of their intent to file suit for violations of the Act and the CCR Rules, 40 C.F.R. § 257.50 *et seq*. (the "CCR Rule(s)"), at the Beckjord Dump as more fully set forth below.

Neither the U.S. EPA ("EPA") nor the Ohio EPA ("OEPA") are prosecuting or taking any action to ensure the future safety of drinking water in Clermont County, or future safety of surrounding properties, from potentially catastrophic toxic overflow of the faulty dams containing the Beckjord Dump. Yet, EPA recognized that "[s]ources of drinking water are finite, and future users' interests must also be protected."[1] Further, "[t]he Act and its legislative history clearly reflect **Congressional intent that protection of groundwater is to be a prime concern …** EPA believes that solid waste activities should not be allowed to contaminate underground drinking water sources to exceed established drinking water standards." *Id*. Here, OEPA is actually exacerbating the problem by issuing approvals to CLP for what OEPA knows to be federally non-compliant closure plans when OEPA lacks, and knows it lacks, authority to issue federally compliant plans. In fact, Ohio EPA admits it has no authority to enforce federal CCR law and regulations.

If the endangerment is not abated within ninety (90) days of receipt of this Notice, then the Commissioners intend to file suit in the United States District Court for the Southern District of Ohio against NRDC, CLP, Duke, and any other related entities who contributed to this imminent and substantial endangerment, seeking injunctive relief, civil penalties, attorneys' fees, and other appropriate remedies under the Act, including all statutory and common law claims against the Polluters. Further, after the expiration of sixty (60) days as provided in the Act, the Commissioners

[1] *See* Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities, 80 Fed. Reg. 21,302, 21452 (April, 17, 2015) (herein "2015 Rule").

plan to file suit in the United States District Court against NRDC, CLP and Duke to enforce the provisions of the CCR Rules and the Act.

I. INTRODUCTION

This notice concerns CCRs—"a dangerous byproduct of coal-fired electrical power plants[.]"[2] "Across the United States, power plants ... burn enough coal to collectively generate upwards of one hundred million tons of coal ash annually[,]" making coal ash "one of the largest industrial waste streams generated in the U.S."[3] The health and environmental dangers posed by coal ash cannot be overstated; it has been established as causing cancer and a myriad of other health problems, as well as significant environmental harms to nearby land, water, and wildlife. (*Infra* at § II.A.)

The Beckjord Dump "is located adjacent to the Ohio River approximately 15 miles upstream from Cincinnati, Ohio."[4] It was once a coal power plant, which produced CCRs as a byproduct from approximately 1952–2014 that were disposed of in onsite unlined landfills and/or surface impoundments (*i.e.*, Pond A, B, C and Cx as well as Pond Run Phase 2 and Pond Run Phase 3) (herein "ash ponds"). It is also adjacent to and upgradient from the local public water supply wells that are the source of drinking water to approximately 145,000 residents in Clermont County.

If the CCRs in the Beckjord Dump are not removed and/or otherwise restrained, the Beckjord Dump will continue to contribute substantial quantities and volumes of contamination including sulfate to groundwater and surface water for decades. The illegal closure of the Beckjord Dump in violation of RCRA and the CCR Rules threatens the surrounding communities and environment, and constitutes ongoing illegal open dumping. The ongoing acts of disposal and handling practices by CLP and NRDC result in contamination of a public drinking water supply above federal maximum contaminant levels ("MCLs") and above other applicable public health guidance and advisories.

As outlined more fully in this Notice, the Beckjord Dump poses an imminent and substantial endangerment to the health of Clermont County residents and the surrounding environment. Clermont County has the responsibility for ensuring a safe drinking water supply in compliance with the Safe Drinking Water Act. If contaminated, the aquifer's water supply cannot simply be replicated or replaced. The stakes could not be higher: contamination of this aquifer would jeopardize the source of drinking water for approximately 145,000 Clermont County residents. Accordingly, Clermont County gives notice of the imminent and substantial endangerment facing its residents and environment, and its intent to sue those responsible to prevent the resulting harm and dangers that are certain to follow.

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[2] *Gavin Power, LLC v. U.S. EPA*, No. 2:24-cv-41, 2025 WL 2908716, at *1 (S.D. Ohio Aug. 26, 2025).
[3] *Id.* (*citing* 2015 Rule, 80 Fed. Reg. at 21,303).
[4] *See Report First Quarter Hydrogeologic Investigation, Walter C. Beckjord Station, New Richmond, Ohio* by Dames & Moore at 5 (Nov. 15, 1988) (herein, "D&M 1988 Report"). All Beckjord Dump documents referenced herein are publicly available to the Polluters, EPA and OEPA through their own records.

II. BACKGROUND

A. CCRs and Their Dangers

CCRs are "byproducts of coal combustion that occurs at power plants" including "fly ash," "bottom ash," "boiler slag," and "flue gas desulfurization materials."[5] CCRs contain "contaminants of environmental concern" that are "carcinogens and neurotoxins, including arsenic, boron, cadmium, hexavalent chromium, lead, lithium, mercury, molybdenum, selenium, and thallium."[6] Accordingly, CCRs "pose serious risks to human health and the environment."[7] "Exposure to these contaminants correlates with increased likelihood of skin, liver, bladder, and lung cancer. Beyond cancer, these contaminants are also linked to harmful neurological, psychiatric, gastrointestinal, cardiovascular, and other effects."[8] Moreover, "[t]hese contaminants likewise harm the environment" including causing "elevated selenium levels in migratory birds, wetland vegetative damage, fish kills, amphibian deformities, snake metabolic effects, plant toxicity, mammal uptake, fish deformities, and inhibited fish reproductive capacity."[9] The harmful impact of coal ash on human health and the environment cannot be questioned.

B. Legal Framework and Regulation of CCRs

In 2015, the EPA promulgated its Final Rule regulating Coal Residuals (the "2015 Rule").[10] "To address the health and environmental risks associated with coal ash, the EPA regulates its disposal under Subtitle D of the RCRA … [which] prohibits the disposal of solid waste in 'open dumps,'" and "calls on the EPA to 'promulgate regulations containing criteria for determining which facilities ... shall be classified as open dumps.'"[11] RCRA sets the baseline that solid waste disposal sites (including coal-residual units) must ensure "no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility." *Id*.

EPA also promulgated minimum national criteria for inactive CCR surface impoundments as well as new and existing landfills and surface impoundments.[12] As part of the rulemaking, "[t]he main exposure pathways the EPA found were through waste that escapes landfills and surface impoundments and then contaminates groundwater tapped as drinking water[.]"[13] That is because "[g]roundwater contamination is more likely to occur at sites that are unlined or lack adequate lining between the coal ash and the soil beneath it." *Id*. at 422. Further, once contamination of a water source occurs, "[t]he EPA has acknowledged that it 'will not always be

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[5] *See Util. Solid Waste Activities Grp. ("USWAG") v. EPA*, 901 F.3d 414, 421 (D.C. Cir. 2018) (internal citations omitted).
[6] *Id.* at 421.
[7] *Gavin Power*, at *1.
[8] *Id.* at *2 (internal citations omitted).
[9] *Id.* at *2 (*citing* Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities, 75 Fed. Reg. 35128, 35,172 (June 21, 2010)).
[10] *See USWAG*, 901 F.3d at 420. *See also Gavin Power*, at *1 ("After struggling with how to address the scale, complexity, and gravity of the nation's coal ash problem for decades, the EPA promulgated the first coal ash disposal regulation in 2015.").
[11] *Gavin Power*, at *3 (*citing* 42 U.S.C. §§ 6944(a), 6945(a)).
[12] *See* 40 C.F.R. § 257.50.
[13] *See USWAG*, 901 F.3d at 421.

possible' to restore groundwater or surface water to background conditions after a contamination event." *Id*. Indeed, as one federal court of appeals recognized:

> Landfills and surface impoundments ***both pose threats to human health and the environment***. The risks generally stem from the fact that thousands, if not millions, of tons [of coal ash are] placed in a single concentrated location. ***These disposal sites are at risk of structural failure ... The sheer volume of Coal Residuals at these sites, moreover, can force contaminants into the underlying soil and groundwater***, threatening sources of drinking water. Surface water bodies—i.e., rivers, lakes, and streams—are also at risk of contamination through harmful constituents that migrate through groundwater, or flow into surface waters as run-off or wastewater discharge, any of which can lead to environmental harms such as "wetland vegetative damage, fish kills, amphibian deformities, * * * [and] plant toxicity."[14]

Additionally, inactive surface impoundments (or "legacy ponds") present a specific danger because they "by their nature are older than most surface impoundments, are 'generally unlined' and unmonitored, and so are shown to be more likely to leak than units at utilities still in operation. Without an on-site operator to monitor and maintain such a unit, consequences of leakage or structural failure may be amplified."[15] Indeed, there is no guarantee that "harmful leaks will be promptly detected; that, once detected, they will be promptly stopped; or that contamination, once it occurs, can be remedied." *Id*. at 429. "EPA amended the 2015 Rule in 2020 and then again in 2024."[16] In the 2020 Amendment, EPA "reclassified unlined coal-residual units as 'open dumps,' which, again per the RCRA, must retrofit or close." *Id*. In the 2024 Amendment, EPA addressed legacy ponds. *Id*.

Within the Sixth Circuit (where the Beckjord Dump is located), Ohio courts recognize that "[t]he 2015 Rule manifests a concern with (subtle) groundwater pollution" and that "protection of groundwater" was the "prime objective" of the 2015 Rule.[17] Accordingly, "when a coal residual unit closes, the 2015 Rule requires the site's operator to '[c]ontrol, minimize or eliminate, to ***the maximum extent feasible***, post-closure infiltration of liquids into the waste and releases of [coal ash], leachate, or contaminated run-off to the ground or surface waters or to the atmosphere.'" *Id*. (emphasis added). In *Gavin Power*, for example, EPA found that "Gavin failed to show that the Fly Ash Reservoir complies with all waste-in-place closure requirements" because it "was saturated with groundwater." *Id*. at *5. EPA found that "[c]ompounding the danger associated with groundwater saturation, the Reservoir is unlined." *Id*. The Beckjord Dump contains the exact type of unlined ash ponds that EPA and courts feared the most.

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[14] *See USWAG*, 901 F.3d at 421–22 (emphasis added) (internal citations and quotations omitted).
[15] *See USWAG*, 901 F.3d at 422-423.
[16] *See Gavin Power*, 2025 WL 2908716 at *4 (*citing* 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, 85 Fed. Reg. 53,516 (Aug. 28, 2020) ("2020 Amendment"); Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 89 Fed. Reg. 38,950 (May 8, 2024) ("2024 Amendment").
[17] *Gavin Power*, 2025 WL 2908716, at *1 (internal citations omitted).

C. The Beckjord Dump

"Beckjord is located adjacent to the Ohio River approximately 15 miles upstream from Cincinnati, Ohio."[18] There are "a total of four (4) ash ponds, named 'A,' 'B,' 'C' and 'C Extension' ('Cx')."[19] "New Richmond Development Corporation, LLC (NRDC) owns the existing [CCR] management units referred to as [Pond A], Pond B, Pond C, Pond C Extension (i.e. Pond Cx), Pond Run Phase 2, and Pond Run Phase 3 at the Former Beckjord Generating Station [] located near New Richmond, Clermont County, Ohio."[20] "The first coal-fired unit was placed into service in 1952[.]"[21] As confirmed by the Clermont County Water Resources Department to the Commissioners in 2023, "Ponds A, B, C and Cx are unlined ash ponds."[22] Therefore, "[t]here is no barrier to impede leachate from entering the groundwater or the upward movement of groundwater into the ash ponds." *Id.* The Commissioners also confirmed that based on groundwater elevations and construction details and elevations of the ponds, groundwater "is in direct contact with the coal ash residuals." *Id.* at 2.

Ash Pond A is located in close proximity (approximately 1,000 feet) to the Pierce-Union-Batavia Townships ("PUB") well fields, which provide drinking water to Clermont County residents.[23] Some of the PUB wells were installed as early as 1954.[24] The well fields are located "on a narrow strip of land between the [Ohio] river and the Beckjord property[.]"[25] In 1988, there were five PUB wells on the narrow strip of land and one on Cincinnati Gas & Electric ("CG&E") property.[26] At the same time, Beckjord had its own groundwater wells pumping groundwater for production uses. "Industrial supply wells at the [Beckjord] Site have been non-operational since the station was decommissioned."[27]

Currently, groundwater flows from the unlined Beckjord Dump toward the public drinking water wells that serve Clermont County residents. "In the late 1980s ... a ground water sulfate plume was identified ... extend[ing] from Pond A towards the public potable water wellfield known as the Clermont County [PUB] wellfield. As a result of these findings, [CG&E] installed an interceptor well (IW-1) to intercept the sulfate plume to protect the wellfield."[28] The purpose of

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[18] *See* D&M 1988 Report at 5.
[19] *See* Ohio EPA Report on Detail Plans for the Closure Plan for Ash Pond "B" for New Richmond Development Corporation fka W.C. Beckjord Electric Generating Station, Pierce Township, Clermont County, at 2 (enclosed with Ohio EPA Permit to Install (Sept. 3, 2021).
[20] *See* Groundwater Monitoring Systems Certification, Former Beckjord Generating Station, New Richmond, Clermont County, Ohio, by Key Environmental, Inc., at 1-1 (June 2022).
[21] *See* Phase 3 Ground Water Investigation, Walter C. Beckjord Station, by Dames & Moore, at 1 (Nov. 25, 1992) (herein "D&M Phase 3 Report").
[22] Letter from L. Bloom, Director of Utilities, Clermont County Water Resources Dept., to J. Schumacher, EPA Region 5, at 1 (Jan. 4, 2023) (herein "Letter from Commissioners").
[23] *See* Third ("3rd") Quarter ("Q.") 2025 Groundwater Monitoring Report Interceptor Well Network & Inactive Ash Ponds ("GMR") by Gemini Engineering, LLC ("Gemini") at 12 (Dec. 2025) ("Sulfate concentrations for the Northern Complex are considered of interest given the presence of the PUB wellfield to the north (approximately 1,000 feet) of the NRDC Site."). *See also* D&M Phase 3 Report at 2.
[24] *See* D&M Phase 3 Report at 2.
[25] D&M 1988 Report at 2.
[26] D&M 1988 Report at 2.
[27] *See* 2nd Q. 2022 GMR at 7 (Nov. 2022).
[28] *See* 2nd Q. 2022 GMR at 1.

"the interceptor system is to intercept the flow of elevated-sulfate ground water from Ash Pond A toward the PUB wellfield."[29] In 1993, CG&E's consultant concluded that "the [new] well should be placed in the vicinity of Clermont County well PUB 6 in order to most effectively intercept the plume and prevent its northward migration to additional PUB wells."[30] Further, at that time, CG&E knew that the operation of the interceptor well "would reduce or eliminate the usefulness of PUB 6[.]" *Id*. "[T]he rationale for the selection of the planned interceptor well location (IW-1) at the Walter C. Beckjord Station ... [was] to prevent further migration of the elevated-sulfate ground water plume to PUB wells while creating a minimal impact on operating capacity of the PUB wellfield."[31] After pressure from Clermont County, "[a] second interceptor well (IW-2) was completed in August 2021 and serves as a backup to the first interceptor well."[32] Based on reporting by NRDC's consultant, only one well is currently operational, providing no redundancy should the single operational well fail.[33]

CG&E merged with Duke Energy in 2006.[34] In 2018, CLP and NRDC acquired the property from Duke under agreements protected from public view with court orders.[35] NRDC is a wholly owned subsidiary of CLP and CLP has exercised control over NRDC. CLP is using layers of corporate shells to insulate CLP and its owners from liability while at the same time assuming enormous environmental liabilities from Duke. Owlfly and TBDA, affiliates of NRDC and CLP, are past or present owners of parcels that make up portions of the Beckjord Dump. They entered into agreements with NRDC allowing the illegal closure on their parcels. CLP and NRDC thereupon disposed of CCR waste into Ponds C and Cx beginning in 2019 and continuing into, at least, the fall of 2021. In addition, Duke, CLP and NRDC each have piped millions of gallons of CCR waste carried by leachate from numerous CCR ash ponds around the Facility into Pond B for treatment and disposal of the CCR waste. CLP and NRDC have continued this practice from the time they acquired the site to the present. CLP and NRDC have also submitted non-compliant closure plans for the ash ponds, which propose to leave all CCRs in place, and in contact with the groundwater below.[36] As noted above, Ohio EPA does not have authority to regulate CCRs and, therefore, does not have authority to approve these non-federally compliant plans. CLP and NRDC are nearing implementation of the non-compliant closure set forth in these plans at Ponds C and Cx and have begun implementing the inadequate and non-compliant closure plan for Pond B, contrary to RCRA and CCR Rules.

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[29] *See* Report Phase 4 Ground Water Investigation/Remediation, Walter C. Beckjord Station, New Richmond, Ohio by Dames & Moore, at 11 (Sept. 30, 1994) (herein, "D&M Phase 4 Report").
[30] *See* Letter from Dames & Moore to CG&E, Regarding Interceptor Well Design, Walter C. Beckjord Station, by Dames & Moore, at 1 (Feb. 22, 1993).
[31] *See* Supplement to February 22, 1993 Letter, Interceptor Well Design, Walter C. Beckjord Station by Dames & Moore, at 1 (April 14, 1993).
[32] *See* 3rd Q. 2022 GMR, at 1-2 (Feb. 2023).
[33] *See* 2nd Q. 2024 GMR, by Gemini at 4 (Oct. 2024) (noting that "the ***operating*** interceptor well (IW-2)" was sampled and that "[t]he ***non-operating*** interceptor well (IW-1) was not gauged[.]") (emphasis added).
[34] *See* Duke Energy, Our Company, Our History, *available at*: https://www.duke-energy.com/our-company/about-us/our-history (accessed April 23, 2026).
[35] *See* 2nd Q. 2022 GMR at 1 ("As of March 2018, NRDC acquired ownership of the property and assets, including environmental responsibilities, for the Site.").
[36] *See* OEPA, Permit to Install, Closure Plan-Ash Pond B-Former Walter C Beckjord Station, at 4 (Sept. 3, 2021).

III. NATURE OF ENDANGERMENT AT BECKJORD DUMP

As outlined more fully below, NRDC, CLP, and Duke have failed to comply with the 2015 Rule by not controlling, minimizing or eliminating, to the maximum extent feasible, the infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters at the Beckjord Dump. Current closure plans leave CCRs in contact with groundwater in direct contravention of the 2015 Rule. This type of non-compliant closure presents an imminent and substantial endangerment to the public drinking water wells in Clermont County and violates the 2015 Rule. CLP and NRDC are required to comply with the 2015 Rule as well as the 2020 and 2024 Amendments and immediately take steps to remedy these violations and design closure of the Beckjord Dump in a way that protects human health and the environment to the maximum extent feasible.

In fact, Duke's own experts on this issue agree that closure by removal is the correct method when ash ponds are unlined and in contact with groundwater. Duke's Senior VP of EHS and CCP testified under oath that for "nine of the ten coal ash basins being closed by [Duke] for which cost recovery is sought ... ash in the basin is actually in contact with groundwater" and that Duke chose closure-by-removal for every single one.[37] Further, "[Duke] determined that closure-by-removal, i.e., excavation, was **the most prudent and cost-effective closure method** consistent with the requirements of the CCR Rule[.]" *Id*. at 13:21-14:1. Duke's own consultant testified that "**closure by removal of all or the vast majority of the CCR is the only closure option that can reliably and cost-effectively meet the federal CCR closure performance standards**."[38] For sites still owned by Duke, Duke's staff admitted that closure-in-place cost estimates at Duke's own sites in North Carolina were consistently higher than excavation when necessary engineering controls were factored in—for example, $1.052 billion for cap-in-place versus $508 million for excavation at Roxboro facility, and $480 million versus $248 million at the Mayo facility. *See* Test. of Bednarcik. Moreover, "[p]ost-closure care includes costs of a 30-year period for maintaining the integrity of the final cover system ... as well as the cost of operating and maintaining a compliant groundwater monitoring system." *Id*. at 46:2-5.

In short, Duke knows that closure by removal is required and also more cost-effective for ash ponds like the Beckjord Dump. The Commissioners agree with Duke's staff and consultants: closure by removal is how the Beckjord Dump should be closed. The fact that Duke paid CLP and NRDC to close the Beckjord Dump instead of doing the work itself does not change the fact that the same federal law applies in Ohio as in North Carolina where Duke is closing its ash ponds by removal. No reason exists why the Beckjord Dump should be allowed to close in violation of CCR Rules and the Commissioners intend to file suit to make the Polluters follow the law.

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[37] *See* Testimony of Jessica L. Bednarcik, Duke Energy Progress, LLC., *In re Application of Duke Energy Progress, LLC for Authority to Adjust and Increase its Electric Rates and Charges*, No. 2022-254-E (Public Service Commission S.C.) ("SC Matter"), at 20:20-21; 30:10-11.

[38] *See* Test. of Marcia E. Williams, Principal, Gnarus Advisors LLC, SC Matter, at 16:18-21; 42:10-12.

A. Groundwater Pathway to Public Drinking Water Supply Wells

"RCRA sets the baseline that solid waste disposal sites (including coal-residual units) pose 'no reasonable probability of adverse effects on health or the environment.'"[39] Allowing coal ash to saturate groundwater in unlined ash ponds—as is occurring at the Beckjord Dump—poses an intolerably high probability of adverse effects on health and the environment. As one Ohio court recently observed, "groundwater could infiltrate the [impoundment], absorb 'contaminants of concern,' and migrate out of the [impoundment] into the broader environment and maybe even our drinking water." *Id*. at *5.

CLP, NRDC and Duke are well aware that due to the CCRs in the unlined Beckjord Dump, sulfate from the CCRs has leached into the underlying groundwater creating a sulfate plume that has migrated towards the public drinking water wells. Their own reports state that "[s]ulfate concentrations are considered an indicator of coal ash-related impacts in ground water for the Northern Complex."[40] Further, they know that "[s]ulfate concentrations … are considered of interest given the presence of the P.U.B. wellfield to the north (approximately 1,000 feet) of the NRDC Site."[41] While two interceptor wells (that are designed to pump out sulfate-contaminated groundwater continuously 24/7 to be dumped into the Ohio River without any treatment or limits) exist, NRDC and CLP only keep one in working order. This single interceptor well is the only mechanism preventing known contaminants from flowing directly to the public drinking water supply well fields that would contaminate Clermont County's raw drinking water supply and jeopardize the water source for its thousands of residents, requiring expensive treatment upgrades Clermont County will have to install to treat the Polluters' contaminants at a high cost to Clermont County residents. In fact, the "sulfate plume" contains additional contaminants as discussed herein, including, for example, molybdenum, iron, manganese, thallium, boron and lithium.[42]

"The first investigation of the issue" was conducted in 1987 and led to a series of other studies and installation of the first interceptor well. After a request from OEPA, and as part of the early investigation, CG&E's consultant concluded in a report provided to OEPA that "[t]he most likely source of the elevated sulfate levels in the ground water at the site is assumed to be the fly ash, bottom ash, and pyrites contained in the dry bed of Ash Pond A."[43] Groundwater monitoring in 1992 by Dames & Moore showed that "the northernmost 100 mg/L sulfate concentration contour was likely located at Ten Mile Creek, but the Phase 3 data suggest that it may have extended beyond the creek toward PUB 9." *Id*. at 12. Studies also showed that "the rate of ground water travel between Ash Pond A and PUB 6 should be on the order of 100 to 200 feet per year (ft/yr) [or] 10 to 20 years total[.]" *Id*. at 18. The report concluded that this rate flow is further supported by the fact that the "sulfate plume has covered the approximately 800 feet between PUB 6 and PUB 9 (directly downgradient) in approximately 4 to 5 years[.]" *Id*. Studies at the time showed that due to natural attenuation, there was a "general lack of metals in ground water samples taken from within the sulfate plume," except for selenium, which "is known to be more mobile and persist longer in a dissolved state than other trace metals[.]" *Id*. In short, since 1992, owners

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[39] *Gavin Power*, 2025 WL 2908716, at *19 (*citing* 42 U.S.C. § 6944(a)).
[40] 2nd Q. 2025 GMR at Section 5.0.
[41] 2nd Q. 2025 GMR at Section 5.1.
[42] *See* 2nd Q. 2025 GMR, at Appendix A: Analytical Tables 2A, 2B, 3A and 3B.
[43] *See* D&M Phase 3 Report at 8.

of the Beckjord Dump have known that the CCRs contaminate the public well fields, but continued to dump CCRs at the Beckjord Dump until closure 30 years later when they decided to close by leaving the CCRs in place with no liner. CG&E's consultant concluded that "[t]he observed plume of elevated sulfate ground water was likely derived from leachate escaping the northern end of Ash Pond A to mix with the underlying ground water." *Id*. at 21.

None of the ash ponds have a liner today that would prevent the same leaching from causing further contaminant plumes to migrate to the public well fields. Notably, the interceptor well was a "short term solution … to block migration of elevated sulfate groundwater to other PUB wells" and "[l]ong term solutions to ground water contamination issues typically involve source removal, containment, neutralization, or some combination of the three." *Id*. NRDC and CLP, knowing the contamination risks, nonetheless propose to close the Beckjord Dump by leaving the CCRs in place.

Monitoring from 2006-2007, after Duke had taken ownership of Beckjord, showed there was "ongoing evaluation of the interceptor well IW-1 in capturing the flow of elevated-sulfate groundwater at the W.C. Beckjord [] site."[44] Recent sampling groups the Beckjord Dump into the Northern Complex (closer to the public drinking water wells) and Southern Complex. From their own reports, NRDC, CLP and Duke know that "ground water flow in the Northern Complex ... is directed primarily toward the north and to the interceptor well system."[45] In order to prevent the contaminated groundwater from continuing to flow towards the public wells, the interceptor wells need to continue pumping continuously at a certain speed/volume to offset the natural flow of groundwater. Notably, months pass between when NRDC samples a well and when any agency sees the results. For example, the results of sampling that occurred in August 12-15, 2024 were not reported to Ohio EPA until six months later on February 6, 2025.[46] The Ohio EPA has also recognized that there is an "undistinguished source" area of groundwater contamination made up of Pond A, Pond B and the former coal storage area, all contained within the Northern Complex. This and other source areas contribute to the groundwater pathway to the Clermont County drinking water wells.

NRDC, CLP and Duke are aware that there is a sulfate plume—a pathway for contaminants—traveling from their property to the public well fields.[47] "The Northern Complex ground water flow is directed primarily toward the north and toward the operating interceptor well (currently IW-2)."[48] In 2022, sampling in the area of Pond A showed not just sulfate but also boron, molybdenum, iron and manganese.[49] Following this sampling, the report concluded "[s]ulfate concentrations for four northern complex monitoring wells ... indicate increasing trends when data

[44] *See* Letter from Duke Energy Corp. to OEPA, Groundwater Monitoring Data, Wastewater PTI Application No. 05-6266, WC Beckjord Station (April 17, 2007) (enclosing April 10, 2007 URS Groundwater Results – March 2007).
[45] *See* 3rd Q. 2025 GMR, by Gemini, at 14 (Dec. 2025).
[46] See Ohio EPA Interoffice Memo from S. Spence to G. Vonderembse (April 1, 2025) (herein "Spence April Memo").
[47] *See* 2nd Q. 2022 GMR at 1 ("In the late 1980s and early 1990s, a ground water sulfate plume was identified at the site which extended northward from Pond A towards the public potable water wellfield known as the Clermont County Pierce-Union-Batavia (P.U.B.) wellfield.").
[48] *See* 2nd Q. 2022 GMR at 7.
[49] *See* 2nd Q. 2022 GMR at 10-11.

dating back to 1992 are considered and one piezometer (P-9) indicates increasing trends when data dating back to 2014 are considered."[50]

Further, NRDC and CLP are aware that their groundwater contaminants have to be removed by the public water system at the cost of the water system and ultimately the public. In December 2025, a report noted that although iron and manganese are routinely detected in their sampling, "they are readily removed in the treatment system for the PUB wellfield."[51]

As to what is required to be sampled upgradient of a public drinking water supply with a known upgradient contamination plume, NRDC and CLP noted that "[d]uring the 1st quarter of 2022 sampling events, NRDC began analyzing additional ground water constituents listed in the [CCR Rules], which included antimony, beryllium, cobalt, fluoride, lithium, mercury, radium-226, radium-228, and thallium[.]"[52] Subsequent sampling detected these so-called Appendix IV parameters above MCL.[53] Sampling of the Southern Complex showed detections of beryllium, fluoride, and radium 226 & 228.[54] Radium-226 and radium-228 have also been detected in interceptor well samples as shown in reports submitted to OEPA. The MCL for combined radium 226/228 is 5 pCi/L and the level of radium 226/228 detected in IW-2 was 0.823 pCi/L and in IW-1 it ranged from 0.435 to 0.408 pCi/L in 2022-23 sampling.[55] For IW-1, sampling showed radium-226 ranged from 0.250 to 0.242 pCi/L and radium-228 ranged from 0.185 to 0.418 pCi/L. On August 14, 2024, sampling results for IW-2 showed radium 226/228 at 1.537 pCi/L. On December 5, 2023, the result was 2.103 pCi/L.[56] A summary table of groundwater monitoring results from 2019 to June 2025 from NRDC's 2nd Q. GMR is set forth at Appendix A to that Report. NRDC, CLP, Duke and the agencies each have access in their own files to the pre-2019 data for their reference.

However, by 2025, an agency reviewer noted that "NRDC has stopped reporting fluoride, antimony, beryllium, cobalt, lithium, mercury, thallium, radium-226, and radium-228[.]"[57] Although thallium is known to leach from CCRs, causing hair loss (among other effects), and was **detected numerous times above MCL** and the consultant noted that **"[m]ore sampling events are needed** before any definitive conclusions can be drawn[,]" NRDC no longer samples for thallium.[58] An agency reviewer also advised that "**[a]dditional information is needed** to support NRDC's conclusion that there is no sulfate plume in the southern complex. MWC-4 and MWC-5 have consistently had elevated sulfate concentrations since 2022, **but there are not enough**

[50] *See* 2nd Q. 2022 GMR at 15.
[51] *See* 3rd Q. 2025 GMR at 14 (Dec. 2025).
[52] *See* 2nd Q. 2022 GMR at 2-3.
[53] *See* Spence April Memo.
[54] *See* 2nd Q. 2022 GMR at 13-14.
[55] *See* EPA, Radionuclides Rule, available at: https://www.epa.gov/dwreginfo/radionuclides-rule (accessed Jan. 12, 2026).
[56] *See* 3rd Q. 2025, GMR at Table 2B (Dec. 2025).
[57] *See* OEPA Interoffice Memo from S. Spence to G. Vonderembse at 3 (Nov. 19, 2025) (herein "Spence November Memo").
[58] *See* 2nd Q. 2024 GMR at 15 (Oct. 2024).

monitoring wells in the southern complex **to fully characterize the extent of elevated sulfate**[.]"[59]

It shocks the conscience that a facility adjacent to and upgradient of a public drinking water source would detect CCR contaminants, and then **stop sampling for them**. Yet, no enforcement action has been taken to address this inexcusable failure. Notably, elsewhere in Ohio law, "products containing radium-226" have to be disposed "[a]t a disposal facility authorized to dispose of radioactive materials[.]"[60] Yet, when CCRs are involved, apparently OEPA has no problem that radium-226 is being detected at levels near MCL in groundwater flowing adjacent and upgradient of a public drinking water supply system. The Commissioners intend to bring suit under RCRA to, among other things, require routine sampling that would provide critical information about the safety of the groundwater that is migrating towards public drinking water supply wells—groundwater the County must clean and maintain. If deliberately ignoring known contaminants that are migrating towards public drinking wells does not constitute a substantial and imminent endangerment, it is hard to imagine what would.

The sulfate plume is a clear marker of Beckjord's contaminants in the groundwater, and shows that a pathway exists for other contamination flows from the Beckjord Dump to the public drinking water wells. The path of groundwater leads to the down gradient public drinking water supply wells. Yet, having been paid over $100 million by Duke for the sole purpose of carrying out closure of the Beckjord Dump, NRDC and CLP have **no plans** to close the Beckjord Dump in a way that avoids contaminating public drinking water and that meets the requirements of federal CCR law. Tellingly, they have acknowledged that, as a result of the partial excavation of waste from Pond A (now dumped in Ponds C and Cx), "[t]he long-term impact of Pond A closure is expected to result in improved ground water quality over time."[61] However, instead of excavating all of the ash ponds "to improve ground water quality," it appears they intend to pocket the money and leave the waste in place without any liner, while taking no further action to actually isolate the waste and prevent further contact with the groundwater that inevitably flows downgradient to the public drinking water wells carrying with it whatever CCR contaminants may be found along the way. Duke has taken no action to ensure that closure of the Beckjord Dump is conducted in compliance with CCR Rules.

An imminent and substantial endangerment exists because Duke, NRDC and CLP plan to leave the Beckjord Dump in place with no plans to protect human health and the environment from the CCRs in the unlined ash ponds, or to even pay for the future maintenance of the interceptor wells, or to conduct a monitoring program to ensure groundwater contaminants are not migrating to public water supply wells. In fact, while Ohio EPA has recognized that **"[i]t is crucial that both interceptor wells are operational to ensure that Clermont County's wellfield is protected from the sulfate plume**[,]" the agency has not taken any action to date to ensure this happens.[62] Instead, there is an imminent and substantial endangerment that if Duke, CLP and NRDC walk away from the Beckjord Dump without taking further corrective action, contaminants will leach and migrate to the public drinking water supply wells where Clermont County Public Water—and

[59] *See* Spence April Memo at 3.
[60] *See* Ohio Administrative Code § 3701:1-46-51(C)(4).
[61] 1st Q. 2025 GMR at 14 (April 2025).
[62] *See* Spence April Memo at 3.

ultimately taxpayers—will end up paying to monitor, detect, filter and maintain the supply wells to continue protecting public drinking water.

There is an imminent and substantial endangerment to public drinking water wells due to closure plans that fail to control, minimize, or eliminate (to the maximum extent feasible, as required by law) the infiltration of liquids into the waste and releases of CCRs, leachate, or contaminated run-off to the ground or surface waters. As it stands, the ash ponds are (and will remain) unlined—allowing the contaminants in the CCRs to leach into groundwater. There is no barrier to impede leachate from the unlined ash ponds from entering the groundwater or the upward movement of groundwater into the ash ponds. Moreover, the current closure plans do not take into account the financial, operational and maintenance obligations for the interceptor wells, or put in place a monitoring program to protect the public drinking water supply wells in perpetuity.

In contravention of the CCR Rules that recognize this groundwater contamination danger for unlined ash ponds, Duke, NRDC and CLP nonetheless propose to close the Beckjord Dump knowing that a public drinking supply aquifer sits downgradient from their leaching ash ponds. Rather than follow the law and carry out closure in accordance with federal regulations that are aimed at preventing groundwater contamination, they have proposed the least expensive and most dangerous closure for the Beckjord Dump, which would leave all of the contamination in place readily available for groundwater to carry to public drinking water supply wells.

The question here is not: *can contaminants flow to the public drinking water wells?* They clearly can and have. Instead, the question is: *What is being done to prevent this imminent contamination so Clermont County residents will have a clean drinking water supply*? The answer is nothing. Based on the federally non-compliant closure plans, neither NRDC nor CLP have any plans whatsoever to avoid this imminent catastrophe. And neither EPA nor OEPA has taken necessary enforcement action. The Polluters seek to shirk their responsibilities and enrich themselves by avoiding the higher costs associated with proper waste disposal. Meanwhile, the public drinking water supply faces imminent risk of contamination, rendering it unusable without expensive treatment. The cost of that treatment—and of any remediation of the Beckjord Dump—is the legal responsibility of the Polluters, not the residents of Clermont County.

B. Lack of Redundancy to Ensure the Safety of a Public Drinking Water Supply

Even if NRDC fixed both interceptor wells, NRDC has put no mechanism in place to ensure that these wells keep working in perpetuity to ensure that the public drinking water supply stays protected. Nor was a mechanism put in place to allow interested parties like the Commissioners to force NRDC or CLP to continue to operate the interceptor wells. As mentioned above, while Ohio EPA has recognized that "[i]t is crucial that both interceptor wells are operational to ensure that Clermont County's wellfield is protected from the sulfate plume[,]" the agency has taken no action to ensure this happens.[63] In fact, NRDC's reports provide repeated reference to the many ways in which the interceptor wells are not working. Despite their own consultant stating that "potential declines in well efficiency indicate that it is prudent to install a backup interceptor well (IW-2)," there is no backup.[64] Although RCRA requires financial assurance for the closure and post-closure

[63] *See* Spence April Memo at 3.
[64] Groundwater Monitoring Plan, by Key Environ. Inc., at 1 (Dec. 2021).

of hazardous waste disposal facilities, no financial assurance has been required for CCR disposal facilities such as the Beckjord Dump.[65] NRDC is aware that the sulfate plume is being currently "managed" only due to interceptor wells operating. In a recent report, the consultant stated "reduction in the total mass of sulfate has likely occurred throughout the plume because of the operation of the interceptor wells."[66] Yet, although NRDC plans to leave the waste in unlined ash ponds for perpetuity, NRDC has no plan in place to keep the interceptor wells pumping contaminated groundwater in perpetuity or at a minimum continuously sampling it to know what contaminants may be migrating to downgradient property. Based on a November 19, 2025 Interoffice Memo from OEPA, on October 23 and 24, 2025, NRDC provided sampling results for the first and second quarter (March and June) of 2025 to the OEPA.[67] IW-1 was not operating. *Id*. If and when these interceptor wells both fail, break or age out, EPA and OEPA have required no remedy to protect public drinking water in perpetuity. The Commissioners are highly concerned that EPA and OEPA are turning a blind eye and rubberstamping "closure" of the Beckjord Dump with no actual remedy to protect a public drinking water supply from known harm. The Commissioners intend to bring suit under RCRA to stop this imminent and substantial endangerment.

C. NRDC and CLP have failed to plan for dam safety and emergency preparedness

The Beckjord Dump presents an imminent and substantial endangerment to the public because the ash ponds are next to the Ohio River in the floodplain. Flooding has inundated and threatens to continue to inundate ash ponds and mobilize contaminants into surface waters and adjacent properties, causing acute ecological and human exposure. Yet NRDC and CLP propose to leave the ash ponds sitting on the banks of the Ohio River for future floods to inundate and overflow—leading to catastrophic flooding of neighboring properties and the environment with coal ash.

The CCR Rules require that an owner or operator prepare an Emergency Action Plan ("EAP") which must "[a]t a minimum" provide the following: "Define responsible persons, their respective responsibilities, and notification procedures in the event of a safety emergency involving the CCR unit; Provide contact information of emergency responders; [and] Include provisions for an annual face-to-face meeting or exercise between representatives of the owner or operator of the CCR unit and the local emergency responders." 40 C.F.R. § 257.73(a)(3). NRDC and CLP have failed to meet these requirements.

Yet, the critical importance of ensuring such dam safety is widely known, and the risks of a catastrophic release are not hypothetical. The EPA has documented numerous cases of coal ash impoundment failures, including the 2008 Kingston Fossil Plant spill in Tennessee -which released over one billion gallons of coal ash and the 2014 Dan River inactive impoundment spill due to

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[65] *See* 2015 Rule, 80 Fed. Reg. at 21,312 n. 2; *Id*. at 21,346 n. 42 ("Under RCRA's financial assurance regulations, owners and operators of hazardous waste facilities must document that they have sufficient resources to close their facilities and pay third-party claims that may arise").
[66] *See* 3rd Q. 2025 GMR at 12 (Dec. 2025).
[67] *See* Spence November Memo at 1.

structural failure in North Carolina at another Duke property.[68] "After the catastrophic release of coal ash from the Tennessee Valley Authority's Kingston, Tennessee facility in December 2008, the [EPA], in collaboration with the States, undertook a nationwide, comprehensive effort to assess the structural integrity of surface impoundments and similar units that contain coal combustion residuals."[69]

Following the disaster at the Kingston Fossil Plant, in 2009, "EPA and its engineering contractors conducted a [CCR] site assessment ... to assess the structural stability of the impoundments[.]"[70] In 2009, Lockheed Martin, on behalf of EPA, evaluated the ash ponds at Beckjord and found them to be in "**poor**" condition and the "**hazardous potential classification**" as "**significant**."[71] The Agency provided a final report with recommendations and indicated that "[s]ince these recommendations relate to actions which could affect the structural stability of the CCR management units and, therefore, protection of human health and the environment, EPA believes their **implementation should receive the highest priority**."[72] In response to required engineering fixes such as a sinkhole in Pond C, detailed stability analyses for each ash pond, more detailed inspection procedures including following heavy rainfall and/or high water events (rather than drive-by inspections), Duke assured the EPA that these tasks would be or were already completed.[73]

As Duke recognized in 2010 during the EPA-led dam safety review, "the impoundment facilities at Beckjord are currently under the regulatory authority of the Ohio Department of Natural Resources, Division of Water (ODNR)."[74] "The dikes forming Ash Pond B are regulated and classified by ODNR as Class II dams based on the height, storage capacity and potential downstream hazard of each of the structures."[75] The EPA "**defines the dam as a 'significant hazard' which could cause significant economic loss, environmental damage, or damage to infrastructure upon failure**." *Id*. An ODNR dam inspection from 2023 noted that Pond Cx is classified as **Class II and included "[l]oss of public water supply" as a category of potential losses**.[76]

Yet, despite widely known dangers if the Beckjord Dump dams were to fail, the current owners and operators of the Beckjord Dump have neglected to plan for annual face-to-face meetings or exercises with local emergency responders, in violation of CCR Rules. NRDC and CLP have owned and operated the Beckjord Dump for eight years. Yet, they have never had a face-to-face meeting or exercise with the local fire department. This is a clear violation of the CCR Rules. Further, a 2019 EAP for the Beckjord coal ash ponds B, C, and C extension is out of date.

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[68] *See* 2015 Rule, 80 Fed. Reg. at 21,313; 21,327.
[69] *See* Letter from B. Johnson, EPA, to E. Sullivan, Duke Energy Corp., at 1 (Aug. 13, 2013).
[70] *See* Letter from M. Hale, EPA, Office of Resource Conservation and Recovery, to E. Sullivan, Duke Energy, at 1 (March 24, 2010) (herein, "Hale Letter").
[71] *See* Assessment of Dam Safety, Coal Combustion Surface Impoundments (Task 3), Draft Report, Duke Energy, W.C. Beckjord Station, by Lockheed Martin at 8, 128, Appendix A (Dec. 7, 2009).
[72] *See* Hale Letter at 1.
[73] *See* Letter from D. Beck, Duke Energy Ohio, Inc., to S. Hoffman, EPA, EPA Request/ICR#2350.01, W.C. Beckjord Station (April 27, 2010) (herein, "Beck Letter").
[74] *See* Beck Letter.
[75] *See* Closure Plan, Ash Pond B, by Key Environmental, Inc., at 1-1 (Rev. July 2021).
[76] *See* Hazard Potential Classification Report, Pond C Extension, by Key Environmental at 9-10 (Dec. 2025).

Typically, the emergency responders have an annual meeting and exercise but the last such meeting was with the prior owner, Duke. Following the sale of the Beckjord Dump, there was no updated plan on file and local emergency responders had to work diligently with state officials to get a plan, which still had not been updated by CLP and NRDC. Representatives of ODNR sent representatives of CLP the existing Duke plan and advised them to just update contact information. There was no discussion, no input, and no communication requested by ODNR or CLP/NRDC from local emergency responders. After only 10 years, it seems the lessons learned from the Kingston Fossil Plant disaster were already forgotten by ODNR and CLP/NRDC. CLP and NRDC have wholly failed to plan and prepare for emergencies.

Training and updates are also the responsibility of the owner/operator of the facility.[77] In the Kingston Fossil Plant case involving over 800 plaintiffs, a federal court in Tennessee found that TVA was liable for "[n]egligent failure to inform or train TVA personnel in the applicable policies and procedures for coal ash operations and management; negligent or inadequate performance by TVA personnel of TVA's policies and procedures; negligence in the construction and implementation of approved design and construction plans; and negligent maintenance."[78]

In reviewing the plan here, it is clear that updates have not been made in several years, although the plan, approved by ODNR, requires an annual review and update. The plan itself has multiple errors, inaccuracies, and incorrect or inconsistent information. These types of mistakes should be corrected and updated annually. For example, while the plan states that New Richmond Development, LLC is the owner, there is no such entity registered with the Ohio Secretary of State. Two different Clermont County sheriffs are listed within the documents, neither of which are the current sheriff and have not been for nine years. The Pierce Township Police Department is not listed on the stakeholder contact list but is likely to be a significant partner during an event. These types of errors lead to delays, problems, and response issues in the event of an emergency—something ODNR and CLP/NRDC should want to avoid.

Local emergency responders also assist with tabletop exercises, but need some understanding of what they are working with to plan a worthwhile exercise. Without communication or an updated plan, it is difficult for them to plan for an emergency. Prior to the change in ownership, emergency responders met with Duke every year to review the plan and discuss updates, changes, and an emergency exercise scenario. **To date, since CLP has owned and operated the site, local emergency responders have never had a single meeting with CLP or NRDC. Annual Face-to-Face Exercises that include local first responders have not been coordinated.** While ODNR is the agency tasked with overseeing dams, clearly there is a significant lack of oversight by ODNR regarding the dam safety at this site, which could lead to potentially catastrophic damages to human health and the environment.

CLP and NRDC have already shown their lack of responsiveness or due care. Recently, during Ohio River flooding in March/April of 2025, local emergency responders **could not reach CLP or NRDC to get a verbal or written response** to ensure the site was being appropriately

[77] After the Kingston disaster, 66 cases were consolidated and settled in 2014 resulting in payment by TVA of $28M for a global settlement.
[78] *See In re Tennessee Valley Authority Ash Spill Litigation*, No. 3:11-cv-00607, 2012 WL 3647704, at *1-2 (Aug. 23, 2012 Judge Varlan) (noting the matter involved 60 pending cases and more than 800 plaintiffs).

monitored. When another emergency occurs in the future, local responders have no up-to-date information, prior planning or information to ensure the hazardous situation is mitigated. **At this time, when another emergency occurs, local emergency responders will be operating off a plan that has not been tested, is inaccurate, and is with a company that has had zero communication, planning or coordination with local responders.** This is in clear violation of the CCR Rules, not to mention reckless and unconscionable. The Commissioners have no confidence that CLP and NRDC have planned for an emergency, nor that, if an incident occurred, the proper notifications would be made or mitigation would be handled appropriately by NRDC or CLP. The CCR Rules require owners and operators to develop an EAP for any CCR surface impoundment classified as having a "significant hazard" potential. The ash ponds at the Beckjord Dump have been classified by EPA as a "significant hazard" potential, which mandates compliance with the EAP requirements. NRDC and CLP's failure to comply with the EAP requirements presents an additional imminent and substantial endangerment, and must be promptly remedied to prevent a potential catastrophe. These failures to maintain and implement the EAP violate the CCR Rules at 40 C.F.R. § 257.73(a)(3).

IV. VIOLATIONS OF RCRA AND CCR RULES

The above imminent and substantial endangerment facts about Duke, CLP and NRDC's closure and handling of the Beckjord Dump also support bringing a citizen suit for violations of the RCRA and the CCR Rules. Under the Act, any violation of the requirements of the CCR Rules constitutes illegal open dumping: "Practices failing to satisfy any of the criteria in . . . §§ 257.50 through 257.107 constitute open dumping, which is prohibited under section 4005 of the Act." 40 C.F.R. § 257. l (a)(2). *See also* 40 C.F.R. § 257.2 ("Open dump means a facility for the disposal of solid waste which does not comply with this part."). In addition, the closure of CCR surface impoundments must meet specified substantive standards that must be spelled out in a federally-compliant closure plan developed for the unit being closed. Any such closure plan that proposes to leave CCR waste in-place, as NRDC and CLP seek to do, "must ensure" the following federal standards are met before leaving waste in place, among others:

1) "Free liquids must be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues." *Id*. § 257.102(d)(2)(i).

2) The plan must "[p]reclude the probability of future impoundment of water, sediment, or slurry." *Id*. § 257.102(d)(l)(ii); and

3) The owner or operator of a CCR unit must ensure that, **at a minimum**, the CCR unit is closed in a manner that will: (i) Control, minimize or eliminate, **to the maximum extent feasible**, post-closure infiltration of liquids into the waste and **releases of CCRs, leachate, or contaminated run-off** to the **ground or surface waters** or to the atmosphere." *Id*. § 257.102(d)(l)(i) (emphasis added).

To be sure, RCRA requires that any criteria, if followed, must "[a]t a minimum" ensure "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).

Each of these standards is a separate and independent requirement that must be satisfied before a CCR impoundment can be capped in place. A failure to satisfy any one of them requires that CCRs be excavated from the impoundment.

Under each of these three requirements, a coal ash pond cannot be capped in place with coal ash in contact with groundwater. In enforcing the CCR Rules at other sites, EPA has underscored that under the CCR Rules, "**surface impoundments or landfills cannot be closed with coal ash in contact with groundwater**. Limiting the contact between coal ash and groundwater after closure is **critical to minimizing releases of contaminants into the environment** and will help **ensure communities near these facilities have access to safe water for drinking** and recreation."[79] As discussed above in Part III.A, groundwater is known to be in contact and will remain in contact with coal ash and coal ash is known to contaminate groundwater. As NRDC's consultant advised, "[g]round water flow in the Southern Complex frequently undergoes reversals in flow direction depending on the river level."[80] This, in turn, means that contaminants in the Beckjord Dump are in contact with groundwater and the Ohio River. "In the southern complex, ground water flow direction is influenced by the Ohio River stage."[81] The unlined closure will leave contaminants free to leach to groundwater at a site where "[p]revious monitoring efforts **have shown** that … ground water flow patterns are largely **dependent on** the operation of the public well field, pumping of the Interceptor Well, and the stage of the Ohio River."[82] As NRDC's federally non-compliant permit application for the Pond B closure plan made clear, the bottom of the ash at Pond B is also located below the water table as depicted in the groundwater level data contained throughout the Quarterly Groundwater Monitoring Reports for the Beckjord facility filed by both Duke and CLP/NRDC. The Commissioners warned EPA in 2023 that "simply capping the ash ponds will not prevent the coal combustion residuals from continuing to negatively impact groundwater supplies for many years into the foreseeable future." *Id*. Therefore, by allowing CCRs to remain in contact with groundwater and the Ohio River, NRDC, CLP and Duke are in violation of the CCR Rules and RCRA.

If groundwater or any other water is already in a coal ash impoundment, then capping the impoundment in place will not control, minimize, or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste or releases of CCR pollution to ground or surface waters. And likewise, even if all or some water is temporarily pumped down within the ash, closure in place will violate this standard where the natural hydrology will cause groundwater to continue flowing into the ash basin and infiltrating into the waste following closure. In addition, the coal ash will be rewetted when the Ohio River rises due to the groundwater's hydrologic connection to the Ohio River underneath the ash impoundment. Only complete excavation of the ash and contaminated soils below the ash will control infiltration of liquids into the wastes and discharges of contaminants to the maximum extent feasible. Excavation of the coal ash ponds is certainly "feasible," because it is being done in other states.

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[79] Press Release, U.S. EPA, *EPA Takes Key Steps to Protect Groundwater from Coal Ash Contamination* (Jan. 11, 2022), https://www.epa.gov/newsreleases/epa-takes-key-steps-protect-groundwater-coal-ash-contamination.
[80] 1st Q. 2025 GMR at 7 (April 2025). *See also* 3rd Q. 2025 GMR at 14 ("Ground water flow directions are influenced by the river stage, particularly for the Southern Complex.").
[81] *See* Spence April Memo at 2.
[82] 2nd Q. 2022 GMR at 7 (Nov. 2022) (emphasis added).

Flooding from the Ohio River has resulted in impounding of water over the Beckjord Dump in violation of CCR Rules. Further, leachate is not being controlled to the maximum extent feasible despite being a known problem. In 1992, a report showed that "[a]sh within Pond A has the potential to leach sulfate and trace metals to sluice water and rainwater with which it comes in contact. The resultant leachate then becomes the potential contaminant source of concern."[83] NRDC's closure plan is to leave the waste in place in unlined ash ponds in contact with groundwater. In 2021, the Closure Plan for Pond B included plans to "[r]eroute leachate flow from ash piles to existing NPDES Outfall 002 after the ash pile leachate treatment system is operational."[84] Further, the Closure Plan notes there is "leachate from the ash piles and Pond Run Phases 2 and 3" and notes there are plans for a "leachate treatment system for Ash Pile B[.]"[85] Although leachate is known to occur, NRDC plans to close the Beckjord Dump without liners. In addition, NRDC plans to stop sampling at the Beckjord Dump entirely. "NRDC may petition the OEPA for approval to modify or terminate the groundwater monitoring program following closure of Ash Pond B and stable groundwater quality conditions are demonstrated."[86] In fact, NRDC has already stopped sampling for dangerous CCR constituents, which have been previously detected. The infiltration of water into the ash has resulted and will continue to result in the release of CCR, leachate, or contaminated runoff from the ash into the ground or surface waters.

NRDC, CLP and Duke are violating 40 C.F.R. §§ 257.102(b) and (d) and RCRA. They have prepared, published, and are implementing closure plans that fail to meet the minimum federal requirements for closure plans, and violate the federal CCR Rules and RCRA. Most notably, the "closure" violates the CCR Rules by leaving coal ash at the Beckjord Dump in contact with water and by not eliminating free liquids; by impounding slurry, sediment, and/or water; and by failing to control, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters. As shown above, the cap-in-place closure activities being performed at the Beckjord Dump and the non-compliant closure plans that set forth those activities violate three independent standards of the federal CCR Rules and, therefore, also violate RCRA.

The ongoing releases of CCR waste into the groundwater from the ash ponds at the Beckjord Dump, and the Polluters' failure to eliminate or minimize those releases or monitor the full range of constituents in those releases, also violate the CCR regulations at 40 C.F.R. § 257.90, including § 257.90(d) for failure to take all immediate and necessary measures to control the sources of those releases so as to reduce or eliminate, to the maximum extent feasible, further releases of contaminants into the environment; and, § 257.91 for failure to properly monitor the groundwater at each contributing CCR unit as the groundwater monitoring systems for Pond B (including the area known as coal storage area). Given the Polluters' failure to continue to regularly test for all Appendix IV parameters, they are also operating in violation of the CCR assessment monitoring requirements at 40 C.F.R. § 257.95.

[83] *See* D&M Phase 3 Report at 13.
[84] Closure Plan, Ash Pond B, by Key Environmental, Inc., at 2-5 (Rev. July 2021).
[85] Closure Plan, Ash Pond B, at 2-7.
[86] Closure Plan, Ash Pond B, at 6-2.

V. REMEDY

Duke, NRDC and CLP have each contributed and/or continue to contribute to the past or present handling, and/or disposal of the CCR waste in a manner that presents an imminent and substantial endangerment to health and/or the environment. The Polluters must immediately commit to and begin to take all corrective actions and measures necessary to abate the conditions that are currently contributing to this endangerment. The releases of contaminants from the Beckjord Dump threaten the ground and surface water in Clermont County, including that which is used for a public drinking water supply. Duke, NRDC and CLP must take all remedial action that is needed at each of the source areas of contamination to ensure the releases of contaminants are adequately eliminated or minimized to the degree necessary to keep potentially harmful levels of constituents from reaching the public water supply aquifer. At a bare minimum, this includes an investigation that will identify all portions of the Northern and Southern Complexes that are contributing to the groundwater contamination threatening Clermont County's public water supply.

In addition to addressing the release of contaminants at their source, Duke, NRDC and CLP must address the contamination in the groundwater before it reaches the County's public water supply. There must be a binding, enforceable, court-overseen obligation to operate a redundant system of intervention that keeps the contaminated groundwater from reaching the Clermont County public water supply until the time the source areas are remediated and the groundwater contamination is eliminated.

Financial assurances are also needed to ensure the systems of intervention, remediation and groundwater monitoring and other control measures can be maintained until all threats are eliminated.

Effective groundwater monitoring is also needed to ensure the full scope of the endangerment is identified and properly monitored over the upcoming years. Thus, Duke, NRDC and CLP must immediately begin to monitor all Appendix IV constituents including antimony, beryllium, cobalt, fluoride, lithium, mercury, radium-226, radium-228, and thallium at all monitoring locations. Minimum remedial actions must also include updating the groundwater monitoring locations and installing additional wells as needed to isolate and effectively monitor all source areas as well as delineate the contaminant plume(s) and identify the natural degradation timelines for each contaminant.

The above remedial actions and corrective measures are also needed for Duke, NRDC and CLP to come into compliance with the standards under the CCR Rules, including 40 C.F.R. § 257.90. Namely, Duke, NRDC and CLP must abandon their non-compliant closure activities and perform closure that either excavates the CCR waste from ash ponds A, B, C and Cx or meets the standards of in-place closure under 40 C.F.R. § 257.102(d) and addresses any residual contamination from beneath each ash pond. Duke, NRDC, and CLP must also immediately update their EAP and take all action necessary to come into compliance with their duties at 40 C.F.R. § 257.73(a)(3) for all ash ponds at the site. Similarly, they must update their groundwater monitoring activities to come into compliance with 40 C.F.R. §§ 257.91 and 257.95.

VI. CONCLUSION

If the listed remedial action to resolve the RCRA violations within 60 days and the imminent and substantial endangerment are not taken within 90 days of this statutory notice, the Commissioners intend to file suit in the United States District Court for the Southern District of Ohio against NRDC, CLP, Duke (and any others who contributed to the imminent and substantial endangerment), pursuant to the citizen suit provisions of RCRA, 42 U.S.C. § 6972(a)(l)(A) and (B), to remedy the violations and abate the imminent and substantial endangerment to the health and environment at the Beckjord Dump and to seek appropriate injunctive relief, civil penalties, attorneys' fees, and any other additional relief provided therein.

Please direct any communications regarding this Notice and the matters referenced herein to the undersigned counsel.

Sincerely,

By: _____
James C. Kezele

cc: (via Registered Mail, Return Receipt Requested)

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