MICHIGAN ENVIRONMENTAL COUNCIL

September 26th, 2018

House Natural Resources Committee
Lansing, MI

Re: HB 6269

Committee Members:

The Michigan Environmental Council (MEC), a coalition of 65 member groups across the Great Lake State, has worked to protect the groundwater of the state. In recent months we have seen a renewed focus on our groundwater, including where many people have had to stop using their groundwater to drink because it is contaminated. MEC has concerns about his bill regarding both its protection of groundwater and its timing due to the uncertainty that is ongoing at the federal level around this issue.

Coal combustion residuals, also known as coal ash, are a powdery waste produced by burning coal in coal-fired power plants. Coal ash contains toxic levels of mercury, cadmium, lead, arsenic, and other harmful heavy metals.

For decades utilities regularly dumped coal ash into unlined ponds or landfills adjacent to coal plants. These ponds vary in size, but the average nationally is equivalent to nearly 40 football fields. There are thought to be about 1,000 coal ash ponds across the country, however that is likely a low estimate given that many ponds have yet to be inventoried, 29 are located in Michigan.

Our main concern at this time is regarding the procedure that would occur if an existing, unlined coal ash impoundment is found to have a statistically significant increase (SSI) in contaminants over baseline. Under the federal rules on coal ash, owners and operators of coal combustion residual units were required by January 31st, 2018 and annually after to put out a groundwater monitoring and corrective action report documenting the results of groundwater monitoring for the previous year. The results of that monitoring are evaluated to identify any SSIs over background. If an SSI is detected and the utility cannot demonstrate that a source other than the CCR unit caused the SSI or that the SSI was a result of error in monitoring then the utility must commence a round of assessment monitoring for an expanded list of contaminates, including mercury, lead, and arsenic. If the assessment monitoring at an existing, unlined impoundment demonstrates that levels in the groundwater of any of the expanded list of contaminates exceeds groundwater protection standards then the owner or operator of the impoundment must cease placing coal ash in the impoundment and start the process to either close the impoundment or retrofit it with a liner.

In Michigan, all 29 CCR units that fall under the new federal regulations. Twenty two of those units are surface impoundments with a total of 37 coal ash ponds. Only 1 of those waste ponds has a liner that meets federal protection standards. The initial round of detection monitoring showed that 80% of the 21 CCR units that have posted monitoring data had SSIs and utilities

have begun assessment monitoring at a number of these sites. We expect assessment monitoring to demonstrate that these unlined waste ponds are contaminating groundwater above safe levels, and therefore starting in the last few months of this year, utilities in Michigan would need to retrofit or close these unlined coal ash impoundment with SSIs.

Under HB 6269, however, the procedure for an SSI would be to simply monitor the groundwater and take steps following the part 201 rules – which is only to ensure the public is not being effected. As we have seen many times recently, writing off groundwater aquifers to contamination causes negative public health impacts in the long term from both drinking water exposure and vapor intrusion. MEC supports following the federal standard of moving immediately toward closure or retrofit of any unlined impoundment that is contaminating Michigan's groundwater.

Secondly, MEC has concerns over three other issues around how this bill matches the federal requirements. The first is that it is unclear whether new or expanding coal ash impoundments require liners. The federal rule is clear that liners are required, but the statutory language in HB 6269 does not reflect that clearly. Additionally the "low-hazard coal impoundment" definition is unclear on how that subcategory of impoundments fits under this law or the federal law. It seems like an exemption where none exists on the federal level for this type of impoundment. Lastly, there is a gap in the definition between "existing coal ash impoundments" and "new coal ash impoundments" of a couple years. There are a few impoundments that fall in this area and it should be clarified what rules are meant to apply.

Finally, despite our agreement that the DEQ is an appropriate regulator of coal ash disposal, MEC believes that it is premature to move toward regulation on the state level given the uncertainty of regulation at the federal level. Any state delegation of authority on this topic must be approved by the EPA after an application by the state, and the program must meet the standards set by the Federal program. The federal rules on this issue are currently being challenged in the courts, with a recent ruling voiding sections of the rules completely. With the rule being this unsettled, MEC believes that the state should wait until the federal rule is finalized before putting anything into statute that would likely need changed before the state could get delegated authority.

Ultimately, MEC feels that this bill is not ready for movement due to the potential conflicts with the federal rule, the fact that the federal rule is currently unsettled, and due to confusing and potentially conflicting requirements within the bill itself. As the federal picture on this issue becomes clearer, MEC would like to see the bill's requirements around what happens when an SSI is found to be strengthened to match the federal requirements and for the bill to get another look at that time.

Sincerely,

Sean Hammond
Deputy Policy Director
Michigan Environmental Council