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Michael S. Regan
Administrator, Environmental Protection Agency
1200 Pennsylvania Ave NW, Suite 1101A
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Submitted Electronically via Regulations.gov

Re: Comments on the Proposed Rulemaking Titled "Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category" by the Attorneys General of the State of West Virginia, Arkansas, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Utah, Virginia, and Wyoming (Docket No. EPA-HQ-OW-2009-0819)

Dear Administrator Regan:

We appreciate the opportunity to comment on EPA's proposed revisions to the Effluent Limitations Guidelines and Standards (ELGs) for coal-fired steam electric power plants. *See* 88 Fed. Reg. 18,824 (Mar. 29, 2023) ("Proposed Rule"). The States are committed to providing reliable and affordable electricity in an environmentally responsible way. But the Proposed Rule doesn't do that. Instead, it requires industry to adopt expensive technology that is not feasible for most facilities. These technologies will lead to increased energy costs and undermine grid reliability by forcing unit and facility closures. We urge EPA to revisit its misguided approach and adopt more reasonable measures to control discharges.

BACKGROUND

The Clean Water Act requires the EPA to regulate the discharge of pollutants into waters of the United States. 33 U.S.C. §§ 1251, 1311. EPA does so through a system of ELGs and National Pollutant Discharge Elimination System (NPDES) permits. This system in turn sets national effluent limitations, which restrict pollutant discharges from point sources. 33 U.S.C. §§ 1314(b) 1316(b)(1)(A). An "effluent limitation" is "any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance." 33 U.S.C. § 1362(11).

The CWA requires these limitations to be based on technological feasibility rather than on water quality. 33 U.S.C. § 1311(b)(2)(A). That is, the CWA requires EPA to set discharge limits that reflect the "capabilities of available pollution control technologies to prevent or limit different discharges rather than the impact that those discharges have on the waters." *Tex. Oil & Gas Ass'n v. EPA*, 161 F.3d 923, 927 (5th Cir. 1998). So as pollution-control technology advances, the CWA might allow for more stringent pollution control methods. *See Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 123 (D.C. Cir. 1987). But EPA must always keep in mind the practical realities of pollution control; it cannot craft ELGs reflecting imaginary technologies or prohibitively expensive works. *See*, *e.g.*, *FMC Corp. v. Train*, 539 F.2d 973, 979 (4th Cir. 1976) ("EPA must take seriously its statutory duty to consider cost."); *Am. Iron & Steel Inst. v. EPA*, 526 F.2d 1027, 1076 (3d Cir. 1975) (Adams, J., concurring) (explaining how EPA might err in failing to adequately consider "external or secondary costs" from ELGs, such as "plant closings").

ELGs are not self-executing. Instead, EPA and authorized state issue NPDES permits—which incorporate ELGs—that make it unlawful to discharge any pollutant from any point source without a permit. 33 U.S.C. § 1311(a); *Am. Petroleum Inst. v. EPA*, 787 F.2d 965, 969 (5th Cir. 1986). The CWA imposes significant financial penalties for failing to comply with all conditions of the NPDES permits, 40 CFR § 122.41, so ELGs can have serious economic consequences for regulated entities (like the power plants at issue here). But regulated entities also face serious economic harms by adopting impractical and expensive compliance technologies.

Before 1989, the technology standard for existing, direct discharges of pollutants was "best practicable control technology currently available." EPA considers several factors in determining BPT, including the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and "other factors as the Administrator deems appropriate." 33 U.S.C. § 1314(b)(1)(B). BPT also required EPA to conduct a cost/benefit analysis: "the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application." *Id.*

But Congress replaced this standard with the more-stringent "best available technology economically achievable" (BAT) standard, which applies to existing, direct discharges of toxic and nonconventional pollutants. 33 U.S.C. §§ 1311(b)(2), 1314(b)(2). BAT tasks EPA to consider many of the same factors as BPT does. 33 U.S.C. § 1314(b)(2)(B). Unlike BPT, BAT omits a cost-benefit analysis and instead requires EPA to consider "the cost of achieving such effluent reduction" generally. *Id.* The EPA "has considerable," but not unlimited, "discretion in evaluating the relevant factors and determining the weight to be accorded to each in reaching its ultimate BAT determination." *Tex. Oil & Gas*, 161 F.3d at 928. And EPA must identify specific "scientific data or other demonstrative evidence" to justify its ELG decisions. *Tanners' Council of Am., Inc. v. Train*, 540 F.2d 1188, 1193 (4th Cir. 1976).

EPA first promulgated ELGs for steam-electric power plants in 1974, with an additional update coming in 1982, and did so under the less-stringent BPT standard. *See* 88 Fed. Reg. at 18,829. In 2015, EPA issued a final rule further updating power plant ELGs, suggesting that then-existent ELGs did not reflect "technology advances that have occurred in the last 30-plus years,"

80 Fed. Reg. 67,838, 67,840 (Nov. 3, 2015) (2015 Rule). Specifically, the 2015 Rule found that the BPT standard was "out of date" and imposed BAT standards for six waste-streams produced by power plants: flue gas desulfurization (FGD); fly ash transport; bottom ash transport; flue gas mercury control; combustion residual leachate (CRL); and gasification. *Id.* at 67,840-41. The 2015 Rule also updated ELGs for legacy wastewater, which acts as a stop-gap limitation that applies to five of the wastewater streams until the implementation deadline. 80 Fed. Reg. at 67,854.

The 2015 Rule constituted "yet another set of costly regulatory mandates" for power plants that came "on the heels" of several other aggressive EPA actions targeting those plants. Adam F. Blalock & Winston K. Borkowski, *EPA Finalizes Strict Effluent Limitation Guidelines for the Steam Electric Power Generating Industry*, ABA WATER QUALITY & WETLANDS COMM. NEWSL. (Am. Bar. Ass'n, Washington, D.C.), June 2016, at 11, 13. The rule "directly and significantly affect[ed] our nation's generation fleet … with enormous cost impacts, and significant impacts on energy supply and reliability." Edison Electric Institute, Comment Letter on Proposed Rule on Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (July 6, 2017), https://bit.ly/3BB5zgH. For example, one power company in South Carolina estimated its costs of compliance would exceed $700 million for just two coal fired plants. *See* American Coalition for Clean Coal Electricity, Comment Letter on Proposed Rule on Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category (July 6, 2017), https://bit.ly/45ecNod.

Various industry stakeholders and environmental organizations quickly challenged different parts of the 2015 Rule, and those lawsuits were consolidated in the Fifth Circuit. *Southwestern Elec. Power Co. v. EPA*, 920 F.3d 999, 1012 (5th Cir. 2019). After a change in presidential administrations, EPA announced it was considering revising compliance dates for the limitations and standards for five of the wastestreams. *See* 82 Fed. Reg. 19,005 (Apr. 25, 2017). EPA then moved to sever the case as to the industrial stakeholders and hold the case in abeyance, which the Fifth Circuit granted. *Southwestern Elec. Power*, 920 F.3d at 1013. EPA subsequently announced its decision to reconsider the 2015 Rule and stayed the rule pending reconsideration. *See* 82 Fed. Reg. 43,494 (Sept. 18, 2017). The Fifth Circuit ultimately considered the environmental organizations challenges to CRL and legacy wastewater, striking down part of the 2015 Rule in *Southwestern Electric Power Company v. EPA*, 920 F.3d 999 (5th Cir. 2019).

In 2020, the agency tried a course correction when it replaced the 2015 Rule with the 2020 Steam Electric Reconsideration Rule. 85 Fed. Reg. 64,650 (Oct. 13, 2020) (2020 Reconsideration Rule). After concluding that more affordable technologies capable of removing similar pollutants had become available since 2015, EPA changed the technology basis for FGD wastewater and bottom-ash transport water. *Id.* at 64,651-52. The 2020 Reconsideration Rule also established new subcategories and varying requirements for high flow facilities, low utilization electric generating units (EGUs), and EGUs transitioning from coal combustion by 2028. *Id.* at 64,652. Even with these changes, however, the expense of that rule did substantial damage to the power industry. *See, e.g.*, Hannah Northey, *Trump Rule Meant to Save Coal Is Forcing Plants to Close*, E&E NEWS: GREENWIRE (Dec. 2, 2021, 1:40 p.m.), https://bit.ly/3MBVhlF.

The Proposed Rule imposes several expensive—and at times—unavailable technologies. *First*, the Proposed Rule establishes tougher ELGs for two categories of wastewater from existing coal-fired power plants: flue gas desulfurization (FGD) wastewater and bottom ash (BA) transport water. For FGD wastewater, EPA proposes moving from discharge limits based on chemical precipitation and biological treatment to commercially unavailable membrane treatment technology. 88 Fed. Reg at 18,838-42. Similarly, EPA proposes updating the existing ELG for BA transport waters from a high recycle rate system—which power plants installed to comply with the Coal Combustion Residuals (CCR) Rule—to an expensive dry handling or closed-loop system. *Id.* at 18,844. *Second*, the Proposed Rule establishes a new ELG for combustion residual leachate (CRL), after a court of appeals invalidated the prior ELG for CRL because it failed to reflect the best available technology. *Id.* at 18,826 (citing *Southwestern Elec. Power Co. v.* EPA, 920 F.3d 999 (5th Cir. 2019)). But EPA underestimates the costs of implementing the technologies to what it admits is a "very small portion" of overall discharges. 80 Fed. Reg. at 67,854. *Third*, the Proposed Rule creates new definitions for legacy wastewater—wastewater that can be comprised of FGD wastewater, BA transport water, FA transport water, CRL, gasification wastewater—in surface impoundments based on best professional judgment (BPJ). 88 Fed. Reg. at 18,826. This premature proposal will require power plants to undertake time-consuming processes even though the CCR Rule may result in most legacy wastewaters being discharged prior to the completion of the Proposed Rule. *Finally*, the Proposed Rule offers some less stringent requirements for facilities that have already complied with the 2015 Rule or the 2020 Reconsideration Rule where the facilities would retire by 2032. *Id.* at 18,826.

In all, the Proposed Rule imposes additional costly measures on power plants while giving insufficient consideration to the power plants' previous efforts to comply with the 2015 Rule and the 2020 Reconsideration Rule.

DISCUSSION

EPA should reconsider its Proposed Rule, as industry is already complying with the 2015 Rule and the 2020 Reconsideration Rule, making any revision unnecessary.

The Proposed Rule is yet another example of EPA employing costly, unnecessary limits that will lead to increased energy prices, closed facilities, and lost jobs. The Proposed Rule does not adequately consider the impacts that its required measures will have on power providers, consumers, and the communities in which these plants operate. Although environmental protection is an important goal, it must always be balanced with other important mandates—and EPA appears not to have done that here.

EPA has also proposed measures that do not constitute the best available technologies. Specifically, EPA should dispense with its proposal for membrane filtration as the BAT limitation for FGD wastewater, as membrane filtration has never been used in a commercial-scale operation in the United States. Implementing this unproven technology would be prohibitively expensive, as industry will need to find some new way to deal with the brine byproduct. EPA should also reconsider its proposal of dry-handling or close-looped systems for bottom-ash transport water. These systems are expensive and industry would be unable to recoup the investments they already

spent complying with other EPA rules. Similar problems plague EPA's proposals for CRL and legacy wastewater, as EPA suggests unnecessary technologies without providing a full accounting of the costs.

For all these reasons, EPA should reconsider its rule.

I. EPA Has Ignored How The Proposed Rule Will Lead to Increased Energy Costs and Decreased Jobs.

The Proposed Rule imposes significant costs on power plants after they have already invested millions of dollars to comply with both the 2015 Rule and the 2020 Reconsideration Rule. These investments have yet to be recovered during the plants' useful lives, and the Proposed Rule will lead to stranded assets and wasteful capital investments. Smaller, local utilities will especially feel these costs, as they face high compliance costs relative to their lower numbers of ratepayers.

EPA has not sufficiently considered how the "whiplash" effect from its recent regulatory efforts will multiply the costs imposed on power providers and, ultimately, consumers. "[W]hen an agency changes course, it must take into account serious reliance interests its longstanding policies may have engendered along with alternatives that are within the ambit of the existing policy." *R.J. Reynolds Vapor Co. v. FDA*, 65 F.4th 182, 189 (5th Cir. 2023) (cleaned up). Here, these reliance interests include the costly capital investments and process changes that have been undertaken by plants in response to prior measures. Bear in mind that, at least before 2015, ELG regulations had not changed for several decades. Now, EPA proposes to change these regulations at least three times in less than ten years, all with an insufficient explanation of (a) what particular circumstances actually justify those changes and (b) why less costly and aggressive measures could not produce similar results. Instead, EPA proposes to allow some flexibility for these "early adopters" *only* when they plan to retire no later than the end of 2032. 88 Fed. Reg. at 18,837.

Even putting this "whiplash" effect aside, EPA still has not confronted the increased energy prices that consumers will see as a result of the Proposed Rule. Instead, EPA has often disclaimed its responsibility to address those effects, insisting that rate-setting by local and state-level power regulators make it impossible to predict how compliance costs of the rule might be passed on to consumers. But "[t]hat particular difficulty may mean [EPA] can determine only the range within which [cost increases] will fall, depending upon how [state regulators] respond[] to the condition but … it does not excuse the [agency] from its statutory obligation to determine as best it can the economic implications of the rule it has proposed." *Chamber of Com. of U.S. v. SEC*, 412 F.3d 133, 143 (D.C. Cir. 2005). EPA needs to forecast what consumers will see on their power bills because of these expensive measures. After all, the cost must be borne by someone—if expenses from the Proposed Rule are not passed along to consumers directly, then they could well be passed along by the effects of facility closures and the like that power companies might be forced to undertake.

And indeed, as with many of EPA's recent environmental regulations, the Proposed Rule's high costs will lead to unit and facility closures. *See Coal Made Up More than 80% of Retired Electricity Generating Capacity in 2015*, U.S. ENERGY INFO. ADMIN. (March 8, 2016),

https://bit.ly/3BAaezo (noting that the 2015 Mercury and Air Toxic Standards rule forced many utilities to retire coal-fired plants). And these closures will lead to a loss of jobs and impacted communities. EPA does not address the broader consequences of facility closures in the Proposed Rule, further highlighting how the agency is viewing costs through an inappropriately narrow lens. *See* EPA, BENEFIT AND COST ANALYSIS FOR PROPOSED SUPPLEMENTAL EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS FOR THE STEAM ELECTRIC POWER GENERATING POINT SOURCE CATEGORY 11-1 (Feb. 28, 2023), https://bit.ly/435pXCM ("[T]he *only* category of costs used to calculate social costs are estimated technology implementation costs for steam electric power plants." (emphasis added)).

Standing alone, perhaps the Proposed Rule could be seen as a good faith—albeit harmful—proposal to regulate wastewater. But the Proposed Rule is just one part of EPA's latest effort to impose massive compliance costs on coal-fired power plants that will lead to increased electricity prices, unit and facility closures, and a loss of jobs. Recent changes like the Coal Combustion Residuals Rule, along with anticipated measures like methane restrictions, greenhouse gas regulation under CAA Section 111, and action under the Mercury and Air Toxics Standards, are just a few of the examples of EPA regulatory initiatives from which coal-fired plants are facing serious economic burdens. While EPA describes some of these measures in the Proposed Rule's Preamble, 88 Fed. Reg. at 18,830-31, EPA has not considered the *cumulative* effects of these various regulatory initiatives; it seems likely that pursuing them all together will increase the likelihood of plant closures and the like. Yet EPA does not give any consideration to the problem of launching these regulatory changes together. Thus, it appears the Proposed Rule is actually an attempt to close coal-fired power plants by making them too expensive to operate. And we see no authority in the Clean Water Act, Clean Air Act, or otherwise for EPA to make a "policy judgment … that it would be 'best' if coal made up a much smaller share of national electricity generation." *West Virginia v. EPA*, 142 S. Ct. 2587, 2612 (2022). After all, the nation's coal fleet is essential to grid reliability, fuel stability, and national security.

In short, before it undertakes to adopt any rule in this space, EPA should adopt a complete cost assessment that accurately considers all the reasonably expected consequences that might follow from any proposed rule.

II. The Proposed Rule Does Not Identify the Best Available Technologies.

Broader problems with the Proposed Rule aside, none of the particular technologies described in the Proposed Rule seem to be an appropriate fit for these plants.

A. Membrane Filtration is Not Technologically Available Nor Economically Feasible

The Proposed Rule suggests membrane filtration as the BAT limitation to control pollutants discharged in FGD wastewater. 88 Fed. Reg. at 18,838. But this decision is not well-supported by evidence and is not economically achievable for much of the industry. And as EPA noted in its 2020 Reconsideration Rule, membrane filtration poses additional costs to the industry EPA doesn't account for. 85 Fed. Reg. at 64,663-68.

EPA justifies its decision to require membrane filtration by citing to the successful pilot tests of membrane filtration in the United States. 88 Fed. Reg. at 18,839. Yet not a single facility in the United States has adopted the technology beyond small-scale pilots. *Id.* And pilot systems are often tightly controlled and small-scale, so their applicability to commercial-scale operations is not always apt. 84 Fed. Reg. 64,620, 64,632-33 (Nov. 22, 2019) (noting significant uncertainty about how the technology would function at the commercial scale). Although some international plants use membrane-based systems, little data exists on the short- or long-term performance of these particular systems. 85 Fed. Reg. at 64,664. So we find no real evidence in the existence of a pilot-program test or two.

EPA's decision to go forward with membrane filtration despite its infeasibility is disappointing but unsurprising given that EPA has signaled that it was considering membrane filtration as early as July 2021. Press Release, EPA Announces Intent to Bolster Limits on Water Pollution from Power Plants (July 26, 2021), https://bit.ly/3MJYxg5. But EPA had rejected membrane filtration as BAT as recently as December 2020 precisely because not a single facility in the United States had adopted the technology for anything beyond small-scale pilots. 85 Fed. Reg. at 64,664. We can only surmise, then, that EPA had inappropriately predetermined that it would adopt membrane filtration; it then relied on whatever trace of evidence that suggested the technology is achievable in the United States to justify that preordained result. *Cf. Forest Guardians v. U.S. Fish & Wildlife Serv.*, 611 F.3d 692, 713 (10th Cir. 2010) (discussing inappropriate agency predetermination in the NEPA context).

But even if membrane technology was technologically available in the United States, EPA has underestimated the full costs of the technology, which makes it inappropriate for BAT. The Proposed Rule does not consider the full costs of the FGD wastewater treatment system, which includes feed-water equalization, chemical softening, oxidant reduction, pH adjustment and antiscalant, membrane chemical cleaning, and balance of plant systems and equipment. One key obstacle to implementing membrane technology is the management of concentrated brine and solid waste generated by the process. Some facilities heat the residual brine until all the water evaporates and only the crystallized solids remain (i.e., thermal evaporation). 88 Fed. Reg. at 18,835. Other facilities use brine encapsulation, which mixes FGD wastewater with fly ash and lime. *Id.* at 18,841-42. The solids are then disposed in a landfill—either onsite or offsite.

EPA correctly found that thermal evaporation was inappropriate and likely could not "be used nationwide," 88 Fed. Reg. at 18,853, but EPA overlooks the added expenses with brine encapsulation. Many sites currently sell fly ash and will likely need to forgo a portion of that revenue to incorporate additional fly ash into the encapsulation mix. Other facilities may not produce enough fly ash and will need to purchase fly ash. Finally, encapsulation will likely mean the construction of new landfills, as existing landfills will reach capacity more quickly with the disposal of new solids. Because of variability across plants, these costs will likely be too high to make membrane technologically economically achievable. So here again, plants would be forced to close, as they would not meet this limitation.

B. A Closed-Loop System for Bottom-Ash Transport Water is Prohibitively Expensive

EPA should also reconsider its proposal to establish a no-discharge effluent limitation based on a dry handling or closed-loop system for bottom-ash transport water. 88 Fed. Reg. at 18,838.

While the 2015 Rule used dry handling or closed-loop systems as BAT for bottom-ash transport water, the 2020 Reconsideration Rule correctly concluded those systems were no longer appropriate given the process changes plants made to comply with the Coal Combustion Residuals (CCR) Rule, 40 CFR § 257.101(a)(1). 85 Fed. Reg. at 64,671. The CCR Rule required plants to stop retaining waste in unlined surface impoundments by April 11, 2021. 40 CFR § 257.101(a)(1). Various wastestreams, both CCR and non-CCR, including bottom-ash transport water, have typically gone into surface impoundments. So by adopting a high-recycle rate system, plants were able to comply with both ELGs and the CCR Rule. 85 Fed. Reg. at 64,671. EPA also noted that maintaining a true closed-loop system was expensive, costing approximately $63 million per year beyond the cost of the system itself. *Id.* at 64,680.

EPA sweeps aside its earlier concerns, noting "nearly every facility will have completed its conversion to a CCR rule-compliant bottom-ash handling method by 2024, the year in which EPA intends to promulgate any final ELG following this proposal." 88 Fed. Reg. at 18,846. So EPA says facilities with high recycle rate systems "would be free to focus on transitioning those high recycle rate systems to closed-loop operations." *Id.* at 18,847. In other words, EPA seems to assume that it is free to impose another round of expensive environmental measures merely because a prior round of measures has been fully implemented.

But EPA doesn't acknowledge that this second round of new measures will cost plants substantial money. Industry has already invested millions of dollars to comply with the CCR Rule. EPA now expects them to move to a different system, where they won't recover the money that they invested. EPA appears indifferent to the time and money plants have invested to be environmentally responsible. And it has not earnestly addressed the "serious concerns about the availability and affordability of the technology basis for … bottom ash transport water requirements" that led the agency to pull back on these requirements just a few short years ago. *Clean Water Action v. EPA*, 936 F.3d 308, 315-16 (5th Cir. 2019).

C. EPA Underestimates the BAT for Combustion Residual Leachate

EPA also proposes chemical precipitation as the technology basis for establishing BAT limitations to control pollutants discharged in CRL. 88 Fed. Reg. at 18,848. As EPA noted in its 2015 Rule, CRL forms only a "very small portion" of overall discharges by steam electric power plants. 80 Fed. Reg. at 67,854. So EPA should only place limits for CRL that are both reasonable and achievable by the industry, especially in light of the minimal environmental impact that would be achieved by *any* rule governing CRL.

But once more, EPA's proposed limitation for CRL underestimates the economic impacts to facilities adopting the ELGs. First, the Proposed Rule's economic achievability of chemical

precipitation only looks at the costs of CRL alone. 88 Fed. Reg. at 18,849. It does not consider the cumulative impact of adding chemical precipitation to the other ELGs imposed for the same facility. Second, the CRL appears not to take into account the limitations of some landfills as they pursue chemical precipitation. CRL includes combustion residual landfills that are not located at permitted steam electric plants, 40 C.F.R. § 423.11(r), and these landfills may lack both the land and the infrastructure needed to adopt this technology.

Given that CRL makes up a small portion of discharges and the costs of implementing technologies, EPA should reconsider its proposals for BAT. If EPA decides to go forward with chemical precipitation, the States agree with EPA that it should include flexibilities and subcategories so all facilities can comply with the BAT. 88 Fed. Reg. at 18,850.

D. Limits on Legacy Wastewater are Premature and Unhelpful

Finally, EPA proposes setting on a case-by-case basis ELGs for legacy wastewater in surface impoundments based on "best professional judgment" (BPJ). 88 Fed. Reg. at 18,850. But BPJ is infeasible for several reasons.

First, BPJ is a time-consuming, fact-intensive process involving technological evaluations and economic assessments. This requirement is especially unnecessary given the related CCR Rule may result in most facilities discharging their legacy wastewaters before the Proposed Rule is even finalized.

Second, requiring BPJ undercuts the certainty that the Proposed Rule would otherwise provide. Especially given that EPA must consider the same factors under a BPJ permit that it must use when establishing national guidelines, *Nat. Res. Def. Council, Inc. v. EPA*, 863 F.2d 1420, 1425 (9th Cir. 1988), industry should know what technologies it needs to adopt without wading into a time-consuming process. And applying BPJ to wastewater invites a particularly high degree of unpredictability because this wastestream is so compositionally different from other wastestreams.

Thus, EPA should wait until after the closure deadlines for the CCR Rule to revisit whether a legacy wastewater standard is even necessary. If the agency then decides to move forward with limits on legacy wastewater, it should at least do so in a consistent way.

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Just recently, the Supreme Court reminded EPA not to misread the Clean Water Act to grant itself power Congress never intended it to have. *See Sackett v. EPA*, No. 21-454, slip. op. (U.S. May 25, 2023). We urge EPA to reevaluate the Proposed Rule, keeping the statute's limits firmly in mind, and then finalize a rule that addresses discharges from power plants in an economical and technological achievable manner. We appreciate the opportunity to provide comments in this rulemaking, and we are happy to discuss further with the agency as helpful.

Sincerely,

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