



State of West Virginia
Office of the Attorney General
John B. McCuskey
Attorney General

June 17, 2026

The Honorable Lee Zeldin
Administrator, Environmental Protection Agency
1200 Pennsylvania Ave NW, Suite 1101A
Washington, DC 20460

Submitted Electronically via Regulations.gov

Re: Comments on Proposed Rulemaking Titled “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category—Unmanaged Combustion Residual Leachate” by the Attorneys General of the States of West Virginia, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming (Docket No. [EPA-HQ-OW-2009-0819; FRL-8794.2-01-OW])

Dear Administrator Zeldin:

We appreciate the opportunity to comment in support of EPA’s proposed revisions to the Effluent Limitations Guidelines and Standards (ELGs) for unmanaged combustion residual leachate (CRL) from steam electric power plants. See 91 Fed. Reg. 28,487 (May 18, 2026). The rule is a welcome step back from a regulatory regime that did not serve the interests of the environment, the public, or the plants that power America.

As you know, the previous rule burdened sources with immense and unjustified requirements—even as those same sources had undertaken expensive compliance measures just a few years before. The new requirements were often impossible to meet and invariably imposed substantial costs. As a result, the old rule irreparably harmed the American energy sector and the general public, which relies on electricity for daily living.

We are thus relieved to see EPA recognize that damage and offer alternatives to undo it, even if for a single wastestream. Of the three options EPA presents, we suggest Option 1 does the

job. And we urge EPA to act quickly to address the other remnants of the Biden administration's prior rule, which continues to impede traditional American energy development.

BACKGROUND

The Clean Water Act directs EPA to regulate the discharge of “pollutant[s]” from “point sources” into waters of the United States. 33 U.S.C. § 1311(a). EPA achieves this directive using ELGs and National Pollutant Discharge Elimination System (NPDES) permits. Together, ELGs and NPDES permits restrict pollution discharges.

ELGs set the backdrop. 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). EPA must periodically set ELGs for “classes and categories of point sources.” *See, e.g., id.* § 1314(b). ELGs can be based on maintaining water-quality standards, *id.* §§ 1312, 1342, or on the technological capabilities of available pollution control technologies, *id.* §§ 1314, 1342. *See Tex. Oil & Gas Ass’n v. EPA*, 161 F.3d 923, 927 (5th Cir. 1998) (explaining that discharge limits must reflect the “capabilities of available pollution control technologies to prevent or limit different discharges rather than the impact those discharges have on the waters”).

Thus, the CWA allows for ELGs to adapt to ever-advancing technology in the hopes that this natural growth will “result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants.” 33 U.S.C. § 1311(b)(2)(A). And *natural* growth is critical: EPA can eliminate discharges only if “such elimination is technologically *and* economically achievable.” *Id.*; *see also id.* § 1314(b)(3) (providing that EPA must “tak[e] into account the cost of achieving” elimination). So ELGs cannot be derived from hypothetical or unaffordable technologies. *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”).

Under the CWA’s “statutory framework of technology-based standards,” *Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 123 (D.C. Cir. 1987), updated ELGs must reflect real-world advancements in pollution-control technology, *see* 33 U.S.C. § 1314(b). As with the initial ELG determination, EPA must be mindful of its “statutory duty to consider cost” when it updates ELGs. *See, e.g., Train*, 539 F.2d at 979. The agency can’t simply demand that sources reach zero discharge or that they use unproven or exorbitantly expensive technology. Rather, ELGs should reflect the use of the “best available technology economically achievable” (BAT). 33 U.S.C. § 1311(b)(2)(A). BAT is determined by considering the “control measures and practices available to eliminate the discharge of pollutants” while also “taking into account the cost of achieving” that elimination. *Id.* § 1314(b)(3). And the BAT determination must be grounded in “scientific data or other demonstrative evidence.” *Tanners’ Council of Am., Inc. v. Train*, 540 F.2d 1188, 1193 (4th Cir. 1976).

Against this ELG backdrop, EPA and authorized States issue NPDES permits to sources. Those permits incorporate ELGs and set other conditions that the permitted source must follow.

33 U.S.C. § 1311. Without a permit, a source cannot discharge any pollutants. *See Am. Petroleum Inst. v. EPA*, 787 F.2d 965, 969 (5th Cir. 1986). A source that discharges pollutants without a permit risks serious economic sanctions. *See* 40 C.F.R. § 122.41.

Over time, EPA has issued a number of rules related to ELGs and NPDES permits. Unfortunately, regulatory requirements have often changed rapidly over time, burdening regulated plants with ever more oppressive requirements.

In 2015, EPA issued a rule that claimed ELG standards were “out of date” and imposed new standards on six power-plant waste streams, including combustion residual leachate (CRL). *See* 80 Fed. Reg. 67,838, 67,840-41 (Nov. 3, 2015). The 2015 Rule also introduced new ELGs for legacy wastewater, intended to serve as a temporary limit until the rule’s implementation deadline. *Id.* at 67,854-55. As we previously explained, “[t]he 2015 Rule was a mistake.” State of West Virginia and 24 Other States, Comments on Proposed Rule On Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline Extensions 3 (Nov. 3, 2025), <https://tinyurl.com/yp242a9s> (Extension Comment). It caused enormous damage to our nation’s energy infrastructure, both in terms of cost and impact on supply and reliability. *See id.*

Because of its onerous requirements, the 2015 Rule faced intense backlash and numerous lawsuits. *See Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1012 (5th Cir. 2019). Even EPA acknowledged that the rule’s unrealistic compliance dates warranted further consideration. *See* 82 Fed. Reg. 19,005 (Apr. 25, 2017). The agency thus stayed the rule pending the ongoing lawsuits and EPA’s own reconsideration. *See* 82 Fed. Reg. 43,494 (Sept. 18, 2017). Soon after, the Fifth Circuit vacated the 2015 Rule’s provisions on CRL and legacy wastewater. *See Sw. Elec. Power Co.*, 920 F.3d at 1033.

EPA tried to right the ship in 2020 with its Steam Electric Reconsideration Rule. *See* 85 Fed. Reg. 64,650 (Oct. 13, 2020). The 2020 Rule established new subcategories and requirements for high-flow facilities, low-utilization electric-generating units (EGUs), and EGUs transitioning away from coal combustion by 2028. *Id.* at 64,652. It also changed the technology bases for certain waste streams to newer, more feasible technologies that had proven capable of reaching elimination levels similar to the 2015 Rule’s. *Id.* at 64,651-52. Still, the 2020 Rule didn’t go far enough to remedy the 2015 Rule’s grave impact, leaving the coal-fired power industry in dire straits. *See, e.g.,* Hannah Northey, *Trump rule meant to save coal is forcing plants to close*, E&E NEWS (Dec. 2, 2021, 1:40 p.m.), <https://tinyurl.com/5d6zukwv>. Even those plants that were able to continue on were forced to spend hundreds of millions of dollars on compliance measures under this *old* rule. *See, e.g.,* Paul Ciampoli, *Santee Cooper Details Efforts to Boost Power Plant Environmental Protections*, AM. PUB. POWER ASS’N (May 8, 2024), <https://tinyurl.com/5fyej38a> (describing a \$300 million wastewater treatment system).

In mid-2024, the situation worsened. The Biden EPA unleashed an “unprecedented ... suite of regulations” targeting the coal industry in an attempt to force a “transition to a cleaner energy economy.” Sonal Patel, *EPA Unleashed Four-Pronged Assault of Fossil Fuel Power Pollution*, POWER (Apr. 25, 2024), <https://tinyurl.com/m6jh6xcc>. Among that suite was a 2024 Rule that

undid EPA's previous attempt at ELG course correction. *See* 89 Fed. Reg. 40,198 (May 9, 2024). In its place, the 2024 Rule demanded that sources use prohibitively expensive (and often unavailable or theoretical) technologies that had previously been deemed economically unachievable in both 2015 and 2020. *Id.* at 40,218. In doing so, the 2024 Rule "establish[ed] zero-discharge standards for coal-fired EGUs retiring after 2034," while subjecting retiring units to the older (and still unrealistic) standards. *Power Plant Effluent Limits*, HARV. L. SCH. ENV'T & ENERGY L. PROGRAM (May 18, 2026), <https://tinyurl.com/5xww896r>. Altogether, the rule "marked EPA's most stringent wastewater discharge standards for coal-fired power plants to date." Sonal Patel, *EPA Extends Steam-Electric Wastewater Deadlines to 2034, Citing Grid Reliability and Rising Power Demand*, POWER (Oct. 8, 2025), <https://tinyurl.com/yb68kf4y>.

Fortunately, EPA realized its mistake. Late last year, the agency extended the 2024 Rule's deadlines. *See* 90 Fed. Reg. 61,328 (Dec. 31, 2025). Since the 2024 Rule was promulgated, EPA "observed extraordinary increases in energy demand across the U.S., decreases in energy reserves, difficulties in transmission across the electricity grid, increased energy prices, and decreased energy reliability." *Id.* at 61,329. The 2024 Rule's "infeasible and impractical" deadlines only exacerbated these conditions. *Id.*

At the same time that it extended compliance deadlines, the 2025 Rule explained that "EPA intends to further evaluate ... and determine if reconsidering the 2024 BAT requirements is appropriate." 90 Fed. Reg. at 61,330.

EPA stayed true to its word: the agency's review revealed "new information regarding the retirement status of a number of plants as well as updates some dischargers have made to their wastewater treatment in place." 91 Fed. Reg. at 28,488. EPA also "identified a flaw in the baseline utilized by the 2024 ELG as it pertains to unmanaged [CRL] by omitting capture and pumping costs," which EPA explained is "an important component of the technology basis." *Id.* And the "revised analysis presented shows that these costs imposed by the 2024 ELG are not insignificant." *Id.*

Based on its review, EPA is now concerned that "other cost elements ... could be impacted by the [2024 Rule's] assumptions that 100 percent of the contaminated groundwater could in fact be captured and treated, and the Agency's assumptions regarding power plants' ability to achieve the 2024 ELG numerical limitations." 91 Fed. Reg. at 28,488. Those cost concerns, along with concerns over a lack of data supporting the 2024 Rule's conclusions on CRL, resulted in the Proposed Rule's revision of the ELG for unmanaged CRL. The Proposed Rule ensures reductions are achieved in a way that "does not financially cripple" the "critical" energy "industry or contribute to burdensome energy costs for American families." *Id.*

The Proposed Rule offers three regulatory options. Option 1 sets numerical limits on direct discharges, while functional equivalents of direct discharge would use BAT limits set on a best professional judgment (BPJ) basis by the permitting authority. 91 Fed. Reg. at 28,497. Option 2 is the 2024 ELG, which had numerical limits on both direct and functional equivalents. *Id.* And Option 3 is a zero-discharge limit in both cases. *Id.* EPA prefers Option 1. *Id.*

EPA has also indicated that it might undertake “subsequent reconsideration action[s]” as to “other wastestreams.” 91 Fed. Reg. at 28,511. The Proposed Rule thus includes a data request seeking further information on certain assumptions underlying the 2024 Rule.

DISCUSSION

We are glad to see EPA heard the concerns with the 2024 Rule. That rule would’ve—and already did—cost our nation dearly. Industry and average Americans alike would’ve been harmed by the rule’s unrealistic requirements. The Proposed Rule resolves our previously voiced concerns and presents a viable way forward for America’s energy sector. In particular, we—like EPA—believe that Option 1 presents the most effective regulatory framework. Option 1 replaces the 2024 Rule’s harmful demands with sensible regulations that will protect the environment without gutting American energy. We urge EPA to adopt it.

I. The 2024 Rule’s Unmanaged CRL Requirements Must Go.

The 2024 Rule contained a host of errors related to unmanaged CRL. These errors started with a failure to adequately characterize unmanaged CRL in the first place. From there, the errors compounded. The 2024 Rule improperly set a functional equivalent and set impossible timelines for compliance. In the face of these issues, EPA must revise the unmanaged CRL requirements.

A. The 2024 Rule Did Not Adequately Characterize Unmanaged CRL.

From the jump, the 2024 Rule built its unmanaged CRL requirements on unsteady ground. That rule assumed that, because “CRL from landfills and impoundments includes similar types of constituents as FGD wastewater,” EPA was free to treat the two identically. 89 Fed. Reg. at 40,210. But “similar” doesn’t mean the same, and EPA’s statutory obligations demand more than blind assumptions. *See, e.g., Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1067 (9th Cir. 2018) (Agency decisions must have “substantial basis in fact.” (cleaned up)).

As the Proposed Rule notes, EPA even “acknowledg[ed]” that there was “very little data ... characteriz[ing] groundwater laden with unmanaged CRL.” 91 Fed. Reg. at 28,488. For instance, the 2024 Rule “recognize[d] that the characterization of legacy wastewater differs within the layers of a CCR impoundment as it is dewatered and prepared for closure.” 89 Fed. Reg. at 40,210. And it conceded that “[w]astewater characteristics may also differ across CCR impoundments due to the different types of fuels burned at the plant, duration of pond operation, and ash type.” *Id.*

Despite recognizing these site-specific factors, EPA forged ahead anyway with an ill-advised, one-size-fits-all national limit. But the CWA “does not forbid the EPA from addressing certain environmental problems on a case-by-case basis where categorical regulation is not technologically feasible.” *Riverkeeper, Inc. v. EPA*, 358 F.3d 174, 203 (2d Cir. 2004); *see also* 40 C.F.R. § 125.3(c)(2) (“Technology-based treatment requirements may be imposed ... [o]n a case-by-case basis.”). So the agency went astray when it disregarded the undisputedly circumstance-driven nature of unmanaged CRL by regulating it as though it were a regular waste stream. *See*

Motor Vehicle Mfrs. Ass’n v. State Farm, 463 U.S. 29, 43 (1983) (“[A]n agency rule would be arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem” or “offered an explanation for its decision that runs counter to the evidence before the agency.”).

B. The 2024 Rule’s Novel ELG On Functional Equivalent Discharges Did Not Comply With ELG-Setting Requirements.

Unmanaged CRL’s insufficient characterization led the 2024 Rule to inappropriately define and regulate functional equivalent discharges. Whether a discharge is a functional equivalent is a case-specific determination involving seven non-exhaustive factors. *See Cnty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 184-85 (2020). Accordingly, in the 2024 Rule, EPA expressly disclaimed any attempt to set a “threshold standard for the ‘functional equivalence’ determination” as being “outside the scope of th[e] rule.” 89 Fed. Reg. at 40,248. EPA nevertheless imposed a national BAT requirement on unmanaged CRL that constituted a functional equivalent. *Id.* at 40,247-48.

This national BAT on functional equivalents posed several issues. We flag just a few here.

For example, EPA didn’t detail which facilities “meet the definition” for coverage. 89 Fed. Reg. at 40,249. The agency also declined to explain how the technology will apply “to the myriad of possible scenarios,” *id.*, involving unmanaged CRL equivalents. And the CWA creates a strict liability regime, *see* 33 U.S.C. §§ 1311, 1342, 1344, enforced by criminal penalties and steep civil fines, *see id.* § 1319. So “the consequences to landowners even for inadvertent violations can be crushing.” *U.S. Army Corps of Eng’rs v. Hawkes Co., Inc.*, 578 U.S. 590, 602 (2016) (Kennedy, J., concurring). The 2024 unmanaged CRL BAT’s nebulous scope therefore violates the “fundamental principle in our legal system ... that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

And because the agency lacked information about the requirement’s “ultimate coverage,” 89 Fed. Reg. at 40,251, it didn’t adequately determine economic achievability. EPA recognized that a “best estimate” based on actual coverage information “would be helpful,” but the agency continued without one, comforted by the belief that “[a]ll that [it] is required to do ... is make a reasonable estimation of costs.” *Id.* An estimate lacking any real-world data is hardly reasonable, though. *See Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) (“It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data.” (cleaned up)). As a result, the agency woefully underestimated costs; the Electric Power Research Institute’s annualized cost estimate, for instance, was roughly 170% higher than EPA’s.

C. The 2024 Rule Set Impossible Timelines.

Prior to EPA’s postponement of the compliance deadlines, the 2024 Rule gave facilities two options. They could either (1) agree to cease operations entirely by 2035 or (2) comply with

the rule’s unfeasible requirements by no later than 2030. 89 Fed. Reg. at 40,200. Facilities had to make their “decision” whether to retire or do the impossible by the end of 2025. *Id.* Fortunately, EPA extended those deadlines, but their mere existence exemplifies the problems pervading the 2024 Rule: EPA was driven by a political end goal, with no basis in on-the-ground costs or possibilities. *See* Extension Comment at 5-8, 11-12. The end game was to force retirements.

II. Option 1 Remedies The 2024 Rule’s Deficiencies.

Option 1 corrects the 2024 Rule’s reckless treatment of unmanaged CRL. In particular, it puts functional equivalent determinations back in the hands of permitting authorities who can better assess the many site-specific factors inherent in such determinations. Option 1 also gives facilities a realistic timeline for compliance. EPA should adopt this framework.

A. Case-By-Case Determinations Are Appropriate For Functional Equivalent Discharges.

Like the 2024 Rule, the Proposed Rule doesn’t attempt to “define what constitutes the ‘functional equivalent’ of a direct discharge” or determine the “threshold standard for the ‘functional equivalence’ determination.” 91 Fed. Reg. at 28,497. Unlike the 2024 Rule, the Proposed Rule heeds the consequences concomitant with a lack of universal definition or standard. Option 1 discards the previous nationwide limit on functional equivalent discharges of direct discharges of unmanaged CRL. Instead, EPA proposes to “rely on discretion of the permitting authority to set case-by-case BAT limitations that apply to functional equivalents” based on a BPJ determination. *Id.* This shift is the right call.

The determination of whether something is a functional equivalent requires a fact-specific analysis. *See Maui*, 590 U.S. at 184-85. They shouldn’t be managed by blanket regulation because “there are too many potentially relevant factors applicable to factually different cases.” *Id.* at 184. And in much the same way, a universal BAT for all functional equivalents is impossible. The site variability EPA has itself documented makes a uniform numerical BAT technologically infeasible for this wastestream. In this regard, the science mirrors the law. 89 Fed. Reg. at 40,210; *see also*, e.g., Walt McNab, *Simulating Groundwater Impacts from Coal Ash Leachate: Python Scripting to Support Reactive Transport Modeling*, NUMERICAL ENV’T (Feb. 28, 2021), <https://tinyurl.com/42uh89uk> (describing how such leachates can present “an especially challenging reactive transport modeling problem”).

Option 1 recognizes that reality and provides “flexibility to ensure appropriate technology-based requirements are set while giving appropriate consideration to all site-specific factors impacting a utility’s ability to collect and treat unmanaged CRL.” 91 Fed. Reg. at 28,497. This flexibility returns discretion to permitting authorities, who “are better situated on a case-by-case basis at the time of permit issuance to assess the difficulty in capturing and treating unmanaged CRL.” *Id.* Thus, Option 1 “ensure[s] that proper consideration is given to the unique needs of specific utilities.” *Id.* at 28,498.

Permitting authorities aren't without guidance, though. Option 1 provides a non-exhaustive list of 12 factors that a "permitting authority should consider ... when evaluating potential model technologies on a BPJ basis." 91 Fed. Reg. at 28,498. Those factors include environmental assessments like "site hydrology," "hydraulic conductivity," "biogeochemical properties of soils," and similar considerations. *Id.* And economic and technological factors, such as energy demand and a technology's passed-on cost to consumers, play a role, too. *Id.* By requiring consideration of environmental, technological and economic facts, Option 1's list of factors hews closely to the CWA's text. See 33 U.S.C. § 1311(b)(2)(A) ("best available technology economically achievable"). This statutory adherence is a welcome change from the 2024 Rule. EPA should adopt Option 1's functional equivalent scheme.

B. The Proposed Rule's Deadlines Provide Room For Compliance.

EPA previously extended the 2024 Rule's unfeasible deadlines, and the Proposed Rule maintains that extension. See 91 Fed. Reg. at 28,498. We applaud EPA for providing a sensible path to compliance. As the agency notes, this timeline "would provide permittees with appropriate time to make comprehensive waste management decisions." *Id.* We are especially glad to see EPA recognize the "suite of requirements on coal-fired power plants" and the attendant challenges. *Id.* The CWA works with industry, not against it, so any final rule should recognize the same.

And while we appreciate the timeline presented, we also urge EPA to pay close attention to any industry comments on this issue. Industry concerns should be taken seriously on any regulatory change, but compliance deadlines in particular must reflect operational realities. If industry comments warn EPA that certain deadlines or compliance goals are impossible, the agency should carefully evaluate those warnings. EPA should do so, not for industry's benefit, but because "[e]lectricity is an essential part of modern life and just as important to the U.S. economy." *Electricity explained: Use of electricity*, EIA, <https://tinyurl.com/svt4uzhb> (last visited June 15, 2026). Any compliance deadline must avoid damaging effects on energy production that in turn harm the American people.

C. Option 1 Restores The CWA's State-Federal Partnership.

"The Clean Water Act anticipates a partnership between the States and the Federal Government." *Arkansas v. Oklahoma*, 503 U.S. 91, 101 (1992). This partnership makes the CWA a prototypical example of "cooperative federalism." See, e.g., *Gulf Restoration Network v. McCarthy*, 783 F.3d 227, 230 (5th Cir. 2015). As part of that cooperation, the CWA affirms the "primary responsibilities and rights of [the] States" to regulate pollution and preserve both "land and water resources." 33 U.S.C. § 1251(b); see also S. REP. NO. 92-414, at 1 (1971), *reprinted in* 1972 U.S.C.C.A.N. 3668, 3669 (noting that it has long been an "important principle of public policy" that "[t]he States shall lead the national effort to prevent, control and abate water pollution").

The 2024 Rule usurped the States' role in this partnership. The rule set a universal limit on the site-specific analysis involved in determining a functional equivalent discharge of unmanaged CRL. This limit shifted regulatory power from the States to EPA. It took decisions

that should be made on the ground, in light of specific facts, and shoehorned them into a single across-the-board choice.

Option 1 undoes this power grab. It acknowledges that States “are better situated” to make functional equivalent determinations. 91 Fed. Reg. at 28,497. As a result, Option 1 leaves those determinations to the “discretion of the permitting authority,” while offering guidance based on EPA’s own expertise. *Id.* at 28,497-98. In contrast, Option 2 simply readopts the flawed 2024 ELG, including the baseline that omitted capture and pumping costs. *See id.* at 28,488. And Option 3’s zero-discharge limit depends on the same 100% groundwater-capture assumption that EPA itself now questions. What’s more, zero discharge is permissible only where “technologically and economically achievable.” 33 U.S.C. § 1311(b)(2)(A). So the latter options erase state discretion while making serious technical errors along the way.

“In the CWA, Congress expressed its respect for states’ role through a scheme of cooperative federalism.” *United States v. Cooper*, 482 F.3d 658, 667 (4th Cir. 2007). Option 1 does the same. We approve.

III. Any Final Rule Must Take The Energy Crisis Seriously.

The United States faces an energy crisis caused by an “unprecedented” “spike in electricity needs.” Alastair Green et al., *How data centers and the energy sector can satiate AI’s hunger for power*, MCKINSEY & CO. (Sept. 17, 2024), <https://tinyurl.com/3awdvbyz>. And consumption forecasts continue to rise. *See, e.g.*, NAT’L MINING ASS’N, *THE GRID RELIABILITY CRISIS COLLIDES WITH SURGING POWER DEMAND* (2024), <https://tinyurl.com/msdr8fcs>. Indeed, electric utilities “have nearly doubled their forecast of how much power they’ll need” in the coming years. Brad Plumer & Nadja Popovich, *A New Surge in Power Use Is Threatening U.S. Climate Goals*, N.Y. TIMES (Mar. 14, 2024), <https://tinyurl.com/y5rz2xet>. As a result, “[s]ince May 2025, the U.S. Department of Energy ... has issued more than 40 emergency orders and extensions under Section 202(c) of the Federal Power Act—more than in any comparable period in the past two decades.” Sonal C. Patel, *DOE’s Section 202(c) Emergency Orders Since May 2025: 43 and Counting*, POWER (Apr. 2, 2026), <https://tinyurl.com/ybzwrbt9>. So we need more generation, not less.

This crisis should’ve served as a clear warning to EPA against levying the 2024 Rule’s exorbitant costs on the energy sector. Relying on our state-level expertise, we even told EPA its rule would lead to disaster. *See* State of West Virginia and 19 Other States, Comments on Proposed Rule On Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline (May 30, 2023), <https://tinyurl.com/3t8nprar>. The rule’s “high costs,” we explained at the time, “will lead to unit and facility closures.” *Id.* at 5. Thus, we implored EPA to consider “the reasonably expected consequences that might follow” from the rule. *Id.* at 6. The agency didn’t listen, and here we are.

We are relieved to see the Proposed Rule takes its impact on the energy crisis seriously. The rule accounts for “the unprecedented, rapidly increasing energy demands throughout the U.S.” 91 Fed. Reg. at 28,497. It also considers “the overall need to ensure grid reliability.” *Id.* All said,

we believe EPA is correct that the Proposed Rule is “tailored to the dynamic energy market of today.” *Id.* at 28,497-98. Any final rule that follows should be so tailored as well.

CONCLUSION

Two years ago, EPA promulgated an error-riddled rule aimed at doing untold damage to the coal industry. The Proposed Rule doesn’t undo all that damage, but it’s a start. We support EPA’s Option 1.

We also support any future efforts to further rectify the harm caused by the 2024 Rule. The Proposed Rule requests “data and information to the Agency to support the analysis of other wastestreams in any subsequent reconsideration action.” 91 Fed. Reg. at 28,511. We hope this signals EPA’s intent to eliminate the 2024 Rule’s flawed zero-discharge technology requirements for other wastestreams. We encourage EPA to replace those requirements with statutorily grounded ELGs, as the agency has done here.

Sincerely,



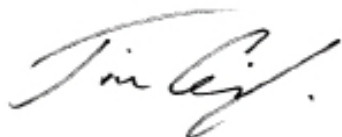
John B. McCuskey
West Virginia Attorney General



Steve Marshall
Alabama Attorney General



Cori Mills
Acting Alaska Attorney General



Tim Griffin
Arkansas Attorney General



James Uthmeier
Florida Attorney General



Christopher M. Carr
Georgia Attorney General



Raúl Labrador
Idaho Attorney General



Todd Rokita
Indiana Attorney General



Brenna Bird
Iowa Attorney General



Kris W. Kobach
Kansas Attorney General



Russell Coleman
Kentucky Attorney General



Liz Murrill
Louisiana Attorney General



Lynn Fitch
Mississippi Attorney General



Catherine L. Hanaway
Missouri Attorney General



Austin Knudsen
Montana Attorney General



Mike Hilgers
Nebraska Attorney General



John M. Formella
New Hampshire Attorney General



Drew Wrigley
North Dakota Attorney General



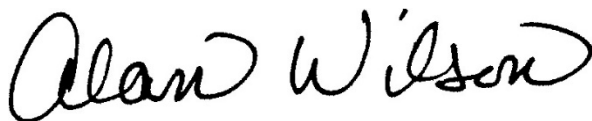
Andy Wilson
Ohio Attorney General



Gentner Drummond
Oklahoma Attorney General



Dave Sunday
Pennsylvania Attorney General



Alan Wilson
South Carolina Attorney General



Marty J. Jackley
South Dakota Attorney General



Jonathan Skrmetti
Tennessee Attorney General and Reporter



Ken Paxton
Texas Attorney General

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Derek Brown
Utah Attorney General

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Keith Kautz
Wyoming Attorney General