

November 3, 2025

Administrator Lee Zeldin
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Via www.regulations.gov

**RE: Comments of the Environmental Law & Policy Center and 29 Great Lakes Partners
Docket ID No. EPA-HQ-OW-2009-0819**

Dear Administrator Zeldin:

The Environmental Law and Policy Center (ELPC) and 29 Great Lakes Partners respectfully submit these comments in opposition to two related actions: (1) U.S. Environmental Protection Agency's Proposal to Postpone Compliance Dates for the Effluent Limitations Guidelines (ELG) and Standards for the Steam Electric Power Generating Point Source Category – Deadline Extension (Steam Electric ELG deadline extension proposal) and (2) its direct final rule (direct final rule) extending the time for a facility covered by the rule to submit to EPA a Notice of Planned Participation (NOPP) committing to a permanent cessation of coal combustion by December 31, 2034, in order to be subject only to the less stringent permit limits of the 2020 steam electric effluent limitations. 90 Fed. Reg. 47693 (Oct. 2, 2025).

ELPC and its partners oppose both the proposed and the direct final rule, which would expose our members throughout the Midwest to continuing discharges of arsenic, selenium, mercury, lead, cadmium, boron, bromides, and other pollutants into the waterways that they rely on for drinking, fishing, swimming, wildlife habitat, and industrial uses. Continuation of these discharges is both harmful to public health and the environment and unnecessary according to EPA's own analysis from just last year. The technologies to prevent such discharges are available, technically feasible, and economically achievable. EPA offers no legally cognizable justification for allowing this pollution to continue.¹

¹ ELPC is joining detailed legal and technical comments on these proposed and direct final rules led by Earthjustice, which has been advocating for EPA to reduce the harmful toxic pollution caused by steam electric power plants for more than ten years. ELPC and partners are submitting this separate letter to note specific concerns over how the EPA's proposed rollback of the deadlines for the Steam Electric ELG rule adversely affects and threatens water quality and public safety in the Midwest and Great Lakes region.

The Clean Water Act mandates that effluent limitations be based on Best Available Technology Economically Achievable (BAT), which courts have described as the “gold standard” for controlling water pollution, *Southwestern Electric Power Co. v. EPA*, 920 F.3d 999, 1003 (5th Cir. 2019). The CWA mandates a system in which “as available pollution-control technology advances, pollution-discharge limits will tighten.” *Id.* at 1005. BAT limitations must “be based on the performance of the single best-performing plant in an industrial field.” *Id.* at 1006 (quoting *Chemical Manufacturer’s Ass’n v. EPA*, 870 F.2d 177, 226 (5th Cir. 1989)). As the Supreme Court explained in *EPA v. National Crushed Stone Ass’n*, 449 U.S. 64, 74 (1980), BAT must achieve “reasonable further progress toward the elimination of the discharge of pollutants.” It is against this backdrop that EPA seeks to extend compliance deadlines for existing power plants to eliminate toxic pollutant discharges as required by the EPA Effluent Limitations Guidelines (ELG) and Standards for the Steam Electric Power Generating Point Source Category regulation promulgated in 2024. In its analysis supporting that regulation, EPA found that the required technologies were technically feasible and economically achievable within the timelines specified in the rule. 40 C.F.R. § 423.13, 89 Fed. Reg. 40198 (May 9, 2024).

The direct final rule would extend the NOPP submittal date from December 31, 2025, to December 31, 2031. The proposed rule includes this NOPP submittal deadline extension and also extends six other deadlines in the 2024 rule. The proposed rule extends the deadline for direct dischargers to comply with zero discharge limits for Flue Gas Desulfurization (FGD) wastewater, Bottom Ash (BA) transport water, and managed Combustion Residual Leachate (CRL) from December 31, 2029 to December 31, 2034 and extends the deadline for indirect dischargers of these same wastewaters from May 9, 2027 to 3 years or longer after the promulgation date of this final rule. The proposed rule would also extend the timelines for compliance with numeric discharge limitations on mercury and arsenic from a category referred to as unmanaged CRL and to legacy wastewater. 90 Fed. Reg. at 47702. EPA also states in the proposed rule that the Agency is considering redoing the 2024 effluent limitation guidelines in a future rulemaking. EPA did not update its BAT analysis to support its proposed or direct final rules. It merely discounted the costs and benefits to reflect the delay in compliance it is proposing. 90 Fed. Reg. at 47697-98. EPA also acknowledges that even without this discounting, the 2024 rule is economically achievable for the regulated entities. 90 Fed. Reg. at 47708.

EPA’s job is to regulate sources of water pollution consistent with Congress’s mandate under the Clean Water Act. EPA does not have the authority to prioritize resource adequacy over the statutory standards when regulating wastewater pollution. 33 U.S.C. § 1311(b)(2)(A) (EPA must set BAT limits that “require the elimination of discharges of all pollutants if . . . technologically and economically achievable”); *Corn Refiners Ass’n, Inc. v. Costle*, 594 F.2d 1223, 1226 (8th Cir. 1979) (“Congress intended effluent limitations to compel plants to improve their antipollution performance” in furtherance of “Congress’ ultimate goal of entirely eliminating the discharge of pollutants into the nation’s waters.”).

The proposed extension of the BAT “no later than” compliance date from December 31, 2029, to December 31, 2034, is both unnecessary and unlawful given that EPA already determined the original compliance date to be technologically and economically achievable, 89 Fed. Reg. at 40198 *et seq.*, and even the original deadline exceeds the statutory maximum of three years. 33 U.S.C. §§ 1311(b)(2)(C), (D) & (F). Moreover, the original compliance date provided a generous timeframe of approximately five years (one full permitting cycle) for implementation, already accounting for standard industry planning and construction timelines. 90 Fed. Reg. at 47693.

EPA has not identified any statutory authority in the Clean Water Act that allows EPA to extend compliance deadlines based on uncertainties related to future inadequacies in the electric system capacity. Other agencies, such as the Department of Energy, have limited emergency powers to address electric energy emergencies (e.g., under the Federal Power Act). EPA has no similar legal authority. While a March 12, 2025 memorandum discusses use of enforcement discretion for energy generation facilities, it does not, and cannot, cite Congressionally granted authority for extending compliance deadlines. Memorandum from EPA Off. of Enf’t and Compliance Assurance on Implementing National Enforcement and Compliance Initiatives Consistently with Executive Orders and Agency Priorities (Mar. 12, 2025), [implementingnecisconsistentlywiththeosandagencypriorities.pdf](#)

This steam electric ELG is designed to protect the American public from power plant discharges of arsenic, selenium, mercury, lead, cadmium, boron, and bromides into our waterways. In the preamble to the 2024 rule, EPA lists the impacts of consuming fish from waters that contain pollution discharged by steam electric power plants as “cancer, kidney damage, nervous system damage, fatigue, irritability, liver damage, circulatory system damage, vomiting, diarrhea, and IQ loss.” 89 Fed. Reg. at 40273.

According to EPA’s own analysis, the rule that EPA is now seeking to delay would prevent over 660 million pounds of pollutants from being dumped into U.S. waterways each year, would reduce the number of receiving waters that exceed levels of pollutants deemed unsafe for human health by 63%, and would reduce the number of receiving waters that are unsafe for fishing by 69%. 89 Fed. Reg. at 40205.

EPA’s delay proposal would allow power plants to continue to dump toxins into drinking water sources for some 30 million Americans who already drink water from sources likely contaminated by power plant wastewater. *See generally*, 89 Fed. Reg. at 40219, preamble ¶ D. *See also*, EPA-821-R-24-005, at iv. In the preamble to the 2024 rule, EPA describes the health benefits accruing to those 30 million Americans due to reductions in arsenic, lead, and thallium as including both cancer and non-cancer benefits from reduced exposure to toxic pollutants from consumption of fish and drinking water. 89 Fed. Reg. 40276. Delay prolongs contamination risks for the estimated 100 public drinking water sources and over 1,500 wells that have historically

degraded due to coal plant pollution. 80 Fed. Reg. 67838, 67840 (Nov. 3, 2015). The delay allows the continued discharge of bromide, which is highly mobile, expensive to treat downstream, and contributes to the formation of carcinogenic disinfection byproducts (DBPs) in public water systems, *id.* at 67840, which are linked to bladder cancer and other serious health problems, including fetal development issues. 89 Fed. Reg. at 40219. According to EPA’s pre-publication notice, “[t]he final rule is estimated to result in a total of 98 avoided cancer cases and 28 avoided premature excess deaths by reducing [total trihalomethane] TTHM exposure during the period 2025-2049.” 89 Fed. Reg. at 40219.

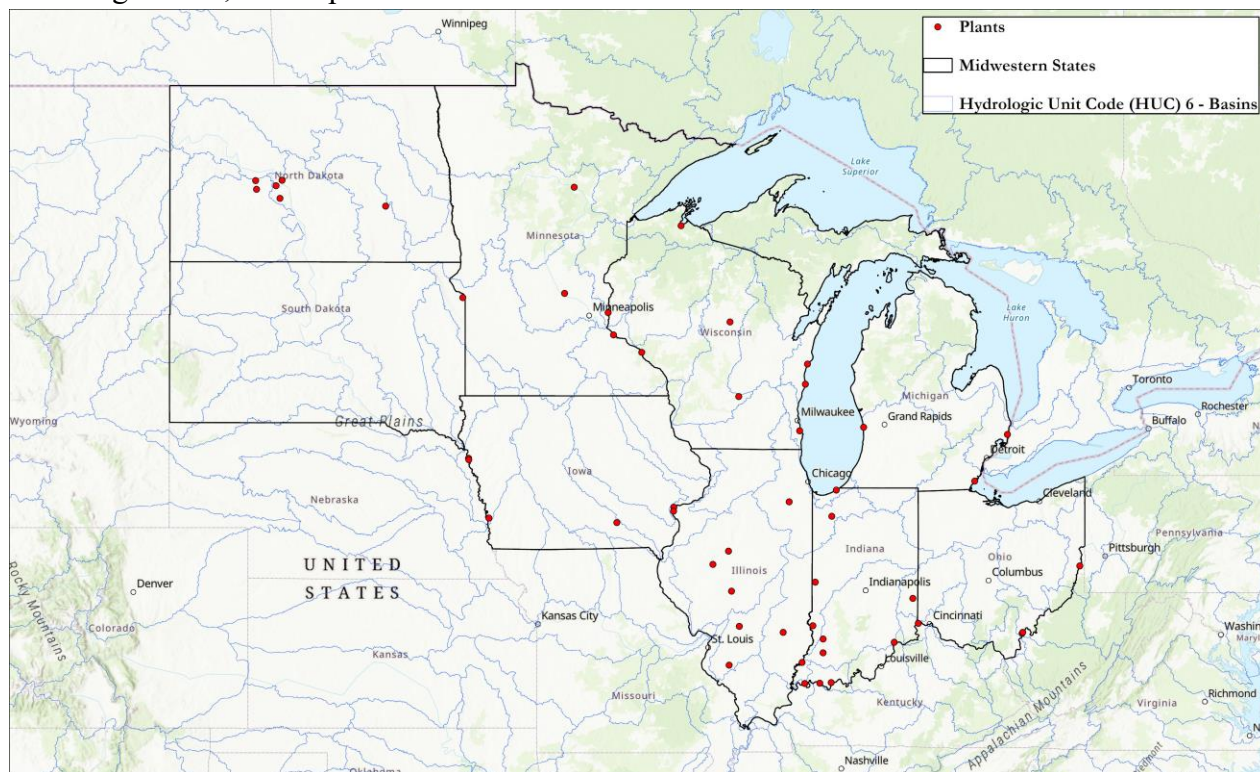
Water utilities must also incur expensive treatment costs to address this pollution burden placed upon them by coal plants. *Id.* This externalizes pollution treatment costs onto water utilities and ratepayers. Historically, 19.5 million people were served by drinking water providers located downstream of coal plants discharging bromide. EPA-821-R-24-005, at 3-12.

Further, EPA characterized the expected benefits from the rule as a 53% reduction in chronic exceedances and a 33% reduction in acute exceedances of the national recommended water quality criteria for the receiving waters and “up to a 63% reduction in the number of immediate water reaches with ambient concentrations exceeding human health criteria for at least one pollutant.” 89 Fed. Reg. at 40219.

Risk to Midwestern Communities

There are approximately 52 steam electric generating facilities operating in the nine Midwestern states which ELPC works to protect. U.S. Env’tl. Prot. Agency, Unit Level Costs (Attachment 1), Docket No. EPA–HQ–OW–2009–0819–10336 (Apr. 22, 2024). This rule would give a green light to these power plants to keep dumping toxic pollutants into our waterways. These facilities that discharge into the Great Lakes and surrounding watersheds have reported significant annual releases of toxic metals, and continuing operation under less stringent interim limits maintains this risk. Maintaining and enforcing the deadlines in the existing rule is critical

to ending known, severe pollution in the Midwest.



Map of power plants in Midwestern states subject to the 2024 Steam Electric Effluent Limitation Guidelines (ELG) rule, showing the locations of regulated power plants (red dots) within major hydrologic basins (HUC 6). The map highlights facilities across the Upper Midwest, Great Lakes region, and portions of the Great Plains and Ohio River Valley.

Case Studies Illustrating Midwestern Pollution:

The examples presented below are of facilities regulated under EPA's 2024 rule. U.S. Env'tl. Prot. Agency, Unit Level Costs (Attachment 1), Docket No. EPA-HQ-OW-2009-0819-10336 (Apr. 22, 2024). Additional information about these facilities was obtained from EPA's Enforcement and Compliance History Online (ECHO) database. *See generally*, U.S. Env'tl Prot. Agency, <https://echo.epa.gov>. *See also*, Sierra Club, Trump Coal Pollution Dashboard, <https://www.sierraclub.org/trump-coal-pollution-dashboard>.

The Cardinal Power Station in Ohio discharges into watersheds that flow into the Salt Run Ohio River. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the Cardinal Power Plant*, ECHO, Facility ID 110000605426, <https://echo.epa.gov/detailed-facility-report?fid=110000605426>. Recent Toxics Release Inventory (TRI) data confirm high annual releases of arsenic compounds (27,008 pounds in 2024, up to 70,730 pounds in 2017). *Id.* The receiving watershed is impaired for pathogens and salinity/total dissolved solids/chlorides/sulfates. *Id.* The facility has been in Significant/Category I Noncompliance under the CWA for 3 out of the last 12 quarters. *Id.* The

facility's discharge monitoring report (DMR) Toxic-Weighted Loadings were between 4,013 and 9,383 lb-eq/year from 2020 to 2024. *Id.*

The Clifty Creek Station in Indiana has identified CWA violations in 8 of 12 recent quarters. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the Indiana Kentucky Electric Corporation – Clifty Creek Station*, ECHO, Facility ID 110000402314, <https://echo.epa.gov/detailed-facility-report?fid=110000402314>. DMR data shows frequent exceedances for mercury, total recoverable (up to 602%). *Id.* TRI reported releases of arsenic compounds (14,977 lbs in 2024) and lead compounds (15,013 lbs in 2024). *Id.*

The Dallman Power Generating Station in Illinois serves as another critical example of the impact to Midwest waterways and communities. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the City Water, Light, and Power Dallman Station*, ECHO, Facility ID 110056956281, <https://echo.epa.gov/detailed-facility-report?fid=110056956281>. Dallman is identified as having FGD wastewater and CRL. *Id.* This facility has a problematic compliance history showing Significant/Category I Noncompliance under the Clean Water Act in the last two quarters reported. *Id.* These violations involved exceedances of effluent limits for total suspended solids (discharge point 005 had a monthly average limit violation of 387%), pH, and total copper. TRI data reveals releasing or transferring lead (677 lbs in 2024), manganese (17,847 lbs in 2024), barium, chromium, copper, nickel, vanadium, and zinc compounds. *Id.* Additionally, there have been large quantities of sulfuric acid, with releases ranging from 12,562 lbs (2024) to 523,000 lbs (2018), hydrochloric acid, and hydrogen fluoride. *Id.*

The General James M. Gavin plant in Cheshire, Ohio has two units involving BA or CRL and is another example of historical noncompliance with the CWA. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the American Electric Power Gavin Plant*, ECHO, Facility ID 110043788327, <https://echo.epa.gov/detailed-facility-report?fid=110043788327>. Monitoring shows violations for levels of mercury (up to a 246% exceedance over permitted limits) and toxicity, choice of species. *Id.* This plant has been reported to release 73,670 lbs of arsenic compounds and 58,980 pounds of lead compounds released in 2024 alone flowing into the Kyger Creek-Ohio River. *Id.*

Similarly, the Kyger Creek Station, also in Cheshire, Ohio, consists of five generating units regulated under FGD wastewater, BA, and CRL rules. U.S. Env'tl Prot. Agency, *Detailed Facility report for the Ohio Valley Electric Corp., Kyger Creek Station*, ECHO, Facility ID 110064603503, <https://echo.epa.gov/detailed-facility-report?fid=110064603503>. This plant also discharges into the Kyger Creek watershed, which flows into the Ohio River. *Id.* Over the last 12 reported quarters, the station was in noncompliance in 5 quarters. *Id.* Specifically, this facility was flagged for a limit violation for pH, oil and grease, missing DMR measurements (2 missing

in 3 separate quarters), and for failure to achieve final compliance with emission or discharge limits. *Id.*

The Miami Fort Power Station discharges into the Ohio River watershed. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the Dynegy Miami Fort, LLC, North Bend, OH*, ECHO, Facility ID 110000823379, https://echo.epa.gov/trends/loading-tool/reports/effluent-exceedances?permit_id=OH0009873. Contaminants exceeding safe levels at this facility include Arsenic (x4), Boron (x10), Cobalt (x2), Molybdenum (x12), and Sulfate (x2). *Id.* The facility's Basin B ash unit reported that it is within five feet of groundwater. *Id.* Recent DMR data additionally identified two exceedances of the monthly average effluent limit for mercury. *Id.*

The Monroe Power Plant in Michigan discharges into the Lake Erie watershed and is regulated for FGD wastewater, BA, and CRL. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the Monroe Power Plant*, ECHO, Facility ID 110000405927, <https://echo.epa.gov/detailed-facility-report?fid=110000405927>. The facility has severe compliance issues under the CWA and CAA. *Id.* The TRI report reveals 3,407,400 pounds of barium compounds, 19,520 pounds of arsenic compounds, and 968,310 pounds of total on-site releases in 2024. *Id.* The plant discharges into the Willow Run-River Raisin watershed, which flows into Lake Erie. *Id.* The assessed waters in this watershed are impaired for many pollutants including mercury, pathogens, per- and polyfluoroalkyl substances, pesticides, and polychlorinated biphenyls. *Id.* Postponing ELG compliance prolongs toxic exposures across multi-state watersheds in the Midwest, including critical segments of the Great Lakes, Ohio River, and Illinois River basins.

And the Sherburne County Generating Plant in Minnesota has TRI data reports detailing releases of manganese, lead, and mercury compounds. U.S. Env'tl Prot. Agency, *Detailed Facility Report for the Sherburne County Generating Plant*, ECHO, Facility ID 110000424700, <https://echo.epa.gov/detailed-facility-report?fid=110000424700>. The immediate receiving water, the Mississippi River, is impaired for mercury, pathogens, and polychlorinated biphenyls (PCBs). *Id.* These discharges into rivers potentially affect drinking water for millions of Midwestern residents and compromise recreational and commercial fisheries in these watersheds.

Collectively, these Midwestern facilities discharge hundreds of thousands of pounds of toxic metals annually, exacerbating impairments in major rivers and lakes and delaying progress toward Clean Water Act objectives. Postponing compliance deadlines for the new ELGs will significantly prolong harm to the Great Lakes and surrounding Midwestern waterways by delaying the mandated reductions of toxic pollution. These pollutants increase the risk of cancer, neurodevelopmental harms, and ecosystem degradation, particularly in the Great Lakes and Mississippi River basins. Extending the compliance deadline for zero-discharge limitations

prolongs the discharge of pollutants such as arsenic, selenium, mercury, lead, cadmium, boron, and bromides.

Respectfully Submitted,

Environmental Law & Policy Center
Alliance for the Great Lakes
Asthma & Allergy Foundation of America - Michigan Chapter
A2D2-Ann Arbor Indivisible for Democracy
Between The Waters
Denby Neighborhood Alliance
Detroitters Working for Environmental Justice
Ecology Center
Flow Water Advocates
Freshwater Future
Friends of the Rouge
Genesee Valley Audubon Society
Great Lakes Business Network
Holy Spirit Missionary Sisters
Illinois Environmental Council
International Association for Great Lakes Research
Izaak Walton League of America, NYS Division
Just Transition Northwest Indiana
Lake Superior Watershed Conservancy
Michigan Clinicians for Climate Action
Michigan League of Conservation Voters
Milwaukee Riverkeeper
North County Climate Change Alliance
Partnership for Clean Streams
Pathway, Inc.
Religious Coalition for the Great Lakes
Revolution Detroit
River Alliance of Wisconsin
Shedd Aquarium
Third Act Michigan