



January 15, 2025

Honorable Lee Zeldin  
Nominee to be Administrator, U.S. Environmental Protection Agency

Dear Rep. Zeldin:



We are companies, State and municipal authorities, and cooperatives that power America's electricity grid. We provide the electricity for millions of homes, businesses, and institutions across the U.S., create thousands of good-paying jobs, and drive economic progress and American prosperity. We are at the cutting-edge of innovation and are a critical partner in the national infrastructure build-out to support America's economic engine, enable technological advancements, and reshore critical industries. We do all of this while meeting stringent State and federal environmental laws protecting human health and our Nation's clean air and clean water.



We are united in requesting swift and sustained action by the incoming Trump Administration to support our efforts to ensure electricity is available, affordable, and reliable. Recent changes made by the U.S. Environmental Protection Agency ("EPA") to air, water, and waste regulations have resulted in significant burdens on the Nation's power sector without tangible benefits. These regulations, individually and collectively, threaten the reliability of the power grid, jeopardize national security, are a drag on economic growth, increase inflation, and hinder the expansion of electric power generation to support the critical development and deployment of Artificial Intelligence and related technologies.

Gavin Power, LLC



Two matters in particular call for immediate attention: (1) regulations on greenhouse gas ("GHG") emissions from existing coal-fired and new natural gas-fired power plants that mandate a carbon capture technology that has not been adequately demonstrated and (2) the unprecedented expansion of the federal regulation of coal combustion residuals ("CCR"). States and power companies have challenged these rules as exceeding EPA's statutory authority. The new Administration should decline to defend these unlawful rules and should seek their immediate rescission. Attached to this letter are additional details on these two matters and immediate actions that would help alleviate the harm these rules threaten.



Additional regulations burdening power generation, currently under challenge in the courts, also warrant the Trump Administration's attention and a full review. We would encourage the new Administration to review EPA's other recent actions, including its "Good Neighbor Plan" for ozone (which the Supreme Court has already found to be likely unlawful) and recent revisions to the Effluent Limitations Guidelines for power plants. These other recent rules, like the GHG and CCR rules, do not further EPA's statutory mission to protect human health and the environment and instead will result in unnecessary costs on the power sector, impacting the affordability and reliability of electricity.



We welcome the opportunity to partner with the new Administration on these and the many other important matters pending at EPA.



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## Coal Combustion Residuals Rules Impede U.S. Energy Production

Coal combustion residuals (“CCR”) are a natural byproduct of generating electricity with coal. For years, CCR has been used for beneficial purposes in U.S. construction and manufacturing, including to construct road base and make concrete and other construction materials. Using domestic CCR lowers construction costs, reduces inflation, supports infrastructure development, reduces waste, and decreases the Nation’s dependence on foreign imports.

EPA’s recent unprecedented expansion of the federal CCR regulations has needlessly diverted funds from the power sector’s efforts to meet the Nation’s growing energy needs; increased costs for power companies and consumers without corresponding benefits to public health or the environment; and placed unnecessary restrictions on beneficial use of CCR. Swift action by the incoming Trump Administration is needed to reverse EPA’s regulatory overreach and to support critical energy production and development at U.S. power plants.

### BACKGROUND

- 2015: EPA promulgates the first regulations specific to disposal of CCR at active power plants. EPA correctly determined that CCR is nonhazardous, but those rules did not include site-specific, risk-based provisions contained in other federal and State solid waste permitting programs. Instead, the rules included one-size-fits-all, inflexible, and often impracticable requirements that have resulted in enormous costs.
- 2016: Congress amends the Resource Conservation and Recovery Act with the Water Infrastructure and Improvements for the Nation (WIIN) Act, which (1) authorizes the CCR rules to be implemented through State permit programs or, in States without such programs, through a federal permit program and (2) authorizes more flexible risk-based rules.
- 2017-2020: Under the Trump Administration, EPA makes key improvements to the regulations to prevent the premature closure of coal-fired power plants and to reduce costs, including the extension of key deadlines and the creation of an administrative process to obtain relief from the regulations’ burdensome one-size-fits-all closure requirements. During this time, EPA also approves two State CCR programs in Oklahoma and Georgia and proposes approval of Texas’s program.
- 2021-2024: EPA eliminates many of the flexibilities achieved in the first Trump Administration by issuing new “guidance” and “interpretations” that (1) effectively nullify the efforts of the prior Administration to reduce compliance costs and prevent the premature closure of power plants and (2) impose unnecessary restrictions on the beneficial use of CCR. During this time, EPA finalizes approval of the State CCR program in Texas and denies the State CCR program in Alabama.
- May 2024: EPA finalizes new regulations (the “Legacy Impoundment Rule”) that broadly expand the scope of the rules to CCR management activities that are well beyond its statutory authority, reverses prior State regulatory decisions on CCR closures (including closures where the CCR had already been removed entirely), and nullifies substantial investments made by power generators. EPA developed the new regulations before even conducting a risk assessment, and its after-the-fact assessment was based on incomplete data, inappropriate methodologies, and unreasonable assumptions. EPA denied requests from States and others to provide additional notice and comment on the assessment. EPA also made last-minute, behind-the-scenes revisions to the regulations—including key definitions—without public comment. These new rules have been challenged by seventeen States, dozens of power plant owners from across the country, and industry trade associations. The litigation is in early stages.

### IMMEDIATE ACTION NEEDED

An overhaul of the CCR regulations and EPA’s current approach is needed to establish standards that are practical and based on demonstrated risk. The incoming Administration should take the following immediate steps:

1. Hold the release of any new CCR regulations or guidance documents from EPA until review and reconsideration of those documents can be conducted.
2. Decline to defend the Legacy Impoundment Rule because it exceeds EPA’s statutory authority. File a motion with the Court for voluntary vacatur of the unlawful “CCR management unit” provisions and the definitions of “liquids,” “infiltration,” and “contains both CCR and liquids” that were issued without proper notice. Request

remand of the remaining provisions for additional rulemaking, including to promptly correct the retroactive regulation of legacy impoundments and units so that the rule only regulates legacy impoundments that currently contain both CCR and surface water and to allow for risk-based closure standards tailored to site-specific conditions. Prompt rescission of the current requirements is essential given upcoming deadlines that require substantial investment and expenditures.

3. Rescind EPA's incorrect interpretation that on-site uses of CCR do not qualify as exempt beneficial uses and reaffirm that all beneficial uses of CCR, whether on- or off-site, are exempt from all provisions of the federal CCR regulations.
4. Review and assess EPA's National Enforcement and Compliance Initiative on CCR as well as recent EPA regional enforcement actions on CCR in light of new priorities. Review federal contracts with private consultants used by EPA to implement the agency's compliance and enforcement responsibilities with respect to CCR.
5. Revoke or revise: (1) the "guidance" document that accompanied the Legacy Impoundment Rule entitled "Considerations for the Identification and Elimination of Free Liquids in Coal Combustion Residuals (CCR) Surface Impoundments and Landfills"; (2) EPA's Final Denial for Gavin Power's Request For a Part A Extension of Closure Date ("Final Denial"); and (3) any similar "contact with groundwater" guidance or interpretation issued by EPA. Seek a litigation abeyance and remand of the Final Denial to allow for reconsideration. Recession of these guidance documents is necessary to prevent costly third-party litigation that may seek to rely on these prior interpretations.
6. Initiate a critical review of EPA's April 2024 "Risk Assessment of Coal Combustion Residuals: Legacy Impoundments and CCR Management Units," including conducting additional notice and comment proceedings regarding the data, assumptions, methodologies, and conclusions in the assessment.
7. Prioritize the expeditious approval of State CCR permit programs to operate in place of the federal rule and include a streamlined process for approving State CCR programs that adopt the federal rules by reference.

## EPA's Greenhouse Gas Rule Would Shut Down or Curtail Fossil Fuel Power Plants

In 2023, coal and natural gas generated 59% of America's electricity. Fossil fuel electric generation is critical to national security and the U.S. economy, including supporting the U.S. advantage in A.I. But in May 2024, the U.S. Environmental Protection Agency ("EPA") simultaneously issued four rules collectively designed to shut down the vast majority of coal-fired power plants and curtail natural gas generation. The most far-reaching of those rules is EPA's new greenhouse gas ("GHG") rule ("GHG Rule"). If not quickly rescinded, the GHG Rule issued under the Biden Administration will have grave consequences for the reliability of the Nation's power system and the cost of electricity by simultaneously forcing the retirement of most coal-fired power plants by 2032 and limiting the output of new natural gas-fired plants to a mere 40% of their capability.

### BACKGROUND

- 2015: EPA issues the so-called "Clean Power Plan," which would have forced shutdown of coal-fired power plants, curtailed gas generation, and shifted power generation to renewables. The Clean Power Plan never took effect because it was immediately stayed by the Supreme Court.
- 2019: Under the first Trump Administration, EPA repeals the Clean Power Plan and replaces it with the Affordable Clean Energy ("ACE") rule, which provided flexibility to States to determine efficiency measures to reduce GHG emissions at coal plants.
- 2022: The Supreme Court in *West Virginia v. EPA* decides that the Clean Power Plan is unlawful and violates the "major questions doctrine" because EPA does not have the authority to restructure the Nation's energy mix. The Court says EPA cannot force coal plant closures or restrict gas plants in the name of climate change. The Supreme Court also says EPA can allow flexible measures such as emissions averaging and trading for compliance purposes.
- 2024: Under the Biden Administration, the EPA issues a new GHG Rule, which attempts to circumvent the Supreme Court by appearing to be a "traditional" performance standard, yet it would force the same result—premature coal plant retirements—because it requires unproven technology and because the GHG Rule's unrealistic timeframes cannot be met. Even worse, the GHG Rule constrains the development of new gas plants by effectively limiting their output to 40% of their capability.

### In a nutshell, the GHG Rule requires:

- No later than May 2026, the owners and operators of existing coal-fired power plants must choose, through binding state plans, to:
  - Shutdown permanently by 2032, which exempts the plant from the GHG Rule;
  - Shutdown permanently by 2039, while meeting an emission limitation beginning in 2030 based on turning a coal plant into a hybrid coal/gas plant that co-fires 40% natural gas, even though most coal plants do not have access to the necessary amount of gas (or any gas at all); or
  - Install carbon capture and sequestration technology ("CCS") that captures 90% of the plant's GHG emissions by 2032. This is the only option that allows a coal-fired plant to operate past 2039. But this option is unproven, extremely costly, and impossible to implement by 2032.
- Any new gas-fired power plants that will operate at greater than 40% of their capacity factor (i.e., the plant generates an amount of electricity that is more than 40% of what the plant was designed to generate) must install by 2032 CCS that captures 90% of the plant's GHG emissions. Because 90% CCS is infeasible and could not be put in place by 2032 even if it were feasible, the GHG Rule effectively forces any new gas-fired power plants to operate at less than 40% of their capabilities, thereby imposing unnecessary and wasteful costs on electric utilities (and the public) by requiring the construction of at least twice as many units to meet electric demand.

Twenty-five states and numerous industry parties have challenged the GHG Rule in court. See *West Virginia v. EPA*, No. 24-1120 (D.C. Cir.). The GHG Rule threatens electric reliability because coal and gas can provide electricity on demand (called "dispatchable" generation), unlike intermittent, renewable energy sources that can provide electricity only if conditions outside the generator's control are favorable (e.g., the sun is shining, the wind is blowing). The GHG Rule threatens electric reliability to such an extent that the organizations responsible for ensuring grid reliability (RTOs and ISOs) filed an amicus brief sounding alarm bells over what the GHG Rule will do. Oral argument was held on

December 6, 2024, and the D.C. Circuit could issue a decision soon. Since the GHG Rule has not been stayed, its deadlines are approaching, and States and regulated entities will be forced soon to make choices that may be difficult, if not impossible, to reverse.

## IMMEDIATE ACTION NEEDED

The incoming Administration should immediately work to repeal all portions of the GHG Rule (except for the repeal of the ACE Rule and EPA's decision not to revise the standards for new coal-fired power plants,<sup>1</sup> neither of which are being challenged in court). All remaining parts of the GHG Rule are unlawful because they violate both the major questions doctrine and the Clean Air Act because the Rule would require technology at a stringency that is simply not demonstrated or feasible, would impermissibly require generation shifting from coal to gas, and would lead to the same result as the Clean Power Plan. If these portions of the 2024 GHG Rule are not repealed immediately, substantial harm will result as owners and operators of existing coal-fired power plants will have to make decisions now about retiring their plants prematurely and will have to make decisions about how to replace that generation. Harm to the economy and increases in the cost of electricity will also result as generators will struggle to replace generation timely and under the stringent requirements of the Rule. To prevent this, the new Administration should:

1. Issue an Executive Order on Day One directing EPA to re-examine the GHG Rule.
2. Direct the Department of Justice to immediately file a motion with the D.C. Circuit to hold the case challenging the GHG Rule in abeyance and to have the GHG Rule remanded to EPA. The motion should be filed quickly because the case has been fully briefed and argued, meaning the D.C. Circuit could issue a decision at any time, which could seek to constrain flexibility in a future rule.
3. Take action to postpone upcoming deadlines in the GHG Rule. EPA should consider whether this is best accomplished through an administrative stay under the Administrative Procedure Act (and, possibly, the Clean Air Act) or through a limited rulemaking to revise the GHG Rule's dates.
4. Conduct notice-and-comment rulemaking to formally repeal all aspects of the GHG Rule (except for the repeal of the ACE Rule and the standards for new coal-fired power plants). The basis for the repeal would be that the GHG Rule violates the major questions doctrine and the Clean Air Act.
5. Initiate a rulemaking to modify the 2015 performance standards for new coal plants to replace "partial CCS" with a demonstrated and feasible technology as originally proposed in 2018 under the first Trump administration.

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<sup>1</sup> Leaving in place EPA's decision in the GHG Rule to not revise the original standard for new coal-fired power plants, which was promulgated in 2015 and was based on "partial CCS," fulfills the Clean Air Act's mandatory eight-year review of performance standards for new sources and thus insulates EPA from a "deadline lawsuit," even while it reexamines the 2015 new coal standard.