



September 19, 2012

**BY ELECTRONIC MAIL**

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

**Re: *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, Docket ID No. EPA-HQ-OW-2009-0819, 78 Fed. Reg. 34432 (June 7, 2013)***

Dear Administrator McCarthy:

The U.S. Small Business Administration, Office of Advocacy (Advocacy), submits the following comments regarding the Environmental Protection Agency's (EPA) recent proposal to update the Steam Electric Power Plant Effluent Limitations Guidelines (ELG) by imposing technology-based standards to control wastewater under the Clean Water Act (CWA).<sup>1</sup>

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>2</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>3</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives. The Small Business Jobs Act of 2010 requires agencies to give every appropriate

<sup>1</sup> 78 Fed. Reg. 34432 (June 7, 2013).

<sup>2</sup> 5 U.S.C §601 et seq.

<sup>3</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et. seq.).

consideration to comments provided by Advocacy.<sup>4</sup> The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.<sup>5</sup>

## **Introduction**

The Office of Advocacy has worked closely with EPA's Office of Water in developing this proposed regulation, and we appreciate EPA's collaboration. EPA has improved the proposal to include consideration of additional regulatory alternatives that address small business concerns. EPA has certified that the proposal will not have a significant economic impact on small entities under the Regulatory Flexibility Act (RFA). Advocacy disagrees and believes that EPA should have convened a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, as required by the RFA.<sup>6</sup> Small entities potentially affected by this rule include several hundred small independently-owned private utilities, small government-owned utilities, and small rural electric cooperative-owned utilities. The proposal would have substantially benefited from this pre-proposal input. Given that the record lacks the specific underlying data and analyses to facilitate informed comment on the RFA certification and the costs and benefits of this proposal, Advocacy believes that the agency has not complied fully with the transparency requirements of Executive Order 13563.<sup>7</sup>

Advocacy has offer a set of recommendations that would be consistent with the Regulatory Flexibility Act, Executive Order 13563, and the Clean Water Act. Advocacy recommends that EPA strongly consider regulatory options that exclude all plants with de minimis amounts of pollution, primarily by excluding smaller plants with generation capacity below a certain size, measured in megawatts (MW). We also strongly recommend that EPA issue a notice of data availability after the public comments are reviewed. The small entities and the public will then have a proper opportunity to comment on this important rulemaking, and EPA can improve its costs, pollutant loadings and other related data and analyses.

These recommendations are based on discussions with EPA, small rural electric coops, small municipality representatives, utility engineers, and water pollution engineering consultants. The two trade associations representing smaller entities, the National Rural Electric Cooperative Association (NRECA) and the American Public Power Association (APPA) generally agree that there should be no additional regulation of existing bottom ash or fly ash impoundments, and that flue gas desulfurization (FGD) impoundments would face new regulation above a specified design flow. Our recommendations are based primarily on the technical analyses of the data by the environmental engineers and economists working for the Utility Water Act Group (UWAG),

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<sup>4</sup> Small Business Jobs Act of 2010 (Pub. L. 111-240) § 1601.

<sup>5</sup> *Id.*

<sup>6</sup> Section 609(c) of the RFA requires the formation of a SBREFA panel of three federal agency representatives that receives small entity input for all EPA rules, except those that are certified by the Administrator as having no significant economic impact on a substantial number of small entities.

<sup>7</sup> January 18, 2011, Executive Order 13563.

and largely mirror the recommendations being submitted by NRECA and APPA (collectively referred to as “industry” below).

## **I. EPA’s Certification of No Significant Economic Impact on Small Entities Lacks a Factual Foundation and Transparency**

### *A. The Certification Lacks a Factual Basis and Transparency*

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities.<sup>8</sup> EPA produced a certification analysis that showed surprisingly few plants with costs owned by small entities. The same analysis showed some significant costs for a large fraction of plants owned by municipalities and rural electric cooperatives of unknown size.<sup>9</sup> Given the hundreds of small entity owners that could be affected, small entity trade associations also concluded that the number of plants with costs owned by small entities was too low.<sup>10</sup>

EPA’s analysis in Chapter 8 of the May 2013 Regulatory Impact Analysis (RIA), does not in our view, comply with the RFA requirement to provide a “statement providing the factual basis for such certification”<sup>11</sup> because the agency has withheld the underlying data supporting this determination. EPA has not revealed which plants will have compliance costs, which plants with costs have small entity owners, what those costs are, or the revenues that such plants have to address those costs. This makes it impossible to verify EPA’s underlying data, estimated values and calculations. We do not have the knowledge to identify these plants or estimate these costs without record information. EPA informs us that this additional transparency would reveal confidential business information (CBI) about these or other plants, without explaining why it is unable to provide this information in some redacted form. However, model plant costs would adequately serve commenters’ needs. EPA could simply identify the plants with costs, by plant ID, and provide the approximate costs. Revenues, or at least electric generation rates, are available for virtually all plants, which would allow for the cost/revenue comparison to be calculated and compared with the EPA evaluation.

### *B. Small Entity Costs Appear High, But the Record is Insufficient to Permit Analysis*

Advocacy is concerned about the EPA finding in Table 4-1 of the RIA that approximately half of all the municipally-owned and rural electric cooperative plants have cost-to-revenue ratios in excess of 3%. Under EPA’s own RFA guidance, if these reflect small entity costs, such large impacts preclude the presumption of a certification.<sup>12</sup> Also, such a finding suggests that many

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<sup>8</sup> 78 Fed. Reg. 34432, 34530 (June 7, 2013).

<sup>9</sup> As discussed below, EPA failed to identify the affected plants, and in turn, which affected plants with costs had small entity owners, preventing us from commenting effectively on the validity of EPA’s determinations.

<sup>10</sup> Personal communication with Dorothy Kellogg, NRECA and Theresa Pugh, APPA, July 19, 2013.

<sup>11</sup> 5 U.S.C § 605(b).

<sup>12</sup> Table 1 shows 8 of 19 co-op plants, and 10 of 23 municipally owned plants face cost/revenue ratios in excess of 3%. Under EPA’s RFA guidance, if these had been individual plants owned by small entities, there would be no presumption of a certification, as the percentage of plants in each category exceeds 20% (see Table 2, November 2006 EPA RFA Guidance at 24; <http://www.epa.gov/sbrefa/>). Further, for the certification analysis, EPA

of these plants would not be financially viable, particularly since the 3% figure is a lower bound for these plants. It is reasonable to expect that several plants would experience cost/revenue ratios exceeding 10% or 20%. Evidence of the degree of serious impact on individual plants is, therefore, lacking in the record. This analysis suggests that the certification may not be correct, but without the underlying data, we can only speculate as to its validity.

Second, this high rate of economic impact on plants generally is not consistent with EPA's historic interpretation over three decades of "best available technology economically achievable" (BAT) determinations, where average cost/revenue impact ratios are generally in the range of 1 percent or less. We anticipate that a large proportion, if not almost all such plants under severe economic pressure, are owned by small entities. Unfortunately, EPA has not identified these impacted plants, the plant owners, or their estimated revenues or compliance costs. Therefore, we cannot comment effectively on the underlying data or the basis for these determinations. Since cost estimates for model size plants, cost curves, plant revenues and plant-based costs are not provided, it is difficult for Advocacy to provide informed comment on this issue.

Third, EPA reports that, of 1,079 steam electric plants, only 277 face costs under Option 4, regulating FGD, fly ash and bottom ash wastewaters. Similarly, of 122 municipally-owned plants, only 23 plants report costs under Option 4. We find this surprisingly small, but cannot evaluate the basis of this claim since EPA has not identified the plants with estimated costs. Underreporting of plant costs would also lead to an underestimate of the economic impact in the certification analysis.

### *C. EPA Should Provide Plant Specific Data for Plants with Costs*

The lack of specific data about the costs to individual plants, and other information is inconsistent with the transparency requirements of Executive Order 13563, and will also inhibit the ability of commenters to provide informed comment to EPA. Commenters will be unable to determine from this record the estimated costs for their own plants.<sup>13</sup>

In contrast, the agency did provide some useful model plant cost information during the Unfunded Mandates Reform Act (UMRA) process in late 2011 and early 2012, and asked municipalities and rural electric cooperatives to provide comments.<sup>14</sup> EPA has so far declined to provide the analogous model plant data that it provided to the public about two years ago. We

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incorrectly identifies the percentage of affected small entities in Table 8-4, instead of the percentage of affected small entities with costs imposed by the rule, which prevents us from examining this proposal using the guidance in Table 2. Use of this metric underestimates the percentage of plants with costs for the parameter used in Table 2 and is insufficient to reach a conclusion regarding certification.

<sup>13</sup> We understand that several large utility members of Utility Water Act Group (UWAG), with significant engineering resources, have asked for the data (costs and pollutant loadings estimates) for their own plants. We know of no small entity-owned plant owners who have taken the opportunity to review their own data, or even know of the option to do so. This procedure, although helpful for the affected large utility plants, does not substitute for full transparency in the record.

<sup>14</sup> The Unfunded Mandated Reform Act requires EPA to consult with State, local, and tribal governments regarding rules that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, in any one year. That consultation took place in late 2011 and early 2012. EPA has not indicated whether those 2011/2012 model costs are representative of EPA's current cost modeling efforts.

disagree that model plant data would undermine the confidential business information provided by individual plants, especially since EPA already provided similar information in the UMRA proceeding earlier.

*D. EPA Should Issue a Notice of Data Availability*

So that interested parties can provide informed comment, Advocacy believes that EPA should issue a notice of data availability containing the cost and revenue information for affected small and large entity-owned plants. EPA has done so in the last two Effluent Limitation Guidelines: the Construction and Development, and the Meat and Poultry rules. Both of these had notices of data availability that supplemented the proposals. Indeed, in the case of Meat and Poultry, EPA used the opportunity to provide more transparency for its costing methodologies and corrected errors in the proposal methodology. EPA should do so in this rulemaking.

**II. EPA Needs to Provide Transparency in Pollutant Loadings and Costs**

EPA should also improve the transparency of the quantity of pollution reductions (pollutant loadings removed by the rule), the cost effectiveness of those removals, and the transparency of the costing methodology.

*A. EPA Needs to Identify the Plant-Specific Pollutant Loadings and the Underlying Data and Calculations*

Again, the EPA record is incomplete. For the EPA-derived ash wastewater pollution estimate, the pollutant loadings are essentially the product of two EPA estimates: chemical concentrations of the pollution and the water flows.<sup>15</sup> We commend EPA for providing all the relevant chemical concentrations, and all the underlying data from which those concentrations were calculated. The agency is entirely transparent regarding this key parameter.

Since the amount of pollution removed for ash wastewater is the product of the water flow and the chemical concentrations, estimating the flow correctly is equally important. Unfortunately, EPA does not provide either the estimated water flow or the resultant estimated toxic pound-equivalents (TWPE) for each plant.<sup>16</sup> Thus, the public has no basis to critique EPA's water flows, or resultant TWPEs.<sup>17</sup> The public has no knowledge of whether the water flows were estimated correctly for individual plants, or the nation as a whole. The public can comment on only one parameter – the projected chemical concentrations which, thanks to EPA's full

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<sup>15</sup> For ash flow pollution removals, only these two estimates are needed, because all the wastewater is removed (a zero discharge requirement). For regulation of flue gas desulfurization (FGD) wastewater, EPA also needs to provide an estimate of treatment effectiveness, since it is removing less than 100% of each pollutant. The fly ash, bottom ash and FGD wastewaters constitute virtually all of the pollution accounted for in this rule.

<sup>16</sup> Toxic weighted pounds equivalents, or TWPEs are the measure of total pollution removals, weighted by appropriate toxicity-related factors derived by the agency.

<sup>17</sup> EPA's release of blinded (redacted plant IDs) plant-specific TWPEs for total ash wastewater pollution is of little utility to the commenters since EPA did not identify the plants associated with the individual TWPEs. This information cannot be used to critique the plant-specific TWPEs or the plant-specific water flows.

transparency, is already being subjected to considerable review and comment (see discussion below).

EPA claims that pollutant loadings cannot be provided because it is concerned that CBI can be deduced if it reveals the plant-specific calculations of water flows, and related TWPEs for individual plants. However, this appears incorrect since EPA has already made public all of the relevant water flow related information for the approximately 240 non-CBI ash wastewater plants, yet withholds EPA's calculations based on this disclosed data.<sup>18</sup>

Therefore, EPA should take the opportunity to issue a notice of data availability that will provide, for every plant, the underlying calculated TWPEs, and the related calculated water flow data, so that the public can comment on the reliability of both the flows and the chemical concentrations, and, therefore, the amount of pollution removed.

#### *B. EPA Needs to Simplify the Cost Methodology*

With regard to costs, EPA has devoted hundreds of pages to describing its costing methodology, which includes references to CBI equations and CBI values. This includes many pages of nested equations within nested equations containing parameters that are revealed only by reading other underlying referenced documentation. We would estimate that comprehending and using this material would consume hundreds of hours or more. We know no small entities and no small entity trade associations who can use these materials to estimate costs, even if all the underlying technical parameters needed to estimate the costs were known. EPA should simplify and make these documents and equations more transparent to allow informed public comment.<sup>19</sup>

### **III. EPA Needs to Correct Overestimation of Pollution Removals**

#### *A. Ash Pollutant Removals are Overestimated*

Based on the information contained in the industry comments to be submitted on this proposal made available to Advocacy, EPA has apparently made several major errors in estimating the amount of pollution removals to be achieved by this regulation, particularly with respect to the fly ash and bottom ash wastewater. According to EPA, the fly ash and bottom ash wastewater removals account for two-thirds (5.2 million) of the total 7.8 million toxic pound-equivalents achieved by regulating the three major waste streams (fly ash, bottom ash, and flue gas desulfurization). The TWPE metric is used to measure the benefits of pollutant removals to the public. By industry's estimate, the 5.2 million TWPEs is more likely to be in the neighborhood of 400,000 TWPEs. This EPA overestimate of pollution removals means that the agency has vastly inflated the benefits of this regulation with respect to ash pollutant removals, which

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<sup>18</sup> Furthermore, EPA has identified at least seven owners of CBI plants that have ash wastewater data withheld, which seems more than adequate to address its rule of deducibility that requires more than two CBI plant owners to be involved in any equation where CBI information may be deduced. We believe this problem could also be resolved simply by withholding data from one or more additional non-CBI owners to make up the required "more than two" owners.

<sup>19</sup> We understand that EPA acknowledged at a conference call with UWAG that several errors in elements of the cost methodology need correction. These should be addressed in the future also.

currently represent about two-thirds of all the benefits of this rule. Part of the determination of what constitutes “best available technology economically achievable” includes consideration of the costs and pollutant removals (benefits to the public). Proper estimation of the ash wastewater flows is critical in estimating the cost effectiveness of this rule and evaluating the merits of the regulatory options for ash wastewater controls. In the past, EPA has promulgated only those rules whose cost effectiveness (cost/toxic pound-equivalent of pollution removed) was in the \$100 (\$1981)/pound-equivalent (PE) and under range for direct dischargers of wastewater (facilities that discharge water directly into water bodies).<sup>20</sup> This calculation was used in past ELGs to help evaluate the final regulation, so it needs to be carefully determined.

After correcting for errors in both the wastewater flows and the chemical concentrations, industry finds that instead of 5.2 million pound-equivalents (PE), the more accurate figure would be approximately one-fifteenth of that amount, or about 400,000 pound-equivalents.<sup>21</sup> This discrepancy is attributable to various errors, primarily: (1) using non-detect data to project high concentrations of pollutants for pollutants that are not really present or are present at much lower concentrations, (2) using outdated data from the 1970s reflecting much higher pollutant loadings than current plants, and (3) the failure to subtract contributions from common low toxicity chemicals (such as calcium and magnesium) found in the source water that are not attributable to the steam electric plants being regulated. Correction of these and other errors dramatically changes the estimated cost effectiveness of the rule with respect to ash wastewaters. This is particularly important since the cost of the control of ash wastewaters is 65% of the total cost of this rule regulating the three major waste streams.<sup>22</sup>

#### *B. Best Available Technology Historically Was Established by EPA at Under \$100/PE*

Industry estimates that the cost effectiveness of the rule as proposed is thousands of dollars/lb-equivalent (PE) for regulation of bottom ash, not the under \$40 to \$60/PE estimated by EPA.<sup>23</sup> For fly ash plants, the cost effectiveness is somewhat better.<sup>24</sup> The February 2012 UWAG comments on the draft Merrimack Station permit offer a good summary of the history of cost effectiveness in ELGs. For example, in the 2003 promulgation of the Metals Products and Machinery (MP&M) ELG, EPA found that \$1000/PE was too high; less than \$200/PE was typical for BAT; \$420/PE was “quite expensive;” and \$455/PE was “very expensive.” The cost effectiveness for this rule, including removal of fly ash and bottom ash wastewater, cannot be justified, since the figure, as in MP&M, is in the neighborhood of thousands of dollars/PE. In the past, EPA has declined to regulate such de minimis amounts of pollution. This means that the agency should seek more cost effective solutions, such as using chemical precipitation technology, instead of the current proposal of eliminating all ash wastewater discharges. In sum, EPA should seek a regulation with a cost/PE that is \$100/PE or lower. In that manner, it would be complying with both the RFA and the Clean Water Act and minimizing small firm costs.

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<sup>20</sup> See discussion below about the basis for the \$100/PE benchmark.

<sup>21</sup> See industry comments.

<sup>22</sup> The costs of Option 4 (control of fly ash, bottom ash and FGD) is \$1.37 billion annually. The cost of the ash water controls portion of this Option is \$887 million annually.

<sup>23</sup> The industry estimate varied by size of plant, varying from several thousand dollars/PE to over ten thousand dollars/PE.

<sup>24</sup> See industry comments for more detail on fly ash and bottom ash discharges, and correction of TWPE estimates.

## IV. Regulatory Options to be Considered

### *A. EPA Should Consider Exclusion of Some or All Plants with Fly Ash, Bottom Ash and FGD Wastewaters, Considering BAT and Cost Effectiveness*

Under the Regulatory Flexibility Act, EPA is directed to consider flexible alternatives that achieve statutory goals that minimize the burden on small entities. Given the potential cost of Option 4 requiring full regulation of all plants with FGD, fly ash and bottom ash wastewaters at \$1.37 billion per year, consideration of such alternatives, as Option 4A (excluding bottom ash controls for all plants with bottom ash wastewater under 400 MW) is quite important.

We observe that EPA's certification is likely critically flawed because it may impose considerable costs on small entities, without commensurate benefits in Option 3, regulation of all plants greater than 50 MW with flue gas desulfurization (FGD) wastewater, and Option 4, regulation of all plants greater than 50 MW with fly ash and bottom ash wastewater.<sup>25</sup> In particular, EPA initially failed to consider any size cutoff above 50 MW for any regulatory options, which excluded only a small fraction of the plants that would otherwise be subject to regulation.<sup>26</sup> Reconsideration of cost effectiveness and the RFA led to the addition of Options 3A and 4A, to supplement consideration of Options 3 and 4 during interagency discussion of this draft proposed rule.

The cost effectiveness analysis of bottom ash and fly ash leads to the conclusion that the cost effectiveness can be improved if additional plants with de minimis discharges (larger than 50 MW plants) are removed from regulation. EPA's rationale supporting the very small 50 MW cutoff regarding the disproportionate economic burden on smaller plants and de minimis dischargers is equally persuasive for much larger facilities.<sup>27</sup> In the development of this proposal, EPA addressed this issue by the formulation of Options 3A and 4A – exclusion of plants below 2000 scrubbed MW<sup>28</sup> for FGD controls; and exclusion of plants below 400 MW for bottom ash control, respectively. We commend the agency for the identification of these more expansive regulatory options.

Option 3A removes 67% of the TWPE, but costs only \$336 million pre-tax, only 60% of the total of \$561 million annually. Option 4A removes 78% of the TWPE, but costs only \$948 million, or 69% of the total \$1.37 billion. Thus, exclusion of smaller plants allows a greater proportion of the pollution to be reduced at a lower proportion of total costs to all plants. This is the expected pattern because small plants generally are disproportionately affected by uniform standards, and would need to spend more to remove the same amount of pollution as a large plant. Excluding the smallest plants is a good regulatory option because it relieves the burden on small plants, more frequently owned by smaller entities, increases the cost effectiveness of the regulation and lowers national costs.

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<sup>25</sup> EPA's certification determination applies to all regulatory alternatives under consideration.

<sup>26</sup> EPA's justification of the 50 MW appears at 78 Fed. Reg. 34432, 34474-75 (June 7, 2013).

<sup>27</sup> 78 Fed. Reg. 34432, 34474-75 (June 7, 2013).

<sup>28</sup> "Scrubbed MW" refers to the cumulative MW capacity of all units at a plant with scrubbers, pollution equipment designed to recover sulfur dioxide emissions.



Unlike bottom ash, it is not apparent that the agency considered a de minimis cutoff for small plants with fly ash wastewater, but it should consider this for the final rule for the same reason it will be considering the same option for bottom ash discharges. Since the cost effectiveness for fly ash is better than bottom ash, it may well make sense to regulate the larger fly ash plants and exclude all bottom ash plants from regulation.<sup>29</sup>

*B. The Industry Data Demonstrates that Regulating Bottom Ash Wastewater is Not Cost Effective*

The most costly portion of this regulation under serious consideration is the requirement to eliminate bottom ash wastewater discharges, and force those existing facilities to switch to a dry bottom ash handling system. The bottom ash costs account for \$719 million of the total of \$1.37 billion annual costs in Option 4. As discussed above, this requirement is expected to be particularly burdensome for the smaller facilities. This is especially true when there is a large capital cost involved. Further, we believe that the industry comments demonstrate that this requirement does not significantly reduce pollutant loadings for any plants, and is likely to be very cost-ineffective. Given the extensive industry database supplying the bottom ash pollutant data, we have more confidence relying on that data in lieu of EPA's much older and smaller sample of data. If EPA had completed its plan to go forward with a SBREFA panel, we believe that EPA would have revised its analysis to rely on the more recent industry data, contributing to more sound EPA determinations.

The industry analysis, after adjusting EPA's costs and pollutant loadings, as stated earlier, would place this requirement at thousands of dollars/PE, more than twenty times higher than the historical standard used by EPA.

In the future, EPA should study the applicability of a less expensive alternative to dry handling, such as employing chemical precipitation technology on the bottom ash impoundment. We support consideration of a new technology option to address this small amount of pollution, and this may well be the better solution for these surface water impoundments containing bottom ash.

*C. Flue Gas Desulfurization; EPA Should Consider a Design Flow Cutoff for Chemical Precipitation for FGD Wastewater and Not Impose Biological Treatment*

Similarly to above, for FGD (flue gas desulfurization) wastewater plants, a high exclusion level for small plants also is warranted. Again, industry data points to an exclusion based on design flow. We don't have the expertise or knowledge to evaluate this option, but recommend that EPA review this concept. Small plants are disproportionately affected also by the FGD requirements, and those more burdened should be excluded. We understand that the design flow is a better indicator of costs, than a MW-based exclusion, such that this option makes practical sense.

There has been considerable criticism of the practicability, high costs, and feasibility of the biological treatment option for FGD wastewaters.<sup>30</sup> Advocacy recommends that biological

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<sup>29</sup> See industry comments for discussion of fly ash cost effectiveness.

<sup>30</sup> See comments of UWAG and NRECA.

treatment be required only by local permit authorities that are trying to address localized water quality issues, such as excessive selenium, rather than impose this technology across the board.

## **V. Nonchemical Metal Cleaning Wastes and Leachate from Landfills**

Among the other alternatives to be considered is eliminating the requirements to treat two small-volume wastewater streams that would affect hundreds of plants: nonchemical metal cleaning wastes (generally water-based wastewater with little pollutants) and leachate from landfills/impoundments. This new requirement for separate collection and treatment of nonchemical metal cleaning wastes is impractical and unnecessary. These water rinse discharges are infrequent and non-toxic. EPA has failed to include any costs for this requirement in the analysis, despite the availability of survey information that would allow the estimation of such costs. Leachate is the liquid that drains or leaches from a landfill or impoundment that is collected at the site. Even using EPA's own estimates, the toxic weighted pound equivalents are less than 100 TWPE per plant per year, an amount considered de minimis in previous ELG regulations.<sup>31</sup> Both of these wastestreams should continue to be treated as low-volume wastes, as under the current regulation.

### **Conclusion**

Advocacy believes that the rule as proposed is improperly certified under the RFA. EPA should provide greater transparency in its pollutant loadings and cost estimates, and correct its overestimations of pollution removals. EPA should consider further regulatory options, including exempting all bottom ash wastewater flows, and setting higher exclusion levels for fly ash and FGD wastewaters.

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<sup>31</sup> EPA declined to include leachate pollution control as a "preferred option", explaining that "...EPA also looked at the cost effectiveness of controlling leachate using chemical precipitation and this value would exceed \$1,000 per TWPE removed." 78 Fed. Reg. 34432, 34474 n. 38 (June 7, 2013). The agency's rejection of this regulatory option costing in excess of \$1000/PE is a reaffirmation of the 2003 MP&M ELG determination that \$1000/PE was too high discussed above.

Advocacy appreciates the opportunity to submit comments on the Steam Electric proposed rule. Advocacy recommends that EPA issue a notice of data availability to address corrections to the analysis and improved transparency to ensure that the final rule is based on sound analysis and sound science. We look forward to working further with the agency on developing the final rule. If you have any questions or comments on this letter, please contact me or Kevin Bromberg of my staff at 202-205-6964 or kevin.bromberg@sba.gov.

Sincerely,

/s/

Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy

/s/

Kevin Bromberg  
Assistant Chief Counsel  
Office of Advocacy

cc: The Honorable Howard Shelanski, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
Docket No. EPA-HQ-OW-2009-0819  
Nancy Stoner, Assistant Administrator for Water