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Daily News

EPA Backs Utilities' Push To Rework Key Provisions Of Power Plant ELG

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EPA is preparing to start a rulemaking to rework three key portions of the contested Obama-era Clean Water Act (CWA) effluent rule for power plants, backing utilities' push to soften mandates they say are unjustified -- even while the power companies in litigation defend other parts of the rule against environmentalists' attempts to tighten them.

The agency announced its next steps in an Aug. 14 filing with the U.S. Court of Appeals for the 5th Circuit, which is hearing the currently stayed litigation over the merits of the 2015 effluent limitation guideline (ELG).

In that motion, EPA says Administrator Scott Pruitt has “now advised that after carefully considering the two administrative petitions, he has decided that it is appropriate and in the public interest to conduct a rulemaking to potentially revise” the rule's best available technology (BAT) and pretreatment standards for existing sources (PSES) for wastewater from flue gas desulfurization (FGD), bottom ash transport and gasification.

“In light of all of the foregoing developments and administrative undertakings, EPA respectfully requests that this Court sever and hold in abeyance all judicial proceedings as to all issues relating to the portions of the 2015 Rule concerning the new, more stringent BAT limitations and PSES applicable to (1) bottom ash transport water, (2) FGD wastewater, and (3) gasification wastewater,” EPA's 5th Circuit brief says.

Power companies protested the provisions in the final rule as unnecessary strict, although they support other sections of the rule that EPA declined to tighten to the level sought by environmentalists and some water utilities. The consolidated 5th Circuit case combines the various suits over the merits of the rule.

Attached to the brief are letters that Pruitt sent to power firms and the Small Business Administration (SBA) on Aug. 11 notifying them of his decision.

“After carefully considering your petitions, I have decided that it is appropriate and in the public interest to conduct a rulemaking to potentially revise the new, more stringent Best Available Technology Economically Achievable effluent limitations and Pretreatment Standards for Existing Sources in the 2015 rule that apply to bottom ash transport water and flue gas desulfurization wastewater,” reads an Aug. 11 letter to the The Utility Water Act Group (UWAG) and SBA, both of which petitioned him to reconsider the ELG.

If the court grants EPA's request, it would create a stand-alone suit on the provisions industry opposes and keep that on hold while it reworks those sections. The rest of the 5th Circuit case that is currently stayed would proceed and power companies, water utilities and environmentalists would continue their fights over the rule's other contested provisions.

Effluent Rule

The 2015 ELG sets technology-based standards for power plants to reduce pollution in their wastewater discharges. Those standards are not immediately effective, but are to be implemented in future CWA discharge permits for the utilities. However, EPA has stayed implementation deadlines in the ELG while it weighs revising its

mandates.

Limits on bottom ash and FGD waste are the main areas where industry sought reconsideration in petitions filed earlier this year, while the gasification revision appears to be an attempt to broaden variances from the ELG that the agency has already proposed to grant for a Duke Energy power plant in Indiana.

EPA quietly posted a notice on its website on Aug. 7 proposing a variance for mercury and sediment releases from a Duke facility in Edwardsport, IN. That notice holds that the plant's gasification equipment is a “fundamentally different factor” that was “not accounted for during the development of the effluent guidelines” and should not be subject to the same requirements as other technologies.

A new rulemaking would allow EPA to incorporate such factors into the ELG.

If the 5th Circuit agrees to sever the three issues EPA plans to revise, the agency would then be able to defend many of the standards that environmentalists and utilities targeted as too lenient, including limits on leachates and the decision not to set a BAT requirement for reducing power plants' bromide discharges.

However, it would also delay any ruling on environmentalists' claims that bottom ash restrictions should apply to all such wastewater, instead of only waste generated after the ELG went into effect.

Currently, the ELG exempts “legacy” wastewater that has been stored in ash impoundments since before the rule was finalized, but will be discharged later -- such as in the course of closing a facility that cannot satisfy the 2015 Resource Conservation & Recovery Act rule governing ash disposal. Environmentalists argued that there is no reason to exempt such waste from treatment mandates.

Industry Claims

UWAG and the SBA's advocacy office filed separate reconsideration petitions in March that targeted the 2015 rule's FGD and bottom ash requirements, largely on the basis that the agency withheld data crucial to establishing whether the BAT mandates for those categories of waste were in fact practicable, designating it as confidential business information (CBI).

UWAG, which represents power plants on water issues, said in its reconsideration petition that the agency's use of CBI in the rule conflicts with President Donald Trump's executive orders on regulatory reform. “EPA withheld its most basic data, methodologies, and analyses from the public record under the guise of CBI. This unprecedented lack of openness is inconsistent with the policies articulated in Regulatory Reform Order for transparency and reproducibility,” the petition said.

More specifically, it charged that technologies required in both the FGD and bottom ash provisions of the ELG were not applicable across the full categories, because they ignore differences between various categories of coal and the composition of the waste created by burning them, and that the agency based many of its requirements on incomplete or outdated data. -- *David LaRoss* (dlaross@iwpnews.com)

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