

401



Daily News

## EPA To Scrutinize Power Plant Water Permits Ahead Of New Effluent Limits

Posted: July 19, 2010

EPA is vowing to closely scrutinize state-issued Clean Water Act (CWA) discharge permits for power plants ahead of its planned technology-based discharge standard for the sector as an interim measure to address environmentalists' longstanding concerns that the permits need to be strengthened.

In a June 24 letter to environmental groups, EPA wastewater chief James Hanlon committed the agency to reviewing at least 35 National Pollutant Discharge Elimination System (NPDES) permits for power plants before the end of 2012 -- when EPA has vowed to propose new discharge limits, or effluent limitation guideline (ELG), for the sector.

In the letter to Earthjustice and the Environmental Integrity Project, Hanlon, director of EPA's Office of Wastewater Management, outlines the agency's intention to review the 35 permits to address the groups' concerns that they are not consistent with federal requirements. "I hope this information helps to clarify the importance EPA places on these permits," the letter says.

In addition to the permit reviews, EPA also issued a June 7 guidance outlining how to analyze discharges from flue gas desulfurization (FGD) and coal combustion residual (CCR) impoundments -- which are key sources of wastewater discharges -- ahead of the ELG.

The EPA permit review commitments and guidance are winning praise from environmentalists, who have long sought aggressive discharge limits on power plant releases as they struggle to win strict EPA hazardous waste rules for CCR.

Environmentalists are already citing EPA's June 7 guidance to urge Washington state regulators to strengthen a proposed NPDES permit for the state's only coal-fired power plant, according to July 9 comments filed by Earthjustice. Activists have already notified EPA of their concerns with the proposed permit, and asked the agency to watch it and object if changes are not made, one activist adds.

But industry sources are questioning the need for the interim measures, given that EPA is taking steps to begin collecting data to support the upcoming ELG. One source says the June 7 guidance to states appears to seek to impose additional best available technology (BAT) review burdens on states, on top of already-required water-quality assessments, that the source says are questionable.

A second industry source says it is "uncommon" for EPA to issue such detailed interim guidance at the same time it is conducting an information collection request to prepare for the new ELG. The source says the guidance does not impose new legal requirements on its own, but clarifies how states should exercise their best professional judgment (BPJ) for determining BAT. "What type of commitment it might prescribe to a state, I can't speak to," the source says.

States, however, say they welcome the guidance though they also note they are generally ill-equipped to conduct the labor-intensive technology reviews on their own and want EPA to "get on with" the national rules, one source says.

EPA officials could not be reached for comment.

### Coal Ash Spill

At issue are EPA requirements governing wastewater discharges from power plants -- an issue that has gained prominence since a massive coal ash spill at a Tennessee Valley Authority (TVA) plant contaminated nearby waters. Activists have since challenged a suite of pending power plant permits and last year sued the agency in an effort to set

strict deadlines for EPA to revise its 1982 ELG for power plant discharges.

While EPA and activists are still in settlement talks on the deadline, the agency announced last September that it would revise the rules, vowing to issue a proposal sometime in 2012. The agency said in a statement announcing its commitment that a 2009 study had found that rules finalized in 1982 "have not kept pace with changes that have occurred in the electric power industry over the last three decades."

A spokeswoman said later that EPA Administrator Lisa Jackson wanted a proposal issued before then, though EPA says in the guidance that it expects a final ELG in late 2013.

But even before the new policy is proposed, EPA has quietly floated guidance to the regions clarifying how they should review pending permits. "The establishment of appropriate NPDES permitting requirements for these discharges is an important effort to better protect the environment and human health," says the guidance to the regions. "You should work with authorized state programs to encourage them to utilize this guidance in their permit decisionmaking process. In cases where state permitting authorities do not consider the attached guidance in developing permitting conditions, you should work with states to make appropriate changes."

The guidance also encourages the regions to "consider using objection authorities in cases where permits do not address appropriate technology-based or water quality-based permit limits to address FGD or CCR discharges."

Environmentalists in their comments on the Washington state draft NPDES five-year renewal permit for a TransAlta power plant, saying the guidance "clearly demonstrate[s] . . . that settling ponds (even with some chemical treatment for some pollutants) are not BAT for steam generating electrical plants like TransAlta."

One environmentalist says activists are arguing that the "state has to go back and do a BAT analysis per the EPA guidance and probably apply additional treatment," such as biological treatment or evaporation distillation processes to turn the wastewater into sludge or solid that can then be sent to a hazardous waste landfill.

The draft renewal permit Washington issued last month does not impose any new technology requirements on the plant even though the state acknowledges that water quality limits could be exceeded. The state conducted a reasonable potential analysis on chlorine, chromium, arsenic and selenium to determine whether effluent limits were necessary, and found "a reasonable potential that the permittee would exceed the water quality criteria for chlorine, chromium and selenium," according to a state-issued fact sheet.

### **Compliance Study**

But instead of setting limits, the state is requiring a compliance study that environmentalists say does not comply with basic water law requirements.

The source says EPA's new guidance is significant because it shows the direction the agency is moving and that its importance will be "played out on the ground in this permit. It is not just an academic exercise."

Environmentalists will also raise the guidance in their administrative challenge to a Tennessee-issued NPDES permit for TVA's Kingston plant -- the site of a massive coal ash impoundment failure.

A Tennessee source says the guidance could apply to that permit if the environmentalists' appeal is successful, and praises EPA for taking steps to help permitting authorities. "States are just ill-equipped to try to do a judgment to establish an effluent limit, generally we don't have the horsepower to do that . . . and so it's entirely appropriate for this to be dealt with at the national scale."

In that vein, the source says the guidance is helpful to outline steps for BPJ on effluent limits but that what's really needed are the new ELG rules because they will explicitly address discharges from new technology that has become available since the ELG was last updated nearly 30 years ago.

Still, the source says in the meantime, the guidance could require increased monitoring and controls, particularly at power plants located on small waterbodies that already have background contaminant levels.

Meanwhile, industry sources are concerned with what the guidance may require in permits. The second industry source says whether the guidance will prompt new control requirements is difficult to assess but that it certainly will "put another burden on permit writers" because it will require them to conduct a "separate water quality-based technology BPJ." The source also questions why EPA is moving toward technology requirements, which the source says are supposed to be uniform, in advance of the ELG, particularly when these discharges will be highly variable, depending on the type of coal

and scrubber.

"This seems to ask a lot of permit writers, especially since they don't have, and EPA doesn't have, a really full picture among the different waste streams that might drive different performance and availability of treatment technology," the source says, calling it "an exercise in form over substance."

However, environmentalists say the guidance and EPA-promised permit reviews -- while not an expansion of any existing agency authority -- are significant.

One source says, "Across the board, states fail to set case-by-case limits on most types of power plant wastewater discharges," which the source says is a clear violation of law.

Another source says the EPA actions should go a long way to address activists' concerns that many power plants will be installing new scrubbers in the next three years that would otherwise be exempt from new discharge limits likely to be required by the ELG, at least for their first five years. "We had been stressing to states they have a Clean Water Act obligation . . . and the great thing about the guidance is that EPA has made that clear." -- Dawn Reeves

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