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Fearing Tie To Coal Ash Rule, Advocates Press EPA To Float Power Plant ELG

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Environmentalists are urging EPA and the White House Office of Management & Budget (OMB) to propose strict effluent limitation guidelines (ELG) for coal-and steam fired power plants by a court-ordered April 19 deadline, in part to address concerns that the agency may delay White House water standard to coordinate it with its long-delayed coal ash waste disposal rule.

The advocates fear that coordinating the two rulemakings could further delay the ELG proposal because OMB may seek to review the costs associated with the regulations together. "I think OMB is seriously at the point of deciding when and where to issue the [ELG] rule," says one environmental attorney who met with administration officials on the proposed ELG Feb. 26.

Groups represented at the meeting included the Environmental Integrity Project, Sierra Club, Earthjustice, Clean Air Task Force, Southern Environmental Law Center, Catawba Riverkeeper and others.

A second environmentalist familiar with the discussion noted that there is not a significant overlap between the ELG and EPA's planned Resource Conservation & Recovery Act (RCRA) rules for coal ash disposal to warrant tying them together, and adds that plaintiffs that forced EPA into a consent decree to issue the proposed ELG by April 19 are unwilling to agree to what would be another deadline extension.

"The waste rule is [one of] the first things [former Administrator] Lisa Jackson promised at the start of the administration, and we haven't seen hide nor hair of this rule -- yet the ELG is ready to go and has a court deadline," the source says. "So when we're hearing that the agency wants to tie them together, it's not clear how EPA thinks that can happen."

EPA has, however, indicated that it believes it can meet the April target for issuing the proposal, environmentalists say.

EPA's proposed ELG is intended to revise technology standards for coal- and other steam-fired generators that were last updated in 1982. Environmentalists and others say the rules are needed because waste releases from the plants are getting more toxic as a result of treatment technologies needed to comply with increasingly stringer air rules, including the agency's maximum achievable control technology (MACT) air toxics rule for coal- and oil-fired power plants which is slated to take effect in 2015.

Environmentalists argue in their push for a strict ELG that because the existing standards only set limits for traditional pollutants, including oil and grease, total suspended solids and pH, states have often avoided limiting metals like mercury, selenium, arsenic, lead and other metals and metalloids that are likely to increase as a result of the air rules.

During the Feb. 26 meeting, environmentalists stressed the importance that the rule set strict numeric limits for selenium. One environmentalist, for example, referenced a series of high-profile studies conducted by Wake Forest University researchers on the ecotoxicity of selenium in fish species, saying "we anticipate EPA will use studies like that to have forceful numeric standards for selenium."

[In a slide presentation](#), environmentalists highlighted local examples of bioaccumulative metals and other pollutants associated with discharges from power plants. For example, they cited Duke University research that indicates that arsenic levels can increase in sediment from discharges from ash ponds, resulting in an "eruption" due to oxygen level changes that the Duke researcher, Avner Vengosh, described as an "arsenic volcano."

Emissions Controls

A 2009 agency study generally backed their concerns, finding that the current Clean Water Act (CWA) rules have not kept pace with emissions control changes that have occurred in the industry over the past 30 years.

And according to agency presentations from 2012, the new ELG will focus on releases from many emissions control units, including flue gas desulfurization (FGD) wastewater from sulfur dioxide air pollution controls, gasification wastewater from integrated gasification combined cycle (IGCC) plants and wastewater associated with flue gas mercury controls (e.g., wastewater resulting from transporting/handling solids from activated carbon injection).

The proposal is also expected to address discharges of fly ash and bottom ash transport water and leachate from ponds and landfills containing coal combustion residues, according to the EPA presentation.

Environmentalists are pushing for a zero liquid discharge standard that would require dry handling of ash, and biological reactors instead of settling ponds.

"We hope EPA gives a hard look to mechanical evaporation" which would result in zero liquid discharge, the second environmentalist says. "EPA has extensive data sets that prove the validity of this technology. "

At a minimum, environmentalists are pushing for EPA to require biological treatment and chemical precipitation for "scrubber sludge" contaminants in the ELG.

While environmentalists are concerned about excess coordination between the ELG and the RCRA rules, they urged OMB and EPA to ensure that the water and air offices are coordinating the ELG with the MACT air toxics rule given that some of the air controls are not anticipated to take effect until 2015.

"We want to make sure the offices inside EPA are speaking to each other" to make sure that a final ELG is "sufficient to accommodate the new air controls," saying it was important to stress that to OMB in the event that the White House is "questioning the stringency" of the proposed ELG, a third environmentalist says.

In 2010, environmentalists sued to force EPA to complete its review of the ELG, and the resulting settlement agreement in *Defenders of Wildlife, et al., v. Jackson* currently stipulates an April 19 deadline -- a date that one source says was likely needed to allow for White House review. EPA Jan. 15 submitted a draft proposed rule to OMB.

Environmentalists have been pushing EPA to move forward with the ELG and impose strict, zero-discharge limits at coal waste disposal sites as a way to limit some of the practice's harmful effects while the agency struggles to subject the sites to RCRA requirements. Environmentalists say they do not believe CWA limits alone are sufficient because they will not address transport, handling and storage requirements that can be regulated under RCRA.

Combined Costs

But industry officials are increasingly concerned over the combined costs of the two rules, as well as a pending rule setting standards for power plants' cooling water intake and effluent systems. Industry officials have been shifting their concerns over the costs of EPA rules away from their long-running focus on the agency's air policies, to the pending waste and water rules that they fear will impose massive costs and prompt some plant closures -- even though cost predictions over the air rules proved to be vastly overestimated.

In recent litigation over the deadline for the pending coal ash RCRA rule, EPA indicated that it needed until 2014 to complete the rulemaking because it was seeking to coordinate its requirements with those in the pending ELG.

An industry source says that EPA has an obligation under RCRA to ensure that it takes into account the effects and costs of other rules when promulgating regulations, and that the coal ash rules and the ELG would both impact the same universe of facilities.

"It makes sense that EPA coordinate" the two rulemakings, the industry source says. "To not do so would not result in the best public policy. "The source did not say whether industry is actively pushing for EPA to tie the rulemakings to one another.

But at the Feb. 26 meeting to discuss the proposed ELG, representatives from a host of environmental groups urged the administration to move forward with the proposal in accord with the legal deadline.

Environmentalists also argued that the ELG is needed because many states are reluctant, absent a federal standard, to set case-by-case permit limits for metals of concern or to require monitoring for those pollutants. A fifth environmentalist called this a "core concern" and said groups highlighted this to OMB to make the case for an "intensive need for a rule" to prevent what the source characterized as "open dumping."

For example, [an August 2010 analysis](#), "In Harm's Way: Lack Of Federal Coal Ash Regulations Endangers Americans And Their Environment," conducted by the Environmental Integrity Project and Sierra Club, showed that very few permits had been issued with

specific limits for toxic metals or monitoring requirements for those metals, sources say. "We wanted to make sure to drive that point home with OMB, a sixth environmentalist says.

In some cases, states with CWA section 402 permitting authority have opted to grant administrative extensions to expired NPDES permits for facilities in the sector instead of issuing new permits, citing EPA's ongoing efforts to issue a new ELG. "Essentially, that means there's no opportunity for public notice and comment, a seventh environmentalist said, noting that three facilities in the Chattahoochee River Basin are operating on extended permits. -- *Bridget DiCosmo* (bdicosmo@iwnews.com)