

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 423

[EPA-HQ-OW-2009-0819]

RIN 2040-AF14

Stay of Certain Compliance Deadlines for the Final Rule Entitled “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” Published by the Environmental Protection Agency on November 3, 2015.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; delay of compliance deadlines.

SUMMARY: By a letter dated April 12, 2017, the Administrator announced the EPA decision to reconsider the final rule that amends the effluent limitations guidelines and standards for the steam electric point source category under the Clean Water Act (“CWA”), published in the **Federal Register** on November 3, 2015. These regulations have been challenged in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al. v. EPA*, No. 15-60821. The earliest compliance date for the new, and more stringent, best available technology economically achievable (“BAT”) effluent limitations and pretreatment standards is November 1, 2018, for each of the following wastestreams: fly ash transport water, bottom ash transport water, flue gas desulfurization (“FGD”) wastewater, flue gas mercury control wastewater, and gasification wastewater. These dates have not yet passed and they are within the meaning of the term “effective date” as that term is used in Section 705 of the Administrative Procedure Act (“APA”). Thus, by this action, the EPA is administratively staying and delaying these compliance dates pending judicial review. During this reconsideration, EPA will conduct notice and comment rulemaking with respect to staying the effective dates and/or the compliance dates

of the Rule.

DATES: The compliance dates of the Rule specified at 40 CFR §§ 423.11(t), 423.13(g)(1)(i), 423.13(h)(1)(i), 423.13(i)(1)(i), 423.13(j)(1)(i), 423.13(k)(1)(i) and 40 CFR §§ 423.16(e), 423.16(f) 423.16(g) 423.16(h) 423.16(i), published at 80 FR 67838 (Nov. 3, 2015), are stayed pending judicial review.

ADDRESSES: EPA has established a docket for the Rule amending 40 CFR part 423 under Docket ID No. EPA-HQ -OW-2009-0819. All documents in the docket are listed on the <http://www.regulations.gov> web site.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Ronald Jordan, United States Environmental Protection Agency, Engineering and Analysis Division; telephone number: (202) 564-1003; email address: jordan.ronald@epa.gov. For information related to NPDES permitting of these facilities, contact Sean Ramach at (202) 564-2865, email address: ramash.sean@epa.gov.

Electronic copies of this document and related materials are available on EPA's website at <https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule>.

Copies of this final rule are also available at <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

On November 3, 2015, the EPA issued a final rule amending 40 CFR part 423, the effluent limitations guidelines and standards for the steam electric power generating point source category, under Sections 301, 304, 306, 307, 308, 402, and 501 of the CWA (33 U.S.C. §§ 1311, 1314, 1316, 1317, 1318, 1342, and 1361). The amendments addressed and contained limitations and standards on various wastestreams at steam electric power plants: fly ash transport water, bottom ash transport water, flue gas mercury control wastewater, FGD wastewater, gasification

wastewater, and combustion residual leachate. Collectively, this rulemaking is known as the “Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category” (“Rule”). For further information on the Rule, see 80 FR 67838 (Nov. 3, 2015).

EPA received seven petitions for review of the Rule. The United States Judicial Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit. Petitioners have filed their briefs, and EPA’s brief is currently due by May 4, 2017.

In a letter dated March 24, 2017, the Utility Water Act Group (“UWAG”)¹ submitted a petition for reconsideration of the Rule and requested that EPA suspend the Rule’s approaching deadlines. In a letter dated April 5, 2017, the Small Business Administration Office of Advocacy also petitioned the EPA for reconsideration of the Rule. The petitions raise wide-ranging and sweeping objections to the Rule, some of which overlap with the claims in the ongoing litigation challenging the Rule in the U.S. Court of Appeals for the Fifth Circuit.² The UWAG petition also points to new data, claiming that plants burning subbituminous and bituminous coal cannot comply with the Rule’s limitations and standards for FGD wastewater through use of EPA’s model technology. The UWAG petition says that a pilot study has been conducted at the Pleasant Prairie plant that supports petitioner’s request, and that a final report on the pilot study “is likely to [be] publish[ed] . . . within the next few weeks.” Moreover, the petitions say that new data have been collected by American Electric Power that “illustrate[] that variability in wastewater management can also impact performance at bituminous plants such that additional technologies

¹ UWAG is a voluntary, ad hoc, unincorporated group of 163 individual energy companies and three national trade associations of energy companies: Edison Electric Institute, the National Rural Electric Cooperative Association, and the American Public Power Association.

² A copy of each petition is included in the docket for this rule, Docket ID No. EPA-HQ-OW-2009-0819.

beyond EPA's model technology will be needed to achieve the limits." EPA wishes to review these data.

In an April 12, 2017 letter to those who submitted the reconsideration petitions, the Administrator announced his decision to reconsider the Rule (a copy of this letter is included in the docket for the Rule). As explained in that letter, after considering the objections raised in the reconsideration petitions, the Administrator determined that it is appropriate and in the public interest to reconsider the Rule. Under Section 705 of the APA, 5 U.S.C. § 705, and when justice so requires, an Agency may postpone the effective date of action taken by it pending judicial review. The compliance dates for certain limitations and standards in the Rule do not occur until November 1, 2018, and in the case of the Rule those dates are within the meaning of the term "effective date" as that term is used in Section 705 of the APA. In light of the capital expenditures that facilities incurring costs under the Rule will need to undertake in order to meet the compliance deadlines for the new, more stringent limitations and standards in the Rule—which are as early as November 1, 2018, for direct dischargers and by November 1, 2018, for indirect dischargers—the Agency finds that justice requires it to stay the compliance dates of the Rule that have not yet passed, pending judicial review. *See* 80 FR 67838, 67863-67868 (Nov. 3, 2015) (discussion of costs of the Rule). This will preserve the regulatory status quo with respect to wastestreams subject to the Rule's new, and more stringent, limitations and standards, while the litigation is pending and the reconsideration is underway. While EPA is not making any concession of error with respect to the rulemaking, the far-ranging issues contained in the reconsideration petitions warrant careful and considerate review of the Rule. EPA will also file a motion requesting the Fifth Circuit to hold the litigation challenging the Rule in abeyance while the Agency reconsiders the Rule, after which it will inform the Court of any portions of the Rule

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for which it seeks a remand so that it can conduct further rulemaking. Separately, EPA intends to conduct notice and comment rulemaking to stay the compliance deadlines for the new, more stringent limitations and standards in the Rule.

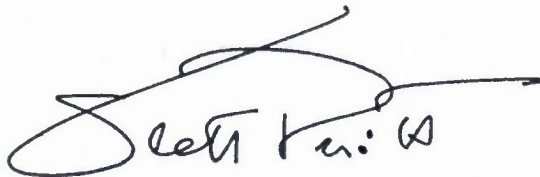
II. Issuance of a Stay and Delay of Compliance Dates

The EPA hereby issues an administrative stay of the compliance dates that have not yet passed contained in the Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category under Section 705 of the APA. The compliance dates of the Rule specified at 40 CFR §§ 423.11(t), 423.13(g)(1)(i), 423.13(h)(1)(i), 423.13(i)(1)(i), 423.13(j)(1)(i), and 423.13(k)(1)(i), and 40 CFR §§ 423.16(e), 423.16(f) 423.16(g) 423.16(h) 423.16(i), published at 80 FR 67838 (Nov. 3, 2015), are stayed pending judicial review.

List of Subjects in 40 CFR Part 68

Environmental protection, Electric power generation, Power plants, Waste treatment and disposal, Water pollution control.

Dated: APR 12 2017



E. Scott Pruitt,

Administrator.

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