

Alabama Rivers Alliance \* Altamaha Riverkeeper \* American Sustainable Business Council \* Amigos Bravos \* Appalachian Faith and Ecology \* Appalachian Voices \* As You Sow \* Banks of the Wabash, Inc. \* Black Warrior Riverkeeper \* Bluestem Communications \* Breast Cancer Prevention Partners \* Cahaba River Society \* Canton Area Citizens for Environmental Issues, Canton Lake and Its Watershed \* Cape Fear River Watch \* Center for Biological Diversity \* Charles River Watershed Association \* Chattahoochee Riverkeeper \* Citizens Against Ruining the Environment - C.A.R.E. \* Clean Water Action \* Clean Water for North Carolina \* Clean Wisconsin \* Coastal Conservation League \* Columbia Riverkeeper \* Committee for Constitutional and Environmental Justice \* Committee on the Middle Fork Vermilion River \* Congaree Riverkeeper \* E2 (Environmental Entrepreneurs) \* Earth Day Network \* Earthjustice \* Eco-Justice Collaborative \* Emerald Coastkeeper, Inc. \* Endangered Habitats League \* Environment America \* Environment Georgia \* Environment Texas \* Environmental Defense Fund \* Environmental Health Trust \* Environmental Law & Policy Center \* Friends of the Kaw \* Great Rivers Environmental Law Center \* Green for All \* Gulf Restoration Network \* Harpeth Conservancy \* HEAL Utah \* Hip Hop Caucus \* Hooiser Environmental Council \* Illinois Council of Trout Unlimited \* Institute of Neurotoxicology & Neurological Disorders \* Kentucky Waterways Alliance \* Labadie Environmental Organization \* League of Conservation Voters \* Liveable Arlington \* Massachusetts Rivers Alliance \* Midwest Coalition for Responsible Investment \* Milwaukee Riverkeeper \* Natural Resources Defense Council \* Nor'East Chapter of Trout Unlimited \* Ohio Environmental Council \* Oregon Environmental Council \* Our Children's Earth Foundation \* Physicians for Social Responsibility \* PolicyLink \* Potomac Riverkeeper Network \* Powder River Basin Resource Council \* Power Shift Network \* Public Citizen \* Quad Cities Waterkeeper Inc. \* River Network \* San Francisco Bay Area Physicians for Social Responsibility \* San Francisco Baykeeper \* San Juan Citizens Alliance \* Sierra Club \* Southern Environmental Law Center \* SouthWings \* St. Johns Riverkeeper \* Taunton River Watershed Alliance \* Tennessee Clean Water Network \* Tennessee Environmental Council \* Tennessee Riverkeeper \* Texas Drought Project \* Texas League of Conservation Voters \* Texas Physicians for Social Responsibility \* The Environmental Justice Coalition for Water \* Vermont Law School \* Voces Verdes \* Waterkeeper Alliance \* West Virginia Headwaters Waterkeeper \* Winyah Rivers Foundation, Inc. \* Yadkin Riverkeeper

July 6, 2017

Submitted electronically at [www.regulations.gov](http://www.regulations.gov)

**Attention Docket ID No. EPA-HQ-OW-2009-0819**

**RE: Postponement of Certain Compliance Dates for the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category**

Dear Administrator Pruitt:

The undersigned organizations, on behalf of our millions of members and supporters across the country, appreciate the opportunity to comment on the U.S. Environmental Protection Agency's proposal to postpone certain compliance dates for the Steam Electric Effluent Generating Guidelines and Standards

(ELG rule) finalized in 2015. Before being finalized in 2015, these standards had not been updated since 1982, despite the fact that coal-fired and other steam electric power plants are by far the largest toxic water polluters in the country, responsible for approximately 30% of all toxics discharged into surface waters by all industries regulated under the Clean Water Act.<sup>1</sup> These discharges contain mercury, selenium, arsenic, lead, nutrients, and other harmful chemicals, and have contaminated sources of drinking water, made it unsafe to eat fish from many of our nation's rivers and lakes, and wreaked havoc on aquatic ecosystems.<sup>2</sup>

**For these reasons and those detailed below, we strongly oppose EPA's proposal to delay compliance deadlines for the ELG rule, which was published in the Federal Register on November 3, 2015 and became effective on January 4, 2016. We urge EPA to immediately reinstate all compliance deadlines for the 2015 ELG rule, and to notify state permitting authorities and power plant utilities of this action to emphasize that the ELG rule is in effect and must be implemented according to the compliance deadlines outlined in the 2015 rule.**

### **EPA Lacks Authority to Delay Compliance Deadlines for the 2015 ELG Rule**

EPA lacks authority under both the Clean Water Act (CWA) and the Administrative Procedures Act (APA) to postpone the compliance deadlines for the ELG rule. As a federal administrative agency EPA only has the authority granted by Congress through statutes.<sup>3</sup> EPA is currently proposing to extend compliance deadlines for the Best Available Technology Economically Achievable ("BAT") effluent limitations and pretreatment standards for each of the following waste streams: fly ash transport water, bottom ash transport water, flue gas desulfurization ("FGD") wastewater, flue gas mercury control wastewater, and gasification wastewater.<sup>4</sup> Not only does EPA lack authority under the Clean Water Act to postpone these BAT compliance deadlines, Section 301 of the CWA explicitly prohibits compliance dates beyond three years following the issuance of BAT standards.<sup>5</sup> The intent of the CWA is to require more stringent discharge limits on pollutants over time to reflect advances in pollution control technologies.<sup>6</sup> Indefinitely delaying compliance deadlines for BAT standards that have already been issued clearly contradicts this intent.

The Administrative Procedure Act (APA) also prohibits EPA from postponing compliance deadlines for the final ELG rule. The APA only allows EPA to stay regulations if the effective date has not yet passed

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<sup>1</sup> 80 Fed. Reg. 67,839-67,840 (Nov. 3, 2015).

<sup>2</sup> *Id.* at 67840.

<sup>3</sup> *North Carolina v. EPA*, 531 F.3d 896, 922 (D.C. Cir. 2008). Less than a week before these comments were filed, the D.C. Circuit issued an opinion forcefully restating precedent that agencies have no inherent authority to issue a stay of a rule pending reconsideration, but rather only the authority granted to them by Congress under either the applicable substantive statute or the Administrative Procedure Act. *Clean Air Council v. Pruitt*, D.C. Cir. No. 17-1145 (Order issued July 3, 2017) (per curiam) (setting aside stay of new source performance standards for methane emitted from oil and gas production facilities where neither the Clean Air Act nor APA provided authority for the agency's action).

<sup>4</sup> 82 Fed. Reg. 26,017 (June 6, 2017).

<sup>5</sup> 33 U.S.C. § 1311 (b)(2)(C).

<sup>6</sup> 33 U.S.C. §§ 1311(d), 1314(b).

and if the agency demonstrates the four factors for a preliminary injunction have been met.<sup>7</sup> Not only has the effective date for the ELG rule long since passed (it went into effect on January 4, 2016), EPA's June 6, 2017 proposal does not address the preliminary injunction factors; specifically EPA does not (and cannot) demonstrate that power plant companies will suffer irreparable harm unless these protections are delayed, nor that the delay is in the public interest. Therefore postponing compliance deadlines for the rule is clearly prohibited under the APA.

### **EPA's Proposal Entirely Ignores the Overwhelming Benefits of the 2015 ELG Rule**

EPA's proposal to delay compliance deadlines is based solely on costs the power plant industry will allegedly incur in order to comply with these new standards, and completely ignores the public health, environmental, and economic benefits of reducing water pollution from power plants. The pollutants in power plant wastewater discharges are linked to cancer, lower IQ in children, cardiovascular disease, neurological disorders, and kidney and liver damage.<sup>8</sup> These pollutants are also linked to deformities and reproductive harm in fish, birds, and other wildlife.<sup>9</sup> In 2015 EPA conservatively estimated that reducing power plant water pollution would provide at least \$451-566 million a year in benefits in the form of improved human health, improved ecological conditions, and improved recreational opportunities.<sup>10</sup>

Because EPA lacked data to quantify all the expected benefits of reduced water pollution from power plants, the actual monetary benefits are likely much greater. For instance, EPA failed to quantify the cost burden placed on drinking water systems that have to treat source water polluted with power plant discharges. Power plants discharge pollutants near approximately 100 public drinking water intakes and more than 1500 public wells across the country, and have contaminated drinking water supplies with arsenic, bromide, and nutrients.<sup>11</sup>

Indefinitely postponing the compliance deadlines for the ELG rule means communities will continue to have their drinking water sources contaminated, raising treatment costs and endangering health, and will continue to be unable to fish or recreate in rivers, lakes, and streams impaired from harmful power plant discharges.

### **Industry's Petition for EPA to Reconsider the 2015 ELG Rule Lacks Merit**

EPA's rationale for indefinitely delaying certain compliance deadlines for the 2015 ELG rule is in response to the power plant industry's request for the agency to reconsider parts of the rule.<sup>12</sup> Industry alleges there are flaws in some of the BAT limitations required under the 2015 ELG rule, but the record does not support this claim. The ELG rule would prevent 1.4 billion pounds of water pollution every year by requiring power plants to install widely available cost effective technologies to treat their wastewater

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<sup>7</sup> *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012).

<sup>8</sup> 80 Fed. Reg. 67840 (Nov. 3, 2015).

<sup>9</sup> *Id.* at 67872.

<sup>10</sup> *Id.* at 67,880-67,881.

<sup>11</sup> *Id.* at 67,840.

<sup>12</sup> 82 Fed. Reg. 26,017 (June 6, 2017).

before discharging it into surface waters.<sup>13</sup> These technologies are affordable and many power plants are already using them. In 2015 EPA found that 44 percent of all plants that discharge FGD wastewater (“scrubber sludge”) use chemical precipitation to reduce concentration of metals and that approximately 10 percent of all plants use biological treatment to reduce nitrogen and selenium concentrations.<sup>14</sup> More than 80 percent of all coal-fired plants built in the last 20 years do not discharge bottom ash wastewater and in 2015 EPA found that more than half of all older plants had already installed zero discharge technologies for this wastestream or had plans to do so.<sup>15</sup> 80 percent of all plants do not discharge fly ash transport water, since all new plants built since 1982 have been prohibited from doing so.<sup>16</sup>

The vast majority of steam electric power plants will incur zero costs to comply with the 2015 ELG rule. In 2015 EPA estimated that overall only about 12 percent of all stream electric plants and 28 percent of coal-fired or petroleum coke-fired plants will incur any cost.<sup>17</sup> It is unreasonable for EPA to delay compliance deadlines for the last few remaining power plants that are grossly behind on upgrading to the best available technology and continue to put public health and the environment at risk because of their uncontrolled pollution.

### **Conclusion**

**Our organizations urge EPA to swiftly withdraw its unreasonable proposal to indefinitely delay certain compliance deadlines for the 2015 ELG rule. Moreover EPA should notify state permitting authorities and power plant utilities of this action to emphasize that the ELG rule is in effect and must be implemented according to the compliance deadlines outlined in the 2015 rule.**

Thank you for considering our concerns.

Respectfully submitted,

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<sup>13</sup> 80 Fed. Reg. 67,838 (Nov. 3, 2015).

<sup>14</sup> *Id.* at 67,850.

<sup>15</sup> *Id.* at 67,852.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 67,842.

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