



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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October 26, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Administrator Wheeler:

As our nation celebrates the 48th anniversary of the Clean Water Act, I write to you, again, with concern about the Trump administration's stewardship of our precious rivers, lakes, streams, and other surface waters. Earlier this fall, the Environmental Protection Agency (EPA) once again took action to weaken one of our nation's most important environmental protection statutes by finalizing regulations that fail to protect our waters from contamination by steam electric power plants, which include both fossil fuel and nuclear electric power plants (hereinafter 2020 Final Rule).

As the Chairs of the House Committee on Transportation and Infrastructure and Subcommittee on Water Resources and Environment, which have primary jurisdiction over the water quality protection of our rivers, lakes, streams, and other surface waters, we are deeply concerned that EPA's 2020 Final Rule¹ will prove ineffective in controlling the outflow of toxic chemicals from coal-fired plants into our local water sources. These plants represent the largest source—30 percent—of industrial toxic pollution discharged into our waters.² These discharges include known carcinogens and neurotoxins, which when unregulated can have significant effects on human health, wildlife, and ecosystems. Your proposal once again shows that the Trump administration prioritizes polluters over people, needlessly endangering our water sources and human life.

The threat of discharges from coal-fired power plants is not anything new. Today, more than 6,000 river miles in the United States are too polluted for safe recreational fishing and an additional 10,000 miles of rivers are unsafe for subsistence fishing³ due to power plant discharges. Wastewater discharges from power plants can include toxic pollutants such as arsenic, boron, lead, mercury, and cadmium. According to EPA's own research,⁴ ingestion of these carcinogens through contaminated fish or drinking water pose serious human health concerns, including forms of cancer and diminished IQ among children. The threats to fish and wildlife include deformities, reproductive

¹ EPA Final Rule on "Steam Electric Reconsideration Rule" EPA-HQ-OW-2009-0819.

² https://www.epa.gov/sites/production/files/2015-10/documents/steam-electric-final-rule-factsheet_10-01-2015.pdf.

³ <https://environmentalintegrity.org/news/epa-to-roll-back-elg-rule/>.

⁴ <https://www.govinfo.gov/content/pkg/FR-2015-11-03/pdf/2015-25663.pdf>.

harm, and decreases in ecosystem diversity. With these risks so well-known, it is hard to understand why the EPA would mandate anything less than the best pollution controls.

Since their inception in 1982, regulations governing steam electric power plant discharges have not been updated, nor have they focused specifically on those most toxic metals. In 2013, the Obama administration began the process of finally addressing these discharges. The 2015 Steam Electric Power Generating Effluent Guidelines Rule⁵ (hereinafter 2015 ELG Rule) was expected to reduce these heavy metals entering our waterways by 1.4 billion pounds a year,⁶ or 90 percent. The EPA projected the monetized benefits of the 2015 ELG Rule to total between \$451 to \$566 million per year.⁷ Analysis also showed that the updated rule would have “minimal impacts on electricity prices and the amount of electricity generating capacity.”⁸

Although the 2015 ELG Rule made strides in setting effluent limitation guidelines on the largest wastewater streams from power plants, the EPA exempted smaller waste streams from technology requirements. The EPA was sued and in 2019, a court confirmed that EPA has a duty to strengthen limits on toxic wastewater, even on the smaller sources of waste streams.

However, rather than address the concerns raised by the court action, the Trump administration once again caved to industry’s wish list, first blocking the implementation of the 2015 ELG Rule and now producing this new rulemaking. Even though a federal court ordered EPA to make the 2015 ELG Rule stronger, it has instead issued a rule that substantially weakens treatment requirements through loopholes and exceptions. The new 2020 Final Rule will only make it easier for toxic water pollution to continue to put communities at risk.

The Trump administration says that the 2020 Final Rule will save \$140 million annually more than the Obama-era rule and will reduce pollution more than the 2015 ELG Rule. The financial savings are only because the less stringent technological requirements cost less money. In addition, EPA’s suggestion that more pollution will be reduced under the 2020 Final Rule is not supported by the record which found few companies would voluntarily participate in the program.⁹

The Clean Water Act requires EPA to ensure that industrial dischargers constantly upgrade their pollution control technology to the highest level economically achievable—a requirement that would have been met with robust implementation of the 2015 ELG Rule. However, the Trump 2020 Final Rule is, instead, a complete giveaway to industry at the expense of human health. The EPA should go back to the drawing board and commit to adequately protecting the public’s health and our environment from toxic coal-fired power plant wastewater pollution. Until then, we will continue to hold the Trump administration and EPA accountable for their blatant disregard for the health and safety of Americans.

To that end, we are requesting answers to the following questions:

⁵ Effluent Limitations Guidelines and Standards for Steam Electric Power Generating Plant Source Category, 80 Fed. Reg. 67,837 (Nov. 3, 2015).

⁶ See https://www.biologicaldiversity.org/news/press_releases/2017/power-plants-09-13-2017.php.

⁷ See https://www.epa.gov/sites/production/files/2015-10/documents/steam-electric-final-rule-factsheet_10-01-2015.pdf.

⁸ Id.

⁹ https://www.epa.gov/sites/production/files/2020-08/documents/steam_electric_elg_2020_final_reconsideration_rule_fact_sheet.pdf.

- 1) The 2015 ELG Rule prohibited power plants from dumping bottom ash wastewater into U.S. waters. Specifically, steam electric power plants were required to use a closed-loop system to flush out accumulated bottom ash in the combustion chambers. That water had to be treated and reused, rather than pulling fresh water from a nearby water source and then discharging the contaminated water back. However, this 2020 Final Rule would allow up to 10 percent of that water to be purged regularly.
 - a. Please identify all of the facilities that, under the terms of the 2015 ELG Rule: (1) would have required structural changes to prohibit the discharge of bottom ash wastewater, or (2) would have required additional action to continue operations; and identify the actions that would have been required. Please also identify any facility that EPA believes could not have come into compliance with the 2015 ELG Rule and may have been required to cease operations, and the specific upgrades or actions that EPA believes would have been necessary to comply with the Rule.
 - b. Please identify how the 2020 Final Rule will affect the activities or timelines for actions for each of the facilities identified in question 1(a).
 - c. Please identify EPA's assessment of the potential changes in the risk to human health and environment under the 2020 Final Rule for each of the facilities identified in questions 1(a) and (b).
- 2) According to the record related to the 2015 ELG Rule, the technology exists to eliminate bottom ash wastewater, and that technology is available and affordable. However, the 2020 Final Rule no longer requires complete elimination of bottom ash wastewater discharges.
 - a. Please provide a copy of any evidence EPA has about the affordability of technology to completely eliminate discharges of bottom ash wastewater since the promulgation of the 2015 ELG Rule; and
 - b. Please provide a copy of any evidence EPA has about the availability of technology to completely eliminate discharges of bottom ash wastewater since the promulgation of the 2015 ELG Rule.
- 3) The 2015 ELG Rule imposed stringent limits on toxic metals and other pollutants in scrubber sludge discharges (known as "Flue Gas Desulfurization" or "FGD" wastewater). While smokestack scrubbers have been effective at controlling toxins from getting into the air, these toxic chemicals are often transferred to process wastewater associated with the facility. When the 2015 ELG Rule was promulgated, many utilities were using chemical treatments to clean the FGD wastewater, but the 2015 Rule required more advanced biological treatment or evaporation and filtration systems. However, the 2020 Final Rule weakened these requirements and provided new loopholes for power plants that would allow them to continue discharging toxic pollution with minimal treatment.
 - a. Please identify all of the facilities that, under the terms of the 2015 ELG Rule: (1) would have required structural changes to meet the new wastewater treatment standards, or (2) would have required additional action to continue operations; and identify the actions that would have been required. Please also identify any facility that EPA believes could not have come into compliance with the wastewater treatment standards of the 2015 ELG Rule and may have been required to cease operations, and the specific upgrades or actions that EPA believes would have been necessary to comply with the Rule.
 - b. Please identify how the 2020 Final Rule will affect the activities or timelines for actions for each of the facilities identified in question 3(a).

- c. Please identify EPA's assessment of the potential changes in the risk to human health and environment under the 2020 Final Rule for each of the facilities identified in questions 3(a) and (b).
- 4) The 2020 Final Rule establishes a voluntary incentives program which would allow covered facilities to extend compliance deadlines if they include changes to achieve more stringent limitations. The EPA estimates a reduction in pollutant discharges of 26.7 million pounds per year through participation in this voluntary program; however, at the time the 2020 Final Rule was published, EPA estimated that only eight plants are likely to opt in.
- a. Please identify all of the facilities that are expected to participate in this program and contribute to EPA's estimate in discharge reductions.
 - b. Please identify all of the facilities that, under the terms of the 2020 Final Rule, have already implemented adequate technology to adopt the more stringent limitations under this voluntary program.
 - c. Please provide a copy of any evidence the EPA has about the availability and affordability of technology adequate to adopt the more stringent limitations that allowed EPA to estimate participation in the voluntary program beyond the eight plants identified.

Please respond to these questions by December 15, 2020. If you have any questions, please do not hesitate to contact _____ at _____.

Sincerely,



PETER A. DEFazio
Chair



GRACE F. NAPOLITANO
Chair
Subcommittee on Water Resources and
Environment