



January 21, 2020

VIA ELECTRONIC SUBMISSION

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, Docket ID No. EPA-HQ-OW-2009-0819, 84 Fed. Reg. 64620 (November 22, 2019)

Dear Administrator Wheeler:

The U.S. Small Business Administration's Office of Advocacy (Advocacy) submits the following comments in response to the Environmental Protection Agency (EPA) proposed rule, "Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category."¹ This proposed rule, in part, is a response to Advocacy's petition for reconsideration of EPA's November 2015 rule establishing new effluent limitation guidelines (ELGs) for this industry. Advocacy supports EPA's rulemaking and recognizes that this proposed rule includes significant reductions in the costs imposed on small entities while maintaining much of the environmental benefit of the original rule. Advocacy recommends EPA consider additional alternatives to relieve regulatory burdens that do not provide a cost-effective environmental benefit.

The Office of Advocacy

Congress established Advocacy under Pub. L. 94-305 to represent the views of small entities before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA); as such the views expressed by Advocacy do not necessarily

¹ 84 Fed. Reg. 64620 (November 22, 2019), Docket ID No. EPA-HQ-OW-2009-0819.



reflect the views of the SBA or the Administration. The Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the *Federal Register*, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵ Advocacy's comments are consistent with Congressional intent underlying the RFA, that "[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public."⁶

Background

In November 2015, EPA published the Steam Electric Power ELG, which imposed new technology-based standards to control wastewater from power plants that use fossil fuels and nuclear power plants.⁷ The Utility Water Act Group (UWAG) submitted a petition for reconsideration of the rule in March 2017,⁸ and Advocacy filed comments in support of the UWAG petition and raised additional concerns about the consideration of small business impacts.⁹ A few days later, the EPA Administrator announced his decision to reconsider the rule, and the rule never took effect.

This proposed rule, published in November 2019, is the result of that reconsideration. EPA has responded directly to a significant portion of the comments and recommendations on the 2015 rule, including adding a new subcategory for low-utilization electricity generating units and one for units that will be retired in the near future.

² 5 U.S.C. §601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL. 111-240) §1601.

⁵ *Id.*

⁶ 5 U.S.C. § 601 note 7.

⁷ 80 Fed. Reg. 67838 (November 3, 2015).

⁸ *Petition for Reconsideration of EPA's Effluent Limitation Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, (March 25, 2017), available at regulations.gov, Document ID EPA-HQ-OW-20009-0819-6478.

⁹ *SBA Petition for Reconsideration of EPA's Steam Electric ELGs – DCN SE06611*, (April 5, 2017) available at regulations.gov, Document ID EPA-HQ-OW-2009-0819-6481.

Advocacy Comments

EPA should be evaluating cost-effectiveness of ELGs consistently.

Overall, Advocacy believes that EPA should be more cognizant of the cost-effectiveness of its proposed requirements and consider the cost-effectiveness on a unit-by-unit basis rather than based on industry averages. As Advocacy wrote in its 2017 petition:

EPA historically has measured the environmental benefits of ELG rules in terms of the quantities and relative toxicities of the pollutants to be removed, known as toxic-weighted pound equivalents (TWPEs). The TWPE metric is used to measure the benefits of pollutant removals to the public. The agency has used this metric over several decades in determining whether the rule is achieving cost-effective pollutant reductions. ELGs typically cost less than \$100/TWPE [in dollars inflation-adjusted back to 1981]. Rules well in excess of this benchmark were determined to be not cost-effective and not Best Available Technology (BAT).¹⁰ [Footnotes omitted]

Based on calculations available in the record,¹¹ it appears the EPA's proposal still would require the adoption of control technologies that are not cost-effective. This kind of requirement is especially harmful to the small entities operating coal-fired power plants. This segment of the electricity market has been declining over the last decade, a result of market forces (i.e., the decline in the price of natural gas and financial incentives for investments in renewables) and environmental regulations (i.e., the Mercury and Air Toxics rule, rules on coal combustion residue, and state-level greenhouse gas initiatives) that have decreased the competitiveness of coal when compared to natural gas and renewables.¹² As a result, utilization rates have been falling, and units that were once providing constant power to the grid are now called upon to provide power at peak demand or respond to the reliability needs of the electricity grid. With decreased utilization also comes a smaller environmental footprint. EPA should therefore avoid requirements that impose additional burden on these lesser utilized units without a case-by-case evaluation of whether it will result in the expected magnitude of environmental benefits.

In particular, EPA should be closely examining the TWPE metric for the following requirements.

- **Low-Utilization Thresholds:** For at least three units operated by small entities that exceed a net generation of 876,000 MWh, the proposed controls for bottom ash wastewater exceed \$10,000/TWPE. APPA recommends a higher threshold of 1,314,000 MWh. Advocacy recommends that EPA also consider a threshold of 1,710,000 to provide additional relief to small entities.
- **Chemical Precipitation:** EPA proposes to require chemical precipitation (CP) to treat wastewater from flue gas desulphurization (FGD), an air emissions control device, for

¹⁰ *Id.* at 6-7.

¹¹ See American Public Power Association public comments on *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category* (January 21, 2020), at Appendix, available at [regulations.gov](https://www.regulations.gov) Docket ID EPA-HQ-OW-2009-0819..

¹² See ERG (Eastern Research Group, Inc.), *Memorandum re: Changes to Industry Profile for Coal-Fired Generating Units for the Steam Electric Effluent Guidelines Proposed Rule – DCN SE07207*, July 31, 2019, at Table 5, available at [regulations.gov](https://www.regulations.gov) Document ID EPA-HQ-OW-2009-0819-7373.

units below the low-utilization threshold. For some units, including several operated by small coops or small municipalities, this requirement is very expensive for the environmental benefit it accrues. EPA should reconsider the requirement for CP or consider alternative criteria to ensure that it is required only where cost-effective.

- **Low Hydraulic Residence Time Reduction Biological Treatment:** EPA proposes BAT for units that exceed a net generation of 876,000 MWh based on treatment of FGD wastewater including a relatively new technique, low hydraulic residence time biological treatment (LRTR). To demonstrate the effectiveness of this technology, EPA relies on data from pilot studies and statistical analysis that excluded data that may reflect normal operating conditions.^{13,14} Pilot tests do not necessarily represent commercial full-scale operation or the operating cycle of many coal-fired power plants. For this reason, EPA may be overstating the cost-effectiveness of this technology. EPA should reconsider whether it has the necessary data to establish effluent limits based on this technology operating in real world conditions.

EPA has not cured the 2015 rule's noncompliance with the Regulatory Flexibility Act.

Although EPA supports the policies of this proposed rule, Advocacy notes that this reconsideration has not cured the problems Advocacy identified in comments on the proposed rule¹⁵ and in support of the UWAG petition.¹⁶ For this proposed rule, EPA treats the 2015 rule as a baseline, considering only the impacts of the changes from the final rule, which never took effect, and not showing the overall impact in the absence of this single extended rulemaking. By conducting its analysis of small entity impacts in this manner, it leaves the original 2015 rule incomplete. The appropriate course of action would have been to re-propose not just changes to the 2015 rule but the 2015 rule in its entirety, as Advocacy recommended in 2017.

Conclusions

Advocacy commends the work EPA has done in this reconsideration of the 2015 steam electric rule. Advocacy is concerned that EPA should be paying more attention to the cost-effectiveness of its proposed requirements and that EPA has still not complied fully with the RFA. However, we appreciate the work done to reduce impacts of these regulations on small entities. We look forward to working with EPA to consider additional alternatives that will further achieve environmental regulatory goals while further reducing the impacts on a segment of the economy already waning after a decade of unprecedented challenges.

¹³ *Supplemental Technical Development Document for Proposed Revisions to the Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category - DCN SE07101*, November, 2019, pp. 8-12, available at regulations.gov Document ID EPA-HQ-OW-2009-0819-8211

¹⁴ *Supplemental Statistical Support Document: Effluent Limitations for Proposed Steam Electric Power Generating Effluent Limitations Guidelines and Standards - DCN SE08055*, September 2019, p. 5, available at regulations.gov Document ID EPA-HQ-OW-2009-0819-8193.

¹⁵ Letter from Chief Counsel Winslow Sargeant "Re: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, Docket ID No. EPA-HQ-OW-2009-0819, 78 Fed. Reg. 34432 (June 7, 2013)", September 19, 2012, available at regulations.gov Document ID EPA-HQ-OW-2009-0819-4477.

¹⁶ *Supra* note 8.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Dave Rostker at (202) 205-6966 or by email at david.rostker@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Acting Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

David Rostker
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Paul Ray
 Administrator
 Office of Information and Regulatory Affairs
 Office of Management and Budget