Message

From: Joseph, Dominique [Joseph.Dominique@epa.gov]
Sent: 9/20/2021 9:07:09 PM
To: Mike Tony [mtony@hdmediallc.com]
CC: Sullivan, Melissa [sullivan.melissa@epa.gov]; EPA Press Office [Press@epa.gov]
Subject: RE: Media Inquiry: ELG Rule Compliance Questions

Got it. Thanks, Mike! We'll get back to you asap.

Dominique Joseph (she/her/hers)
Senior Communications Advisor
U.S. Environmental Protection Agency
joseph.dominique@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Monday, September 20, 2021 5:03 PM
To: Joseph, Dominique <Joseph.Dominique@epa.gov>
Cc: Sullivan, Melissa <sullivan.melissa@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Hi Dominique,

We're running a story tomorrow that I'm about to file for which this information would be helpful, but since that is such a quick turnaround, I will take a response as soon as you can provide it since I'll be working on follow-up stories to run later this week on this. Thanks very much.

Best,
Mike

From: Joseph, Dominique <Joseph.Dominique@epa.gov>
Sent: Monday, September 20, 2021 4:58 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: Sullivan, Melissa <sullivan.melissa@epa.gov>; EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Hi Mike,

Melissa's out, so I'll check on this for you. What's your deadline?

Dominique

From: Mike Tony <mtony@hdmediallc.com>
Sent: Monday, September 20, 2021 2:58 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Hi Melissa,

I wanted to circle back to this and see if could specify or direct me to what transfer provisions would be required under Section 423.13(o). Thanks very much again.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Wednesday, September 15, 2021 1:43 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Good afternoon Mike,

Please see our response below.

Question:
Does EPA know (or would DEP know) whether Appalachian Power and Wheeling Power properly incorporated transfer provisions under Section 423.13(o) to be able to transfer out of the permanent cessation of coal combustion subcategory at a later date?

Response:
Please reach out to WV DEP.

Question:
Can EPA confirm that Appalachian Power and Wheeling Power submitted requests to extend the CCR rule deadline?

Response:
Applications for deadline extensions were submitted to EPA for the following facilities:

- John Amos, St Albans, WV (American Electric Power, or Appalachian Power)
- Mitchell, Captina, WV (American Electric Power, or Appalachian Power)
- Mountaineer, New Haven, WV (American Electric Power, or Appalachian Power)

Thank you,
Melissa

On Sep 14, 2021, at 4:42 PM, Mike Tony <mtony@hdmediallc.com> wrote:

Thank you for the update and for your continued help. I really appreciate it.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Tuesday, September 14, 2021 4:35 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Mike,

Your follow-ups require coordination between multiple offices.

We hope to have something for you tomorrow.

Thank you for your continued patience.

Melissa

> On Sep 14, 2021, at 12:18 PM, Mike Tony <mtony@hdmediallc.com> wrote:
>
> Good afternoon, Melissa. Thank you for the helpful responses. Following up, does EPA know (or would DEP know) whether Appalachian Power and Wheeling Power properly incorporated transfer provisions under Section 423.13(o) to be able to transfer out of the permanent cessation of coal combustion subcategory at a later date? Also, can EPA confirm that Appalachian Power and Wheeling Power submitted requests to extend the CCR rule deadline? Thanks very much again for any additional insight you can provide.
>
> Best,
> Mike
>
> ---
>
> **From:** Sullivan, Melissa <sullivan.melissa@epa.gov>
> **Sent:** Tuesday, September 14, 2021 12:02 PM
> **To:** Mike Tony <mtony@hdmediallc.com>
> **Cc:** EPA Press Office <Press@epa.gov>
> **Subject:** Re: Media Inquiry: ELG Rule Compliance Questions

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Good afternoon Mike,

Thank you for your patience. Please see our response below.

1. The utilities say that there is an Oct. 13 deadline for them to notify the West Virginia Department of Environmental Protection whether they intend to retire the plants to comply with the ELG rule. Is that true, and if so, can that deadline be extended? **EPA RESPONSE: The current ELG requires that facilities intending to participate in the subcategory for permanent cessation of coal combustion must file a notice of planned participation with their permitting authority (in this case, WVDEP) no later than October 13, 2021. Nothing in the rule provides for an extension of this deadline and EPA has no intent to revise this requirement via rulemaking over the next month. However, a facility who had properly incorporated transfer provisions under Section 423.13(o) may be able to transfer out of the permanent cessation of coal combustion subcategory at a later date pursuant to those provisions.**
2. If the Companies later decide not to complete ELG compliance improvements for some units, will they be required to cease coal operations at those units by each unit's ELG compliance deadline (June 30, 2023 for Mitchell, Dec. 31, 2022 for Amos and June 1, 2022 for Mountaineer)? **EPA RESPONSE: If the permitting authority (in this case, WVDEP) has determined a "no later than" date under 423.11(t), then a facility must comply with limitations by this date either through changes in operations, installation of additional pollution control technology, or cessation of discharge (e.g., by ceasing operations).**
3. Is it true, as the utilities report, that the EPA has tolled an April 11, 2021 deadline date to begin closing bottom ash ponds at the three coal-fired power plants (the Amos, Mitchell and Mountaineer facilities) pending its decision on the extension requests and has not issued a decision regarding their requests to extend the CCR rule deadline? (pages 20 and 21 here) EPA continues to evaluate the requests facilities submitted for extensions to the April 11, 2021 deadline of when unlined coal combustion residual (CCR) surface impoundments must stop receiving waste. EPA is carefully reviewing the requests and will be making thoughtful decisions on them. Until final determinations are made, the deadline to stop placing waste into unlined CCR surface impoundments is paused for the facilities that have submitted extension requests. The deadline pause only applies to the surface impoundments for which a facility submitted an extension request.

Thank you,
Melissa

On Sep 14, 2021, at 9:53 AM, Mike Tony <mtony@hdmediallc.com> wrote:

Thank you for the update. If it's helpful, highlighted below are passages that appear to indicate that a company may tell EPA it is retiring units without losing the option of later going back and saying that it will conduct the required retrofits:

40 CFR § 423.19(f):

(f) Requirements for units that will achieve permanent cessation of coal combustion by December 31, 2028.

(1) Notice of Planned Participation. For sources seeking to qualify as an electric generating unit that will achieve permanent cessation of coal combustion by December 31, 2028, under this part, a Notice of Planned Participation shall be made to the permitting authority, or to the control authority in the case of an indirect discharger, no later than October 13, 2021.

40 CFR § 423.13(o): provides the option to transfer from the retirement exemption to being regulated under the regular ELG rule or to limitations that apply to "*low utilization electric generating units*," until December 31, 2023 or December 31, 2025. See below and 423.13(g)(2) && 423.13(k)(2)

But if the company instead moves forward with being regulated under the "more stringent limitations of the ELG rule" now, it "must continue to meet those more stringent limitations."

(o)(1) Transfer between applicable limitations in a permit. Where, in the permit, the permitting authority has included alternative limits subject to eligibility requirements, upon timely notification to the permitting authority under § 423.19(i), a facility can become subject to the alternative limits under the following circumstances:

> *(i) On or before December 31, 2023 a facility may convert:*
>
> > *(A) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section; or*
> >
> > *(B) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section or generally*

applicable limitations under paragraph (k)(1)(i) of this section to limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section.

(ii) On or before December 31, 2025 a facility may convert

(A) From voluntary incentives program limitations under paragraph (g)(3)(i) of this section to limitations for electric generating units permanently ceasing coal combustion under paragraph (g)(2)(i) of this section; or

(B) From limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) or (k)(2)(ii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under (k)(1)(i) of this section; or

(C) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to generally applicable limitations under paragraphs (g)(1)(i) or (k)(1)(i) of this section; or

(D) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to voluntary incentives program limitations under paragraphs (g)(3)(i) of this section or generally applicable limitations under paragraph (k)(1)(i) of this section; or

(E) From limitations for low utilization electric generating units under paragraphs (g)(2)(iii) or (k)(2)(iii) of this section to limitations for electric generating units permanently ceasing coal combustion under paragraphs (g)(2)(i) and (k)(2)(ii) of this section.

(2) A facility must be in compliance with all of its currently applicable requirements to be eligible to file a notice under § 423.19(i) and to become subject to a different set of applicable requirements under paragraph (o)(1) of this section.

(3) Where a facility seeking a transfer under paragraph (o)(1)(ii) of this section is currently subject to more stringent limitations than the limitations being sought, the facility must continue to meet those more stringent limitations.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Tuesday, September 14, 2021 8:42 AM
To: Mike Tony <mtony@hdmediallc.com>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Good morning Mike,

We have not forgotten about you.

Hope to have something for you soon.

Thank you,
Melissa

On Sep 14, 2021, at 6:03 AM, Mike Tony <mtony@hdmediallc.com> wrote:

Hi Melissa,

I just wanted to follow up on this.

Thanks,
Mike

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 3:56 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Sure thing. Thanks again in advance.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 3:54 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: RE: Media Inquiry: ELG Rule Compliance Questions

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Thank you for your flexibility and patience. I will be in touch on Monday.

Melissa A. Sullivan (She/Her/Hers)
Office of Public Affairs
U.S. Environmental Protection Agency
202 913 3840
Sullivan.Melissa@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 3:52 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Hi Melissa,

Yes, I can extend to Monday. Thank you again.

Best,
Mike

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 3:48 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: RE: Media Inquiry: ELG Rule Compliance Questions

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Good afternoon Mike,

We continue to work on this for you.

In order to be as responsive as possible, we require more time.

Are you able to extend to Monday?

Thank you,

Melissa

Melissa A. Sullivan (She/Her/Hers)
Office of Public Affairs
U.S. Environmental Protection Agency
202 913 3840
Sullivan.Melissa@epa.gov

From: Mike Tony <mtony@hdmediallc.com>
Sent: Friday, September 10, 2021 11:48 AM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

Thank you, Melissa. I appreciate it.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Friday, September 10, 2021 8:26 AM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

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Thank you, Mike.

We will do our best to meet your deadline.

> On Sep 9, 2021, at 6:34 PM, Mike Tony <mtony@hdmediallc.com> wrote:
>
> Would you be able to provide responses to my questions by tomorrow at 3 p.m.? Thank you again.
>
> **From:** Mike Tony <mtony@hdmediallc.com>
> **Sent:** Thursday, September 9, 2021 5:35 PM
> **To:** Sullivan, Melissa <sullivan.melissa@epa.gov>
> **Cc:** EPA Press Office <Press@epa.gov>

Subject: Re: Media Inquiry: ELG Rule Compliance Questions

What's in question here, for further clarity, is the argument that under the ELG rule, American Electric Power subsidiaries could submit a NOPP in October but later decide not to take advantage of the early retirement option and instead make ELG retrofits and continue operating power plants past 2028. The statute in question seems to be 40 C.F.R. § 423.13(o)(1)(i)(A), (o)(1)(ii)(B). Thank you again for any insight you can provide.

From: Mike Tony <mtony@hdmediallc.com>
Sent: Thursday, September 9, 2021 5:28 PM
To: Sullivan, Melissa <sullivan.melissa@epa.gov>
Cc: EPA Press Office <Press@epa.gov>
Subject: Re: Media Inquiry: ELG Rule Compliance Questions

I will be filing this story shortly, but I would still be grateful for any response that you can provide whenever you can provide it. Thank you again.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>
Sent: Thursday, September 9, 2021 5:19 PM
To: Mike Tony <mtony@hdmediallc.com>
Cc: EPA Press Office <Press@epa.gov>
Subject: Media Inquiry: ELG Rule Compliance Questions

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Good afternoon Mike,

We at HQ received your inquiry from our colleagues.

We are checking on your questions.

Is an extension is possible?

Thank you,
Melissa

From: Mike Tony <mtony@hdmediallc.com>
Sent: Thursday, September 09, 2021 12:34 AM
To: White, Terri-A <White.Terri-A@epa.gov>; Seneca, Roy <Seneca.Roy@epa.gov>; Sternberg, David <Sternberg.David@epa.gov>
Subject: ELG Rule Compliance Questions

Hope you're doing well. I'm working on a story on the Appalachian Power and Wheeling Power electric utilities requesting that the West Virginia Public Service Commission reopen a case in which they're seeking approval for implementation of and cost recovery for compliance with the EPA's coal combustion residual and effluent limitation guidelines at three different in-

state coal-fired power plants. I have the following questions that I was hoping you could provide responses for by my deadline of 3:30 p.m. today. Thank you very much regardless.

1. The utilities say that there is an Oct. 13 deadline for them to notify the West Virginia Department of Environmental Protection whether they intend to retire the plants to comply with the ELG rule. Is that true, and if so, can that deadline be extended?

2. If the Companies later decide not to complete ELG compliance improvements for some units, will they be required to cease coal operations at those units by each unit's ELG

compliance deadline (June 30, 2023 for Mitchell, Dec. 31, 2022 for Amos and June 1, 2022 for Mountaineer)?

3. Is it true, as the utilities report, that the EPA has tolled an April 11, 2021 deadline date to begin closing bottom ash ponds at the three coal-fired power plants (the Amos, Mitchell and Mountaineer facilities) pending its decision on the extension requests and has not issued a decision regarding their requests to extend the CCR rule deadline? (pages 20 and 21 here)

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