To: Dain, Gregory[Dain.Greg@epa.gov]; Stein, Mark[Stein.Mark@epa.gov]
Cc: Houlihan, Damien[houlihan.damien@epa.gov]
From: Webster, David
Sent: Fri 8/23/2013 7:40:00 PM
Subject: RE: EPA Likely To Drop Strictest Power Plant ELG Option Sought By Advocate

Thanks.
Note: " Environmentalists have criticized three of the options that the White House Office of Management & Budget (OMB) added after EPA submitted its draft, according to a red-line version of the proposal posted to the docket." Who says there is a lack of transparency in government.

-----Original Message-----
From: Dain, Gregory
Sent: Friday, August 23, 2013 3:22 PM
To: Stein, Mark; Webster, David
Subject: EPA Likely To Drop Strictest Power Plant ELG Option Sought By Advocate

Daily News
EPA Likely To Drop Strictest Power Plant ELG Option Sought By Advocates
Posted: August 23, 2013
EPA says it is unlikely to move forward with the most stringent of its proposals for governing power plant discharges as part of its effluent limitation guidelines (ELG), arguing that portions of that standard may be too costly and could violate the Clean Water Act's (CWA) requirement that such rules be economically achievable.

However, the agency's stance is irking environmentalists, who are renewing their calls for EPA to move forward with either of the two most stringent options, known as options 4 and 5, and reiterating their arguments that they will sue if the agency finalizes a weaker standard. They are opening themselves up to a lawsuit if they adopt one of these weaker options, says one environmentalist attorney.

During an Aug. 20 webinar summarizing provisions of the ELG, Ron Jordan, an official in EPA's Office of Water, said that officials did not list option 5 among the agency's preferred options because of the high total cost of the rule and actually some potential concerns about economic achieve-ability, especially concerning the proposal's provisions for flue gas desulferization (FGD) waste.

I don't think we reached the conclusion that it was not economically achievable, but certainly at time of proposal we came to the conclusion that it looked like this did not represent [best available technology (BAT)], which again is a national standard.

However, the environmental attorney says that the CWA requirements call for multiple factors to be weighed when setting a BAT standard, of which economic feasibility is joined by technological feasibility, cost to the industry as a whole and a slew of other considerations.

Option 5 is BAT, the source says, noting that the technologies are already employed at some plants and that EPA's own review found that moving forward with the stringent requirements would only result in costs to 277 plants, less than 30 percent of facilities. I don t think that the facts suggest that option 5 should be dismissed just because there are concerns that its more expensive than the other options.

In particular, the source says, the statute expressly says that if the technology is available then the ELG will require the elimination of discharges. If that technology is feasible both from a technological and economic standpoint, that s what the standard should be.

Moving forward with anything less would open the rule up to a legal challenge, the source adds.

EPA issued the proposed ELG, which updates standards that were issued in 1982, on April 19.

The measure sets technology standards for limiting liquid discharges from coal and other power plants. Environmentalists say the ELG, together with a pending Resource Conservation and Recovery Act (RCRA) rule regulating coal ash, are needed to curtail releases that have become increasingly toxic due to stricter emissions controls required by EPA's Clean Air Act rules.

While EPA is seeking to coordinate the ELG with the pending RCRA rule, industry officials fear the rule's costs could be prohibitive. Many electricity generators are increasingly concerned that the water and waste rules will impose a new set of regulatory requirements just as they are beginning to implement the agency's recently released air rules.

Under the terms of an agreement with environmentalists, EPA is required to issue a final rule next May. The agency is accepting comments on the proposal until Sept. 20.

Eight Options

The proposed rule includes eight possible technology-based alternatives, with four designated as preferred options, for reducing the discharge to water as required by the CWA of contaminants from wastewater from FGD units, fly ash transport water, combustion residual leachate, flue gas mercury control (FGMC) systems waste water, Gasificiation wastewater and nonchemical metal cleaning wastes -- all of which are recent technologies designed to reduce the presence of contaminants in air emissions.

As part of the rule, EPA has recognized about 34 contaminants, mainly heavy metals, that it is seeking to limit from six waste streams that stem from coal combustion residuals (CCRs). The options vary based on how each of six waste streams are treated, the generating capacity of the units controlled and stringency of the treatment options.

Environmentalists have criticized three of the options that the White House Office of Management & Budget (OMB) added after EPA submitted its draft, according to a red-line version of the proposal posted to the docket.

Two of those options contain exemptions for smaller plants, and OMB also changed the agency's preferred options to favor weaker requirements, such as continued use of wet storage impoundments that environmentalists say allow toxic metals to seep into groundwater.

Environmental groups have already threatened publicly to take action should EPA less-stringent options. During a July 23 conference call, Robert Kennedy Jr., president of Waterkeeper Alliance, promised his group would definitely sue if the agency selects one of the weaker standards.

And Eric Schaeffer, executive director of the Environmental Integrity Project (EIP), called such litigation a no-brainer.

However, EPA's Jordan defended the agency's preferred options, saying in a presentation they would likely not cause any plants to close and that only 19 percent of power plants, or 200 facilities, would incur compliance costs under the most stringent of the preferred options, option 4a.

On the lower end of the preferred standards, option 3, only 66 facilities would incur compliance costs, Jordan said.

And 66 would be obviously a much smaller percentage, Jordan said. I would also mention that we actually evaluated eight regulatory options there and the most stringent one . . . we ended up with a number of 277. That was the largest number of facilities we estimated would incur compliance costs.

Overall, EPA estimates that the rule will cost between $185 million and $954 million per year and will have monetized benefits of $139 million to $483 million per year, depending on the preferred options. However, Jordan said, the benefits do not include things difficult to monetize, including down stream human health impacts beyond 10 kilometers from the facility, non-IQ impacts of mercury and lead on

children, cancers due to arsenic exposures and effects of reducing other pollutants. EPA can move forward with any of the eight options, but is likely to choose one of the preferred standards. -- Jenny Hopkinson (jhopkinson@iwpnews.comThis e-mail address is being protected from spambots. You need JavaScript enabled to view it)

Greg Dain
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square
Boston, Massachusetts 02109
tel. 617-918-1884
facsimile. 617-918-0884

ÿ