

**TO:** ICAC Members  
**FR:** ICAC Staff  
**RE:** Steam Electric Effluent Limitation Guidelines Status and Compliance Timelines

---

## Introduction

The following memorandum contains a brief summary of the implementation status of The Effluent Limitation Guidelines for the Steam Electric Power Generating Point Source Category. The Steam Electric ELG was finalized in 2015, under the Obama Administration but implementation of key parts of the rule, as described more fully below, have been delayed by the Trump Administration.

## The 2015 Rule

### Overview

On November 3, 2015, the EPA published a final rule updating and amending the Effluent Limitation Guidelines for the Steam Electric Power Generating Point Source category. (Steam Electric ELG or ELG). 80 Fed. Reg. 67838 (November 3, 2015).

### Standards Applicable to Specific Waste Streams

The updated Steam Electric ELG set forth limitations and standards on the following waste streams at steam electric power plants:

1. FGD wastewater
2. Bottom Ash Transport Water
3. Fly Ash Transport Water
4. Flue Gas Mercury Control Wastewater
5. Gasification Wastewater
6. Combustion Residual Leachate

The rule contained standards for direct and indirect dischargers and new and existing sources. New and existing direct dischargers are subject to Best Available Technology Economically Achievable standards (BAT) and indirect dischargers to a publicly owned treatment plant are subject to Pretreatment Standards for New Sources (PSNS) and Pretreatment Standards for Existing Sources (PSES).

These standards can be summarized as follows:

---

Standards			
Waste Stream	BAT	PSNS	PSES
Bottom Ash Transport Water	Zero discharge limitation based on dry handling or closed-loop system.	If to Pretreatment TSS, oil and grease	No Discharge If to Pretreatment: Limits for As, Hg, Se, and N.
FGD Wastewater	Limits on As, Hg, Se, and N based on chemical precipitation plus biological treatment.	If to Pretreatment: TTS, oil and grease	If to Pretreatment: Limits for As, Hg, Se, and N.

Fly Ash Transport Water	A zero discharge limitation based on dry handling.	No Discharge	No Discharge
Flue Gas Mercury Control Wastewater	A zero discharge limitation based on dry handling.	TSS, oil and grease	No Discharge If to Pretreatment: Limits for As, Hg, Se, and N.
Gasification Wastewater	Limitations on As, Hg, Se, and TDS based on evaporation.	TSS, oil and grease	Limits for As, Hg, Se, and TDS.
Combustion Residual Leachate	Limitation on TSS.	TSS, oil and grease	Limits for As and Hg.

### Timing for Compliance

Under the rule, BAT limits for direct dischargers for new and existing sources apply when implemented in a National Pollution Discharge Elimination System (NPDES) permit issued to a direct discharger. For the waste streams listed above, the rule authorized permitting authorities to determine a date when the new effluent limitation guidelines apply to any given discharger. The date was required to be “as soon as possible beginning November 1, 2018, but not later than December 31, 2023.

For indirect dischargers to a POTW, section 307 of the Clean Water Act requires that all standards must be applicable on a date “not to exceed three years from the date of promulgation.” Thus, the pretreatment standards for both new and existing sources (PSNS and PSES) became applicable under the rule on November 1, 2018.

### Litigation History

EPA received seven petitions for review of the 2015 Rule. The U.S Panel on Multi-District Litigation issued an order on December 8, 2015, consolidating all of the petitions in the U.S. Court of Appeals for the Fifth Circuit, *Southwestern Electric Power Co., et al. v. EPA*, No. 15 – 60821.

Two petitions for reconsideration were filed. On March 24, 2017, the Utility Water Act Group (UWAG) submitted a petition for reconsideration and requested that EPA suspend the Rule’s approaching deadlines. On April 5, 2017, the Small Business Administration (SBA) Office of Advocacy sent EPA a second petition for reconsideration.

On April 12, 2017, the Administrator announced his decision to reconsider the 2015 Rule in response to the petitions for reconsideration.

On April 14, 2017, EPA requested that the Fifth Circuit hold the case in abeyance while the Agency undertook reconsideration.

On April 24, 2017, the Fifth Circuit granted the motion and placed the case in abeyance.

On August 14, 2017, EPA filed a motion to govern further proceedings in the Fifth Circuit, which explained that EPA intended to conduct further rulemaking related to the FGD wastewater and bottom ash transport water requirements and requested, in part, that the Court sever and hold in abeyance all judicial proceedings concerning portions of the 2015 ELG related to those particular requirements.

On August 22, 2017, the Court granted EPA’s motion to hold the cases in abeyance for issues related to FGD wastewater and bottom ash transport water.

#### EPA Process for Postponement of Compliance Dates

In light of the Petitions for Reconsideration, EPA proposed to postpone the compliance dates for the new, more stringent, BAT effluent limitations and PSES in the 2015 Rule. (82 Fed. Reg. 26017 (June 6, 2017)). EPA explained that this postponement would preserve the regulatory status quo and that postponement of compliance dates was intended to prevent the unnecessary expenditure of resources until EPA finalizes any reconsideration rulemaking. EPA also solicited comment on whether this postponement should be for a specified period of time, for example, two years.

On August 11, 2017, EPA sent a second letter to those who had requested reconsideration of the 2015 Rule, announcing the Administrator’s decision to conduct a new rule making to potentially revise the new, more stringent, BAT limitations and PSES in the 2015 Rule that apply to two waste streams; FGD wastewater and bottom ash transport water.

On September 18, 2017, EPA finalized a rule postponing direct discharge requirements for FGD wastewater and bottom ash transport water. EPA left implementation timelines for all other waste streams unchanged.

#### Current Compliance Timelines

As a result of the final rule postponing the standards for FGD wastewater and bottom ash transport water, the deadlines for compliance are summarized as follows. In essence, the standards for FGD wastewater and bottom ash transport water have been delayed for two years.

---

Compliance Dates		
Waste Stream	PSES/PSNS	BAT
Bottom Ash Transport Waste	November 1, 2020	ASAP after November 1, 2020 and before December 31, 2023
FGD Wastewater	November 1, 2020	ASAP after November 1, 2020 and before December 31, 2023
Fly Ash Transport Water	November 1, 2018	ASAP after November 1, 2018 and before December 31, 2023
Flue Gas Mercury Control Wastewater	November 1, 2018	ASAP after November 1, 2018 and before December 31, 2023
Gasification Wastewater	November 1, 2018	ASAP after November 1, 2018 and before December 31, 2023
Combustion Residual Leachate	November 1, 2018	ASAP after November 1, 2018 and before December 31, 2023

#### Conclusion

In summary, EPA is postponing the earliest compliance dates for the new, more stringent, BAT effluent limitations and PSES for FGD wastewater and bottom ash transport water for a period of two years (November 1, 2020). Compliance dates for all other waste streams have remained unchanged and direct dischargers are expected to adhere to the November 1, 2018 and December 31, 2023 deadlines.