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Via Electronic Mail

Mr. Carey A. Johnston
Water Docket, Environmental Protection Agency
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Attention: Docket ID No. EPA-HQ-OW-2008-0157

RE: Comments on EPA's 2009 Annual Review of Effluent Limitations Guidelines and Preliminary 2010 Effluent Guidelines Program Plan

Dear Mr. Johnston:

Thank you for the opportunity to comment on EPA's 2009 annual review of the effluent limitation guidelines (ELGs) and the preliminary 2010 Effluent Guidelines Program Plan. We respectfully submit these comments on behalf of the Environmental Integrity Project, Defenders of Wildlife, Earthjustice, and the Sierra Club.

We agree with EPA that revising the existing ELGs and effluent limits for the Steam Electric Power Generating (Steam Electric) industry is warranted. 74 Fed. Reg. 68,599, 68,606 (Dec. 28, 2009). We are hopeful that the agency will act quickly to establish critically needed and long overdue ELGs and effluent limits for the Steam Electric industry. Although this industry is one of the largest dischargers of toxic pollutants such as arsenic, cadmium, selenium, hexavalent chromium, lead, copper, aluminum, mercury, manganese, zinc, nickel, and others, the existing ELGs and effluent limits have not been revised since 1982 and fail to limit dangerous discharges from coal combustion waste handling systems and air pollution control wastewaters.

The Clean Water Act clearly contemplates periodic review and revision of the ELGs and effluent limits, and directs EPA to publish a biennial plan that identifies a schedule for review and revision of the ELGs and effluent limits. 33 U.S.C. §§ 1314(b), (m)(1), 1311(d). Yet the proposed 2010 Effluent Guidelines Program Plan does not contain a schedule for the long overdue revision of the Steam Electric ELGs and effluent limits. See 74 Fed. Reg. at 68,612 (noting only that "EPA has decided to pursue an effluent guidelines rulemaking for the Steam Electric Power Generating (Part 423) category").

The 2010 Effluent Guidelines Program Plan must include a schedule for the revision of the Steam Electric ELGs and effluent limits. Section 304(m) of the Clean Water Act states that

EPA shall publish a biennial plan in the Federal Register, “which shall...establish a schedule for the annual review *and revision* of promulgated effluent guidelines, in accordance with subsection (b) of this section....” 33 U.S.C. § 1314(m)(1)(emphasis added); see 74 Fed. Reg. at 68,602 (noting that “[s]ection 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guidelines selected for possible revision as a result of that annual review”).

Section 304(b) of the Clean Water Act states that EPA must review and, if necessary, revise effluent limitation guidelines every year. See 33 U.S.C. § 1314(b) (mandating that EPA “shall... provide[] guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations”). In addition, EPA is required to review and, if necessary, revise effluent limitations every five years. See 33 U.S.C. § 1311(d) (mandating that effluent limitations “shall be reviewed at least every five years and, if appropriate, revised...”); E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 124 (1977) (validating EPA’s decision to combine the review and revision process for 304(b) and 301(d) into one unified procedure).

The nearly thirty-year delay in setting limits on toxic discharges from the Steam Electric industry has had serious consequences for public health and the environment. As EPA acknowledges,

[d]ischarges of coal combustion wastewater have been associated with fish kills, reductions in the growth and survival of aquatic organisms, behavioral and physiological effects in wildlife and aquatic organisms, potential impacts to human health (e.g., drinking water contamination), and changes to the local habitat. Many of the pollutants commonly found in coal combustion wastewater (e.g., selenium, mercury, and arsenic) are known to cause environmental harm and potentially represent a human health risk Some of the pollutants in [power plant] discharges, although present at low concentrations, can bioaccumulate and present an increased ecological threat due to their tendency to persist in the environment, resulting in slow ecological recovery times following exposure. In addition, leachate from impoundments and landfills containing coal combustion wastes can contain high concentrations of pollutants and has been identified as a source of ground water and surface water impacts.

74 Fed. Reg. at 68,606-07.

In addition, it is critical that EPA set national guidelines and limits to address pollution from fluidized gas desulfurization systems (e.g., scrubbers) as soon as possible. Coal plants across the country are in the process of installing new air pollution controls that will dramatically increase power plant toxic discharges. EPA predicts a 16 percent increase in scrubbed units between 2009 and 2015 alone. Without federal rules to limit these discharges, states are failing to set limits in individual permits, as required by the Clean Water Act. For example, the Tennessee Department of Environment and Conservation (TDEC) recently issued a permit to the TVA Kingston Fossil Plant authorizing the discharge of scrubber wastewater without any effluent limits for toxic pollutants. This permit will allow further degradation of water quality in

a stretch of the Clinch River that was impaired for mercury even before it was severely impacted by the release of approximately one billion gallons of toxic coal ash after the collapse of the Kingston Plant's surface impoundment in December of 2008. See TDEC, Division of Water Pollution Control, State of Tennessee NPDES Permit No. TN0080870, available at <http://www.tn.gov/environment/wpc/ppo/tn0080870draft.pdf> (last visited Feb. 24, 2010).

EPA already has missed several successive deadlines for review and revision of the Steam Electric ELGs and effluent limits. It is incumbent on the agency to comply with the Clean Water Act and finalize critical regulations as quickly as possible. EPA must include an expeditious schedule for the revision of the Steam Electric ELGs and effluent limits in the 2010 Effluent Guidelines Program Plan.

Respectfully Submitted,



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