



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

April 11, 2017

The Honorable Terry McAuliffe
Governor of Virginia
Chair, National Governors' Association
State Capitol
Third Floor
Richmond, Virginia 23219

Dear Governor McAuliffe:

On November 3, 2015, the U.S. Environmental Protection Agency published a final rule establishing Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category ("2015 Final Rule" or "Rule"). On March 24, 2017, the Utility Water Act Group sent EPA a petition for reconsideration of the 2015 Final Rule, which specifically seeks relief from the deadlines by which new limitations must be met under the 2015 Final Rule. On April 5, 2017, the U.S. Small Business Administration's Office of Advocacy sent EPA a second petition for reconsideration of the 2015 Final Rule, which expressly supports the Utility Water Act Group's petition. As EPA considers these petitions for reconsideration, including the request for relief from the deadlines in the Rule, I would like to remind you of the flexibilities available under the 2015 Final Rule for the States and EPA Regional Offices that issue National Pollutant Discharge Elimination System ("NPDES") permits.

The new effluent limitations for direct dischargers in the 2015 Final Rule apply only when implemented in an NPDES permit issued to a discharger. The Rule authorizes the permitting authority to determine a date when the new effluent limitations apply to any given discharger, within a specified period of time. The Rule provides that the final effluent limitations are applicable "on a date determined by the permitting authority that is as soon as possible beginning November 1, 2018, but no later than December 31, 2023. *See, e.g.,* 40 CFR 423.13(g)(1)(i). The Rule also specifies that in determining what date is "as soon as possible," permitting authorities may decide on a date later than November 1, 2018, after receiving information from the discharger. Under the Rule, the date determined by the permitting authority is to reflect a consideration of certain factors, including "other factors as appropriate." *See* 40 CFR 423.11(t).

One important consideration under the 2015 Final Rule is that the Rule has an *inflexible* deadline of November 1, 2018, for discharges to Publicly Owned Treatment Works to meet the new pretreatment standards. Section 307(b) of the Clean Water Act says that “pretreatment standards . . . shall specify a time for compliance not to exceed three years from the date of promulgation.” EPA intends to consider the petitioner’s request for relief from the deadlines in the Final Rule for both direct and indirect dischargers along with the request for reconsideration of certain substantive aspects of the Rule.

I look forward to working with you, your state experts and local communities as we develop a path forward to improve our environment and bolster the economy in a manner that is respectful of and consistent with the rule of law.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt". The signature is stylized with a large, sweeping initial "E" and a long horizontal stroke extending to the right.

E. Scott Pruitt