

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

APPALACHIAN VOICES, et al.,)	
)	
Petitioners,))	
)	
v.)	
)	No. 20-2187 (L)
UNITED STATES)	
ENVIRONMENTAL PROTECTION)	
AGENCY, et al.,)	
)	
Respondents.)	
)	

DECLARATION OF RADHIKA FOX

I, Radhika Fox, declare that the following statements are true and correct to the best of my knowledge and belief and are based on my personal knowledge, information contained in the records of the United States Environmental Protection Agency (“EPA” or “the Agency”), and information supplied to me by current EPA employees.

1. I am Assistant Administrator for the Office of Water in EPA. I have officially served in this position since June 16, 2021. Prior to being confirmed as the Assistant Administrator for the Office of Water, I served as the Principal Deputy Assistant Administrator for the Office of Water beginning in January 2021.

2. As Assistant Administrator, I am responsible for, and provide counsel to, the Administrator on policy, planning, program development and implementation, management, and control of the technical and administrative aspects of the Office of Water. I manage the Agency's programs under the Clean Water Act, Safe Drinking Water Act, and the Marine Protection, Research, and Sanctuaries Act.
3. Within EPA, the Office of Water has primary responsibility for the rulemaking process related to the Clean Water Act. Within the Office of Water, the Office of Science and Technology's Engineering Analysis Division has the responsibility for, among other things, developing effluent limitations guidelines and standards ("effluent guidelines") under sections 301, 304, 306, and 307 of the Clean Water Act.
4. I am responsible for overseeing EPA's promulgation of effluent guidelines. The Agency has promulgated effluent guidelines for 59 categories of industrial dischargers, including promulgation of the first effluent guidelines for the steam electric power-generating point-source category in 1974, which were most recently revised in 2015 and 2020.
5. Below, I explain the Agency's decision to initiate a rulemaking that will propose to revise the 2020 Steam Electric Reconsideration Rule. Today, I signed a Federal Register Notice announcing this decision to undertake a

rulemaking. At this time, EPA intends to sign a notice of proposed rulemaking in the Fall of 2022. EPA is undertaking this rulemaking to ensure that this important industrial sector is implementing the best available pollutant control technologies needed to advance the goal of the Clean Water Act to eliminate the discharge of all pollutants. While the Agency undertakes this new rulemaking, facilities will continue to be subject to the requirements of the 2015 Rule, as amended by the 2020 Rule, which are currently effective. In this way, the pollutant reductions accomplished by the existing Rules will occur while the Agency engages in rulemaking to consider more stringent requirements.¹

6. Following his taking office on January 20, 2021, President Biden signed Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 20, 2021). The Order announces the following Administration policies:

to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

¹ Effluent limitations and standards are primarily implemented through NPDES permits issued to individual facilities under 33 U.S.C. § 1342. Pretreatment standards applicable to indirect dischargers are directly enforceable. *See* 33 U.S.C. § 1317(d).

7. The Executive Order further states that all agencies “shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to,” the aforementioned policies. The Executive Order further directs that, “for any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.”
8. On January 25, 2021, the 2020 Steam Electric Reconsideration Rule was included in a non-exclusive list of 48 EPA actions identified by the White House for review pursuant to Executive Order 13990.²
9. The 2020 Rule promulgated revised effluent limitations and pretreatment standards for the steam electric industry. EPA had previously promulgated such effluent limitations and pretreatment standards in 2015, and the 2020 Rule revised the limits applicable to discharges of toxic and non-conventional pollutants found in two of the largest sources of wastewater in the industry: flue

² <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

gas desulfurization wastewater and bottom ash transport water.³ The Rule also established three new subcategories, for which plants that qualify would be subject to less stringent limits than those that would otherwise apply. Finally, the Rule established new compliance dates, which in the case of the generally applicable limits, are as soon as possible beginning October 2021 and no later than December 2025, as determined by the permitting authority.

10. Clean Water Act section 301(b)(2)(A) requires that, by March 31, 1989, existing discharges of toxic and non-conventional pollutants must be limited based on “best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued . . . pursuant to section 304(b)(2) of the Act.” Furthermore, such limitations “shall require the elimination of discharges of all pollutants if the Administrator finds . . . that such elimination is technologically and economically achievable” for the industry, “as determined in accordance with regulations issued . . . pursuant to section 304(b)(2).” Section 304(b)(2) provides that “[f]actors relating to the assessment of best available technology shall take into account

³ Toxic pollutants are those listed as such under section 307(a) of the Clean Water Act. Conventional pollutants are those listed as such under section 304(a)(4) of the Act, as well as any additional pollutants defined by the Administrator as conventional, such as oil and grease. Non-conventional pollutants are those that are neither toxic nor conventional pollutants.

the age of equipment and facilities involved, the process employed, the engineering aspect of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.”

11. Consistent with Executive Order 13990 signed by President Biden, EPA has carefully reassessed the administrative record for and basis of the 2020 Steam Electric Rule. EPA has now completed its review under the Executive Order. Based on that review, EPA has decided to initiate a notice-and-comment rulemaking in which the Agency will determine whether more stringent limitations and standards are appropriate consistent with the technology-forcing statutory scheme and the goals of the Clean Water Act. For example, EPA is concerned that some pollution control technologies that the 2020 Rule found not to be technologically available, such as membrane filtration for control of pollutants in flue gas desulfurization wastewater, may, in fact, be able to be used by many steam electric power plants. EPA also intends to consider other aspects of the 2020 Rule, such as the requirements applicable to bottom ash transport water and the three subcategories, which are afforded less stringent limits than those otherwise applicable under the Rule, and determine whether revisions to those aspects of the 2020 Rule may be warranted.

I declare under penalty of perjury that the foregoing is true and correct, based on my personal knowledge and on information provided to me by employees of the EPA.

Dated: July 26, 2021

Radhika Fox
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency