



OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

December 23, 2025

MEMORANDUM

SUBJECT: No Action Assurance Regarding the Steam Electric Power Generating Effluent Limitations Guidelines and Standards at 40 Code of Federal Regulations Part 423

FROM: Craig J. Pritzlaff, Acting Assistant Administrator

TO: Jessica Kramer
Assistant Administrator
Office of Water

In response to your request of December 23, 2025, the Office of Enforcement and Compliance Assurance (OECA) is issuing this No Action Assurance (NAA) regarding certain coal-fired power plants that are subject to, through Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permits, effluent limitations at 40 C.F.R. § 423.13(g) and 40 C.F.R. § 423.13(k) finalized in 2020 (the 2020 Final Rule) and in 2024 (the 2024 Final Rule).

As explained more fully below, this NAA establishes that the EPA will exercise its enforcement discretion to not pursue enforcement actions for certain NPDES permit violations by coal-fired power plants not yet in compliance with limitations in NPDES permits from the 2020 and 2024 Final Rules where those limitations are required by the permit to be met on dates between December 31, 2025 through December 31, 2026, as long as the entities involved meet the conditions of this NAA. The Office of Water (OW) has indicated that this time is necessary to allow for the typical timeframe for issuing new permits or permit modifications.

As noted in your request, on October 2, 2025, the EPA proposed a Deadline Extension Rule to, among other things, create authority for limited additional timing flexibility for both 2020 and 2024 Final Rule deadlines based on site-specific factors.

Your request explains that after the promulgation of the 2024 Final Rule, the EPA observed extraordinary increases in electricity demand in the U.S. An extension of the 2024 Final Rule's latest deadlines is needed to ensure plants can continue operating to support grid reliability as well as address implementation challenges subsequently identified. Since the promulgation of the 2024 Final Rule, federal agencies, states, grid operators, and grid reliability experts have identified an impending

energy crisis resulting from increased load and the premature retirement of critical steam electric and other baseload power plants. The changes since the promulgation of the 2024 Final Rule include challenges and uncertainties in energy reliability and resource adequacy, given the increasing demand for electricity due to data center expansions and AI demand, manufacturing growth, and population increases. The U.S. will need infrastructure upgrades to meet this demand, particularly as new electric generation has increasingly relied upon more variable resources. Additionally, many stakeholders, including utilities, trade associations, and grid operators, have raised concerns to the EPA regarding the timeline given to facilities to determine their energy demand and compliance pathways under the 2020 and 2024 Final Rules and meet the resulting deadlines in their permits. The proposed Deadline Extension Rule will allow utilities to take additional time to assess the changing landscape of power demand, select or change their compliance pathway, and meet the associated limitations.

The Deadline Extension Rule is based on the challenges with estimating energy demand and operational timeframes in a rapidly evolving landscape, as detailed in the final rule preamble and supporting documents. An extension of the compliance deadlines does not forgo the limitations established by the 2020 and 2024 Final Rules, but it affords utilities the time required to conduct operational planning given the recent changes in energy demand and give notice for retirement or apply to transfer into a different subcategory. Extended compliance deadlines will allow for the smooth implementation of control technologies in a cost-efficient manner while maintaining reliability of the electricity grid for the U.S.

OW explicitly identified three potential scenarios in the final Deadline Extension Rule that would warrant additional time:

- (1) A utility may have announced that one or more electric generating units (EGU) at a plant would retire by 2028 (making it eligible for the 2020 Final Rule's subcategory for the permanent cessation of coal combustion by 2028), while the remainder would continue generation. If the IRP process or capacity auctions indicate that future needs may not be met, these EGUs may need to back out of previous retirement decisions. However, the plant may have combined wastewaters, such as combined FGD wastewaters from a joint FGD unit that treats flue gas from the entire plant. In the case that the plant was properly developing a treatment system that could treat wastewater from the EGUs it had intended to continue operating, the continued operation of one or more additional EGU(s) could lead to more wastewater than the system can treat. In such circumstances, the plant would be forced to choose between noncompliance or retiring an EGU needed for local resource adequacy.
- (2) A plant that had submitted a notice of planned participation for permanent cessation of coal combustion by 2028 may learn through the IRP process or capacity auctions that its continued operation is necessary to support local resource adequacy. Such facilities can still use the transfer flexibilities in 40 C.F.R. § 423.13(o) to transfer to the VIP limitations for FGD wastewater and the generally applicable limitations for BA transport water by December 31, 2025. However, if a plant had not taken significant steps to design, bid, and procure these technologies prior to the transfer deadline, it would not be practicable for the plant to do so by the deadlines in the 2020 Final Rule, particularly where the generally applicable BA transport water limitations have the same deadline as the transfer itself.

- (3) A facility may have to wait on parts that are available on the market, but not on the timelines originally believed or agreed to in a contract.

Your request notes that it is not feasible for regulated facilities and permitting authorities to allow the final Deadline Extension Rule to be incorporated via permits prior to the 2020 Final Rule BAT compliance deadline of December 31, 2025, or potentially other permit deadlines already implementing the 2024 Final Rule.

In recognition of these extremely unusual circumstances, and subject to the conditions below, EPA is issuing an NAA for violations of limitations in CWA NPDES permits from the 2020 and 2024 Final Rules BAT provisions at 40 C.F.R. § 423.13(g) and 40 C.F.R. § 423.13(k) where those limitations are required by the permit to be met on dates between December 31, 2025 through December 31, 2026.

I emphasize that this NAA only applies to entities described above that meet the requirements of the Deadline Extension Rule for alternative applicability dates. This NAA does not cover coal-fired power plants that are already in compliance with 2020 Final Rule BAT limitations or any other entities covered under the effluent limitations guidelines at 40 C.F.R. Part 423. In addition, this NAA is conditioned on meeting the following requirements:

- The facility must submit to the permitting authority a timely and complete initial request letter to receive an alternative applicability date pursuant to 40 C.F.R. §§ 423.18(d) and 423.19(q) and provide a copy to EPA via the “contact us” form on EPA's Effluent Guidelines website;
- The permitting authority must find that the initial request letter factually supports the facility meeting one of the circumstances that warrant an alternative applicability date pursuant to 40 C.F.R. § 423.18(d)(3); and
- The facility must meet all applicable reporting and recordkeeping requirements pursuant to 40 C.F.R. § 423.19.

This NAA will remain in effect until either (1) 11:59 PM ET, December 31, 2026, or (2) the effective date of an action by the permitting authority to establish an alternative compliance date pursuant to the Deadline Extension Rule, whichever occurs earlier. EPA reserves the right to revoke or modify the NAA at any time.

If you have any further questions regarding this matter, please contact Laurie Ireland of my staff at (202) 564-2932 or Ireland.Laurie@epa.gov.

cc: Rosemarie Kelley, OECA
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