



Lead NEPA Story: Judge won't toss Virginia project's permits, despite NEPA ruling

(Greenwire, 11/11/2019) Pamela King, E&E News Reporter

A federal judge won't scrap permits for an already constructed electric transmission line across the James River — even after an appeals court struck down the Army Corps of Engineers' environmental review supporting the project.

U.S. District Court for the District of Columbia Judge Royce Lamberth said Friday that voiding federal approvals for the Dominion Virginia Power line across the James River was "not appropriate" because the project is already providing electricity to the region.

His ruling follows the U.S. Court of Appeals for the District of Columbia Circuit's finding earlier this year that the Army Corps needed to revisit its National Environmental Policy Act review for the project.

"It is possible that after completing the [environmental impact statement], the Corps will decide to re-issue the permit for the project. ... If that were the case, large sums of money would have been wasted," Lamberth, a Reagan appointee to the district court, wrote.

Continued on page 7

Federal Insecticide, Fungicide, and Rodenticide Act: EPA proposes relaxed rules for widely used insecticides

(Greenwire, 11/13/2019) Marc Heller, E&E News Reporter

EPA yesterday proposed watered-down regulations for a set of widely used insecticides linked to a range of human health and environmental concerns.

At issue are pyrethroids, a class of pesticides considered to be highly effective against crop pests. EPA acknowledged that pyrethroids pose threats to pollinators and aquatic life, adding that the risk is greatest with crops such as rice, which is grown around water, and grapes and blueberries.

Backing away from an earlier proposal to expand environmental safeguards, EPA proposed vegetative buffer strips to separate treated crops from waterways, limits on application in the wind and new labeling

requirements to discourage consumers from pouring them down drains, for instance.

The proposal brought a rebuke from the Center for Biological Diversity, an environmental group, which said the laxer recommendations overlook the pesticides' human health risks — including autism and Parkinson's disease — and threats to fish and bees.

Inside This Issue...

Clean Water Act: Army Corps presses EPA to revive vetoed Mississippi flood project 2

Clean Water Act and Resource Conservation and Recovery Act: EPA punches loopholes in coal ash regulations 4

NEPA: Some tortoises will die, but 'minimal' harm from project—FWS 6

The agency proposed to renew the registration of five of 23 pyrethroids; action on the remaining ones is pending. In addition, EPA released a set of risk mitigation measures proposed for pyrethroids more generally. The documents are open for public comment until Jan. 13.

In its proposal, EPA said a vegetative buffer strip of 25 feet should separate treated fields from aquatic habitats, citing the chemicals' toxicity to fish. That's an increase from 10 feet in current regulations but a reduction from 66 feet in earlier EPA recommendations.

In some areas, such as prime farmland or fields where reduced tillage is used, the strip could be 15 feet, EPA said. The smaller area reflects the reduced risk of erosion on such fields, the agency said. Smaller buffer strips would also be called for in Western irrigated areas due to cost concerns, EPA said.

The Center for Biological Diversity accused EPA of bowing to pressure from pesticide makers, which had united behind the chemicals through an organization called the Pyrethroid Working Group.

"There's no floor on how low this administration will stoop to appease the pesticide industry," said Nathan Donley, a senior scientist at CBD.

"Ignoring independent science in favor of whatever pesticide companies want is par for the Trump course. In their relentless push to cripple pesticide protections, EPA officials are shrugging off huge threats to children's health and the survival of bees and other environmentally crucial creatures," Donley said.

CBD also criticized EPA's embrace of a 15 mph wind limitation on the chemicals' application, up from 10 mph in an earlier proposal.

Pyrethroids are manufactured derivatives of natural pesticides called pyrethrins, which in turn come from chrysanthemums. The manufactured version is used on a wide variety of pests indoors and outdoors, including aphids, caterpillars, beetles, mosquitoes and bedbugs.

In agriculture, pyrethroids are commonly sprayed on corn, soybeans, cotton and wheat. About 2.4 million pounds is sprayed on about 47 million acres, EPA said, accounting for multiple applications on the same land.

Like other pesticides, they're also showing signs of reduced effectiveness due to insect resistance. The Michigan Farm Bureau reported last year that oriental fruit moths are showing increased resistance — confirmed by research at Michigan State University — and recommended non-pyrethroid insecticides to use against the moths.

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

Clean Water Act: Army Corps presses EPA to revive vetoed Mississippi flood project

(Greenwire, 11/13/2019) Ariel Wittenberg, E&E News reporter

The Army Corps of Engineers has been pushing EPA to reopen its veto of a controversial flood protection project in Mississippi over the past year, according to documents received under a Freedom of Information Act request.

The Army Corps Vicksburg District has done a new analysis of the wetlands that would be affected if the controversial Yazoo Backwater Area Pumps Project were constructed, which it believes justifies EPA taking a second look at the project, according to a January letter from then-Vicksburg District Cmdr. Maj. Gen.

Richard Kaiser to EPA Region 4 chief Mary Walker.

When the George W. Bush EPA vetoed the Yazoo Pumps project under the Clean Water Act in 2008, EPA said the benefits of protecting 1,000 homes, businesses and farms from flooding weren't worth the destruction of between 67,000 and 200,000 acres of floodplain wetlands critical to migratory birds' habitat.

The decision was later upheld by the 5th U.S. Circuit Court of Appeals, but that hasn't stopped proponents from lobbying for the project as the

Mississippi River Valley continues to flood each spring.

Now, the Army Corps says it has "additional wetlands data and analyses" developed since 2008 showing the wetlands in question are fed by precipitation — not flooding of the Yazoo River, meaning the impacts of pumping water off the wetlands when the river floods would be less than what was calculated a decade ago.

"The magnitude of potential adverse effects to wetland resources may be lower than indicated in 2008," Kaiser wrote.

His letter was, in part, motivated by intense lobbying by Mississippi lawmakers to revive the Yazoo Pumps project. It describes how more than 440,000 acres of the Yazoo backwater area flooded in spring 2018 and that about \$377 million in damage has occurred there between 2008 and 2018.

"It is vital that we have a complete and common understanding of the stakeholder interest, continued significant flooding in the Yazoo backwater area and additional scientific information available since the issuance of the [veto] in 2008," he wrote.

Indeed, pressure to revive the project has only increased since Kaiser's January letter. Most recently, Mississippi Gov. Phil Bryant (R) visited EPA Administrator Andrew Wheeler in Washington, D.C., this fall to discuss the project.

While EPA has been consulting with the Army Corps, Walker's August response to the Vicksburg District shows the agency resisting pressure to reopen the veto until it receives more information.

EPA staff in August visited the Vicksburg District, where the Army Corps showed them some new information assessing wetland functions and hydrology in the Yazoo Backwater Area.

But, Walker writes in her letter, the Army Corps has yet to share its new computer modeling

system calculating the changes. She asked the corps to provide five types of new information.

"Based upon our initial review of the information provided by the Corps, we agree that circumstances may have changed since the 2008 [veto], but believe revisions to the following technical data, analyses, interpretations, and conclusions previously provided by the Corps are needed to fully understand the differences between the new information and [what was provided in 2008]," she wrote.

Walker notes that while EPA has modified previous vetoes under the Clean Water Act, the agency has never withdrawn a final veto.

When EPA issued the veto in 2008, she said, it was based on a mountain of information compiled by the Army Corps and the Fish and Wildlife Service on how the pumps would affect the wetlands at issue. Undoing a veto, she wrote, would require a similar quantity of information and quality of review.

"The information provided by the corps thus far touches on various aspects of the project, but it is not sufficiently comprehensive in the context of the analysis conducted in the [2008 process] to provide the type of record that would be required to evaluate a potential modification or withdrawal," she wrote.

EPA spokesman James Pinckney said the agency has an "ongoing dialogue" with the Army Corps and most recently met with it in Mississippi at the end of last month. The agency also held a listening session in Mississippi "to hear first-hand from residents" about the project, he said.

"The EPA recognizes the disruptive impacts of the recent flooding along the lower Mississippi River and the Yazoo Backwater Area on the day-to-day lives of Mississippians and the economy of the area," he wrote in an email. "We remain committed to working actively and cooperatively with the corps concerning our Clean Water Act programs to support a long-term viable solution."

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

Clean Water Act and Resource Conservation and Recovery Act: EPA punches loopholes in coal ash regulations

(Greenwire, 11/4/2019) Ariel Wittenberg and Sean Reilly, E&E News reporter

Two EPA proposals released today would create loopholes and exemptions in Obama-era regulations for waste from coal-fired power plants that could significantly increase water pollution near facilities.

One proposal deals with how power plants handle their wastewater, which can contain highly toxic chemicals like mercury, arsenic, nitrogen and selenium.

The proposal rolls back 2015 standards that represented the first time in more than 30 years the federal government had acted to curb the toxics and other pollutants that power plants release into nearby waterways.

The other would give companies until 2028 in some circumstances to begin closing hundreds of ponds storing coal ash, which can leak contaminants into nearby waterways. Full closure could take years longer.

EPA Administrator Andrew Wheeler celebrated the dual proposals in a statement, saying they will "provide more certainty to the American public."

"These proposed revisions support the Trump Administration's commitment to responsible, reasonable regulations by taking a commonsense approach, which also protects public health and the environment," he added.

Coal-producing states and the coal industry are cheering the new rules.

"We applaud the Trump EPA's latest efforts to protect coal mining and the livelihoods of those who depend on its success in West Virginia," state Attorney General Patrick Morrisey (R) said.

Environmentalists are slamming the proposals as rollbacks that will harm the 6 million people who live within 3 miles of coal-fired power plants.

"This administration will stop at nothing to save the coal industry a few bucks," said Abel Russ,

senior attorney for the Environmental Integrity Project.

Wastewater

Compared with the 2015 rule, today's wastewater proposal, known as the Effluent Limitation Guidelines (ELGs), would allow significant increases of selenium entering waterways in wastewater that has been used to clean power plants' air filters.

The Trump administration's rule would set a daily maximum limit on selenium at 76 micrograms per liter — or more than three times the Obama-era limit of 23 micrograms per liter. The monthly average treatment in the new rule is 31 micrograms per liter, compared with 12 micrograms per liter in the Obama-era rule.

Betsy Southerland, a former staffer in EPA's Office of Water who helped write the 2015 rule, said the increased selenium levels are extremely concerning because selenium — which can cause respiratory effects and cancer in humans — bioaccumulates as it moves up the food chain.

"These high allowable discharges will have a long-lasting impact on the fisheries and waterfowl downstream of these plants," she said.

What's more, the proposal includes many loopholes, allowing a large number of power plants to be exempted from even the higher selenium limits.

The Obama-era rule required power plants to treat their wastewater in two ways. Citing lower compliance costs, the Trump rule would allow power plants to use a shorter biological treatment process, which would result in the higher selenium levels.

But many plants have been exempted from using the biological treatment process at all, allowing their mercury, arsenic and nitrogen levels to increase significantly.

Power plants with "high flows" of wastewater and coal power plants that are used only during

peak power demand are exempted from the biological treatment requirement entirely.

Those plants are allowed to release nearly 10 times as much mercury — 788 micrograms per liter daily — as plants that are not exempted from the treatment requirement, which are limited to 85 micrograms per liter daily.

The rule gives power plants until the end of 2025 to comply with the new rules but also says EPA would establish a voluntary incentive program whereby power plants would have until 2028 to comply if they decide to include more biological treatment.

The Trump rule also makes changes to new requirements the Obama administration set on water used to flush plants of waste left over when coal is burned, known as bottom ash.

Industry practice had been to use massive amounts of water to flush the bottom ash out of plants and into coal ash pits.

The Obama administration sought to change that by requiring all power plants to dispose of the ash while continuously recycling the process water, and not discharging any of it, because it can be highly toxic.

The Trump EPA proposal would allow 10% of the process water to be discharged daily.

That rollback also includes an exemption: Plants that are retiring by 2028 do not have to treat their wastewater or dry dispose of their bottom ash.

The Trump rule comes despite a spring court decision in which the 5th U.S. Circuit Court of Appeals sided with environmentalists in finding that the Obama-era ELG rule did not use the best available technology and needed to be more stringent.

The Trump proposal mentions the decision only to say it will address the ruling in a subsequent action.

While environmental groups are saying the administration is putting coal company profits above human health, the proposal this morning says its "relaxation" will save about \$175 million in pretax compliance costs and \$137 million annually in social costs.

Coal ash

Under a related draft rule also released this morning, EPA would set an August 2020 deadline for power producers to stop shipping coal ash waste to storage ponds that lack liners to prevent leaks and either retrofit them or begin closure.

But the proposal contains exceptions that could push back that deadline by as much as eight years. It is intended to address a federal court decision last year that found the existing Obama-era regulations on coal ash disposal were unlawfully weak because they permitted the indefinite operation of unlined ponds as long as there was no evidence of unsafe groundwater contamination.

There are hundreds of such ponds around the U.S., according to EPA numbers cited in the decision by the U.S. Court of Appeals for the District of Columbia Circuit.

While EPA now expects that many operators would be able to meet the proposed August 2020 deadline to halt receipt of new waste, the proposal contains a three-month extension until November 2020 that would be granted almost automatically on the assumption that factors like "extreme weather" could temporarily get in the way of developing other means for coal ash storage.

But on a case-by-case basis, utilities could also seek to keep operating unlined ponds until as late as 2023 if they show to regulators' satisfaction that they need more time to develop an alternative.

And companies with storage ponds larger than 40 acres could get a reprieve until October 2028 if they were shutting down at least some of their coal-fired generation at those sites, the proposal indicates. After that, actual completion of closure could take as much as 10 years, or until 2038, Lisa Evans, an Earthjustice attorney, said in an email.

Coal ash is one of the nation's largest waste streams. Under the first-ever federal regulations issued by the Obama EPA in 2015, coal ash is officially classified as nonhazardous waste, but the agency acknowledged that it could contain mercury, arsenic and other toxins at "levels of

concerns." Groundwater monitoring has since shown widespread contamination around power plant sites.

Allowing coal ash dumps "to stay open risks causing serious harm to public health, particularly in low-income communities and communities of color," Becky Hammer, an attorney with the Natural Resources Defense Council, said in a statement this afternoon.

But Jim Roewer, executive director of the Utility Solid Waste Activities Group, said his members

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

are already striving to begin closure of unlined ponds that do not meet regulatory requirements.

"We thank EPA for recognizing the technical challenges of meeting the deadline," Roewer said in a separate statement, "and for including in the proposal mechanisms for site-specific deadline extensions for facilities that are waiting on their alternative disposal units to become operational."

NEPA: Some tortoises will die, but 'minimal' harm from project—Fish and Wildlife Service

(Greenwire, 11/15/2019) Scott Streater, E&E News reporter

A proposed solar power project in Nevada that would rank among the world's largest would kill or harm as many as 1,825 threatened Mojave Desert tortoises during the 30-year life of the project, according to the Fish and Wildlife Service.

But the biological opinion FWS released this week also says many of the impacts to the federally protected desert tortoise associated with the Gemini Solar project — which would be among the 10 largest photovoltaic solar power projects ever built — will be mitigated by the project proponent.

"The construction, [operation] and decommissioning of the Project is unlikely to negatively affect the ability of the desert tortoise to reach stable or increasing population trends in the future, since the proposed action will only have an overall minimal negative effect on reproduction, numbers, and distribution of desert tortoises in the action area," according to the biological opinion.

Hundreds of Mojave Desert tortoises, which are listed as threatened under the Endangered Species Act, would be captured and relocated, at least temporarily, during the construction phase of the project.

While some will not survive the relocation, the plan is to bring many of the tortoises back to live

on portions of the newly constructed solar power plant site, according to the biological opinion.

"The Project will allow vegetation to remain on 65% of the site, and tortoises will be allowed back into the solar array to utilize these areas," the document says.

The biological opinion was requested by the Bureau of Land Management, which is conducting an environmental impact statement of the project. BLM released a draft EIS last summer.

The project developer, Quinbrook Infrastructure Partners, has secured a 25-year power purchase agreement with NV Energy Inc.

Gemini Solar is proposed to be built on roughly 7,100 acres of BLM lands about 33 miles northeast of Las Vegas in Clark County, Nevada. If built, it would have the capacity to produce up to 690 megawatts of electricity, or enough to power more than 200,000 homes and businesses annually.

The actual solar arrays would only cover about 2,500 acres of the total project site, thus allowing for many of the tortoises to be brought back to the site after construction.

Still, the project site sits near the Old Spanish National Historic Trail, Muddy Mountain Wilderness Area and Bitter Springs Trail Back

Country Byway. Approving it would require a resource management plan amendment to change the visual resource classification of the area.

And Kevin Emmerich, co-founder of Basin and Range Watch, said he worries that the impacts to the desert tortoises, though mitigated, could still be "severe."

Basin and Range Watch, a Nevada-based group that is opposed to the siting of the massive project, issued a press release stating the Gemini project "represents an unacceptable large threat to tortoise populations, connectivity, and high-quality habitat in the northeastern Mojave Desert."

The FWS estimate of "minimal" impacts "appears to us to be minimizing the threat of this project and recommending mitigation measures

that will fail to halt tortoise mortality and further cumulative habitat degradation."

Emmerich said the desert tortoise population in the project area is "stable, unlike many other locations in their range which are seeing sharp declines."

So, he asked, why build a commercial-scale solar project there?

"The BLM should be protecting this region, not sacrificing it for solar panels that would do the same job on the rooftops and developed parts of the Las Vegas Valley," he said.

The Gemini Solar DEIS and Biological Opinion may be viewed at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=149503>.

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

Lead NEPA Story (continued from page 1)

The D.C. Circuit handed the case back to Lamberth after reaching its conclusion on the NEPA review. Judges for the appeals court noted that backers of the power line had previously said they would take down the towers if they lost their case.

"Of course, it is possible that defendants acted nefariously, but more than mere conjecture is required before finding that to be the case," Lamberth said.

"Additionally, even if the harm were self-inflicted, defendants are not the ones who would suffer most from their own actions — the hundreds of thousands of people in the region relying on this project as their power source would be the ones who face the greatest consequences," he continued.

The National Parks Conservation Association, one of the challengers in the case, said

Lamberth's decision was "extremely disappointing."

"This ruling endangers national parks, the James River ecosystem and viewshed, and some of America's earliest memories at historic Jamestown," Theresa Pierno, president and CEO of the group, said in a statement. "It also sets a dangerous precedent for companies seeking an end-run around our bedrock environmental protection laws."

Dominion Energy Inc. applauded the judge's decision.

"Keeping the existing transmission line energized while the Environmental Impact Statement is prepared is the responsible thing to do and provides safe, reliable power to the Peninsula," said Le-Ha Anderson, a spokeswoman for the company.

The Army Corps declined to comment.

Reprinted from *Greenwire* with permission from Environment & Energy Publishing, LLC. www.eenews.net; 202-628-6500

The **NAEP National Desk** is published every two weeks using content originally published in *Greenwire*. The NAEP *National Desk* is emailed directly to approximately 1,000 NAEP General, Associate, Student, and Senior members, and indirectly to more than 3,100 chapter-affiliate members through 17 state or regional affiliate chapters. News articles are provided through a licensing agreement with Environment and Energy (E&E) Publishing, LLC (www.eenews.net). E&E's five daily online publications are ClimateWire, EnergyWire, E&E Daily, Greenwire and E&E News PM. **Subscription discounts are available to NAEP members. Sign up for a subscription by sending an email to cchinyata@eenews.net.**

This edition of the National Desk was compiled by Harold Draper. For more information on NAEP, please contact the NAEP office at office@naep.org.

The National Association of Environmental Professionals (NAEP) is a multidisciplinary, professional association dedicated to the promotion of ethical practices, technical competency, and professional standards in the environmental fields. Our members reflect a diversity of employers, including government, industry, academia, consulting firms, and the private sector in the U.S. and abroad. They have access to the most recent developments in environmental practices, research, technology, law and policy.