

BEFORE THE PUBLIC SERVICE COMMISSION
OF WISCONSIN

Investigation on the Commission's Own Motion to Review

Potential Excess Capacity in Electric Generating Units Owned

5-EI-150

by Wisconsin Electric Utilities

COMMENTS OF AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION, BLACK HEALTH
COALITION OF WISCONSIN, INC., AND MIDWEST ENVIRONMENTAL ADVOCATES

The American Civil Liberties Union of Wisconsin Foundation (ACLU-WIF), the Black Health Coalition of Wisconsin (BHCW), and Midwest Environmental Advocates (MEA) submit these comments in response to the Commission's Notice, specifically in response to question 3 g, relating to "broader factors relating to Wisconsin... that the Commission should consider in making determinations about whether to mothball or retire an electric generating unit," and to question 6 relating to "interests of ... the public that are relevant to mothballing or retirement decisions."

Since 1920, the American Civil Liberties Union has been the nation's guardian of liberty, defending and preserving individual rights and liberties, including the right to equal justice that the Constitution and laws of the United States guarantee everyone in this country. It has nearly 9,000 members throughout Wisconsin. The American Civil Liberties Union of Wisconsin Foundation is the state affiliate of the national ACLU and is a non-profit, non-partisan private organization.

The Black Health Coalition of Wisconsin, Inc., incorporated in 1988, is a coalition of 26 organizations and 19 individual members, all of whom are African-American, dedicated to the mission of improving the health status of African Americans in the state of Wisconsin and to insure equitable and

comprehensive health for all people. The coalition is made up of health care professionals, social service agencies, professional organizations, and grassroots organizations.

Founded in 1999, Midwest Environmental Advocates is a non-profit environmental law center which provides legal and technical support to grassroots groups that are working for environmental justice in the Western Great Lakes and Mississippi River regions. MEA has offices in Madison and Milwaukee, Wisconsin.

ACLU-WIF, BCHW, and MEA request that the Commission include environmental justice among the factors to be considered in making determinations about whether to mothball or retire an electric generating unit. Specifically, the Commission should investigate and consider whether its decisions will result in disproportionate adverse impacts on minority or low-income communities.

Funds of the United States cannot be used in programs or activities that support racial discrimination. For example, Title VI of the Civil Rights Act of 1964 prohibits the intentional exclusion from, participation in, denial of benefits of, and discrimination based on race, color, or national origin under programs or activities that receive Federal funding.¹ Regulations issued pursuant to Title VI clearly prohibit actions that have a racially discriminatory effect, not only those that are intentionally discriminatory.² To further protect individuals from discrimination, in 1994 President Clinton issued Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, with the intention of promoting nondiscrimination in programs substantially affecting human health and the environment by making it part of each Federal agency's mission to achieve environmental justice. For example, each Federal agency must "identify[] and address[], as appropriate, disproportionately high and adverse environmental effects of its programs,

¹ 42 U.S.C. § 2000d.

² See, e.g., 40 C.F.R. §7.35.

policies, and activities on minority populations and low-income populations . . .”³ The Center for Economic Development at the University of Wisconsin-Milwaukee recently completed a study for the Southeastern Wisconsin Regional Planning Commission which included a section entitled “Environmental Justice Principles and Regulation.” A copy of that section of the UWM study, which provides a concise summary of the subject, is attached to these Comments. The entire document is available at <http://www4.uwm.edu/ced/sewrpc/index.cfm>.

The Public Service Commission has been and is a recipient of federal funds, including an award of \$893,448 under the American Recovery and Reinvestment Act of 2009 (ARRA), through the DOE’s Electricity Regulators Assistance Plan. Recipients of funding from the United States Department of Energy are subject to the requirements of Title VI, and the DOE’s implementing regulations are set forth at 10 CFR part 1040. Section 1040.13(a) provides as follows:

Sec. 1040.13 Discrimination prohibited.

(a) General. No person in the United States shall be excluded on the ground of race, color, national origin, or sex (when covered by section 16 or section 401), from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

For the above reasons, environmental justice considerations, as well as the Commission’s compliance with its obligations as a recipient of federal funds, need to be among the factors considered in the Commission’s decision-making generally. However, there are compelling reasons to believe that these considerations need to be specifically included in this docket.

Environmental justice issues are raised most clearly by WE Energies’ Valley generating plant on Canal Street, in the City of Milwaukee. This plant is the utility’s oldest power plant that lacks modern air emission controls. It is located in the heart of the State’s largest majority-minority city, between the state’s largest concentration of African-American residents to the north and its largest concentration of

³ E.O. 12898 § 1-101

Hispanic and Asian residents to the south.⁴ As noted in a Milwaukee Journal-Sentinel business section article on July 10, 2010, while many other old coal-fired power plants in the state are shutting down or being upgraded, the Valley plant has avoided installation of pollution controls. (Copy attached; also available at <http://www.jsonline.com/business/98179294.html>.)

The adverse health impacts of air pollution, of which power plants are a major source, are well-recognized. Meanwhile, asthma, caused and exacerbated by air pollution, affects nearly 100,000 Wisconsin children under age 18; is far more common in southeastern Wisconsin; and is far more prevalent among blacks than whites.⁵ The problems are exacerbated by the fact that Milwaukee has been designated by the EPA as out of compliance with air quality standards.

In contrast, WE Energies' coal-fired generating plant in Port Washington, a community with very few non-white residents,⁶ was razed and replaced with a natural gas fueled plant. In Oak Creek, another overwhelmingly white community,⁷ four old coal generating units were retired, construction of the second of two new units with pollution controls is nearing completion, and four other old coal generating units are continuing in operation with installation of improved air emission controls.

These circumstances indicate that previous decisions to retire, replace, or upgrade generating plants in white communities have resulted in disproportionate adverse impacts upon minority and low-income communities in Milwaukee. In making decisions on current and future power generation, the Commission needs to consider the extent to which the current patterns of electrical generation are causing disproportionate adverse impacts on minority or low-income communities, and the Commission

⁴ For example, as of 2000 in census tract 156 to the south of the plant the population was only 13.4% white/non-Hispanic, and 28% of residents were low income; census tract 140 to the north of the Menomonee Valley had only 5% white/non-Hispanic residents and 56% of its residents were low income. The City of Milwaukee as a whole was only 45% white/non-Hispanic.

⁵ *Wisconsin Medicaid HMO Comparison Report: 1998/1999* (Wisc. DHFS), citing *Children's Health System: Milwaukee Allies Against Asthma* (April 2000).

⁶ As of 2000, Port Washington was 97% white/non-Hispanic.

⁷ As of 2000, Oak Creek was 90% white/non-Hispanic.

therefore needs to ensure that its decision-making processes regarding whether to retire, mothball , or upgrade existing electric generating units mitigates those impacts.⁸

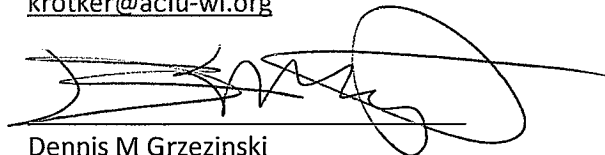
Respectfully submitted this 9th day of August, 2010.

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⁸ We are not requesting here that the Commission order the retirement of the Valley plant; we believe that doing so might have an adverse impact on employees, who we believe may be disproportionately persons of color. Rather, the Commission must ensure that minority and low-income communities near operating power plants are not subject to greater levels of pollution than white and/or non-low income communities near other power plants.

purpose of the socio-economic impact analysis, the results from the quantitative analyses, including historic trends and projections on population and job growth and low-income households, and the preliminary results of the analysis. CED gained public feedback through the question and answer sessions following the presentations, and encouraged attendees to contact CED for further clarification or comments via e-mail or through the comments section on CED's webpage for public feedback.

The dates, times, and locations of the open house meetings were the following:

- March 2nd, 6pm Independence First, in the City of Milwaukee (approximately 5 attendants)
- March 3rd, 7pm Goodwill, in the City of Waukesha (1 attendant)
- March 9th, 7pm HeartLove Place, in the City of Milwaukee (approximately 7 attendants)
- March 11th, 7pm Frame Park Schuetze Building, in the City of Waukesha (approximately 7 attendants)

ENVIRONMENTAL JUSTICE PRINCIPLES AND REGULATION

Environmental Justice is both a concept and a movement. As a concept, Environmental Justice seeks to rectify any past or present harms or injustices related to environmental issues, and to identify any potential injustices that may result from an action. The concept of Environmental Justice is not new; it has its roots in the laws and regulations developed by the US Environmental Protection Agency (USEPA) and other federal, state, and local agencies throughout the 20th Century that were developed to ensure safe, responsible use of resources and to safeguard the population from the hazards of industry and harmful environmental conditions. Planning as a field, particularly land use planning and zoning, had developed from the need to improve and safeguard the health, welfare, and safety of communities.

As a movement, Environmental Justice has its roots in the Civil Rights movement of the 1960's, and 1970's and in the environmental movement of the 1960's and 1970's. Although living conditions had improved for many, blight persisted in primarily low-income, and often minority, neighborhoods by the end of the 20th Century. Many saw that the benefits that planning and regulation could provide should go a step further to ensure that the health, welfare, and safety was applicable to all people, not just those that had reaped the benefits of prior regulatory changes. In 1987, the Commission for Racial Justice published the nation-wide study *Toxic Wastes and Race in the United States* that correlated the location of waste facility sites and demographic characteristics and found that the most significant variable in predicting the location of toxic waste sites was race, even more significant than poverty, land values, and home ownership. Additionally, in 1990, Robert D. Bullard published *Dumping in Dixie: Race, Class, and Environmental Quality*; just as the civil rights movement had been born in the south, *Dumping in Dixie* highlighted how the African-American social justice movement in the South converged with the environmental movement to create the Environmental Justice movement.

What began as local and often isolated struggles against toxic hazards and facility siting quickly grew into an organized multi-ethnic global movement. In October 1991, delegates to the First National People of Color Environmental Leadership Summit gathered in Washington, DC to develop a formalized Principles of Environmental Justice⁴. The Principles

⁴ First National People of Color Environmental Leadership Summit (October 1991). Accessible online at www.ejnet.org/ej/principles.html

of Environmental Justice set forth a seventeen point framework that addresses environmental issues in terms of public health, worker safety, land use, transportation, housing, resource allocation, and community empowerment⁵. In 1994, then-President Clinton signed Executive Order No. 12898 into law, recognizing the need for addressing Environmental Justice issues at the Federal level. Both the Principles and Executive Order No. 12898 are set forth in Appendix F.

In 2007, a follow up report to *Toxic Wastes and Race* was commissioned by the United Church of Christ and produced by a consortium of researchers led by Robert D. Bullard from Clark Atlanta University, the University of Michigan, the University of Montana and Dillard University. The report found that in the 20 years since the original report, no progress in the arena of Environmental Justice had been made and that environmental laws do not protect communities of color any more than they had in 1987. The 2007 report specifically cites the response to Hurricane Katrina in New Orleans as a most poignant example of unequal treatment of minorities in hazardous waste emergencies.

Federal Laws and Regulations Pertaining to Environmental Justice

In February 1994, Executive Order No. 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations") was signed into law. Executive Order 12898 set forth the framework for defining Environmental Justice at the Federal level. It created an interagency working group on Environmental Justice, and charged each Federal agency with "identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the US and its territories. Executive Order 12898 is set forth in Appendix F.

The concept of Environmental Justice requires application of Civil Rights laws to the environmental arena, and, per the Environmental Protection Agency, "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." These issues come into play with lead abatement, hazardous waste sites, the handling and disposal of pesticides and all hazardous materials, air pollution, waste water, and the distribution of water.

Civil Rights legislation and regulation are inherent to the concept of Environmental Justice, as they are often the mechanism by which to determine if an environmental injustice has occurred. In addition to Executive Order 12898, various preceding Federal laws and regulations pertain to Civil Rights and Environmental Justice. These include the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987, and numerous environmental acts including the National Environmental Policy Act of 1969 (NEPA) and the creation of the USEPA in 1970, the Clean Air Act of 1963 (substantially amended in 1977 and 1990), the Federal Water Pollution Act of 1972 (also known as the Clean Water Act), the Safe Drinking Water Act of 1974 (SDWA), the Toxic Substances Control Act of 1976, the Resource Conservation and Recovery Act of 1976, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, also referred to as the Superfund site program).

In addition to this legislation, the Council of Environmental Quality and the Office of Environmental Justice provide specific guidance for determining whether or not an action or policy has a negative impact on environmental justice.

⁵ Robert D. Bullard *Environmental Justice in the 21st Century*, accessible at www.ejrc.cau.edu/ejinthe21century.htm

The Council on Environmental Quality

The Council on Environmental Quality (CEQ) was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969 (NEPA). The CEQ is charged with coordinating all Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. The CEQ developed USEPA's *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* which provides an overview of many of the factors that should be considered when identifying and evaluating environmental justice concerns.

Based on the guidance, CEQ regulations (40 CFR 1508.27) set forth criteria for determining whether a proposed action or policy is significant, thereby requiring a detailed statement (i.e., an Environmental Impact Statement or EIS). Under CEQ guidance, economic or social effects alone do not trigger an EIS [40 CFR 1508.14]. For an EIS to be triggered, there must be a sufficient impact on the environment to be considered "significant" within the meaning of NEPA. The agency must identify potential impacts that the action or policy would have on low-income populations, minority populations or Indian tribes, and determine if such actions could lead to disproportionately high and adverse human health or environmental effects. CEQ requires that significance be evaluated in terms of "intensity" or "severity of impact"; based on this, each action or policy must be evaluated in a focused manner that may show potential impacts at the local level that may be missed at a regional or state level. Narrowing the focus could have an impact on the determination of whether disproportionately high and adverse effects should trigger the serious consideration of alternatives and mitigation actions in coordination with extensive community outreach efforts.

The Office of Environmental Justice

The Office of Environmental Justice under the US Environmental Protection Agency developed the *Toolkit for Assessing Potential Allegations of Environmental Justice*⁶. The *Toolkit* provides guidance that can be used to aid in the identification of environmental justice issues raised by a community or other stakeholders. These issues range from concerns about conditions caused by past environmental decisions to determinations of whether future actions will have environmental justice implications.

According to the *Toolkit*, the determination regarding whether a particular situation raises an environmental justice issue or problem depends upon an evaluation of the totality of the circumstances surrounding the action. Also, in accordance with the Department of Justice Guidance Concerning Environmental Justice, there are a number of factors that should be considered in determining whether any individual situation does raise such an issue:

1. Whether individuals, certain neighborhoods, or federally recognized tribes suffer disproportionately adverse health or environmental effects from pollution or other environmental hazards;
2. Whether individuals, certain neighborhoods, or federally recognized tribes suffer disproportionate risks or exposure to environmental hazards, or suffer disproportionately from the effects of past under enforcement of state or federal health or environmental laws;

⁶ Office of Environmental Justice *Toolkit for Assessing Potential Allegations of Environmental Justice*, accessible online at www.epa.gov/compliance/ej/resources/policy/ej-toolkit.pdf

3. Whether individuals, certain neighborhoods, or federally recognized tribes have been denied an opportunity for meaningful involvement, as provided by law, in governmental decision-making relating to the distribution of environmental benefits or burdens. Such decision-making might involve permit processing and compliance activities.

As stated in the *Toolkit*, although it is important to avoid overly narrow conceptions of possible environmental justice circumstances, the mere presence of environmental hazards in a particular community does not necessarily mean that an environmental justice problem is unlawful. Additional factors must be considered, such as the accumulation of a number of environmental hazards in an affected area because of the lack of public participation by the community, the lack of adequate protection under the laws designed to protect health and the environment, or unusual vulnerability of the community to such hazards.

Based on the *Toolkit*, Environmental Justice Coordinators at EPA Headquarters and Regional Offices utilize a four phase framework for identifying potential sources of Environmental Injustice:

- Phase 1 – Problem Identification
- Phase 2 – Data Collection
 - Collection of Data (Social, Economic, and Health Indicators⁷) on Affected Area and Reference Community
- Phase 3 – Assessment of the Potential for “Adverse” Environmental and Human Health Effects or Impacts
- Phase 4 – Assessment of Potential for “Disproportionately Adverse” Effects or Impacts

The first phase of the assessment is to determine, at least qualitatively, the context, scope, participants, community of concern, reference communities, and indicators that can be used to evaluate the assessment endpoints and level of effort needed to conduct a preliminary examination of the questions or issues that started the assessment. At the screening stage, the goal of problem formulation is a conceptual model of the issue and an analysis plan. The second phase of the framework is collecting data on the environmental actions or entities (e.g., a facility) that create the environmental and health effects; and the community of concern where these impacts will be manifested.

Within the context of establishing the potential for Environmental Justice impacts, the third phase is to evaluate the environmental data or action collected in phase 2 to determine whether it is likely to cause adverse environmental, human health, or welfare impacts. This step helps to determine whether the proposed actions or existing situation, either alone or in combination with other sources of stress in the environment, might cause adverse impacts on the environment in which the members of the community live and work. Examples of adverse effects can include:

⁷ As no known sustained health problems have been scientifically linked to any municipal water systems (including groundwater radium contamination), the data collection and assessment of the potential for “adverse” impacts were limited to social and economic indicators and assessing environmental impacts.

- Bodily impairment, infirmity, illness, or death;
- Air, noise, soil, and water pollution or contamination;
- Destruction or disruption of man-made or natural resources;
- Destruction or disruption of aesthetic values;
- Destruction or disruption of community cohesion or a community's economic vitality;
- Destruction or disruption of the availability of public and private facilities and services;
- Vibration;
- Adverse employment effects;
- Displacement of persons, businesses, farms, or nonprofit organizations; and
- Increased traffic congestion, isolation, exclusion, or separation of individuals within a community or from a broader community.

Indicators of existing environmental conditions include known contaminants levels in the air, water, or soils, including any environmental data that is monitored or that is needed to establish the existence of an environmental injustice situation. Data on existing conditions are also needed to establish the potential for environmental injustice situations in the event that an action may have a further negative impact.

The fourth phase of the framework assesses whether or not any adverse impacts identified in the third phase would have a disproportionately higher impact on any of the Environmental Justice communities than on the community at large. This is based on the idea that an action that equally affects many may be an adverse effect, but would not necessarily trigger environmental justice concerns. As stated in the *Toolkit*, the term "disproportionately high and adverse effects or impacts" means an adverse effect or impact that is predominately borne by any segment of the population, including a minority population and/or a low-income population and is significantly more severe or greater in magnitude than the adverse effect or impact that will be suffered by a non-minority population and/or non-low-income population.

Because the definition of environmental justice assumes a relative or disproportionate comparison of impact, the indicators of community trends are examined within the context of the reference area outside the community, and the community that may be disproportionately affected is evaluated in a way to show that it is distinct from the larger reference community. While indicators may suggest that a community is adversely affected, until those impacts are compared to impacts on an appropriate reference community, the community of concern cannot be classified as disproportionately affected. In other words, an adverse impact is not necessarily an environmental injustice impact.

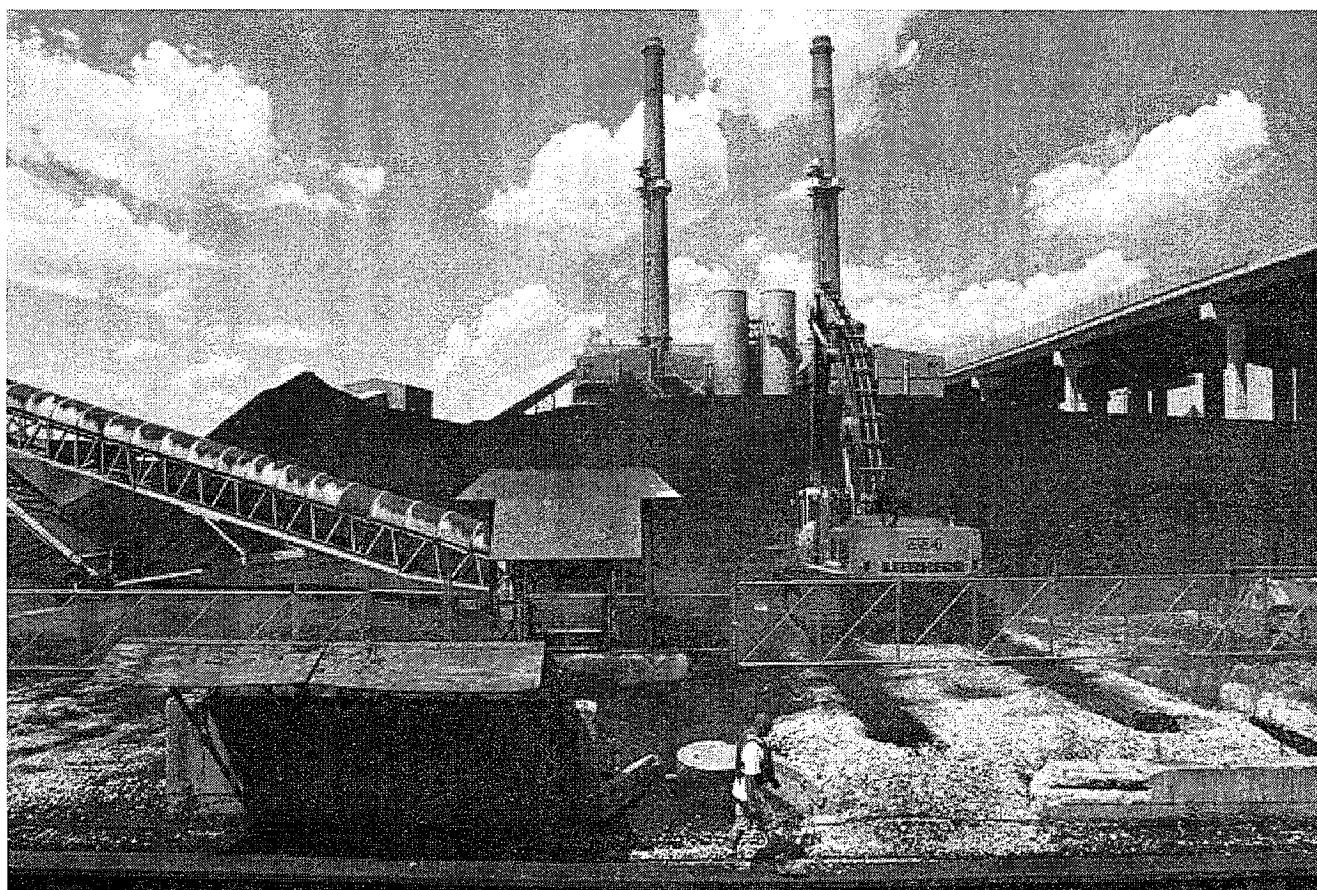
SEWRPC's Environmental Justice Task Force

In 2006, SEWRPC created the Environmental Justice Task Force (EJTF) to oversee issues pertaining to Environmental Justice in the seven county Region, and charged it to:

1. Ensure public involvement of low income and minority groups in decision making;
2. Prevent "disproportionately high and adverse" impacts of decisions on low-income and minority groups; and
3. Assure low-income and minority groups receive proportionate share of benefits.

SEWRPC created a primary role for the Environmental Justice Task Force, "to enhance the consideration and integration of environmental justice throughout the regional planning process", and set forth five specific purposes, which are:

We Energies' Valley plant operates under more lenient standards



Mark Hoffman

Timmy Koss, a crew member of the tugboat Leona B., gets ready to tie up Friday after delivering a barge loaded with about 2,000 tons of coal, destined for delivery to the We Energies' Valley power plant on Canal St. The plant is exempt from many modern emission standards.

Many old coal-fired power plants are shutting down or being upgraded, but Valley escapes change

By Thomas Content and Lee Bergquist of the Journal Sentinel

July 10, 2010 |(47) Comments

Many of Wisconsin's oldest coal-fired power plants are shutting down or are being upgraded as regulators tighten standards to improve air quality.

But We Energies' Valley plant - with its twin 400-foot smokestacks that tower over the High Rise Bridge a mile south of downtown Milwaukee - is a glaring exception.

The utility has avoided installing costly pollution controls by capitalizing on the plant's age, its unique role in producing steam to heat many downtown buildings and a court settlement with environmental regulators.

Valley is We Energies' oldest power plant that lacks modern emission controls. As a result, it exposes metro Milwaukee - an area with longstanding air quality problems - to more air pollution.

"Valley is the poster child for the oldest and dirtiest coal plants in the state," said Jennifer Feyerherm of the Sierra Club, an organization that has been active in forcing utilities to clean up operations of old power plants.

We Energies' No. 2 executive said the company has installed equipment to bring down pollution.

"We have not ignored Valley," said Rick Kuester, the utility's executive vice president.

He signaled for the first time that the company is studying the future of Valley and considering adding more pollution controls or switching to a cleaner burning fuel.

Kuester also emphasized the critical role the plant plays in the financial health of downtown Milwaukee by relying on steam to keep heating costs stable. The plant also provides supplemental electricity for the broader power grid on hot summer days when usage is high.

Air takes the hit

But burning coal at Valley - and the way the plant is allowed to operate - hurts local air quality.

In addition to pollution from power plants, air quality is influenced by many factors - weather, vehicles, factories and emission from other regions.

Milwaukee County doesn't meet federal health standards for particle pollution. Also, much of eastern Wisconsin doesn't meet health standards for ozone, or smog, but state officials say recent data shows the region will come into compliance.

Dirty air can aggravate heart and lung problems. It's known to exacerbate asthma and, when levels rise, the state issues public announcements warning people with heart and lung problems, children and the elderly that they could be at greater risk.

For every kilowatt produced, Valley generates more nitrogen oxide than any We Energies plant in the state. Nitrogen oxide, a byproduct of burning coal, is a key ingredient in smog.

Using the same measure, in 2008 only five coal plants in Wisconsin produced more nitrogen oxide than

Valley, a Journal Sentinel analysis of federal emissions data shows.

Three of those plants plan to stop burning coal - or have already done so.

Efforts to crack down on older coal plants are intensifying. They include:

- The U.S. Environmental Protection Agency is drafting rules to reduce emissions of pollutants to control smog, particle pollution, mercury contamination and carbon dioxide, which is linked to global warming. The regulations are driven by a growing body of science that shows air pollution, even at lower levels, can be a source of health problems.
- The Wisconsin Public Service Commission is studying whether to idle or close old coal plants at a time when utilities are producing more electricity than customers need.
- Wall Street is assessing whether new rules could spur expansion of natural gas, nuclear power and renewable energy.

"Retirement of older, smaller, dirtier coal-fired plants is highly likely," analyst Christine Tezak, who tracks environmental policy for Robert W. Baird & Co. in Washington, D.C., wrote recently in a research note to investors.

Last week, the EPA proposed new regulations that clamp down on smog and particle pollution - or soot - in the eastern United States starting in 2012. The cost of adding scrubbers and other controls is estimated at \$2.8 billion annually by 2014. The EPA says that the price will be offset by \$120 billion a year in health benefits, avoiding up to 36,000 in premature deaths and 240,000 cases of aggravated asthma.

Plans for Valley also are influenced by new state water regulations that will limit the temperature of water released by power plants and other facilities. Valley sends warm water into the Menomonee River. Heated water has the potential to harm fish and other aquatic life. The new rules by the Department of Natural Resources are likely to force We Energies to install upgrades.

Dual nature of Valley

What sets Valley apart from virtually any other plant in the state is its dual capacity to provide electricity and steam. The plant feeds a 105-year-old steam system that supplies heat and hot water for downtown and the near south side. Customers are as varied as Rockwell Automation, Marquette University and the U.S. Bank building.

Any plant upgrades will be billed to customers in the downtown area. We Energies also would seek to recoup a portion of the costs from its base of 1 million electric customers, spokesman Brian Manthey said.

It costs more to build a coal plant, but burning coal is less expensive than burning natural gas. Natural gas plants pollute less and release less carbon dioxide, but prices can be volatile.

"We shouldn't rush into anything," said Todd Stuart, executive director of the Wisconsin Industrial Energy Group, which represents large energy users. "We've got a very manufacturing-intensive economy, and they need low-cost power."

Environmentalists want We Energies to convert Valley to natural gas, but they are also pressing the EPA to mandate tougher controls on the plant if it continues to burn coal. It's part of a broader effort to clean

up old coal plants.

In recent years, the Sierra Club and EPA have filed lawsuits or complaints against other utilities over emissions from coal plants in Madison, Green Bay and seven other Wisconsin cities.

"Continuing to do at Valley what We Energies has done since it opened isn't an option any more," said David Bender, a Sierra Club lawyer.

"Do you keep pouring money into that old technology, or at what point do you replace it with something cleaner?"

The numbers

Built in 1968, Valley generates 280 megawatts of electricity - enough for about 140,000 homes.

It replaced power plants on N. Commerce and E. Wells streets - buildings which are now used by Time Warner Cable and the Milwaukee Repertory Theater's Quadracci Powerhouse Theater.

Valley burns an average of 2,200 tons of Colorado coal a day. Steam travels from the plant to downtown in pipes mounted into the iconic arch at the east end of Canal St. and the High Rise Bridge before heading downtown.

Laura Bray, executive director of the Menomonee Valley Partners, a business group, said the majority of businesses in the valley view the plant as an asset.

But Potawatomi Bingo Casino - a catalyst for redevelopment in the valley that drew 6 million visitors last year - believes the 14-story power plant isn't a good fit for tourism and the tribe's environmental ethic.

"From our perspective, it's very old," said Jeff Crawford, attorney general for the Forest County Potawatomi.

"Hopefully in the near future, it's replaced with something far more efficient and less polluting."

We Energies' Kuester said a decision on Valley will be made in the next few years as planners at the company sort through impending regulations.

Upgrades to the plant, thus far, have been modest: About \$26 million has been spent by the company on new controls, out of \$4 billion in upgrades throughout its system.

Because Valley was built before power plants were subject to tougher environmental standards, it operates under a more lenient regulatory standard than newer plants. It's never been required to install equipment such as selective catalytic reduction systems and scrubbers, which remove substantially more ozone-causing pollutants.

More recently, it was exempted when We Energies reached an air-pollution settlement with EPA in 2006. We Energies proposed to retire or install state-of-the-art controls at its largest coal plants, but Valley was left off the list.

Allen K. Shea, director of the DNR's Division of Air and Waste Management, said adding controls at the bigger plants at Oak Creek and at Pleasant Prairie in Kenosha County helped attack regional emissions

problems.

"We Energies chose to make improvements at other plants, and that makes sense to us," Shea said.

Environmentalists think that utilities shouldn't be able to choose which plants get special treatment.

In a brief filed in April with the EPA, Sierra Club and Clean Wisconsin objected to We Energies' plans to reduce its overall emissions by installing air pollution controls at plants other than Valley.

By We Energies "averaging" pollution across its fleet of plants, the groups argued, residents near Valley will be harmed by dirtier air. In addition to the casino and a burgeoning industrial base, the plant is a neighbor to condominiums and low-income neighborhoods.

"It's a real environmental justice problem," said Katie Nekola, energy program director at Clean Wisconsin.

"They are complying with air regulations by cleaning up other plants, but not this one."

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