

ALERTS

Environmental Law Alert - EPA To Reconsider Effluent Limitations Guidelines Rule

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Environmental Protection Agency (EPA) Administrator Scott Pruitt recently announced that the EPA will be reconsidering the Clean Water Act Effluent Limitations Guidelines (ELG) and standards for the Steam Electric Power Generating Point Source Category and issuing an administrative stay of outstanding compliance deadlines. The announcement was made in a letter to the Utility Water Act Group (UWAG) and the U.S. Small Business Administration (SBA) Office of Advocacy on April 12.

The EPA will also petition the U.S. Court of Appeals for the Fifth Circuit to hold the litigation challenging the final ELG rule in abeyance until Sept. 12, 2017. Pruitt has committed to inform “the Court of the portions of the rule, if any, that [EPA] seeks to have remanded to the [EPA] for further rulemaking” by then. The case, *Southwestern Electric Power Co., et al. v. EPA*, No. 15-60821, has been pending since the final rule was challenged in 2015.

The EPA’s action is in response to two petitions for reconsideration, one from the UWAG dated March 24, 2017, and the other from SBA Advocacy dated April 5, 2017. The EPA cited in its [pre-publication Federal Register Notice](#) that UWAG has disclosed new data that may indicate the challenged regulation’s standards cannot be met with the model technologies the EPA identified in its ELG rulemaking.

Once the EPA’s administrative stay is finalized, regulated entities will receive a temporary reprieve from the impending Nov. 1, 2018, deadline to comply with some or all end-of-pipe or pretreatment standards for flue gas desulfurization (FGD) wastewater, fly ash transport water, flue gas mercury control wastewater, gasification wastewater, and bottom ash transport water. The compliance deadlines will be administratively stayed during the court proceedings and the EPA reconsideration. The EPA also intends to stay the deadlines through notice and comment rulemaking. It is unclear how long new rulemaking for revised ELG standards and compliance deadlines could take. Environmental organizations involved in the litigation have indicated that they will challenge the EPA’s stay of the compliance deadlines.

Related Steam Electric ELG standards that became effective on Jan. 4, 2016 (e.g., standards for combustion residual leachate and oil-fired and small 750 MW generators and New Source Performance Standards), are not affected by the EPA’s regulatory action or court filings.

For more information regarding this order, its implementation, and legal effects, contact the Barnes & Thornburg attorney with whom you work, or Jeffrey S. Longsworth at 202-408-6918 or jlongsworth@btlaw.com; Lydia

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