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**Subject:** Steam Electric ELGs  
**Date:** Thursday, May 04, 2017 10:32:39 AM  
**Attachments:** [image001.png](#)

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FYI . . .

### Water Pollution

## Halting Toxic Water Discharge Limits From Power Plants Gets EPA Sued



By *Amena H. Saiyid*

Indefinitely postponing the date for power plants to meet limits on their toxic water discharges has landed the Environmental Protection Agency in federal district court.

A coalition of environmental groups, led by Clean Water Action, accused the EPA of violating the Administrative Procedure Act by not giving the public a chance to comment on the agency's decision to stay the compliance deadlines for its toxic effluent

limits rule (*Clean Water Action v. Pruitt*, D.D.C., No. 1:17-cv-00817, 5/3/17).

They also alleged the EPA lacked the authority to take this step, according to the [complaint](#) filed May 3 in the U.S. District Court for the District of Columbia.

The EPA in late April postponed compliance dates—which were to begin in November 2018—after agreeing to a petition from the Utility Water Act Group; Southwestern Electric Power Co, a subsidiary of American Electric Power; and Union Electric Co., an Ameren Corp. subsidiary; as well as from the Small Business Administration Office of Advocacy to reconsider the rule. The power industry said the EPA underestimated the time, cost and equipment needed to treat wastewater.

The effluent limits (RIN:2040-AF14) at issue regulate the discharge of coal ash wastewater. They also limit releases into wastewater of arsenic, mercury, selenium and nitrates. Those pollutants are released by scrubbers and other controls, which are installed at mostly coal-fired power plants to reduce harmful air emissions.

### Selective Reconsideration

The environmental groups alleged the EPA selectively chose parts of the 2015 effluent limits regulation to reconsider, an action they said violates Section 705 of the Administrative Procedure Act, "which only authorizes agencies to 'postpone the effective date' of rules in their entirety."

The groups said the EPA's action only postpones compliance dates for new, more stringent effluent limits in the regulation, but leaves untouched other provisions of the rule, such as exemptions for so-called "legacy wastewater" and the landfill leachate, or wastewater found at the bottom of landfills.

The nonprofit Earthjustice filed suit on behalf of the Sierra Club, the Waterkeeper Alliance and Clean Water Action, while the Environmental Integrity Project is representing itself, PennEnvironment, Chesapeake Climate Action Network, Chesapeake Physicians for Social Responsibility and Prairie Rivers Network.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, founder of Bloomberg L.P. Bloomberg BNA is an affiliate of Bloomberg L.P.

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### Snapshot

- EPA sued by environmental groups for staying compliance deadlines for power plant effluent limits
- The groups say EPA violated the Administrative Procedure Act by not allowing public comment on the stay