

The Daily Feed

5th Circuit stays power plant ELG challenge

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Over the objections of drinking water and environmental groups, the U.S. Court of Appeals for the 5th Circuit has granted EPA's request to stay litigation over the Obama-era Clean Water Act (CWA) effluent rule for power plants, delaying oral argument on its legality for at least 120 days while the agency weighs reconsidering the policy.

5th Circuit Judge Edward C. Prado granted EPA's request without comment in an [April 24 order](#), giving the agency a deadline of Aug. 22 to decide whether it will ask the court to remand the rule, either partially or in full, for substantive revisions.

EPA has started the process of reconsidering the power plant effluent limitation guideline (ELG), [granting petitions from industry](#) that claim the policy is a prime candidate for repeal or revision under President Donald Trump's regulatory reform plans because it is unduly burdensome and lacks support in the scientific record.

The agency is not yet committing to actually revising the ELG -- instead it is only considering whether to start a new rulemaking process. But the 120-day deadline for EPA to update the court on its plans will allow Trump administration officials to consider possible changes to the rule and potentially lay out a timeline for crafting them by Aug. 22.

Environmental groups and drinking water groups [filed briefs in the suit](#), *Southwestern Power Electric Company, et al., v. EPA, et al.*, opposing the stay, where they claimed it would undermine the rule of law by allowing EPA to avoid implementing or defending otherwise valid rules indefinitely because it is merely considering potential revisions. The groups are asking the 5th Circuit to uphold the rule and strengthen many of its requirements, while industry has argued that it should be scrapped entirely.

“[A] new Administration’s disagreement with regulations on the books may be a reason to initiate a rulemaking to consider proposing changes to those regulations, but it is not a valid basis for EPA to abdicate its responsibility to defend and enforce them,” the environmentalists' brief says.

However, Prado's order does not address those arguments, instead granting all of EPA's requests.

The 2015 ELG sets technology-based standards for power plants to reduce the effluent content of their wastewater discharges, to be implemented by state and federal regulators when they craft new CWA discharge permits for the facilities. The first deadline for ELG-compliant permits was to be Nov. 1, 2018, with other targets extending as far as 2023, but EPA Administrator Scott Pruitt has already extended the those timelines pending either revisions to the rule or a final ruling in the 5th Circuit case.

That extension could lead to proposed permits incorporating the ELG limits being reworked and made less stringent -- such as one for a Rome, GA, power plant operated by Georgia Power. [The Atlanta Journal-Constitution reports](#) that environmental groups are warning the ELG stay could derail plans to reduce arsenic and other releases from the plant, after Georgia regulators decided to delay the ELG-based limits in its proposed permit from 2018 to 2023.

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