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Endangered Species Concerns Seen Delaying Final Cooling Water Rule

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EPA is again in talks with environmentalists on the timing of its long-pending rule governing cooling water intake structures at power plants and industrial facilities, with the agency working through final Endangered Species Act (ESA) and other concerns that sources expect will delay the final measure at least two weeks.

On Jan. 14, the day the rule was previously due under a legally binding consent decree, EPA in a statement acknowledged it would miss the deadline but said it is working to finish the rule "as soon as possible."

The rule's deadline -- set in a consent decree with the environmental group Riverkeeper -- has been extended twice over the past few months. One extension, from Nov. 4 to Nov. 20, accounted for the 16-day government shutdown. The agency later received an additional extension to Jan. 14 in part to push the rule's release past the holidays.

"EPA is in discussions with the parties to the settlement agreement about the timing for completing the rule," the agency says.

The agency submitted the final cooling water rule July 30 for mandatory White House Office of Management & Budget (OMB) pre-publication review, which typically takes 90 days. The rule is still at OMB, according to the office's website.

EPA in June also requested a formal ESA review of the rule with the National Marine Fisheries Service and the Fish & Wildlife Service, a process that could bolster environmentalists' arguments for stricter requirements. That review, which was expected to take 135 days, was also delayed due to the government shutdown.

A source with knowledge of the issue says the rule's delay is "due to a continuing inter-agency consultation under the ESA," adding that it is unclear exactly what issues the species review is raising with the rule.

The source expects the delay to last "at least two weeks. My sense is they might take at least that long."

An industry source also says the delay could last "about two weeks," adding that many issues with the rule are "continuing to be discussed right down to the last minute. . . . I think EPA would like to avoid getting sued this time around, but frankly that's probably unavoidable."

Environmentalists have been pushing for stringent plant overhauls in the rule such as closed-cycle retrofits that would dramatically reduce water withdrawals and as a result reduce the amount of fish killed by being sucked into cooling systems or pinned against intake structures.

Industry has favored alternative technologies, such as upgraded screens, barrier nets or reduced intake velocity, that would meet the rule's fish safety requirements but cost far less than retrofitting plants with cooling towers. EPA has pledged to include significant flexibilities in the cooling water rule.

An environmentalist earlier said that if the final rule "looks like the proposal . . . we would be forced to sue EPA because we don't think EPA's approach is lawful."