

## Stein, Mark

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**From:** Stein, Mark  
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**To:** Sharon DeMeo; Houlihan, Damien; Webster, David  
**Cc:** Carl Dierker  
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FYI –

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**KEY ISSUES:** GHG Permits CompTox Water Trading NAAQS

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Daily News

## Weighing Industry Data, EPA Wins Lengthy Extension For Power Plant ELG

Posted: April 14, 2014

EPA and environmentalists have agreed to extend to September 2015 the deadline for the agency to revise its decades-old discharge standards for the coal- and steam-electric power sector, though advocates say they will ask for a speedier deadline if the agency misses a December target for a related waste rule governing coal ash.

[The agreement](#), entered April 9 by a judge in the U.S. District Court for the District of Columbia, gives EPA until Sept. 30, 2015, to revise its 1982 effluent limitation guideline (ELG), 16 months beyond its most recent deadline of May 22.

EPA had previously indicated in court filings that it would need additional time to finish the rule and was negotiating for an extended target date.

An environmentalist attorney says the need for more time was spurred by comments on the rule from industry groups, which "introduced significant amounts of new data" challenging virtually every part of the agency's technical analysis of the rule.

"Industry had a lot of opportunities to provide EPA with data, and they waited until the 11th hour to dump this very significant amount of new data on EPA," the source says. "Based on what we know now, EPA is in process of evaluating this."

The source adds: "We don't necessarily think this data significantly changes the underpinnings of the rule [or] the analysis they did. We still think there's a strong record [supporting] a very strong final rule, toward the more stringent end of what EPA originally proposed."

The source says that even if the new information does not change the rule's substance, EPA must review the new data and provide responses to issues raised in comments and also address the concerns during interagency review conducted by the White House Office of Management & Budget (OMB).

"It is going to take EPA staff some time to go through the reams of new data and critically evaluate what that new data means for the technical underpinnings of the rule," the attorney says.

The ELG is one of three key rules targeting solid and liquid releases from power plants. The other two are the Resource Conservation & Recovery Act (RCRA) coal ash rule, which EPA has committed to finish by December; and the Clean Water Act (CWA) section 316(b) rule governing cooling water intake structures, which is set to be finalized April 17.

Though EPA has received several deadline extensions for the cooling water rule, observers expect the agency to meet the looming target date.

In response to a months-long lobbying effort to soften the rule's fish safety requirements, EPA appears to have [changed some provisions](#) in the rule to address industry concerns. The agency is widely expected to finalize a rule that does not require costly recirculating cooling systems that nearly eliminate the impingement and entrainment of fish.

EPA Administrator Gina McCarthy, during an April 2 congressional hearing, said the agency has had a "robust dialogue" with utilities about the rule's potential impacts on the sector and has also worked with other agencies "to make sure that this rule is reasonable and appropriate."

"I think you will see that we have listened very closely when this rule is released," the administrator said, in response to a question from Rep. Adam Kinzinger (R-IL) about the [nuclear sector's concerns](#) about the rule.

Given EPA's signals about the direction of the rule, the attorney says, "Our hopes are pretty low for what it will look like, in terms of the strength of it."

### **No 'Further Extensions'**

For the ELG, environmentalists have been [sharply critical](#) of three technology-based options added to the rule during earlier review by OMB. Those options generally offer more exemptions to treatment requirements and also allow continued use of wet storage impoundments for some waste streams. Advocates argue those options do not adequately meet the CWA's "best available technology" standard for effluent rules.

"They all seem designed to bring the overall cost of the rule down based on some arbitrary sense that the rule can't cost more than X," the source says. "That has nothing to do with the statutory standard that EPA is required to follow."

The source dismissed suggestions that EPA needs more time to work on the rule in order to bolster its analysis of those options. "I would be greatly surprised if EPA attempts to paper over these OMB-created options and to create a record around them, when there really is not substance behind them," the source says. "I have not heard that they are attempting to do that, and I don't know how they could."

Industry, however, [argued in comments](#) on the rule that EPA can justify "little additional regulation" for most waste streams identified in the proposal and should continue to allow impoundments or settling ponds as a treatment option.

In addition to the extended deadline, the modified consent decree in *Defenders of Wildlife and Sierra Club v. EPA* includes a clause allowing environmentalists to seek an earlier deadline if EPA misses a Dec. 19 deadline for the RCRA rule. Both EPA and advocates believe the rules are closely linked, given that they regulate water-based waste streams that traditionally have been treated in coal ash impoundments.

"It was a really important . . . that EPA demonstrate a commitment to following through with both rules," the source says. "There's a real concern if these deadlines slip any further, it could mean that these rules ultimately do not get done in this administration."

The agreement also includes language that EPA "does not plan to seek further extensions" of the deadline. As such, it also removes a provision giving the agency an automatic six-month extension if it requests one in court.

In the latest round of negotiations, the source says, "EPA always knew, if we weren't able to reach agreement, it could file a motion and get an automatic extension." Removing that provision would ensure a firmer deadline.

"We don't want to be put in this position again where September 2015 only becomes a date on paper," the source says, adding that "we're ready to go to court to enforce the new deadline." -- *Lee Logan* ( [llogan@iwppnews.com](mailto:llogan@iwppnews.com) This e-mail address is being protected from spambots. You need JavaScript enabled to view it )

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