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Clean Water Act Effluent Limitation Guidelines/Power Plants: Environmental Organizations U.S. District Court (D.C.) Challenge to U.S. Environmental Protection Agency Compliance Date Postponement

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Earthjustice and a number of other environmental groups (collectively “Earthjustice”) filed a Complaint in the United States District Court for the District of Columbia against the United States Environmental Protection Agency (“EPA”) challenging the postponement of certain compliance deadlines in the November 2015 final rule revising a Clean Water Act Effluent Limitations Guidelines for Power Plants (“ELG rule”).

EPA had issued an indefinite stay of the ELG rule on April 25th. See Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric Generating Point Source Category, 82 Fed. Reg. 19,005 (“Stay”).

The ELG rule had been finalized on November 3, 2015. See 80 Fed. Reg. 67,838. Affected facilities would have been required to meet the standards beginning in 2018.

Earthjustice argues that EPA, without notice in providing the public with an opportunity to comment, promulgated the stay. The organizations argued that the stay violates the Administrative Procedures Act for six reasons:

- A failure to make findings required to support a determination that “justice so requires” an administrative stay under 5 U.S.C. § 705
- Because EPA’s justification for the stay was to consider pending petitions for reconsideration, rather than to stay the rule pending judicial review
- Because 5 U.S.C. § 705 provides only for postponing the effective date of an action, and the effective date of the ELG rule is nearly 16 months in the past
- EPA postponed the compliance dates for only selected portions of the ELG rule, rather than staying the effectiveness of the rule in the entirety
- An adequate justification for the stay was not provided nor did EPA consider all relevant factors
- A failure to provide prior notice and opportunity to comment as required by 5 U.S.C. § 553

[A copy of the Complaint can be downloaded here.](#)

