

STEAM ELECTRIC ELG LITIGATION

Internal deliberative pre-decisional - FOR USE BY 2024 PRESIDENT-ELECT TRANSITION TEAM MEMBERS ONLY

ISSUE SUMMARY:

On May 9, 2024, EPA promulgated a final rule entitled “Supplemental Effluent Limitations and Guidelines for the Steam Electric Power Generating Point Source Category.” 89 Fed. Reg. 40198. The final rule revises technology-based effluent limitations guidelines and standards applicable to certain wastestreams discharged by coal-fired power plants: flue gas desulfurization wastewater, bottom ash transport wastewater, combustion residual leachate, and legacy wastewater. These regulations were last revised in 2015 and 2020. 80 Fed. Reg. 67,838 (Nov. 3, 2015); 85 Fed. Reg. 64,650 (Oct. 13, 2020). The new rule, in part, responds to a remand from the Fifth Circuit in *Southwestern Electric Power Co. v. EPA*, 920 F.3d 999 (5th Cir. 2019). A number of parties – including those representing industry, states, and non-governmental organizations – have challenged the 2024 final rule in various petitions for review across several circuits. Under the multicircuit petition process in 28 U.S.C. § 2112(a), the Judicial Panel on Multidistrict Litigation has selected the U.S. Court of Appeals for the Eighth Circuit as the circuit in which to consolidate those petitions for review. In July 2024, industry and state petitioners filed a motion for a stay of the rule pending judicial review. The Eighth Circuit denied the request on October 10, 2024, and merits briefing is now expected to take place in the coming months.

KEY POINTS:

- The 2024 final rule became effective on July 8, 2024. The rule’s more stringent limitations and standards will be implemented into NPDES permits on a date determined by the permitting authority beginning on the effective date of the rule and no later than December 31, 2029.
- EPA has pending litigation in the Fourth and Fifth Circuits involving review of the 2020 and 2015 rules, respectively. See *Appalachian Voices et al. v. EPA*, No. 20-2187 (4th Cir.); *Southwestern Elec. Power Co. v. EPA*, No. 15-60821 (5th Cir.).

ONGOING/UPCOMING REVIEWS FOR FY2021:

N/A.

KEY EXTERNAL STAKEHOLDERS:

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| <input type="checkbox"/> Congress | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States | <input type="checkbox"/> Tribes | <input type="checkbox"/> Media | <input type="checkbox"/> Other Federal Agency |
| <input checked="" type="checkbox"/> NGO | <input type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public | | | |

MOVING FORWARD:

- Merits briefing is expected to take place over the coming months, under a schedule that is being negotiated by the various parties to the litigation.