Court Vacates EPA Stay of Methane Emissions Final Rule

By Jason R. Gianvecchio / Sep 29, 2017

The U.S. Court of Appeals for the District of Columbia Circuit recently held that the Environmental Protection Agency (EPA) lacked authority under the Clean Air Act (CAA) to stay a final rule concerning methane and other greenhouse gas emissions. *Clean Air Council v. Pruitt* 862 F.3d 1 (2017). In June 2016, the EPA issued a final rule establishing "new source performance standards" for fugitive emissions of methane and other pollutants by the oil and natural gas industries. After the rule was published, various industry groups including the American Petroleum Institute, Texas Oil and Gas Association, and the Independent Petroleum Association of America filed petitions seeking reconsideration under section 307(d)(7)(B) of the CAA, which states that "if the person raising objections can demonstrate to the EPA administrator that (1) it was impracticable to raise such objection within the notice and comment period and (2) if the objection is of central relevance to the outcome of the rule, the Administrator *shall* convene a proceeding for reconsideration of the rule and the effectiveness of the rule may be stayed during the reconsideration for a period not to exceed three months."

On April 18, 2017, the EPA administrator stated that the EPA found that the petitions have raided at least one objection to the emission monitoring requirements that warrant reconsideration under the CAA. On June 5, 2017, the EPA granted reconsideration on four aspects of the methane rule and the EPA published a notice of proposed rulemaking (NPRM) announcing its intention to extend the stay for two years and look broadly at the entire rule during the reconsideration proceeding. After the EPA suspended implementation of the methane rule, six environmental groups, including the Environmental Defense Fund, Natural Resources Defense Council, and the Sierra Club, filed an emergency motion for a stay, claiming that all of the issues the EPA administrator identified could have been, and actually were, raised during the comment period.

The EPA defended the stay by arguing that they have "broad discretion" to reconsider their own rules and that they have "inherent authority" to "issue a brief stay" of a final rule while it reconsiders the rule. The Court held that that argument was invalid for two reasons: (1) the EPA did not cite any authority for that proposition and (2) the EPA does not have inherent authority as a stay is only allowed when the two above considerations are met. The Court then dealt with the issue of whether or not it was impracticable to raise any such objections within the notice and comment period. The EPA granted reconsideration and stayed the emissions standards on four grounds: (1) industry groups had no opportunity to object to provisions concerning "low production well sites," (2) the final rule included a process for demonstrating "alternative means" of compliance that was not in the NPRM, 3) the final rule required "certification by a professional engineer" that regulated entities had a proper closed vent system, and 4) exemption from regulation for "well site pneumatic pumps" on an engineer's certification that it is infeasible to route the pneumatic pump to a control device.

The Court found that the industry groups had ample opportunity to comment on all four issues on which the EPA granted reconsideration. The Court also found that in several instances the agency incorporated those comments directly into the final rule. Because it was not "impracticable" for industry groups to have raised such objections during the notice and comment period, CAA section 307(d)(7)(B) did not require reconsideration and, thus, did not authorize the stay.

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