

ALERTS

Environmental Law Alert - EPA Extends Comment Deadline For Proposed Rule To Cap Carbon Emissions From New Power Plants

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On March 6, a notice of extension of public comment period was published in the Federal Register for EPA's proposed rule to regulate greenhouse gas (GHG) emissions from new power plants. The comment deadline for the proposed rule will be extended for 60 days until May 9, 2014.

As we [previously reported](#), the comment period initially was only 60 days (comments had been due March 10, 2014). On Jan. 15, 2014, EPA received a bi-partisan letter from 71 members of Congress seeking this 60-day extension, given the potential impacts of the proposed rule not only on power plants, but also on energy-intensive manufacturers and homeowners who pay electricity bills.

In addition to extending the time for comment on the proposed rule, the comment period extension will provide additional time to respond to EPA's Feb. 26, 2014, notice of data availability in requesting comments on EPA's arguments about what data the agency is allowed to consider in making its determination that carbon capture and sequestration (CCS) is the "best system of emission reduction" that is "adequately demonstrated," as required by the Clean Air Act. In making that determination, EPA relied on data from three power plants that received federal assistance. The Energy Policy Act of 2005 limits the use of data from federally- subsidized facilities when setting standards. EPA is arguing that this limitation only prohibits "sole" reliance on data from subsidized projects.

On Jan. 15, 2014, the State of Nebraska filed suit in the District Court for the District of Columbia seeking withdrawal of the proposed rule on the grounds that it violates the Energy Policy Act, and an injunction against EPA to bar the agency from using data from federally-subsidized projects to identify the "best system of emission reduction" that is "adequately demonstrated."

A copy of the notice extending the comment deadline is available here: http://www2.epa.gov/sites/production/files/2014-02/documents/commentextension_proposed_cps_for_new_power_plants.pdf

A copy of the notice of data availability is available here: <http://www.gpo.gov/fdsys/pkg/FR-2014-02-26/pdf/2014-03115.pdf>

For more information, contact the Barnes & Thornburg attorney with whom you work, or one of the following attorneys in the firm's Environmental Law Department: Tony Sullivan at tony.sullivan@btlaw.com or 317-231-7472; Charles Denton at

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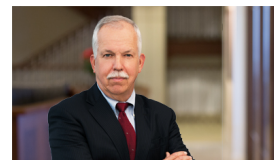
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