

Inside EPA's

Clean Air Report

An exclusive biweekly report on the Clean Air Act and U.S. air policy

The Inside Story

Coal Mine GHG Rule Suit Tests EPA Resource Limit Claim

Posted: August 12, 2013

Environmentalists' lawsuit challenging EPA's decision to reject a petition seeking first-time Clean Air Act greenhouse gas (GHG) rules for coal mines will test whether the agency can claim resource constraints and a need to prioritize rulemakings as a sufficient rationale for the denial, as EPA did in denying the petition.

WildEarth Guardians filed an Aug. 9 statement of issues in the U.S. Court of Appeals for the District of Columbia Circuit case WildEarth Guardians v. EPA, which challenges an April 30 decision by then-Acting EPA Administrator Bob Perciasepe to reject the petition seeking coal mine GHG new source performance standards.

EPA said it needed to focus its limited resources on larger sources of GHGs for regulation and is currently working on climate rules for existing and future utilities. But the suit asks whether EPA's decision not to complete the rulemaking because of other priorities "violates the Clean Air Act and/or is unsupported by the record, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law."

WildEarth Guardians, along with other environmentalists, petitioned EPA in 2010 to conduct a rulemaking to determine if coal mine emissions -- which include methane, particulate matter, nitrogen oxides and volatile organic compounds -- endanger public health or welfare, a finding that would trigger regulation under the Clean Air Act.

EPA, in its April 30 denial of their rulemaking petition, said its decision was not based on a substantive review but was because of a need to focus its resources on the largest sources of GHGs. A finding by the D.C. Circuit that EPA can cite resource constraints when it responds to petitions for rulemaking could offer a path for the agency to reject petitions without having to go through the resource-intensive rulemaking process.

EPA's resource limit defense comes as its air office has faced budget constraints but is still under heavy pressure to complete several high-priority rules, including President Obama's deadlines for the agency to propose and finalize the GHG standards for power plants, rules that EPA cited in its denial of the petition.

EPA has yet to propose climate standards for fossil fuel production systems and oil refineries, the two largest stationary sources of GHGs after power plants. Under Obama's schedule, EPA will not finalize climate rules for existing power plants until June 2015.

WildEarth Guardians, which sued EPA for its petition rejection in the D.C. Circuit on July 9, in the recent statement of issues also questions if EPA's failure to list coal mines as an air act source category and to regulate coal mine air emissions was in violation of the Clean Air Act.