



AIR POLLUTION:

Judges order 2 high-profile EPA cases to proceed despite shutdown

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Federal judges have rejected two requests from U.S. EPA to delay upcoming arguments in two high-profile air cases because of the government shutdown.

In separate motions, the Department of Justice asked the U.S. Court of Appeals to reschedule arguments in a case from public health advocates on EPA's air standards for pollutants that contribute to acid rain, and in another that challenges air limits for portland cement manufacturers.

Acting Assistant Attorney General for DOJ's Environment and Natural Resources Division Robert Dreher wrote to the court that "absent an appropriation, Department of Justice attorneys and employees of the EPA are prohibited from working, even on a voluntary basis, except in very limited circumstances."

Judges for both cases quickly denied the requests.

The first case, on the acid rain standards, is scheduled for Thursday in front of Judge Brett Kavanaugh and Senior Judges David Sentelle and Arthur Randolph. The Center for Biological Diversity, Clean Air Council and National Parks Conservation Association are seeking to force EPA to update its secondary National

Ambient Air Quality Standards, or NAAQS, for sulfur dioxide and nitrogen oxide.

The secondary standard is supposed to protect public welfare, including aquatic wildlife and ecosystems. The advocates contend that the standard, which hasn't been updated since 1971, is too lax and contradicts scientific research.

Notably, the advocates have also sought to reschedule the arguments on multiple occasions due to lawyer retreats and other conflicts. The judges also denied those requests (E&ENews PM, Sept. 16).

In the second case, the Natural Resources Defense Council and others will argue that EPA unlawfully weakened its air standards for portland cement makers in February.

EPA changed the standard after losing another D.C. Circuit case brought by industry. The agency removed all commercial incinerators from its database before recalculating the standards and changing testing requirements. As a result, the particulate matter standard was made weaker and companies were given more time to comply.

Arguments in that case are scheduled for Oct. 24, before Kavanaugh, Judge Srikanth Srinivasan and Senior Judge Harry Edwards.

Outside the D.C. Circuit, EPA has been more successful in delaying cases during the shut-down. The U.S. District Court for the District of Minnesota on Wednesday granted EPA's request to stay a case brought by the American Farm Bureau and National Pork Producers Council.

They are seeking to prevent EPA from releasing personal data on livestock operations in response to Freedom of Information Act requests. The agency came under fire from the groups earlier this year for releasing hundreds of pages containing data on concentrated animal feeding operations in 29 states to environmentalists (Greenwire, July 8).