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Suits Over Haze Plan Test Stringency Of Utility Emissions Control Mandate

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Environmentalists and Native American groups are suing EPA over its final regional haze reduction air plan for a coal-fired utility whose emissions affect several western states, arguing that the agency has set a negative precedent by requiring air controls that the advocates argue fail to meet stringent Clean Air Act requirements.

Still, several sources note that the federal implementation plan (FIP) pollution control measure that EPA wrote for the Navajo Generating Station (NGS) may be unique because the facility is located on tribal land for which the agency has oversight. Only a handful of other power plants are similarly located and could be affected by the outcome of the suits filed in the U.S. Court of Appeals for the 9th Circuit, though sources also note NGS emits significant pollution.

EPA in February 2013 proposed a FIP that would have required NGS to install selective catalytic reduction (SCR) technology on all three units of the facility to meet a nitrogen oxides (NOx) emission limit of 0.055 pounds per British thermal unit (lb/MMBtu) by 2018, in order to meet air law best available control technology (BART) requirements.

The agency then issued an Aug. 8 rule finalizing a FIP with a "better than BART" alternative first floated by a technical working group in July 2013. Under the alternative, NGS would have to limit its emissions of haze-forming NOx by establishing a long-term facility-wide cap on NOx from 2009 to 2044 and would require the implementation of one of several alternative operating scenarios to ensure the cap is met.

To meet requirements under the Clean Air Act to restore natural air quality in U.S. national parks and wilderness areas, EPA requires BART on stationary sources that produce NOx emissions.

Under the Tribal Authority Rule, EPA must issue a FIP to regulate NOx emission limits from coal-fired plants with a total generating capacity in excess of 750 megawatt (MW) located on tribal lands consistent with agency guidelines when a tribe has not submitted or EPA has not approved a tribal implementation plan.

NGS, which consists of three 750 MW coal-fired electric utility generating units with a total capacity of 2,250 MW, is co-owned by the U.S. Bureau of Reclamation, the Salt River Project, the Los Angeles Department of Water

and Power, Arizona Public Service, and utilities NV Energy and Tuscon Electric Power.

NGS serves the Central Arizona Project -- a 336-mile distribution system that delivers about 1.5 million acre-feet per year of Colorado River water from Lake Havasu in western Arizona to non-Native American agricultural water users in Central Arizona, Native American tribes in Arizona and municipal water users in several Arizona counties.

Generally, the alternative operating scenarios would require NGS to close one unit and to set a NOx emission limit of 0.07 lb/MMBtu with the installation of SCR on the other two units beginning in 2030.

The technical working group is composed of participants from the Department of Interior, the Salt River Project, the Central Arizona Conservation District, the Environmental Defense Fund, the Gila River Indian Community, the Navajo Nation, and the Western Resource Advocates, according to the agency's final rule.

Haze Litigation

An environmental attorney familiar with the haze cases says the technical working group's proposal that EPA finalized is "unusual" in that it "could go any number of directions over 30 years," noting that when EPA "backs away" from BART, it usually has a plan in place for weaker technology or for the plant to shut down by certain dates.

"I think [it's] focused on NGS. And the unique situation where [you] have [the] federal government that is owner-operator here," says counsel for the Native American groups.

A source with WildEarth Guardians does not think the suits will have implications for other regional haze cases, but says NGS is a "big enough monster in and of itself," given the politics "intertwined with it."

The legal challenges over the FIP filed Oct. 2 and 7 in the 9th Circuit argue that the FIP is too weak.

Native American environmental groups To' Nizhoni Ani, Black Mesa Water Coalition and Din Citizens Against Ruling the Environment say in a fact sheet that NGS is a "massive" source of NOx, which contributes to regional haze and health problems for people near NGS. The BART alternative that EPA approved "fails to comply with the Clean Air Act and will delay cleanup of regional haze," the groups say

Furthermore, the fact sheet claims that EPA is applying a double standard in the final rule for the utility because it has required the operators of privately owned power plants to comply with NOx emission limits no later than five years from the date of the final ruling of previous BART determinations.

"We've alleged that EPA [is] applying [a] double standard here," according to counsel for the Native American groups, who said the time frame for

compliance is another "big issue" in the suit.

Press releases also issued Oct. 7 by both the Native American groups and the environmental groups that are suing say that EPA has agreed to let NGS pollute "for at least another three decades," and that "EPA contends it can water down the Clean Air Act requirements" because NGS is located on Navajo Nation lands.

The environmental groups suing over the FIP -- including the National Parks Conservation Association, Sierra Club, Grand Canyon Trust and the Natural Resources Defense Council -- say EPA's alternative to requiring BART "will not adequately reduce haze pollution in affected Class 1 areas and that does not comply with the Clean Air Act haze requirements," according to a mediation questionnaire filed by the groups Oct. 13.

EPA "went off the rails" says the environmental attorney familiar with the case, when the technical working group proposed the BART alternative in 2013. It is "hard to tell what it's going to do," the attorney says, adding, it "doesn't in all respects comply with [the] basic requirements of [the] Clean Air Act."

This is one of the most "impacting" plants, says another environmental attorney, adding that NGS is "one of [the] biggest, dirtiest. For those reasons [it] earns [a] special status."

The haze FIP that EPA approved "has promise" with regard to bringing a unit offline and renewable energy development, according to the second environmental attorney, but the plan "delays resolution of what happens with emissions of [the] facility" given the concerns about the compliance timeline.

Utility Emissions

The second environmental attorney also says the "distinguishing" factor in these cases is that NGS is on "native land." Aside from NGS, there are two other coal-fired power plants on tribal land: Bonanza Power Plant in Utah and Four Corners Power Plant in New Mexico, according to EPA. There should be a "heightened need for more expeditious treatment of [the] plant's pollution and resolve for its future because of [a] very long history of gross injustice," the attorney says, adding there are "a lot of political complexities" underpinning worry about NGS.

An EPA spokeswoman in an email says the agency will review and respond to the lawsuits. However, in the agency's final rule, EPA defends the BART alternative, saying it "will achieve greater NOx emission reductions at lower cost than BART in exchange for flexibility in the time frame for achieving NOx reductions. When fully implemented, this Final Rule requires over an 80 percent reduction in NOx emissions from NGS and is expected to significantly reduce the impact of NGS on visibility at 11 mandatory Class 1

Federal areas."

The petitioners also conveyed their concerns about the FIP to EPA during the public comment period on the proposed version of the FIP. EPA in its response to comments in the final rule said the FIP "will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because they increase the level of environmental protection for all affected populations."

Furthermore, EPA downplayed advocates' concern regarding the time frame for compliance under the agency's framework for the BART alternative. EPA said that between 2009 and 2044, the plan will result in reductions of additional pollutants that affect visibility or human health and "will provide an enforceable mechanism to ensure that NGS ceases conventional coal-fired electricity generation at NGS by the end of 2044." -- *Lea Radick* *(*lradick@iwpnews.com*)*

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