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# Clean Air Council v. Pruitt

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## *Clean Air Council v. Pruitt,* 862 F.3d 1 (D.C. Cir. 2017)

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The United States Court of Appeals for the District of Columbia granted a motion for summary vacatur against the Environmental Protection Agency after environmental groups challenged the agency's reconsideration of the Obama-era methane rule under the Clean Air Act. The court held that the EPA unlawfully issued a stay after it reconsidered the rule without proper authorization. The court vacated the EPA's stay, one example of the Trump Administration unsuccessfully repealing Obama-era rulemaking.

### I. INTRODUCTION

The court in *Clean Air Council v. Pruitt* granted Clean Air Council's ("Environmental Petitioners") motion to vacate the ninety-day stay implemented by the Environmental Protection Agency ("EPA") regarding the final methane rule ("Rule").[1] The Environmental Petitioners claimed that under the Clean Air Act Section 307(d)(7)(B) ("Section 307"), the EPA lacked authority to implement the stay.[2] The Court of Appeals for the District of Columbia agreed with the Environmental Petitioners, concluding that the Section 307 did not authorize the EPA to stay the rule because reconsideration of the rule was not mandatory, given how extensively the issues under reconsideration had been addressed in the proposed rule.[3] Subsequently, the court granted the Environmental Petitioners motion for summary vacatur, reinstating the Obama-era rule until the EPA complies with the appropriate procedural requirements to reconsider the rule.[4]

### II. FACTUAL AND PROCEDURAL BACKGROUND

In June 2016, the EPA issued its final rule, implementing "new source performance standards" governing the fugitive emissions of methane gas in the oil and natural gas industries.[5] The rule took effect on August 2, 2016.[6] Absent the stay, regulated entities would have had to complete their initial monitoring surveys by June 3 and repair any leaks within thirty days.[7]

After the EPA published the final rule, a group of petroleum industry associations ("Industry Petitioners") filed an administrative petition,

1. Clean Air Council v. Pruitt, 862 F.3d 1 (D.C. Cir. 2017).
2. *Id.* at 4.
3. *Id.*
4. *Id.* at 14.
5. *Id.* at 4 (citing 40 C.F.R. § 60.5397a(f) (2016)).
6. *Id*.
7. *Id.*

which sought to reconsider the rule under Section 307.[8] Section 307 mandates that if the petitioner can show the "Administrator that [1] it was impracticable to raise such objection within [the notice and comment period] . . . and [2] if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule . . . ."[9] Additionally, the EPA or court may stay the rule for up to three months while the reconsideration proceedings occur.[10]

The Industry Petitioners sought a stay pending reconsideration.[11] They argued the EPA must reconsider the rule because several provisions included in the final rule were not included in the proposed rule, which meant they could not participate in the public comment period, as required by the CAA.[12]

In April of 2017, the EPA recognized one of the Industry Petitioner's objections warranted reconsideration.[13] The EPA ordered a temporary ninety-day stay on June 5, 2017, which retroactively went into effect on June 2, 2017; the day before the rule required industry to implement their monitoring systems and repair leaks.[14] On June 16, 2017, the EPA published their intent to further look at the rule and extended the stay for two years.[15]

The Environmental Petitioners filed suit in the United States Court of Appeals, District of Columbia, seeking either an emergency stay or a summary vacatur.[16] The Environmental Petitioners argued that the EPA's stay violated the CAA because the issues the EPA raised regarding the rule were addressed, and heavily deliberated, during the comment period.[17] The EPA contended, as did intervening Industry Petitioners, that the court lacks jurisdiction over the matter and the stay is lawful under the CAA.[18]

## III. ANALYSIS

Two primary issues were raised for the court. First, the EPA and Industry Petitioners contended the reconsideration of the rule was unreviewable by the court, because the rule was not a final agency action, and thus the court lacked jurisdiction.[19] Second, the Environmental Petitioners argued the CAA did not authorize the EPA to

8. *Id.* at 4 (citing 42 U.S.C. § 7607(d)(7)(B)(2017)).
9. *Id.* at 5 (quoting 42 U.S.C. § 7607(d)(7)(B)).
10. *Id.* (citing 42 U.S.C. § 7607(d)(7)(B)).
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* (citing 82 Fed. Reg. 27,645 (June 16, 2017)).
16. *Id.* at 6.
17. *Id.*
18. *Id.*
19. *Id.* (citing 42 U.S.C. § 7607(b)(1)).

issue a ninety-day stay because reconsideration of the rule was not mandatory.[20]

### *A. Jurisdiction Argument*

The court first determined whether the EPA's reconsideration of the rule created a final agency action that allowed the court to review the action.[21] A final agency action "mark[s] the consummation of the agency's decisionmaking [sic] process" and is "one by which rights or obligations have been determined, or from which legal consequences will flow."[22] Ultimately, the court concluded that because the EPA's decision to grant reconsideration could also result in no change to the rule, the reconsideration was not the final agency action.[23]

However, the court interpreted the stay of the rule—which postponed the rule's compliance deadline—as analogous to a final agency action.[24] Because the EPA changed the date for compliance, the court found it equal to amending or revoking the rule.[25] In prior cases, the D.C. Circuit held: "[S]uspension of the permit process . . . amounts to a suspension of the effective date of regulation . . . and may be reviewed in the court of appeals as the promulgation of a regulation."[26] Thus, the court rejected the EPA's assertion that it lacked jurisdiction over the reconsideration of the rule because the stay was effectively final agency action.[27]

Furthermore, contrary to the arguments of the EPA, the court specifically highlighted Section 307, which gives the court the power to issue a stay, and therefore should also give it power to deny a stay.[28] The court noted that without the ability to deny a stay, the situation would arise with the "perverse result of empowering this court to act when the agency denies a stay but not when it chooses to grant one."[29]

### *B. Decision to Reconsider*

The court concluded—in agreement with the Environmental Petitioners—that the EPA's decision to issue the ninety-day stay was unauthorized under the CAA.[30] First, while the EPA suggested it has "broad discretion" to reconsider rules, the court highlighted the EPA's non-compliance with the Administrative Procedures Act, which required

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20. *Id.* at 8.
21. *Id.*
22. *Id.* at 6 (quoting Bennett v. Spear, 520 U.S. 154, 177–78, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997)).
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* (quoting Council of Southern Mountains, Inc. v. Donovan, 653 F.2d 573, 579 (D.C. Cir. 1981)).
27. *Id.* at 7.
28. *Id.*
29. *Id.*
30. *Id.* at 8.

appropriate notice and comment periods.[31] Second, the EPA contended it had "inherent authority" to "issue a brief stay."[32] The court disagreed, noting that the EPA must comply with the statute, and Section 307 does not give the EPA authority to stay the rule unless the reconsideration was mandatory.[33]

Because the EPA's stay was only lawful if the reconsideration was mandatory, the court reviewed whether the EPA's stay met the two requirements in order to reconsider.[34] First, the EPA had to prove it was impracticable for the Industry Petitioners to object during the public comment period.[35] Second, the EPA had to demonstrate the objection was "of central relevance to the outcome of the rule."[36]

The court used the arbitrary and capricious standard of review to determine whether the EPA met the two requirements of reconsideration.[37] The decision hinged on whether the final rule was "a logical outgrowth" of the proposed rule.[38] The final rule "fails the logical outgrowth test" if "interested parties would have had to divine the agency's unspoken thoughts, because the final rule was surprisingly distant from the proposed rule."[39]

The court examined the record and determined that the Industry Petitioners had ample opportunity to participate in the comment period.[40] In three instances, the final rule set forth by the EPA responded directly to the comments and information the EPA later said was "impracticable" for Industry Petitioners to comment on.[41] These public comments proved to the court that it was not impracticable for the Industry Petitioners to object within the public comment period, which meant the first requirement for reconsideration was not met, thus the stay was unauthorized.[42] Without authorization for the stay, the EPA acted in excess of its statutory authority, and the decision to impose the stay was arbitrary and capricious.[43] The court did not need to discuss the second requirement for consideration because the first was not met.[44]

The dissent challenged the majority's opinion that the stay was "final agency action."[45] The dissenting judge reasoned that "hitting the pause

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31. *Id.* at 9 (citing 5 U.S.C. § 553).
32. *Id.*
33. *Id.* at 10.
34. *Id*.
35. *Id.* (citing 42 U.S.C. § 7607(d)(7)(B)).
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.* (quoting CSX Transportation, Inc. v. Surface Transportation Board, 584 F.3d 1076, 1080 (D.C. Cir. 2009)).
40. *Id.* at 13.
41. *Id.* at 11.
42. *Id.* at 14.
43. *Id.*
44. *Id.*
45. *Id.* at 15.

button [was] the antithesis of ending the matter,"[46] and that Section 307 clearly states that the agency can stay the effectiveness of the rule during reconsideration.[47]

## IV. CONCLUSION

The EPA's action in *Clean Air Council* was an example of the Trump Administration's effort to repeal Obama-era agency rule making. Although the court granted summary vacatur to the Environmental Petitioners, the EPA can proceed with its June 16, 2017 Notice for Proposed Rulemaking, so long as "the new policy is permissible under the statute . . ., there are good reasons for it, and . . . the agency *believes* it to be better."[48]

46. *Id.*
47. *Id.* (citing 42 U.S.C. § 7607(d)(7)(B)).
48. *Id.* (quoting F.C.C. v. Fox Television Stations, Inc, 556 U.S. 502, 515 (2009)).