

Appeals court tosses suits challenging climate change plan

June 9 2015, by Sam Hananel

A federal appeals court on Tuesday threw out a pair of high-profile lawsuits challenging the Obama administration's sweeping plan to address climate change, saying it's too early to challenge a proposed rule that isn't yet final.

The ruling from the U.S. Court of Appeals for the District of Columbia Circuit is a temporary setback to opponents of the plan who are expected to renew their legal attack once the regulation is finalized later this year.

The lawsuits from a coalition of 15 states and the nation's largest privately-held coal mining company claim the EPA exceeded its authority last year when it proposed the far-reaching plan to curb pollution from the nation's existing coal-fired power plants.

Opponents had argued that even though the [rule](#) is not yet final, they are already facing steep costs to get ready for it. But the appeals court said that has never before been a justification for a court to examine a proposed rule that could still be changed before it becomes a final regulation.

"They want us to do something that they candidly acknowledge we have never done before," wrote Judge Brett Kavanaugh. "We do not have authority to review proposed agency rules."

The court also said public statements by EPA officials about what the rule will do are not considered final agency action.

The rule the EPA proposed last year is a centerpiece of Obama's efforts to reduce pollution linked to global warming and one of his most significant acts during his final years in office. It would require states to cut carbon emissions by 30 percent by 2030. Each state has a customized target and is responsible for drawing up an effective plan to meet its goal.

One lawsuit was filed by a coalition of 15 coal-reliant states. The second was from Ohio-based Murray Energy Corp., the nation's largest privately-held coal mining company.

EPA spokeswoman Liz Purchia said agency officials are pleased with the court's ruling and expect to issue a final rule by "mid-summer." The agency had initially said the rule would be finalized by June 1, but that was pushed back earlier this year.

Opponents say the plan will force coal companies to shut down plants, shed thousands of jobs and drive up electricity prices. They argue that the plan is illegal because the EPA already regulates other power plant pollutants under a different section of the Clean Air Act. They say the law prohibits "double regulation."

The EPA, however, says it has authority for the plan under the Clean Air Act. At issue are dueling provisions added by the House and Senate to the Clean Air Act in 1990. The EPA says it wins under the Senate language, but opponents argue that the House version should prevail.

The advocacy group Environmental Defense Fund called the decision "a big win in protecting our communities and families against the massive carbon pollution from power plants and an important victory for a fair and democratic rulemaking process."

West Virginia Attorney General Patrick Morrisey said he was

disappointed with the ruling but "we still think we have a compelling case that the rule is unlawful." He said the state would continue with litigation to stop "this unlawful power grab by Washington bureaucrats."

A statement from Murray Energy said the company would "fully litigate the rule" once it is made final.

The states challenging the EPA plan are Alabama, Alaska, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, West Virginia, Wyoming and Wisconsin.

On the other side, 13 states and the District of Columbia are backing the Obama administration plan.

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