

## Alert | Environmental



July 2018

### D.C. Circuit Issues Stay of the EPA's Latest Effort To Ease Clean Air Act Requirements

On July 18, 2018, a divided panel of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) **ordered** a stay of a recent Environmental Protection Agency (EPA) action that would allow manufacturers to continue to produce trucks with engines that do not comply with the agency's Clean Air Act caps. In so ruling, the D.C. Circuit expressly stated that the stay "should not be construed in any way as a ruling on the merits of that motion" and ordered the EPA to submit responsive briefs July 25.

A trio of major environmental groups (the Environmental Defense Fund, the Center for Biological Diversity, and the Sierra Club) had petitioned the D.C. Circuit for the stay earlier this week, challenging the EPA's July 6 issuance of "**conditional no action assurance**," a rarely used measure, essentially exempting smaller "glider truck" manufacturers from a 2016 Clean Air Act regulation (*see generally*, [40 C.F.R. § 1037.635](#)) limiting the number of such vehicles that can be produced annually. The measure pledges that the agency will exercise its enforcement discretion and take no action against smaller manufacturers that produce more trucks than allowed under the current production cap.

Glider truck kits are new truck chassis, without engines or transmissions. A pre-2016 regulatory loophole allowed the gliders to be paired with rebuilt engines that predate the requirement for installation of expensive emission controls. As a result, glider trucks became increasingly attractive to trucking companies and others as a means of purchasing substantially new vehicles cheaply. Unfortunately, these rebuilt engines emit up to 43 to 55 percent more pollution than compliant engines from model years 2014 and 2015.

The EPA justified the no action assurance by arguing that final action had been delayed on a proposed rule issued last November to remove the production caps on glider trucks. But the environmental groups argued that the measure “encourages the production and sale of thousands of super-polluting, heavy-duty diesel freight trucks in violation of the agency’s own Clean Air Act regulations” and would lead to “substantial and irreparable public-health consequences” if the no action assurance were allowed to stand. With the stay in place, the production caps in section 1037.635 remain in effect for now.

The no action assurance is the latest in a series of EPA policy and proposed rule changes designed to ease various Clean Air Act regulations, including, most famously, the proposed rule to repeal the Clean Power Plan, an Obama-era measure designed to limit greenhouse gas emissions from power plants. Meanwhile, the House passed a series of amendments to the EPA appropriations bill that would constrain the agency’s ability to enforce certain Clean Air Act rules.

It is difficult to predict which Clean Air Act policies and rules will next be slated for change in this rapidly-changing regulatory landscape. Regulated entities will thus have to pay close attention to ensure that they are complying with the latest guidance and rules.

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