

Energy Cos. Face Permit, Regulatory Delays Due To Shutdown

By Keith Goldberg

Law360 (October 23, 2025, 8:31 PM EDT) -- Energy companies are starting to feel the pinch of the federal government shutdown, as scaled-back operations and new furlough announcements at the U.S. Environmental Protection Agency threaten the approval of needed permits and the issuance of highly anticipated regulations.

With the shutdown in its fourth week and no end in sight, closely watched lawsuits, including challenges to Biden-era air and water rules and the EPA's rescission of such rules, have been paused. The EPA also confirmed this week that it had furloughed additional employees.

Former EPA officials told Law360 that the agency's reduced capacity could soon hobble permitting and permit compliance checks and, perhaps more significantly, the agency's pledge to unwind regulations targeting climate change and fossil fuel use.

"EPA employees who have not been furloughed continue to do their work, but not knowing how many more days they will be allowed to work before funding runs out makes it a challenge," said Alston & Bird LLP environmental partner Kevin Minoli, a former acting EPA general counsel during the first Trump administration. "The lack of certainty presents a challenge for companies regulated by the EPA as well, forcing many to decide between trying to accelerate or trying to delay discussions with agency officials."

The EPA's shutdown contingency plan, released last month, calls for a nearly 90% reduction in staffing and the cessation of major activities like the issuance of permits and regulations, approval of pending requests from state environmental regulators and civil enforcement inspections.

Joseph Goffman, a former senior official in the EPA's Office of Air and Radiation during the Obama and Biden administrations, was furloughed during a 2013 government shutdown. He said the agency's default shutdown setting is inactivity, save for a small number of exempted matters.

"If there was some qualifying event that required my attention, I'd be allowed to answer a call on my EPA phone and turn on my computer," Goffman said. "As the appropriations for different programs, activities and staff expire and the carryover margin goes to zero and people are going to be furloughed, the work will stop. Period."

In an emailed statement to Law360 Friday, EPA press secretary Carolyn Holran said the agency "has been intentional and strategic in establishing operational structures that focus EPA on statutory obligations and Presidential priorities," and that there is "zero uncertainty" about what the agency is

working on and who is working on it.

"To pin any potential delays for permitting or regulations on anyone other than Congressional Democrats is unfair to dedicated EPA employees who continue working to protect human health and the environment," Holran said.

The current shutdown's most immediate impact for energy companies is the pause in litigation challenging the EPA's permitting decisions and policies such as Biden-era particulate matter and smog rules. The U.S. Department of Justice, which has also scaled back its operations, has sought and received stays in scores of cases involving the EPA and other federal agencies.

"If this goes on for a long time, it's going to take a while to catch up after DOJ is put back on the job," said Arnold & Porter Kaye Scholer LLP environmental partner Ethan Shenkman, a former EPA deputy general counsel and DOJ attorney.

For project developers, delays in affirming the legality of permit approvals could drive investors away, Shenkman said.

A slowdown in EPA's enforcement work is also apparent, agency watchers say. Civil enforcement cases, and settlements of such cases, won't proceed unless a substantial threat to public health exists or the case is subject to a court order, according to Crowell & Moring LLP senior counsel Stacey Geis, a deputy assistant administrator at the EPA's Office of Enforcement and Compliance Assurance during the Biden administration.

While some companies might welcome further relaxation of EPA enforcement, that isn't necessarily the case for companies that are negotiating a settlement with the agency or even just seeking guidance on a compliance issue, experts say.

"If you're anticipating inspections, if you have a compliance question and you want to seek guidance from the EPA, you may not get an answer," Geis said. "From an industry standpoint, the inability to actually engage with the EPA on a potentially important part of your business is a concern."

Experts say the shutdown's impact on EPA's permitting work is trickier to gauge.

Most Clean Air Act and Clean Water Act permits are issued by state or local agencies under the statutes' cooperative federalism model. But the EPA still weighs in on those permits to ensure that approved permits meet federal standards.

Goffman said most of that work is carried out by the EPA's regional offices. On Oct. 20, the union representing employees in EPA's Region 5, which covers six Midwestern states, said that their members began receiving furlough notices.

If EPA regional offices are hit hard by furloughs, that could slow down or even halt the issuance or modification of permits, Goffman said.

The energy industry's biggest unknown may be how — or if — an extended shutdown will slow down the EPA's ambitious deregulatory agenda. The actions the agency has proposed include rescinding emissions rules for power plants and vehicles, a greenhouse gas reporting program and a 2009 finding that GHG emissions endanger the public.

"If the furloughs start to roll in the EPA's Office of Air and Radiation, and the divisions within OAR that are working on these big climate rules, there's a significant risk that it will slow down the rulemakings," Shenkman said. "Or they'll have to finalize the rules without really having done all the necessary work to make them as defensible as they can be."

For example, the public comment period for the EPA's proposed rescission of the GHG endangerment finding closed on Sept. 22. Yet recent court filings have cited reports that the EPA remains intent on finalizing the rescission by year's end, despite receiving thousands of comments.

"That very truncated schedule suggests they're vulnerable to an argument that they've prejudged the outcome," Goffman said. "If they keep up the pace even after absorbing lost work days due to the shutdown, it just intensifies the suspicion and maybe even provides more evidence they've prejudged the outcome of the rulemaking."

"Courts don't often reject rules for that reason, but this may be a sufficiently extreme case that a court would really question whether they followed the legally required process," Goffman added.

The longer the shutdown lasts, the more pronounced the consequences will be. And while those consequences will be case-specific, Shenkman said companies need to start factoring the shutdown into their plans for the next couple of financial quarters and thinking about how their business will be affected if the stoppage lasts a long time.

"Just because you haven't felt an effect yet doesn't mean you won't two to four weeks from now if this continues," Shenkman said.

--Additional reporting by Juan-Carlos Rodriguez. Editing by Alanna Weissman.