



Environmental Notes - May 2017

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BYE-BYE CLEAN POWER PLAN

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The Clean Power Plan ("CPP"), and its companion new source review rule, is the Obama Administration's signature regulation on reducing greenhouse gas emissions from power plants. Among other things, it requires states to put in place programs designed to reduce overall nationwide carbon emissions from existing power plants by 32% by 2030 compared to 2005 levels. Issued as a regulation by EPA in 2014, it has faced tough times from the get-go – and things are only getting worse.

Almost immediately after it was promulgated, 29 states and dozens of corporations and industry groups filed suit to invalidate it. After the U.S. Court of Appeals for the District of Columbia Circuit refused to stay the effectiveness of the rule during the pendency of the litigation, the United States Supreme Court in February 2016 stepped in and blocked the rule until it could hear the case. The Supreme Court's action was unprecedented: It was the first time the Court had blocked implementation of an environmental regulation before the D.C. Circuit could consider the regulation on its merits. Strike One.

President Trump pledged during the campaign to eliminate many of President Obama's actions to combat climate change, and on March 28, 2017 he signed an Executive Order directing EPA to review the CPP and, "if appropriate," to suspend, revise or rescind the rule. Strike Two.

The full D.C. Circuit held arguments on the CPP litigation in February, 2017, but on May 1, 2017 -- a little more than a month after the Executive Order was signed -- that court granted the Trump Administration's request to suspend the litigation. The court agreed to do so for 60 days, and asked the parties to brief the court by May 15 on whether to remand the CPP to EPA for further consideration or hold the litigation in abeyance while EPA undertakes its review. Considering the national attention focused on this case and how far along the litigation was at the time, the D.C. Circuit's action was also unusual. Strike Three.

EPA has a host of options in deciding what to do with the CPP and its companion new source review rule, but rest assured it will be a long and drawn-out process. The CPP received over four million public comments when it was proposed, and it's clear the public, trade associations, utilities and environmental groups have a significant interest in the outcome.

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