The Clean Power Plan . . . Pause

On February 9, the U.S. Supreme Court, in a 5:4 decision, granted a stay, effective immediately, of the U.S. Environmental Protection Agency’s (EPA) Clean Power Plan (CPP) to limit greenhouse gas (GHG) emissions from existing power plants. The September 6, 2016, deadline to file state plans and other rule requirements are now on hold. The order does not elaborate on the Supreme Court’s reasoning for the stay.

This stay extends through the litigation, West Virginia, et al. vs. EPA, et al., including any Supreme Court review. Oral argument in the underlying case is scheduled for June 2 (and June 3 if necessary) before the D.C. Circuit Court of Appeals so a final decision by that court is expected before the end of the year. However, if the eventual D.C. Circuit decision is appealed to the Supreme Court (as is likely) and that court hears the case, a final decision is not likely before mid-2017.

As a result, the ultimate status of the CPP and GHG regulation under the U.S. Clean Air Act is unclear, and next steps will be dictated by judicial review. As expected, early reactions to the Supreme Court decision are diverse and wide-ranging.

This issue of EM, which is going to press days after the Supreme Court decision, addresses EPA’s final CPP, along with the proposed federal plan and model trading rules to implement the CPP. EPA describes the CPP and the two major affected stakeholder groups—the states and the electric power sector—provide some reactions. These articles were crafted prior to the Supreme Court stay, and while some articles were able to include updates before press time, they nonetheless focus on presenting the program in review and raising key issues associated with the final rule and its implementation.
**The Clean Power Plan**

EPA describes the CPP as one of the most significant steps the United States has ever taken to combat climate change. In her article, Janet McCabe, Acting Assistant Administrator for EPA’s Office of Air and Radiation, says the CPP puts the United States on track to significantly cut carbon pollution from power plants—our nation’s largest single source—and shows the world that the United States is committed to leading global efforts to address climate change.

The article outlines EPA’s approach of setting state goals to reduce existing power plant emissions, which reflects each state’s particular energy mix. The final rule gives states up to three years to submit a final plan; specifically, states can submit either a final plan or make an initial submittal by September 6, 2016, with a request for an extension until September 2018. EPA’s proposed model rules and federal plan, which include rate- and mass-based options, are designed to be used directly by a state if it so chooses. EPA would automatically implement the federal plan in any state that does not submit an approvable plan.

McCabe says that the CPP follows the direction the electric power sector is already moving, toward a more sustainable, less polluting energy system. EPA says the CPP offers the power sector the ability to optimize pollution reductions—while maintaining a reliable and affordable supply of electricity for ratepayers and businesses—through a range of approaches, such as improved plant efficiency, running cleaner plants more, using renewables, and taking advantage of energy efficiency and interstate trading.

In the second article, Environmental Council of the States (ECOS) Executive Director Alexandra Dunn and ECOS President Martha Rudolph of the Colorado Department of Public Health and Environment discuss the diversity of state reactions and responses to the CPP’s ambitious national goals (i.e., to reduce carbon emissions to 32 percent below 2005 levels by 2030). ECOS is the national non-profit, non-partisan association of state and territorial environmental agency leaders.

The authors observe that the varying impacts of the national emissions target on state economies and energy systems have led to rising tensions as the CPP became the most heavily litigated environmental regulation to date, with more than 15 lawsuits filed in just two days after publication. Presently, 27 states have filed suits challenging the rule and calling for a stay of the CPP, while 18 states and the District of Columbia have entered the litigation in support of EPA. The present 27-state coalition alleges that a stay of the CPP is proper because they “are being immediately and irreparably harmed by EPA’s illegal effort to force [s]tates to reorder their electrical generation systems”.

While many states have vowed to vigorously oppose the CPP, most states have announced they are considering compliance pathways so they will be prepared for all potential outcomes. States employing the dual-track approach are shielding their state from a federal plan that will go into effect in non-complying states if the CPP is upheld. Many states have made it a priority to work with their stakeholders to plan for meeting their energy and environmental goals, and state environmental regulators are not waiting to begin developing potential compliance plans that work for their states.

In the third article, PNM Resources, the largest electricity provider in New Mexico, presents an electric utility perspective. President and CEO Pat Vincent-Collawn says EPA’s CPP represents the most significant regulatory action ever taken under the U.S. Clean Air Act and its implications will fundamentally change the electricity generation mix in the United States. PNM’s ultimate mission is to provide affordable, reliable, and sustainable electricity. PNM is concerned about the CPP’s impact on its state and customers. Utilities like PNM must align with the state environmental regulators and public utility regulators in developing the very best plan for each state and its citizens.

Vincent-Collawn says PNM’s regional haze plan for the San Juan Generating Station will play a significant role in helping New Mexico comply with the CPP. PNM, along with the other owners of San Juan, will install technology designed to reduce nitrogen oxides emissions on two of the four units and shut down the remaining two units, resulting in the retirement of almost 900 MW of coal-fired power generation by December 31, 2017. PNM’s resource planning has been anticipating carbon regulation for several years. It is crucial for customers that the actions being taken at San Juan are recognized by EPA and credited toward CPP compliance. PNM raises some important question related to design of state plans and implementation of the CPP.

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The regulations for existing plants are among the most controversial regulations in EPA history and are certain to continue to be the subject of litigation, discussion and debate for years to come. em

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