

U.S. SUPREME COURT STAYS EPA'S CLEAN POWER PLAN

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U.S. Supreme Court on Tuesday stayed the implementation of EPA's Clean Power Plan, overruling the D.C. Circuit's January 21 decision. As a result, EPA is now prevented from implementing the rule until the D.C. Circuit determines the validity of the rule, and the Supreme Court reviews that ruling. The question now before the D.C. Circuit (and to be before the Supreme Court upon review) is whether EPA has the authority under Section 111 of the Clean Air Act to enact the Clean Power Plan.

The Clean Power Plan would require existing power plants to cut their carbon emissions by 32 percent from 2005 levels by 2030. In addition, States would be required to submit implementation plans by 2018 and start showing emissions reductions by 2022.

The D.C. Circuit originally denied the stay, citing *Winter v. Natural Resources Defense Council*, in which the Supreme Court said plaintiffs seeking a preliminary injunction must show that irreparable harm is "likely." The D.C. Circuit agreed to expedite its hearing of the case to avoid any possible harm.

Opponents to the Clean Power Plan argued that they had been irreparably harmed by the costs incurred already to prepare for compliance with the rule, a rule that they believed ultimately would be invalidated by the courts. In making their case, the challengers argued that EPA was overreaching its authority under Section 111 of the Clean Air Act, trying to encourage the use of renewable energy by mandating the reduction of coal-fired power. In essence, they argued, EPA was engaging in economic and social engineering by changing the U.S. energy economy by rule.

The D.C. Circuit will hear the challenge to the Clean Power Plan on June 2, 2016. Implementation of the Clean Power Plan is stayed, however, until after the Supreme Court has reviewed the D.C. Circuit's decision after the June 2, 2016 oral argument.

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