

SCOTUS Asked to Stay Implementation of Obama's Clean Power Plan Rules Pending Judicial Review

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Following the United States Court of Appeals for the District of Columbia Circuit's (the Court of Appeals) denial on January 21, 2016, of a request for an emergency stay of the final Clean Power Plan rules, an application for an emergency stay was filed with the Supreme Court of the United States (SCOTUS) on January 26, 2016, by more than 28 states and state regulators, with West Virginia leading the charge. And so it goes...implementation of the U.S. Environmental Protection Agency's (EPA) final Clean Power Plan rules, signed by the EPA Administrator on August 3, 2015, continues to be fraught with legal challenges and confronted by hostile legislators, but thus far, implementation has not been put on hold by the courts. Despite the backlash, a significant number of states have not challenged the rule and are working to prepare their implementation plans, due to EPA under the final rule in September 2016, unless an extension can be obtained from EPA.

The Court of Appeals, in denying the request for emergency stay, ordered an accelerated briefing schedule that would have all briefing completed by April 22, 2016. Oral arguments are scheduled to begin June 2, 2016, and continue to June 3 if necessary, allowing time for a court decision on the rule before initial state plans are due in September 2016. Unless SCOTUS issues a stay (which most observers believe is a long shot) and the Court of Appeals invalidates the rule, states and power plants subject to this rule need to be taking immediate steps towards compliance to meet the EPA deadline for plan submittal by September 2016.

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