Understanding the Stay
Implications of the Supreme Court’s Stay of the Clean Power Plan

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Executive Summary

Since the Supreme Court stayed EPA’s Clean Power Plan, which regulates carbon dioxide emissions from existing fossil fuel-fired power plants, opponents of the Plan have been making unfounded assertions about the consequences of the stay. This policy brief aims to clarify the stay’s implications for EPA’s implementation work and the Plan’s future compliance deadlines.

First, although the Clean Power Plan’s requirements are not enforceable while the stay is in place, the agency is free to continue work on matters relating to the Plan, such as the Federal Plan and Model Trading Rules it proposed last October in order to assist states with future compliance. Opponents who argue that EPA is prohibited from doing so confuse the consequences of a stay with those of an injunction. In fact, continuing this work would be consistent with the past actions of both Republican and Democratic administrations. And EPA is justified in continuing this work, in order to aid states that want to voluntarily comply with the Clean Power Plan during the pendency of the stay, and help states prepare for a smooth implementation of the Plan if it is ultimately upheld by the courts.

Second, the Supreme Court’s stay says nothing about delaying or “tolling” any of the Clean Power Plan’s deadlines, and it is premature for the Plan’s opponents to claim that those deadlines will be tolled by the amount of time that the stay is in effect. Precedent suggests that the U.S. Court of Appeals for the D.C. Circuit is likely to determine whether and how long to toll the various compliance deadlines once the stay is lifted, taking into account the particular circumstances of the case, including current trends in the electric power sector. In particular, the continuing decline of coal-fired electric generation and the rapid rise of renewable energy, which are likely to continue even while the Clean Power Plan is stayed, will make compliance easier than appeared to be the case when the Plan was promulgated, potentially impacting any tolling decisions.

1. Introduction

On February 9, 2016, the Supreme Court issued a stay of EPA’s Clean Power Plan. The stay will last for the period during which the D.C. Circuit and the Supreme Court review the Plan’s legality.¹ The Plan regulates carbon dioxide emissions from existing coal- and gas-fired electric power plants, by providing emissions limits for those power plants and requiring states to submit plans for achieving those limits.² The Plan is critical to achieving reductions in greenhouse gas emissions in the United States, both to reduce the nation’s contribution to climate change and to uphold international agreements to reduce greenhouse gas emissions globally.³

Impact on the Model Trading Rules and Other Rules to Aid Implementation

Before the Supreme Court’s decision, EPA had issued a proposed rule outlining a Federal Plan and Model Trading Rules for the Clean Power Plan.⁴ The Federal Plan indicates the regulations that EPA will implement in states that decline to submit their own plans or that submit deficient plans. The Model Trading Rules provide a ready-made, presumptively approvable framework for states that want to use emissions trading programs to achieve the emissions limits. EPA planned to finalize the Model Trading Rules in the summer of 2016.⁵ Clearly, EPA cannot enforce any requirement of the Clean Power Plan until the Supreme Court’s stay is lifted. But can EPA continue to work on the Model Trading Rules and other rules related to the Clean Power Plan?
Following the issuance of the stay, opponents of the Clean Power Plan were quick to claim that EPA is required to cease all work on the Plan's implementation. In a letter sent to the National Association of Regulatory Utility Commissioners, the attorneys general of Texas and West Virginia (two of the states leading the court challenge to the Clean Power Plan) argued that “the States, their agencies, and EPA should put their pencils down.”⁶ Jeff Holmstead, a former EPA official representing opponents of the Clean Power Plan, said that further work by EPA would be the equivalent of “thumbing your nose at the Supreme Court.”⁷ Marlo Lewis, a fellow at the Competitive Enterprise Institute, fretted that even voluntary offers of assistance from EPA to states would be coercive, since states would feel compelled to accept in order to stay on good terms with EPA and ensure they were up to speed on the technical details of the rule.⁸ These moves by EPA towards implementation would be “[e]xactly what the stay prohibits,” Lewis argued.⁹

However, there is ample precedent for EPA continuing to work on the Model Trading Rules and other related rules during the stay. In recent years, EPA has taken actions to implement stayed rules under both the Republican and Democratic administrations, including when Holmstead was the EPA Assistant Administrator for Air and Radiation during the George W. Bush administration.¹⁰

In addition, opponents of the Clean Power Plan are confusing the effects of a stay with the effects of an injunction. Under a stay, EPA can continue working on matters related to a stayed rule, even though the requirements of the rule are not enforceable while the stay is in effect. Finalizing the Model Trading Rules would be useful to states that want to voluntarily comply with the Clean Power Plan during the pendency of the stay. It would also guide the long-term resource plans of electric utilities, and provide more regulatory predictability to the energy industry. In addition, for states that are not currently working to implement the Clean Power Plan, the Model Trading Rules would make compliance easier if the Plan is ultimately upheld. Instead of coercing any states into compliance, EPA's continued work on rules related to the Clean Power Plan would provide useful guidance to the states.

Impact on the Clean Power Plan’s Deadlines

Opponents of the Clean Power Plan have also argued forcefully that the stay has resulted in an automatic tolling of all deadlines in the Clean Power Plan. When EPA promulgated the final version of the Clean Power Plan in October 2015, it required initial submissions from states by September 6, 2016, either proposing that state’s implementation plan or explaining why more time was needed to develop a plan.¹¹ Final state implementation plans are due no later than September 6, 2018.¹² The Clean Power Plan has three interim performance goals in the periods 2022–2024, 2025–2027, and 2028–2029, with full compliance beginning in 2030.¹³ The litigation will almost certainly continue beyond the initial September 6, 2016, deadline, which EPA will not be able to enforce as a result of the stay. But if the courts ultimately uphold the Clean Power Plan, what will happen to its later deadlines? Will they be automatically tolled for the duration of the litigation, so that each deadline will be delayed by exactly the amount of time the stay remains in place?

On these points, the U.S. Chamber of Commerce released a white paper arguing that, if the Plan is upheld by the courts, “EPA is required to move all [of its] deadlines into the future by at least the amount of time between the [s]tay’s issuance and its expiration.”¹⁴ According to the white paper, the stay requires tolling because petitioners to the Supreme Court specifically requested tolling, and both relevant case law and the findings supporting the Clean Power Plan require tolling as well.¹⁵ The Chamber of Commerce called on EPA to “tell states, utilities, and electricity users that it will honor the tolling requirements inherent in the stay decision.”¹⁶ Senator Jim Inhofe (R-OK) sent a strongly worded letter to Gina McCarthy, the EPA Administrator, asserting that “all [Clean Power Plan] deadlines should be tolled even if the rule ultimately survives judicial review.”¹⁷ Senator Inhofe argued that EPA was “us[ing] the fear of potential deadline
truncation to coerce states and stakeholders into continuing their resource-draining planning activities,” which could lead to “irreversible impacts” on the energy industry that the stay was intended to prevent.  

EPA’s opponents are wrong that the Clean Power Plan’s deadlines have all been automatically tolled by the Supreme Court’s stay or that they will necessarily be tolled in the future by the period of time in which the stay is in effect. The petitions to the Supreme Court requested that the deadlines be tolled, but the Supreme Court’s stay order does not mention any such tolling and, by its terms, is explicitly limited to the duration of judicial review and is silent on what will happen after that. EPA cannot enforce the Plan while the stay is in effect. But if the rule is upheld, the compliance deadlines will in all likelihood be set by the D.C. Circuit when the stay is lifted, in light of fact-specific determinations that the D.C. Circuit will make at that time.

2. Consistent with Prior Practice Under Administrations of Both Parties, EPA Can Continue to Work on the Federal Plan and Model Trading Rules for the Clean Power Plan

Under three different administrations of both political parties, EPA continued to work on facilitating the implementation of rules that had been stayed by the courts. Thus, there is ample precedent supporting EPA’s efforts to finalize the Model Trading Rules, issue additional guidance, or perform additional work on the Federal Plan while the stay is in effect.

Precedent Under the Obama Administration

On December 30, 2011, the D.C. Circuit issued an order staying EPA’s Cross State Air Pollution Rule (the “Transport Rule”). Nonetheless, EPA issued additional rules related to implementation of the Transport Rule while the stay was in effect. For example, EPA resolved modeling issues and emissions allowances for certain sources of pollution for the Transport Rule on February 21, 2012. EPA argued that its action was “consistent with and . . . unaffected by the Court’s Order staying the underlying final Transport Rule.” To support its position, EPA noted that the rule would not have any legal weight on its own: “Finalizing this action in and of itself does not impose any requirements on regulated units or states.” EPA also adjusted state emissions budgets for the Transport Rule on February 21, 2012. EPA later withdrew the adjustments in the second rule, and finalized a parallel proposal it had also made on that date, all while the stay was still in effect. It appears that there were no challenges to EPA’s authority to issue these rules while the stay was in effect.

Precedent Under the George W. Bush Administration

Under the George W. Bush Administration, EPA also declined to “put its pencil down” when faced with a stay of its rule adding an Equipment Replacement Provision to the Routine Maintenance, Repair, and Replacement exclusion from New Source Review. The D.C. Circuit issued a stay for this rule on December 24, 2003. EPA noted this stay by amending its regulations to reflect their suspension due to the stay. However, EPA also proceeded to grant reconsideration of the Equipment Replacement Provision, and solicited comments on several issues. After considering the issues raised by the comments, EPA ultimately denied reconsideration. At that time, EPA noted that the judicial stay of the Equipment Replacement Provision was still in effect.
Precedent Under the Clinton Administration

Likewise, under the Clinton Administration, EPA continued to work on rules that had been stayed, and also offered opportunities for voluntary compliance with stayed rules. On May 25, 1999, the D.C. Circuit granted a stay of EPA’s deadlines for submitting State Implementation Plans (SIPs) under the NO$_x$ SIP Call.$^{33}$ Previously, EPA had decided to use the NO$_x$ SIP Call, which asked states to file revisions of their SIPs to address interstate NO$_x$ pollution, instead of regulating sources of such pollution directly under Section 126 of the Clean Air Act.$^{34}$ At that time EPA had determined that Section 126 would apply if a state failed to comply with the NO$_x$ SIP Call.$^{35}$ Following the stay of the NO$_x$ SIP Call deadlines, EPA indicated that it was required to apply Section 126 controls to upwind sources of NO$_x$. But EPA also decided to allow states to voluntarily comply with the NO$_x$ SIP Call in order to avoid regulation under Section 126.$^{36}$ Some commenters complained that EPA was “coercing these States into complying with the NO$_x$ SIP call” and “thereby circumventing the court’s stay of the compliance deadline.”$^{38}$ EPA rejected the argument that “not only the clock for SIP revisions, but the entire regulatory setting, must stop for the duration of the litigation on the NO$_x$ SIP call.”$^{39}$ EPA noted that there were no penalties or repercussions for not submitting a SIP under the NO$_x$ SIP Call, so compliance would be purely voluntary.$^{40}$ Rather than coercing states, EPA argued, it was merely providing them another option for complying with a rule that was unaffected by the court’s stay.$^{41}$ The D.C. Circuit later largely upheld the Section 126 rule.$^{42}$

3. A Stay Gives EPA More Flexibility than an Injunction

By arguing that EPA must “put its pencil down” and stop all work on the Clean Power Plan, opponents of the Clean Power Plan speak as if the Supreme Court had granted an injunction rather than a stay. In doing so, they overlook the important differences between a stay and an injunction. A stay temporarily suspends a court order, an agency order, or an agency rulemaking while the order or rulemaking is reviewed by a court or reconsidered by the agency.$^{44}$ The fact that EPA may stay its own rules while reconsidering them,$^{45}$ and that courts may stay the effects of their own judgments while entertaining certain motions,$^{46}$ demonstrates that stays allow work to continue even though the underlying rules or judgments are not enforceable. In contrast, an injunction is an affirmative order by a court requiring an entity to take some action or refrain from taking some action.$^{47}$

The Supreme Court has acknowledged that stays and injunctions have “some functional overlap,” but also noted important distinctions between them.$^{48}$ In the words of Chief Justice Roberts, in a majority opinion for the Court, a stay “prevent[s] some action before the legality of that action has been conclusively determined . . . by temporarily suspending the source of authority to act” such as a regulation or court order, whereas an injunction “directs the conduct of a party, and does so with the backing of [a court’s] full coercive powers.”$^{49}$ Because of the important distinction between stays and injunctions, the Supreme Court found that an immigration statute that limits the ability of courts to issue injunctions does not apply to the issuance of stays, despite ambiguous language.$^{50}$ Similarly, if a court issues an injunction pending appeal instead of a stay, the court is required to include supporting reasons for the injunction and specify its scope, which is not required for a stay.$^{51}$ In the case of the Clean Power Plan, the Supreme Court’s terse order lacks the specificity that would be required of an injunction.

If a stay required EPA to “put its pencil down,” it would be absurd for Congress to grant EPA the ability to stay its own rulemakings while reconsidering them. Reconsideration is an active process, requiring the agency to solicit comment
and respond to those comments in the same way as EPA does for comments on a proposed rule.52 Similarly, if imposing a stay on a court order required a court to “put its pencil down” and stop all work on the case, it would be impossible for the court to stay its own orders while it considered a new motion or conducted a rehearing.53

In this case, EPA’s authority to enforce the Clean Power Plan has been temporarily suspended during the period of the Supreme Court’s stay, but EPA has not been directed to stop working on the Clean Power Plan through an injunction.54 As a result, while EPA cannot enforce the Clean Power Plan against any state that does not voluntarily comply with one of the Plan’s deadlines during the time the stay is in effect, there is nothing barring EPA from continuing to develop the Clean Power Plan through finalizing the Model Trading Rules, working on the Federal Plan, or engaging in other related actions.

4. Revisions to the Deadlines of the Clean Power Plan Will Likely Be Made by the D.C. Circuit, Which Should Consider Recent Trends in the Electric Power Sector

Opponents of the Clean Power Plan are incorrect that the Supreme Court’s stay automatically tolled all compliance deadlines by the duration of the litigation. If the Clean Power Plan is upheld by the courts, the determination of revised compliance deadlines will be resolved at the time the stay is lifted, most likely by the D.C. Circuit.55 The stay itself contains no tolling provisions.56 The legal analysis from the Chamber of Commerce’s attorneys tries to cast exercises of judicial discretion as an absolute rule by ignoring the facts and context of the rulings they cite. Because the Clean Power Plan’s deadlines are much farther in the future than the deadlines in the orders cited by the Chamber’s attorneys, the D.C. Circuit may well treat those deadlines differently. In addition, the D.C. Circuit should consider changes in the electric power sector that may make it possible for states to comply with the rule more easily and quickly than foreseen when the Clean Power Plan was promulgated. As a result of the inherent uncertainty about the Plan’s timeline after the stay is lifted, EPA should make a strong effort to provide compliance tools and guidance while the stay is in place. EPA has the authority to provide those tools and guidance, as discussed above in Section 2. Doing so would reduce the regulatory uncertainty that the electric power industry faces, and guide financial markets towards the best long-term investments in the energy sector.

A Decision on the Proper Timeline for Compliance Will Be Made, Probably by the D.C. Circuit, When the Stay Is Lifted

When the Chamber of Commerce’s attorneys argue that the Clean Power Plan’s deadlines must be tolled during the stay, they mistake instances of the exercise of judicial discretion, at the time when the stay is lifted, for hard-and-fast rules that apply automatically at the time a stay is granted. None of the legal authorities cited in the Chamber of Commerce’s white paper supports the conclusion that the Supreme Court’s stay tolled the Clean Power Plan’s deadlines.

The Chamber of Commerce’s white paper cites an order from the D.C. Circuit that extended the deadlines for submitting SIPs for interstate NOx pollution in response to the EPA’s NOx SIP Call (discussed above).57 The order notes that there were 128 days remaining for compliance when the stay was issued, and therefore grants 128 days from the issuance of the order for compliance, rather than EPA’s proposed schedule of 71 days after the order.58 The court justifies this as merely “restor[ing] the status quo preserved by the stay.”59 Later, the court amended its order to specify that “the deadline for full
implementation of SIP revisions” was extended “from May 1, 2003, to May 31, 2004.”60 The court justified this extension on the same basis as the previous order, asserting that it gave states 1,309 days for full compliance, as had the original rule.61

Most importantly, this decision was made when the stay was lifted, and not when the stay was put in place. In addition, this case is easily distinguishable from the Clean Power Plan litigation, because the timeline for compliance for the NO\textsubscript{x} SIPs was much faster than almost all of EPA’s deadlines under the Clean Power Plan. When the Clean Power Plan was stayed on February 9, 2016, there were 5,075 days between the stay of the Clean Power Plan and the envisioned full compliance date of January 1, 2030,62 far longer than the 128-day timeline for submitting NO\textsubscript{x} SIPs under the order cited by the white paper, and also far longer than the 1,309 days given for final compliance with the SIP revisions under the NO\textsubscript{x} SIP Call. In recognition of the long timeframe for compliance, the general counsel for the National Association of Regulatory Utility Commissioners suggested that “[t]he deadlines that are further out — the 2030 and 2022 deadlines — may change less than the nearer-term ones” after the stay is lifted.63 The Texas Public Policy Foundation also expressed less certainty that the later deadlines would be tolled for the full duration of the stay.64 Because these deadlines are so much farther in the future, the impact of shortening the Clean Power Plan’s implementation schedule would be very different than doing so for the NO\textsubscript{x} SIPs.

In addition to the NO\textsubscript{x} SIP order, the white paper cites an order from the D.C. Circuit granting EPA’s motion to lift the stay and toll compliance deadlines for the Transport Rule.65 In that case, the court agreed with EPA’s proposed compliance deadlines, tolling the deadlines by three years.66 Like the NO\textsubscript{x} SIP order, this decision was made when the stay was lifted, not at the time when it was entered. Furthermore, this order shows the importance of considering the particular circumstances of the case, as opposed to applying an absolute rule. EPA noted in its motion that the stay was issued only two days before the Transport Rule was scheduled to take effect, and therefore tolling the deadlines for the duration of the litigation would give states only two days to comply, an impossible task.67 Instead, EPA successfully argued that the court should toll the deadlines for exactly three years, which gave states 70 days for compliance after the court lifted the stay.68 EPA argued that it would be administratively simpler to delay all deadlines by exactly three years, and the timeline would give states a reasonable amount of time to comply.69 Thus, the court chose not to toll the deadlines for the exact period of the litigation, but to take a flexible approach that accounted for the circumstances of the case.

The Chamber of Commerce’s attorneys cite NRDC v. EPA for the proposition that accelerating the Clean Power Plan’s deadlines would “unfair[ly] . . . penalize states that reasonably relied on” the Supreme Court’s stay of the Plan.70 But the NRDC case has little to nothing to do with the current litigation. Instead of requiring EPA to extend compliance deadlines after a judicial stay, the D.C. Circuit in NRDC reluctantly ratified EPA’s extension of a compliance deadline beyond the limits of a statute.71 The court found that it would be unfair to subject states to statutory penalties caused by EPA’s own delay in promulgating a guidance document long past a statutory deadline.72 In this case, by contrast, EPA has not promulgated any document granting a filing extension to states, and there are no statutory deadlines at issue. Furthermore, if the Clean Power Plan is upheld by the courts, it will not be the fault of EPA that the rule has been delayed. The case is therefore not apposite.
Current Trends in the Electric Power Sector Indicate that Compliance Might Be Feasible with Little or No Tolling

If EPA prevails in the litigation over the Clean Power Plan and the stay is lifted, the D.C. Circuit should take a careful look at evidence that shows strong trends in the electric power sector towards cleaner forms of energy. It is likely that compliance with the Clean Power Plan will be achievable on a shorter timeframe than originally envisioned. Due to the recent renewal of key tax credits supporting renewable energy development, utility-scale renewable energy resources will likely be deployed much more rapidly than foreseen in October 2015. Even without the Clean Power Plan, the tax credits alone are projected to create 92 gigawatts of renewable energy capacity by 2025. In 2016, the majority of new electric generation capacity is projected to come from solar and wind. In addition, the outlook for coal-fired generation continues to be bleak, and the nation’s largest coal producer recently filed for bankruptcy. Natural gas generation of electricity is anticipated to surpass generation from coal-fired power plants for the first time ever in 2016, and a recent analysis by PJM found that continuing low natural gas prices could ease compliance with the Clean Power Plan.

As a result of these trends, carbon emissions from the power sector in the U.S. have been dropping steadily, reaching almost 18% below 2005 levels by the end of 2015. This represents more than half of the Clean Power Plan’s target of a 32% reduction below 2005 levels by 2030. Assuming that these trends continue, there will be less coal-fired generation on the grid and more natural gas and renewable generation if and when the stay is lifted, compared to when the Clean Power Plan was finalized in 2015. This will likely make it feasible for the electric power sector to comply with the Plan with little or no tolling of the Plan’s deadlines.

Conclusion

The effects of the Supreme Court’s stay of the Clean Power Plan are quite different from those that EPA’s opponents attribute to it. Unlike an injunction, a stay allows EPA to continue work related to implementation of the Clean Power Plan, even though the Plan itself is not currently enforceable. Continuing implementation work in this way is fully consistent with the past practice of both Republican and Democratic administrations. Furthermore, the deadlines in the Clean Power Plan have not been tolled at this point. The decision of whether and for how long to toll each deadline will be made when the stay is lifted, after the judges consider circumstances such as the state of energy markets at that time. The D.C. Circuit may well decide not to toll the Plan’s emission reduction deadlines, or to toll them by an amount shorter than the duration of the stay. As a result of the unavoidable uncertainty about the Clean Power Plan’s compliance timelines, EPA should continue working to provide guidance on the Plan’s requirements now. Such guidance, which EPA plainly has the authority to provide, will greatly benefit both state governments and the electric power industry.
Endnotes

1 West Virginia v. EPA, 136 S. Ct. 1000 (2016) (mem.).


5 Id. at 64,966.

6 Letter from Patrick Morrissey, Attorney Gen., State of W. Va., & Ken Paxton, Attorney Gen., State of Tex., to Travis Kavulla, President, Nat’l Ass’n of Regulatory Util. Comm’rs, & Ursula Nelson & Stuart Clark, Co-Presidents, Nat’l Ass’n of Clean Air Agencies 2 (Feb. 12, 2016), available at http://www.ago.wv.gov/pressroom/2016/Documents/2016-02-12%20Letter%20to%20NARUC%20on%20NACAA%20(M0118777xCECG6).pdf. They admitted, however, that state officials could voluntarily devote resources to working on compliance with the stayed Clean Power Plan, although they argued that this would be a waste of taxpayer money. Id. at 3.

7 Amanda Reilly, Rule Freezes ‘Part of the Landscape’ at EPA, GREENWIRE (Feb. 18, 2016), http://www.eenews.net/greenwire/2016/02/18/stories/1060032564.


9 Id.


12 Id.

13 Id. at 64,667.


15 See generally id.


18 Id. at 2.

19 West Virginia v. EPA, 136 S. Ct. 1000 (2016) (mem.).


22 Id. at 10,326.

23 Id.


The stay of the Transport Rule was lifted in 2014. See EME Homer City Generation, L.P. v. EPA, No. 11-1302 (D.C. Cir. Oct. 23, 2014) (order granting motion to lift the stay).


Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion; Reconsideration, 69 Fed. Reg. 40,278, 40,281 (July 1, 2004) (granting reconsideration and soliciting comment on “the contentions that our legal basis is flawed, that our selection of 20 percent for the cost limit is arbitrary and capricious and lacks sufficient record, and that we should provide an opportunity for comment on the revised format for incorporating the PSD FIP into state plans”).


Id. at 2,679–80.

Id.

Id. at 2,681.

Appalachian Power Co. v. EPA, 249 F.3d 1032, 1036 (D.C. Cir. 2001).

Id. at 1044–48.

See Stay, BLACK’S LAW DICTIONARY (10th ed. 2014); 5 U.S.C. § 705 (allowing courts and agencies to stay agency actions during judicial review); 42 U.S.C. § 7607(d)(7)(B) (allowing EPA to stay its own rules under the Clean Air Act while reconsidering them).


See, e.g., FED. R. CIV. P. 62(b) (allowing U.S. district courts to stay a judgment while certain motions are pending); FED. R. APP. P. 41(d) (allowing U.S. circuit courts of appeals to stay a judgment for rehearing, or while the case is appealed to the Supreme Court).

See Injunction, BLACK’S LAW DICTIONARY (10th ed. 2014).


Id. at 428–29.

Id. at 426.


See the procedural rules cited in footnote 46, supra.

In fact, the stay order only mentions the final version of the Clean Power Plan, referring to its location in the Federal Register. West Virginia v. EPA, 136 S. Ct. 1000 (2016) (mem.). The Federal Plan and Model Trading Rules were published under a separate notice in the Federal Register, and the Supreme Court’s order does not refer to that notice. Id.; Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations, 80 Fed. Reg. 64,966 (Oct. 23, 2015) (to be codified at 40 C.F.R. pt. 60, 62, 78).
This is assuming that after the D.C. Circuit rules on the merits of the Clean Power Plan, the Supreme Court grants certiorari, issues an opinion, and remands the case to the D.C. Circuit for further proceedings (including lifting the stay), which is very likely.

West Virginia, 136 S. Ct. at 1000.

Sidley Austin LLP, supra note 14, at 3 (citing Michigan v. EPA, No. 98-1497 (D.C. Cir. June 22, 2000) (order lifting stay)).

Michigan, No. 98-1497 (D.C. Cir. June 22, 2000) (order lifting stay) (noting that EPA’s schedule called for SIPs to be submitted by Sept. 1, 2000, but granting 128 days to submit SIPs instead); see also Calculate Duration Between Two Dates, timeanddate.com, http://www.timeanddate.com/date/duration.html (showing there are 71 days between June 22, 2000 and Sept. 1, 2000).

Id.


Id.

See timeanddate.com, supra note 58 (showing there are 5,075 days between February 9, 2016, and January 1, 2030).


Sidley Austin LLP, supra note 14, at 4 (citing EME Homer City Generation, L.P. v. EPA, No. 11-1302 (D.C. Cir. Oct. 23, 2014) (order granting motion to lift the stay)).

See Respondents’ Motion to Lift the Stay Entered on December 30, 2011 at 14, EME Homer City, No. 11-1302 (D.C. Cir. June 26, 2014); see also EME Homer City, No. 11-1302 (D.C. Cir. Oct. 23, 2014) (order granting EPA’s motion to lift the stay).

Respondents’ Motion to Lift the Stay, supra note 66, at 16.

Id. at 14–16; see timeanddate.com, supra note 58 (showing there are 70 days between the order on Oct. 23, 2014, and January 1, 2015, the first compliance date).

Respondents’ Motion to Lift the Stay, supra note 66, at 15–16.

Sidley Austin LLP, supra note 14, at 3 (citing NRDC v. EPA, 22 F.3d 1125, 1137 (D.C. Cir. 1994)).

NRDC, 22 F.3d at 1136–37.

Id. at 1137.


