

D.C. Court of Appeals Denies Stay of EPA's Clean Power Plan

The [U.S. Court of Appeals for the D.C. Circuit](#) on Thursday declined to halt the implementation of the [EPA's](#) Clean Power Plan ("CPP"). The CPP, which requires states to submit proposals to reduce carbon emissions from power generation facilities, was promulgated by the EPA on August 15, 2015 under Section 111(d) of the Clean Air Act. Opponents of rule, including West Virginia and 23 other states, immediately filed suit in federal court, arguing that the rule exceeded the EPA's legal authority under Section 111(d). The group also asked the appellate court to halt the implementation of the CPP while their legal challenge is pending. The states argued that implementation of the rule would cause "irreparable harm."

Thursday's decision means that the rule will remain in effect while the court considers the lawsuit. The court held that the petitioners "have not satisfied the stringent requirements for a stay pending court review." The D.C. Circuit cited a [U.S. Supreme Court](#) decision holding that injunctions will only be granted when the petitioners demonstrate a "strong likelihood of success on the merits" and when necessary to prevent "irreparable harm." While allowing the implementation of the CPP to go forward, the D.C. Circuit ordered that the lawsuit will be heard "on an expedited basis." Oral argument on the merits is scheduled for June 2, 2016. State environmental agencies have until September 6, 2016 to submit a CPP compliance plan to the EPA.

If you have an interest in the issue of the EPA's Clean Energy Plan or questions about the court's decision, we invite you to call any of our [utility regulation](#) and [energy lawyers](#).