

ORAL ARGUMENT NOT YET SCHEDULED
No. 15-1363 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, *et al.*,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petitions for Review of a Final Action of the
United States Environmental Protection Agency

**JOINT REPLY OF WEST VIRGINIA, ET AL., OKLAHOMA, ET AL.,
NORTH DAKOTA, AND MISSISSIPPI DEQ IN SUPPORT OF
MOTIONS FOR STAY AND FOR EXPEDITED CONSIDERATION**

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GLOSSARY

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| Act (or CAA) | Clean Air Act |
| Advanced Energy Opp. | Response of Advanced Energy Associations In Opposition to Motion for Stay, No. 15-1363 (and consolidated cases), ECF 1587482 (Dec. 8, 2015) |
| CAMR | Standards of Performance for New and Existing Stationary Sources: Electric Utility Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005) |
| Energy Opp. | Response of Power Companies in Opposition to Motions for Stay, No. 15-1363 (and consolidated cases), ECF 1587423 (Dec. 8, 2015) |
| EPA | United States Environmental Protection Agency |
| EPA Opp. | Respondent EPA's Opposition to Motions to Stay Final Rule, No. 15-1363 (and consolidated cases), ECF 1586661 (Dec. 3, 2015) |
| Envtl. Opp. | Environmental and Public Health Respondent-Intervenors' Opposition to Motions for Stay, No. 15-1363 (and consolidated cases), ECF 1587490 (Dec. 8, 2015) |
| FERC | Federal Energy Regulatory Commission |
| HAP | Hazardous Air Pollutant |
| Intervenor Peabody Reply | Reply of Peabody Energy Corp. in Support of Motions for Stay of EPA's Final Rule, No. 15-1363 (and consolidated cases) (D.C. Cir. Dec. 23, 2015) |
| Joint Non-State Reply | Joint Reply of Utility, Coal, Labor, and Business Movants in Support of Motions for Stay of EPA's Final Rule, No. 15-1363 (and consolidated cases) (D.C. Cir. Dec. 23, 2015) |

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| Joint States Mot. | State Petitioners' Motion for Stay and For Expedited Consideration of Petition for Review, No. 15-1363, ECF 1579999 (Oct. 23, 2015) |
| NAAQS | National Ambient Air Quality Standards |
| ND Mot. | Petitioner State of North Dakota's Motion for Stay of EPA's Final Rule, No. 15-1380, ECF 1580920 (Oct. 29, 2015) |
| Ok. Mot. | Petitioner Oklahoma's Motion for Stay of EPA's Existing Source Performance Standards for Electric Generating Units, No. 15-1354, ECF 1580577 (Oct. 28, 2015) |
| Power Plan (or Plan) | Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) |
| SIP | State Implementation Plan |
| States Opp. | Opposition to Petitioners' Motions for a Stay On Behalf of the States of New York, et al., No. 15-1363 (and consolidated cases), ECF 1587450 (Dec. 8, 2015) |
| 1995 EPA Memo | EPA, Air Emissions from Municipal Solid Waste Landfills, Pub. No. EPA-453/R-94-021 (1995) |

INTRODUCTION

Attempting to walk a line between downplaying the need for a stay and advocating for the Power Plan's immediate importance, EPA's opposition spins a self-contradictory tale of two rules. EPA asserts that the Plan is central to "establish[ing] this country's leadership" right now, EPA Opp. 68, and is "critically important" to combating "the nation's most important and urgent environmental challenge," such that any delay "would adversely affect public health and welfare," *id.* at 1, 68. In the next breath, EPA denies that this momentous rule is covered by the clear statement rule of *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) ("*UARG*"), for "agency decisions of vast economic and political significance," *id.* at 2444, and belittles the notion that Petitioners "must devote substantial efforts during the period of judicial review to develop plans," EPA Opp. 56.

But no amount of obfuscation can conceal that the Power Plan is an unprecedented attempt by this nation's environmental regulator to force States to reorder their mix of electricity generation. The Plan is the first time EPA has ever used "generation-shifting" to define emission limits under Section 111(d). And while no one contends that the Plan precisely "dictates the required mix of generation facilities in each state," *id.* at 53, it is undisputed that the Plan is intended to, and will, force a massive reordering of each State's mix of generation facilities. EPA itself admits there is no way to meet the Plan's targets solely by making efficiency improvements at coal-fired power plants. *Id.* at 12-13.

Moreover, the declarations from EPA and its supporters—as well as the numerous declarations from Petitioners, including the 27 Petitioner States—establish beyond any serious doubt that the Power Plan is already having far-reaching, immediate, and irreversible consequences. In a declaration submitted by EPA, the Power Plan is described as having “cemented the U.S. commitment to action” in the international community. Stern Decl. ¶ 10. Planning activity in the States on both sides of this case is already significant and well underway, requiring the expenditure of taxpayer resources, changes in state laws, and redirected legislative time. *See infra* pp. 17-22. And EPA’s intervenors explain that the Plan is now providing substantial “market signals,” Mendelsohn Decl. ¶ 11, which are driving capital and consumer decisions in the energy generation field to the tune of “billions” of dollars, Energy Opp. 7-8.

When the Sixth Circuit recently stayed another far-reaching EPA rule, it did so in light of the “the sheer breadth of the [rule’s] ripple effects” and to “silence[] the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing” while also “honor[ing] the policy of cooperative federalism.” *In re EPA*, 803 F.3d 804, 808 (6th Cir. 2015). Here, the Plan is forcing the unrecoverable expenditure of massive taxpayer resources, displacing state sovereign functions, and influencing business and diplomatic decisions right now. This Court should stay the Power Plan until it has a full opportunity to review this unlawful Rule.

ARGUMENT

I. Petitioners Are Likely To Prevail On The Merits.

A. EPA's Use Of Generation-Shifting To Calculate Emission Standards Under Section 111(d) Is An Assertion Of "Vast" Authority Without "Clear" Congressional Authorization.

1. The Power Plan's central methodology—basing emission reductions on power plant owners "shifting" business to other forms of energy generation—cannot be reconciled with the Supreme Court's *UARG* decision. Joint States Mot. 8-10. In the rulemaking at issue in *UARG*, EPA expanded two CAA programs to cover stationary sources solely because those sources emitted more than a particular amount of CO₂. 134 S. Ct. at 2437-38. Notwithstanding "*Chevron*'s deferential framework," *id.* at 2442, the Court rejected EPA's effort as a "decision[] of vast economic and political significance," based upon a "long-extant statute," without "clear[]" congressional authorization, *id.* at 2444 (quotation omitted).

EPA now takes a head-in-the-sand approach to *UARG*. Though *UARG* involved the same agency regulating emissions of the same gas, EPA carefully avoids quoting the *UARG* language that controls this Court's determination. EPA Opp. 26-27, 31. EPA does not argue that its interpretation is clearly authorized by Section 111. Instead, the agency claims *Chevron* deference, *id.* at 12, 19, 24, 26, an argument that becomes irrelevant once the *UARG* clear statement rule is triggered, 134 S. Ct. at 2444; *see also King v. Burwell*, 135 S. Ct. 2480, 2489 (2015).

UARG decisively forecloses the Power Plan. The vast majority of the Plan's emission reductions come from "generation-shifting." EPA Opp. 7. This concept is both straightforward and breathtaking in its audacity: EPA claims it can require States to force emission reductions premised on a regulated source's owners buying or investing in their competitors' businesses, determined by EPA to be "cleaner." 80 Fed. Reg. at 64,726, 64,767-68. EPA claims that this is just "pollution regulation" that "result[s]" in "an indirect effect on energy markets." EPA Opp. 30, 33. But this misrepresents the Plan, which expressly picks favored and disfavored sources of energy in the process of calculating emission limitations, unquestionably making decisions of "vast economic and political significance" under *UARG*. And the fact that some power plant owners have voluntarily pursued certain measures does not diminish that significance, *see* EPA Opp. 1, 2, 12, 13, 14, 15, 27, as there is a stark difference between those choices and government mandates for an entire industry.¹ That is why the Administration has readily admitted that the Power Plan seeks to "transfor[m] . . . the domestic energy industry." Joint States Mot. 1.

Critically, EPA's generation-shifting methodology would eventually allow EPA to require a complete "shift" away from fossil fuel-fired generation. Joint States Mot. 8. The agency baldly asserts that requiring a complete phase-out "would be an action entirely different in nature." EPA Opp. 30 n.18. But its legal interpretation in this case

¹ Nor is it legally relevant what plant *owners* can or cannot do, as Section 111(d) concerns the regulation of *sources*. *See infra* pp. 6-7; Joint Non-State Reply 7.

has no logical end. Nothing prevents EPA from arguing one day that circumstances not only permit but compel a rule requiring a total phase-out of fossil fuels.

EPA's methodology is also a power recently discovered in a "long-extant" statute. *UARG*, 134 S. Ct. at 2444. The sole alleged example of generation-shifting in Section 111's 45-year history is the Clean Air Mercury Rule ("CAMR"), 70 Fed. Reg. 28,606 (May 18, 2005). CAMR provides no support for EPA because it was vacated by this Court, and, in any event, did not set emission limits based upon shifting generation to another industry. Joint Non-State Reply 16-17.

2. *UARG*'s clear statement rule is reinforced in this case by the canon of statutory construction that an agency must have "clear" congressional authorization to intrude upon "areas traditionally regulated by the States." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *see* Joint States Mot. 10; Ok. Mot. 7-8. EPA's response that "states retain the same authorities . . . to regulate retail electricity sales in intrastate markets and to license new power generation facilities," EPA Opp. 33, misses the point. By using generation-shifting to set emission limits that cannot be achieved solely by improving the performance at an individual power plant, EPA is forcing States to restructure the mix of "power generation facilities" from which their citizens will receive retail energy. This mandate that States reduce reliance on certain energy generation intrudes on States' ability to "regulat[e] electrical utilities for determining questions of need, reliability, cost and other related state concerns." *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983).

3. Even if EPA's use of generation-shifting should be analyzed under *Chevron*, but see *supra* p. 3, the Plan would still fail review because EPA unreasonably interprets Section 111(d), as explained fully by the private movants. See Joint Non-State Reply 4-9. To avoid duplicative briefing, the States emphasize only that generation-shifting violates the statutory requirement that "standard[s] of performance" be "appl[icable] . . . to a[] particular source." 42 U.S.C. § 7411(d)(1).

EPA argues that "the description of 'standards of performance' as applying to sources . . . does nothing to limit the scope of measures that can be considered part of the 'best system of emission reduction,'" EPA Opp. 23-24, arguing that the term "system" has an "expansive" dictionary definition, *id.* at 14. But this contradicts EPA's position in the final Plan, see 80 Fed. Reg. at 64,720 ("the system must be limited to measures that can be implemented—'appl[ied]'—by the sources themselves"), and throughout its brief, see, e.g., EPA Opp. 7 ("individual sources can implement all of these measures"), 17, 23-24 n.10. Because a "standard of performance" must be "appl[icable] . . . to a[] particular source," so too must the best system of emission reduction, which sets the "degree of emission limitation" for the standard. Joint States Mot. 7 (quotations omitted). Generation-shifting does not satisfy that requirement because it is not a measure applied to the source, but rather to the source's owner or operator. 80 Fed. Reg. at 64,767-68.

EPA further disputes the States' argument that generation-shifting is not about improving a source's "performance," but simply about shifting generation *away from*

the source. *See* Joint States Mot. 7. The statutory word “performance” is irrelevant, the agency insists, because it is “part of the fuller statutorily-defined term ‘standard of performance.’” EPA Opp. 26. But this method of statutory interpretation—ignoring a word that Congress used because it is part of a statutorily defined term—is contrary to Supreme Court precedent. *See Solid Waste Agency of N. Cook Cnty. v. Army Corps of Eng’rs*, 531 U.S. 159, 172 (2001) (requiring that the word “navigable” in the Clean Water Act’s statutorily defined term “navigable waters” be given “effect”).

B. The Section 112 Exclusion Prohibits EPA From Requiring States To Regulate Fossil Fuel-Fired Power Plants.

The Section 112 Exclusion independently bars the Power Plan. Joint States Mot. 11-15. The Exclusion prohibits EPA from invoking Section 111(d) to require States to regulate “any air pollutant” emitted from a “source category which is regulated under [Section 112].” 42 U.S.C. § 7411(d)(1)(A)(i). Given EPA’s voluntary decision to regulate power plants under Section 112, EPA cannot through the Power Plan require States to regulate those plants under Section 111(d). Joint States Mot. 12.

EPA raises four arguments to defend the Power Plan against the plain terms of the Section 112 Exclusion. Each argument fails.

First, to support its view that the Exclusion is ambiguous, EPA contends that the Section 112 Exclusion could be read to prohibit a Section 111(d) rule only where “air quality criteria have [also] been issued” for the air pollutant at issue. EPA Opp. 39. But EPA specifically rejected that interpretation in the final Power Plan as “not a

reasonable reading of the statute,” 80 Fed. Reg. at 64,713, and agency action can only be upheld on “grounds upon which the agency itself based its action,” *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943).²

Second, EPA defends the interpretation actually adopted in the final Plan: that the Section 112 Exclusion applies only where the air pollutant being regulated under Section 111(d) is a HAP listed under Section 112. EPA claims that “when construing the phrase ‘regulated under section [112],’ one must consider *what* is being regulated,” and points out that “[o]nly hazardous pollutants are addressed by section [112].” EPA Opp. 39. Thus, EPA asserts, the Section 112 Exclusion “only exclud[es] the regulation of HAP emissions under [S]ection 111(d) *and* only when that source category is regulated under [S]ection 112.” 80 Fed. Reg. at 64,714 (emphasis added).

But the Exclusion’s terms are clear on their face. They prohibit EPA from regulating the emission of “*any* air pollutant” emitted from a “source category which is regulated under [Section 112].” 42 U.S.C. § 7411(d)(1)(A)(i) (emphasis added). As EPA has consistently explained for 20 years, this text has only one “literal” meaning: “if source category X is ‘a source category’ regulated under section 112, EPA could not regulate HAP or non-HAP from that source category under section 111(d).”

² This interpretation is also foreclosed by *New Jersey v. EPA*, in which this Court vacated CAMR as violating the Section 112 Exclusion—even though no relevant air quality criteria had been issued. 517 F.3d 574, 583 (D.C. Cir. 2008).

70 Fed. Reg. 15,994, 16,031 (Mar. 29, 2005).³ Nothing in the language “qualifies or restricts” the type of air pollutant covered by the Exclusion, and EPA is wrong to now suggest that the silence creates a lack of clarity. *W. Minn. Mun. Power Agency v. FERC*, 806 F.3d 588, 592 (D.C. Cir. 2015) (quotations omitted). This Court recently rejected a similar argument from another federal agency as “manufactured ambiguity,” and it should do so here, too. *Id.*

As the States have argued, EPA’s interpretation simply adds language to the plain text, rewriting it from a prohibition against regulation of any “source category which is regulated under Section 112” into a prohibition against regulation of any “source category which is regulated under Section 112, *where the air pollutant is a hazardous air pollutant actually regulated under Section 112.*” Joint States Mot. 13.⁴

³ EPA’s claim that it has not changed position on the *literal reading* of this statutory text, EPA Opp. 39 n.25, is false. It is undisputed that the Clinton-era EPA, writing just 5 years after the 1990 CAA Amendments, adopted the States’ understanding of the Exclusion. EPA, *Air Emissions from Municipal Solid Waste Landfills*, Pub. No. EPA-453/R-94-021, 1-6 (1995) (“1995 EPA Memo”). Then, in the CAMR rulemaking in 2005 and in last year’s proposed version of the Power Plan, EPA again concluded that the “literal” reading of the Exclusion’s text, as it appears in the U.S. Code, means exactly what the States have said. 70 Fed. Reg. at 16,031; EPA Legal Memo at 26-27 (2014), <http://www2.epa.gov/sites/production/files/2014-06/documents/20140602-legal-memorandum.pdf>. While EPA has argued since the CAMR rulemaking that an uncodified amendment in the 1990 Statutes at Large creates an ambiguity, it has consistently agreed that the “literal” reading of the text in the U.S. Code is consistent with the States’ understanding. Joint States Mot. 14-15.

⁴ EPA also has no meaningful answer to footnote 7 of *American Electric Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527 (2011) (“*AEP*”), where the Supreme Court explained that under the Exclusion, “EPA may not employ [Section 111(d)] if existing stationary sources of the pollutant in question are regulated . . . under [Section 112].” *Id.* at 2537

Third, EPA makes the policy argument that reading the Exclusion by its literal terms would “render [Section 111(d)] practically moot, since over 140 source categories are regulated under section [112].” EPA Opp. 42. But that is no reason to ignore the clear statutory language, which EPA has previously honored. Since Congress expanded both the Section 112 program and the Section 112 Exclusion in 1990, EPA has only sought to invoke Section 111(d) twice. Joint States Mot. 13-14. Both times, EPA’s actions were consistent with the States’ view that EPA cannot regulate under Section 111(d) if a source category is already regulated under Section 112. *Id.*⁵ It is EPA that is now acting in a way that fundamentally expands the reach of Section 111(d), by using it for the first time ever to regulate a source category already regulated under Section 112.⁶

n.7. While it is true that the Court concluded that Section 111(d) “speaks directly to emissions of [CO₂] from defendants’ [power] plants,” EPA Opp. 42 n.29 (quoting *AEP*, 131 S. Ct. at 2537, the language quoted above reflects the Supreme Court’s further recognition that there are limitations on EPA’s authority under Section 111(d) which, if triggered, divest EPA of its authority to regulate under that provision.

⁵ EPA claims that there is no “legislative history” from “either house of Congress” to support the States’ position, EPA Opp. 42—ignoring entirely that EPA explained to this Court during the CAMR litigation that the drafting history of the 1990 Amendments establishes that the House of Representatives specifically intended to change the meaning of the Exclusion to that currently advanced by the States. Brief of EPA, *New Jersey v. EPA*, No. 05-1097, 2007 WL 2155494 (D.C. Cir. July 23, 2007).

⁶ Environmental Intervenors assert that the States’ reading of the Exclusion would create a “gap” in the CAA. Env’tl. Opp. 5 n.6. But they do not respond to the fact that EPA has never identified any pollutant under Section 111(d) that fell outside the post-1990 definition of a HAP under Section 112, including carbon dioxide. Joint States Mot. 13. Tellingly, EPA does not argue that there would be any gap.

Fourth, EPA exhumes the meritless argument that a second “version” of the Exclusion exists in the 1990 Statutes at Large. EPA Opp. 40-41. The “Senate amendment” to which EPA refers is a failed attempt to update an obsolete cross-reference—not a separate “version” of the Exclusion. Joint States Mot. 14-15. This sort of erroneous clerical correction is common in modern, complex legislation, and EPA still has never identified *any* court or agency giving any meaning to such an amendment.⁷ *Id.* at 15. EPA’s argument that this Court “must account for the Senate amendment[],” EPA Opp. 41, is contrary to this Court’s controlling caselaw, *Am. Petroleum Inst. v. SEC*, 714 F.3d 1329, 1336-37 (D.C. Cir. 2013), dozens of examples of uniform legislative practice, *see* Letter of 17 States, EPA-HQ-OAR-2013-0602-25433, at *5-6 (posted Dec. 15, 2014),⁸ and EPA’s own position just five years after the 1990 CAA Amendments, *see* 1995 EPA Memo, at 1-6. Though EPA has long been aware of these authorities, *see* Joint States Mot. 15, it does not address any of them.

Assuming, *arguendo*, there is a version-in-exile of the Exclusion, that would not salvage the Power Plan. If EPA were correct, then the agency’s duty would be to give “*full* effect to [both]” the Exclusion in the U.S. Code and the failed Senate

⁷ The only cases cited by EPA are irrelevant to the circumstances here. They stand for either: (1) the uncontroversial proposition that the Statutes at Large control over the U.S. Code when there is a substantive conflict between the two, which is not true here; or (2) the fact that this Court gives effect to conforming amendments that are not clearly clerical errors, which is also not the case here. EPA Opp. 40-41.

⁸ The Letter of 17 States is available here: <http://goo.gl/epGmXm>. *See also* Letter to Tom Marino, Chairman, Subcommittee Regulatory Reform, from Ralph V. Seep, Law Revision Counsel (Sep. 16, 2015), <http://goo.gl/xtskmv>.

amendment, which EPA contends would prohibit only the regulation of any HAP under Section 111(d). EPA Opp. 41 (emphasis added); *accord Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). The only way to do that would be to prohibit EPA *both* from regulating under Section 111(d) any “source category regulated under Section [112]” (the text in the U.S. Code), *and* from regulating any HAP under Section 111(d) (EPA’s view of the failed Senate amendment). And under this straightforward reading, the Power Plan is still unlawful. *Scialabba v. Cuellar De Osorio*, 134 S. Ct. 2191 (2014), on which EPA relies, thus provides no support for the agency’s position. Unlike here, that case involved two irreconcilable, substantive commands in the U.S. Code.⁹

C. The Plan Unlawfully Establishes Performance Standards And Fails To Allow States To Take Account Of The Remaining Useful Life Of Regulated Sources.

EPA’s responses to two additional statutory arguments in North Dakota’s stay motion, *see* ND Mot. 15-17, also lack merit.

First, EPA fails to persuasively rebut the argument that the Power Plan violates Section 111(d) by establishing “standards of performance,” rather than simply providing “a procedure” for States to do so. *Id.* at 16. EPA responds that the Plan’s emission targets are merely “substantive” “guidelines” for evaluating state plans, EPA Opp. 50, but that mischaracterizes the rule. The Power Plan prescribes hard emission

⁹ *Scialabba* is also distinguishable because that case involved an agency’s power to resolve an arguable conflict between two unclear provisions in the U.S. Code. Here, EPA claims the antecedent authority to decide which of two amendments to the same statutory text to make operative. *See* Intervenor Peabody Reply 2-3.

limits, *see* 80 Fed. Reg. at 64961-64, that each State’s plan must achieve in a legally-enforceable way. This is nothing less than dictating the level of emissions reduction for regulated sources. EPA also argues that North Dakota’s argument is an untimely challenge to two 1975 regulations, EPA Opp. 50 (citing 40 C.F.R. §§ 60.21(e), 60.22(a)), but those regulations refer only to “guideline[s]” and “guideline documents”; they do not allow EPA to dictate, contrary to Section 111(d)’s plain text, specific emission limits that regulated sources *must* meet.

Second, EPA cursorily asserts in one paragraph that the Plan’s “flexibilities” permit States to take account of the remaining useful lives of regulated sources. EPA Opp. 50. By that logic, any statute requiring an agency to “take into consideration” a specific factor would be satisfied anytime the regulated parties have flexibility in responding. But the plain import of the statutory directive is that any Section 111(d) rule must contain a specific provision that permits accommodation of remaining useful life, *see* ND Mot. 17, which EPA’s general Section 111(d) regulations do, *see* 40 CFR 60.24(f), but the Plan does not. This is of particular concern where tax levies have already been approved to pay to retrofit state utilities under other EPA rules—tax dollars that will be wasted under the Plan. *E.g.*, McClanahan Decl. ¶ 10.

D. The Plan Unconstitutionally Commandeers And Coerces States And Their Officials Into Carrying Out Federal Energy Policy.

By compelling States to restructure their electric systems, the Power Plan “use[s] the States as implements of regulation” and thereby violates the Constitution’s

bar on commandeering and coercion of the States and their officials to achieve federal ends. *New York v. United States*, 505 U.S. 144, 161 (1992). EPA provides no direct response to this point or to the argument that the statutory text discussed above must be construed to avoid these constitutional problems.

First, EPA does not dispute that extensive state regulatory action is required to achieve the Plan's mandatory transition from carbon-intensive generation to increased utilization of natural gas and renewables. Instead, EPA argues that the Plan gives States a permissible choice: promulgate a state plan or allow EPA to impose a federal plan. EPA Opp. 43-44.

But that aspect of the Plan “only underscores the critical alternative a State lacks: A State may not decline to administer the federal program,” *New York*, 505 U.S. at 176–77, through the exercise of its “traditional authority over the need for additional generating capacity, the type of generating facilities to be licensed, land use, ratemaking, and the like,” *Pac. Gas & Elec. Co.*, 461 U.S. at 212. As EPA itself acknowledges in the Plan, *see* Ok. Mot. 10-11, exercise of that state regulatory authority is necessary regardless of whether a State's electric system is subject to a state or federal plan. In either event, state agencies will have to be involved with decommissioning dozens of coal-fired plants, and granting regulatory and siting approval to many new renewable energy and transmission projects. *See, e.g.*, Lloyd Decl. ¶¶ 6, 57, 59; Nowak Decl. ¶ 12; McClanahan Decl. ¶ 7. Without these actions, there will be grid failure and blackouts; indeed, EPA's proposed federal plan expressly

depends on state authorities to address reliability concerns. 80 Fed. Reg. 64,966, 64,981 (Oct. 23, 2015). In that respect, the choice to carry out federal policy under either a state plan or a federal plan is indistinguishable from the regulate-or-take-title choice put to States in *New York* that was soundly rejected as “infringing upon the core of state sovereignty reserved by the Tenth Amendment.” 505 U.S. at 177.

Second, confirming that this is no “textbook example of cooperative federalism,” EPA Opp. 44, EPA does not even attempt to identify federal authority that could displace the need for state actors to implement the Plan. While EPA declares itself prepared to “directly regulate [in-state] sources’ CO₂ emissions,” *id.* at 44, it cites no authority by which it or another federal agency could accomplish the Plan’s forced retirement or reduced utilization of massive amounts of generating capacity, as well as the substantial legislative, regulatory, planning, and other activities that are necessary to carry out federal implementation of the Plan while maintaining electric service. *See, e.g.*, Wreath Decl. ¶¶ 2, 4, 6, 15–20; Lloyd Decl. ¶ 61 (describing current efforts by state officials to create new electric generation, transmission, and infrastructure capacity). Instead, as EPA’s silence concedes, all those activities are pushed on the States—again, just like the low-level nuclear waste program struck down in *New York*. *See* 505 U.S. at 176 (“A choice between two unconstitutionally coercive regulatory techniques is no choice at all.”).

Third, EPA identifies no precedent for this invasion of state sovereignty. “[H]aving the power to make decisions and to set policy is what gives the State its

sovereign nature.” *FERC v. Mississippi*, 456 U.S. 742, 761 (1982). Consistent with that principle, the mining statute at issue in *Hodel v. Virginia Surface Mining & Reclamation Association* allowed States to displace federal mining regulation with their own programs, but did not *require* them to do anything. 452 U.S. 264, 288 (1981) (“If a State does not wish to [regulate consistent with statute], the full regulatory burden will be borne by the Federal Government.”); *see also Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138, 175 (D.C. Cir. 2015) (same).¹⁰ But, as in *New York* and *NFIB*, the Power Plan deprives the States of that core aspect of their sovereignty, requiring them to exercise regulatory authority while stripping them of policymaking discretion. This is not cooperative federalism. It is a plain violation of the principle that “the Federal Government may not compel the States to implement . . . federal regulatory programs.” *Printz v. United States*, 521 U.S. 898, 925 (1997).

Finally, the claim by States supporting EPA that the Plan advances state sovereignty, States Opp. 7-11, is utterly false. The difference between the Plan and other rules that may affect state regulatory efforts is that the Plan relies on and compels state implementation—which EPA and its Intervenors concede. *See id.* at 8. If EPA’s supporters were correct, the federal government could demand obedience in any area of traditional state authority, and States would be powerless to resist.

¹⁰ As concerns coercion, the prospect of the lights going out, which would frustrate a State’s exercise of its police powers, is far more of a “gun to the head,” *NFIB v. Sebelius*, 132 S. Ct. 2566, 2604 (2012) (Roberts, C.J), than the minor diversion of federal funding at issue in *Miss. Comm’n on Env’tl. Quality*. *See* 790 F.3d at 177-78.

II. A Stay Is Necessary To Prevent Irreparable Harm To Petitioner States.

Absent a stay, the Plan will continue to immensely and immediately impact the sovereignty and resources of Petitioner States, on a scale exceeding any environmental rule the States have seen. Joint States Mot. 15. Complying with the Plan, both immediately and over the next year, will entail enacting new laws, revising regulations, and devoting many millions of dollars and tens of thousands of hours of employee time. *Id.* at 15-17. If the Court finds the Plan unlawful, all these efforts and disruptions will be wasted and, in many cases, impossible to reverse. *Id.* at 16. Moreover, the Plan will cause substantial, unrecoverable losses of tax revenue, ND Mot. 13-15, and impose *per se* irreparable injury by unconstitutionally invading States' sovereign authority, Ok. Mot. 17-18; ND Mot. 12-13.

A. EPA offers little to rebut the States' claims of irreparable sovereign harm. EPA asserts only that it is not irreparable harm to a State's sovereignty "for a state to exercise its regulatory authority subject to nationwide constraints in implementing a scheme of cooperative federalism." EPA Opp. 53. But this assumes that the Plan is a constitutional scheme of cooperative federalism, which it is not. *See supra* pp. 15-16.

The agency barely addresses the changes in state laws and lost legislative time that will occur during this litigation, irrevocably infringing on States' sovereign power "to create and enforce a legal code," *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982). As EPA acknowledges in the Plan, at least some States will need to enact legislation to comply with the Plan's generation-shifting

requirement. 80 Fed. Reg. at 64,859; *see also* Joint States Mot. 16. And because many state legislatures sit briefly every year or every other year, some changes will occur during this lawsuit, if a stay is denied. Lloyd Decl. ¶¶ 80, 93; Hyde Decl. ¶¶ 34-35.

In a footnote, EPA attempts to walk back its concession, arguing that “there is no basis to claim that the Rule requires immediate legislative changes” because “state environmental agencies can [simply] set emission limits for power plants.” EPA Opp. 57 & n.38. This *post-hoc* rationalization by legal counsel must be ignored. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983). Furthermore, some state environmental agencies “currently ha[ve] no regulatory program or mechanism to inventory or track generation and/or CO₂ emissions.” Hyde Decl. ¶ 25. And it is unrealistic to assume that States can simply impose the Plan’s strict limits without making changes to state laws or regulations to ensure sufficient alternatives to the fossil fuel-fired generation shuttered by the Plan.

EPA also ignores that the massive CO₂ reductions required by the Power Plan intrude on state sovereignty by greatly limiting—and effectively eliminating—state regulatory discretion. ND Mot. 10-13. For example, the Plan mandates that North Dakota reduce CO₂ emissions by nearly 45%. This staggering requirement constrains the ability of the State’s agencies to take into account considerations other than compliance with the Power Plan—such as the interests of North Dakotans themselves—in making decisions about electricity generation policy and facilities in North Dakota. And the threat of a federal plan that would still require extensive

action by North Dakota officials only exacerbates the pressure on the State to compromise—or forego—current sovereign priorities by drafting a state plan that conforms to the Power Plan’s requirements.

The imposing constraint on the agencies’ authority is a clear intrusion on North Dakota’s sovereignty. It is not true, as EPA asserts, that impairment of state sovereign authority is irreparable only if a State is “prevented . . . from exercising its authority at all.” EPA Opp. 53. The court in *Kansas v. United States* found sovereign harm irreparable not because of the degree of harm, but simply because the State had not had “a full and fair opportunity to be heard on the merits.” 249 F.3d 1213, 1227 (10th Cir. 2001). But even if EPA were correct, the impairment of sovereign authority in North Dakota, which must sacrifice other considerations to achieve the draconian 45% emission reduction, is effectively total.

B. EPA and its supporting States spend more time disputing that the Plan is currently requiring Petitioner States to expend significant, irretrievable resources, but their arguments are equally unavailing.

1. EPA first wrongly asserts that the expenditure of unrecoverable state resources cannot constitute irreparable harm. EPA Opp. 54-55. “[N]umerous courts have held that the inability to recover monetary damages . . . renders the harm suffered irreparable.” *Odebrecht Constr., Inc. v. Sec’y, Fla. Dep’t of Transp.*, 715 F.3d 1268, 1289 (11th Cir. 2013). This Court applied that rule in *American Public Gas Association v. Federal Power Commission*, 543 F.2d 356, 358 (D.C. Cir. 1976), issuing a stay where a

company showed that federal action imposed unrecoverable financial costs upon the firm. *Id.* at 358. The principle applies with particular force when, as here, the harms are imposed upon States. Thus, in *Michigan v. EPA*, Order, No. 98-1497 (D.C. Cir. May 25, 1999), this Court stayed the petitioner States' obligation to submit revised State Implementation Plans (SIPs) to EPA to prevent just such harms. Other courts recently have recognized the same possible injury to States in cases involving EPA.¹¹

Citing *Wisconsin Gas Company v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985), EPA argues that “economic losses do not constitute irreparable injury except . . . where the ‘very existence’ of a company is threatened.” EPA Opp. 52. What this Court actually said, however, was that “[r]ecoverable monetary loss may constitute irreparable harm only where the loss threatens the very existence of the movant’s business.” *Wis. Gas Co.*, 758 F.2d at 675 (emphasis added). Here, it is undisputed that Petitioner States are spending resources that are and will be *unrecoverable*. Moreover, a requirement that lost resources threaten the “very existence” of a State before becoming irreparable would be nonsensical. *Cf.* U.S. Const. Art. IV, Sec. 3.¹²

¹¹ *E.g.*, *In re EPA*, 803 F.3d at 808 (“unrecoverable expenditure of resources” by States “to comply with the new [regulatory] regime” would constitute “irreparable harm”); *North Dakota v. EPA*, No. 3:15-cv-59, --- F. Supp. 3d ---, 2015 WL 5060744 (D.N.D. Aug. 27, 2015) (“[I]f the States incur monetary losses as a result of an unlawful exercise of regulatory authority, no avenue exists to recoup those losses.”).

¹² EPA’s only other citations to support its argument are several out-of-circuit decisions that the agency misleadingly suggests are about “the ‘cost of doing business’ for a state regulatory agency,” but in fact concern regulatory burdens borne by private firms. EPA Opp. 58. Those cases are irrelevant to the instant matter where significant

EPA's further assertion that treating state expenditures as irreparable harm would lead to stays of "virtually any agency action" and "disrupt the entire statutory scheme for . . . air quality standards as well as other pollution control programs that rely on state plans," EPA Opp. 55, is baseless. In *Michigan*, several parties opposing the States' stay motion made the same arguments. They warned that if this Court credited the States' arguments about "expend[ing] time and resources to promulgate revised SIPs[,] . . . staying agency action pending judicial review would be the norm, rather than the rare exception." Indus. Intervenors Opp. 7-8, No. 98-1497 (D.C. Cir. Mar. 5, 1999). This Court properly discounted those predictions, which have not come to pass because courts do not look only to irreparable harm in granting a stay. They also consider likelihood of success, the balance of equities, and the public interest—factors satisfied here but that would not be in challenges to most rules.

2. States supporting EPA assert that, in any event, the Plan does not require immediate expenditures by the States. States Opp. 14. But this is refuted by their own declarants, who admit that their States have "*already begun* [their] efforts to develop a state plan for compliance with the Clean Power Plan . . . includ[ing] stakeholder outreach, ongoing modeling and other analyses of the electric power system, [and] collaboration" among state agencies. Snyder Decl. ¶ 47 (New York) (emphasis

burdens have been placed upon sovereign States and, in any event, are foreclosed by this Court's controlling decision in *American Public Gas*.

added).¹³ And EPA’s Administrator boasted during international negotiations that the Plan “is being actively engaged by every state in the United States.” Joel Kirkland, *Obama’s A-Team touts Clean Power Plan’s enforceability*, E&E News (Dec. 7, 2015).¹⁴

3. Finally, EPA and its supporting States argue that Petitioner States will not suffer as much irreparable harm as they have alleged.

The main argument of EPA’s supporting States is that the Plan tracks what those States have already been doing. *See, e.g.*, Dykes Decl. ¶ 26 (“very similar to the process . . . RGGI participating states undertook”); Thornton Decl. ¶ 23 (Power Plan “reflect[s] many strategies that Minnesota has demonstrated”). Put another way, the Plan now requires *all* States to adopt the generation-shifting approach that States supporting EPA have voluntarily adopted over a period of many years and even “decades.” Eisdorfer Decl. ¶ 13. For example, the Regional Greenhouse Gas Initiative (“RGGI”) framework was developed over nearly six years, among States whose sovereign priorities aligned with the goal of generation-shifting.¹⁵

¹³ *Accord* Chang Decl. ¶ 30 (California) (“planning process began . . . in 2015, and is expected to unfold throughout 2016”); Clark Decl. ¶ 16 (Washington) (“began its efforts”); Klee Decl. ¶ 31 (Connecticut) (“already begun”); McVay Decl. ¶ 18 (Rhode Island) (“already begun”); Pedersen Decl. ¶ 12 (Oregon) (“began working”); Wright Decl. ¶ 24 (New Hampshire) (“already”).

¹⁴ In addition to the activities documented in the declarations submitted by all States in this case, the attached table shows that States across the country are actively engaged with the Plan. *See* Table of State Compliance Actions, Exh. A.

¹⁵ RGGI Design Archive, <http://rggi.org/design/history>.

That certain States have already been phasing out coal-fired generation as a matter of their own policy choices, however, says nothing about the burden the Plan places on States that have made different choices or are more heavily coal-reliant. For example, California and New York have measures to promote generation-shifting, currently obtain only 0.67% and 7% of their energy from coal-fired power plants, and need to reduce CO₂ emissions by just 13% and 19%. In comparison, Petitioners West Virginia and North Dakota have not likewise facilitated generation-shifting, currently obtain 95% and 77% of their energy from coal-fired power plants, and must design State Plans in less than three years to reduce emissions by 37% and 45%.¹⁶

EPA and its supporters also equate the Plan's obligations to creating a SIP under the National Ambient Air Quality Standards (NAAQS) program and other similar CAA duties. EPA Opp. 55; States Opp. 14-15. Even if correct, these assertions would not support denying a stay, as this Court has previously stayed a rule requiring a SIP *revision*. Order, *Michigan v. EPA*, No. 98-1497 (D.C. Cir. May 25, 1999). In any event, the comparison is wrong. Gross Decl. ¶ 3; Stevens Decl. ¶ 8. No EPA rule has required a State to design state-wide plans to achieve massive emission reductions (up to 45%) that are premised on and can only be accomplished by “shifting” from the State's largest energy source to an entirely different method of generation—let alone

¹⁶ See 80 Fed. Reg. at 64,824 tbl. 12 (emission targets by State); U.S. Energy Information Administration, State Profiles and Energy Estimates, <http://www.eia.gov/state/?sid=US> (coal reliance by State).

design such ambitious plans in less than three years. *See supra* p. 23 n.16 and accompanying text. In more than 1,400 pages of declarations, neither EPA nor any supporter points to any federal environmental rule requiring a change of this scale over any time period. A NAAQS SIP, for example, is something with which state regulators are familiar, typically impacts a limited geographic area within a State, and does not expressly require an electric reliability assessment. 80 Fed. Reg. at 64,876.

Lastly, EPA argues that States will not suffer irreparable harm because of the Plan's "flexibility," which "includ[es] the option of doing nothing" and acceding to a federal takeover, adopting a yet-to-be-promulgated "Model Plan[]," or entering into "existing state trading programs." EPA Opp. 46, 57. But under any approach, the Plan requires Petitioner States to phase out the most commonly used, reliable form of energy. And deciding among options to achieve this mandate—a subject discussed over 500 pages of the prepublication final Plan—and then designing any appropriate approach will involve complex interagency analyses, evaluation of the natural gas and renewable-source capacity that could be added, and evaluation and the implementation of needed changes to state laws and regulations.¹⁷ EPA does not dispute that unrecoverable resources are required even to request an extension in 2016. *Id.* at 56. States must also assess what measures are needed for credits under the

¹⁷ Nowak Decl. ¶¶ 4-13; McClanahan ¶¶ 4-10; Bracht Decl. ¶¶ 2, 8, 10, 12; Hodanbosi Decl. ¶ 5; Gore Decl. ¶¶ 5-6; Lloyd Decl. ¶¶ 47-48, 82-87; Gustafson Decl. ¶ 15; Rikard Decl. ¶¶ 5, 8.

Clean Energy Incentive Plan, because statements of intent are due with 2016 submissions. 80 Fed. Reg. at 64,669. Thus, even States supporting EPA, who have been in the generation-shifting business, are not waiting to begin work. *See supra* p. 21.

Although States may choose to default to the federal plan or adopt one of EPA's not-yet-promulgated "models," this does not relieve the States from immediate and irreparable harm. EPA's assertion that States can accept, sight unseen, a yet-to-be-finalized plan and "do nothing," EPA Opp. 46, is premised on the entirely unrealistic notion that States can leave the functioning and reliability of their power sectors to faith and chance. *E.g.*, Hyde Decl. ¶ 22 ("Texas [has] little choice but to begin allocating[] time, effort and resources immediately" because "Texas will have virtually no time to review the final Federal Plan."). EPA suggests that a federal plan could be abandoned at any time if it proves undesirable, EPA Opp. 11, but that cannot be done unless States spend resources now reviewing and preparing ready alternatives to the federal plan. Moreover, even those States that have decided to default to the federal plan must expend resources today to prepare for the reliability impacts of the federal plan. *E.g.*, Wreath Decl. ¶ 3; *see also* Lloyd Decl. ¶ 48; *supra* p. 17.

C. EPA does not seriously dispute North Dakota's claim of irreparable harm from lost tax revenue and the impact on critical state services. ND Mot. 6-9, 13-15. The agency does not contest that losses will occur, arguing that "there is no evidence that such loss would occur before judicial review is complete." EPA Opp. 54 n.36. But the lost tax revenues will result from reduced lignite mining, which will follow the

closure in 2016 and 2018 of several coal-fired power plants in North Dakota. The first of the closures, which are predicted by EPA's own model¹⁸ and independently confirmed by North Dakota officials,¹⁹ fall well within the lifespan of this litigation.²⁰

III. Allowing The Power Plan's Immense, Immediate Consequences To Continue Is Contrary To The Public Interest And The Equities.

No one disputes that the Power Plan is having massive and immediate impacts; the disagreement is only over which of the Plan's impacts are being most felt. The declarations from *all* States show that substantial public funds are being expended now to comply with the Plan's obligations. *See supra* pp. 21-23. EPA and its supporters attest that the Plan is having immediate consequences for international negotiations, Stern Decl. ¶¶ 13-18, 31; Albright Decl. ¶¶ 1-6, and multi-"billion" dollar investment and consumer decisions in the renewable energy field, Advance Energy Opp. 7-8. Declarations by Industry Petitioners show that the Plan is leading to imminent power plant closures and other substantial changes to fossil-fuel capital allocation decisions. Joint Non-State Reply at 28; *see also* Lloyd Decl. ¶¶ 31, 33, 41-46. And States supporting EPA confirm that utilities in their States "have already begun factoring the specific requirements of the . . . Power Plan" into their planning. Eisdorfer Decl. ¶ 19.

¹⁸ EPA's attempt to dispute its own modeling is unfounded. Joint Non-State Reply 26-28; Schwartz Reply Decl. ¶¶ 19-32.

¹⁹ *See, e.g.*, Gaebe Decl. ¶ 12; *see also* Glatt Decl. ¶ 14; Christman Decl. ¶ 12.

²⁰ EPA also argues that North Dakota can increase tax rates and types to cover any shortfall, but requiring the State to change its laws is itself a harm. *See supra* p. 17.

All of these substantial and present impacts are contrary to the public interest because the Power Plan is unlawful. There is an “overriding public interest” in “an agency’s faithful adherence to its statutory mandate.” *Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 58-59 (D.C. Cir. 1977). If this Court agrees that the Plan is unlikely to survive judicial review, then *any* changes or commitments that manifest before the Plan is invalidated are contrary to the public interest as a matter of law. *Id.* In other words, “the sheer breadth of the ripple effects caused by the [Plan] . . . counsels strongly in favor of maintaining the status quo for the time being.” *In re EPA*, 803 F.3d at 808. Thus, EPA and its supporters have matters exactly backwards. The Power Plan’s ongoing consequences are not a reason to deny a stay; they demand one.

Taking EPA’s approach would repeat the unseemly spectacle that followed its recent loss in *Michigan v. EPA*, 135 S. Ct. 2699 (2015). When the Plan is declared unlawful, EPA will again brag that regulated parties are “already in compliance or well on their way to compliance,”²¹ and oppose vacatur because power plants have shuttered, billions have poured into renewable energy, and international commitments have been cemented.

CONCLUSION

The States respectfully request that their motions for stay be granted.

²¹ Janet McCabe, <https://blog.epa.gov/blog/2015/06/in-perspective-the-supreme-courts-mercury-and-air-toxics-rule-decision/>.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2015, I caused the foregoing document to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system and hand-delivered four copies to the clerk's office. All registered CM/ECF users will be served by the Court's CM/ECF system. The following non-CM/ECF counsel will be served by U.S. mail:

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ORAL ARGUMENT NOT YET SCHEDULED
No. 15-1363 (and consolidated cases)

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, *et al.*,

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petitions for Review of a Final Action of the
United States Environmental Protection Agency

EXHIBIT A

**JOINT REPLY OF WEST VIRGINIA, ET AL., OKLAHOMA, ET AL.,
NORTH DAKOTA, AND MISSISSIPPI DEQ IN SUPPORT OF
MOTIONS FOR STAY AND FOR EXPEDITED CONSIDERATION**

**Table of Illustrative State Activities Undertaken Since August 3, 2015,
to Prepare State Plans Under the Clean Power Plan**

| State | Activity | Website |
|----------------|--|--|
| Alabama | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Alabama Department of Environmental Management (ADEM) forms workgroup of utility stakeholders to receive comment on final Clean Power Plan (CPP). • <u>September 24, 2015</u> – ADEM staff present on final CPP to Alabama Chapter of Air & Waste Management Association. • <u>Autumn 2015</u> – ADEM staff participate in several national workshops and over a dozen conference calls and webinars on the CPP. • <u>Autumn 2015</u> – ADEM staff meet with electric utilities to discuss CPP and its potential impacts. | |
| Arizona | <ul style="list-style-type: none"> • <u>August 20, 2015</u> – Joint Legislative Review Committee on State Plans Relating to Carbon Dioxide Emissions from Existing Power Plants (JLRC) hosts meeting with Arizona Department of Environmental Quality (ADEQ), Arizona Corporation Commission (ACC), and Arizona utilities and the Electric Cooperative Association, and receives public comment. • <u>September 1, 2015</u> – ADEQ hosts first stakeholder meeting on the final CPP to discuss the rule and next steps to meet the 2016 initial submittal deadline. ADEQ announces it is working with a group of 15 States to consider options for and interest in adopting a regional approach to state planning. A technical working group of stakeholders and Arizona State University are helping to complete analyses of state plan options. • <u>September 24, 2015</u> – JLRC hosts meeting to consider the reliability of the electrical power grid, the availability of natural gas and related infrastructure, and the effects on the state and local economies with presentations from the ACC, ADEQ, Arizona Commerce Authority, Arizona Cattlemen’s Association, Arizona Chamber of Commerce, and Greater Phoenix Chamber of Commerce. • <u>October 6, 2015</u> – ADEQ hosts stakeholder meeting to discuss next steps to meet the 2016 initial submittal deadline. ADEQ announces that officials have been looking at other States’ planning activities and linkage opportunities, and traveling to meetings in Denver and Philadelphia. ADEQ also announces it has met with the Navajo Nation on the CPP, and that ADEQ has formed a technical work group and a consultation group, in addition | <p>http://www.azdeq.gov/environment/air/phasethree.html</p> <p>http://www.azleg.gov/FormatDocument.asp?inDoc=/committee/Joint+Legislative+Review+Committee+on+State+Plans+Relating+to+Carbon+Dioxide+Emissions+from+Existing+Power+Plants%2Edoc.htm</p> <p>http://www.azleg.gov/InterimCommittees.asp</p> |

| State | Activity | Website |
|----------|--|---|
| | <p>to the large stakeholder meetings.</p> <ul style="list-style-type: none"> • <u>October 8, 2015</u> – Arizona CPP Technical Working Group meets. • <u>November 3, 2015</u> – Stakeholder Working Group meets to discuss outreach to vulnerable communities and to review Work Plan for ADEQ completion of initial state plan submittal. • <u>November 4, 2015</u> – ADEQ releases revised draft work plan for development of initial state plan. • <u>December 2015</u> – Technical Working Group meets to identify compliance options that can be eliminated based on clear technical limitations. • <u>December 2015</u> – ADEQ develops outreach program to vulnerable communities. • <u>December 30, 2015</u> – ADEQ submits quarterly report to JLRC. • <u>January 5, 2016</u> – ADEQ hosts stakeholder meeting to discuss state plan compliance options. | |
| Arkansas | <ul style="list-style-type: none"> • <u>August 17, 2015</u> – Arkansas Department of Environmental Quality (ADEQ) and Arkansas Public Service Commission (APSC) host press conference on the final CPP. • <u>October 9, 2015</u> – ADEQ and APSC host a joint meeting with stakeholders to discuss the CPP and to accept comments on a tentative strategy for state implementation. The tentative strategy document notes efforts will include continued multi-agency engagement, renewed and periodic stakeholder engagement, multi-agency and stakeholder engagement and participation in development of the assumptions and data fields comprising required assessments of the state plan (see below), engagement with the state General Assembly, and continued engagement with the Governor’s office. • Act 382 requires ADEQ to work with the APSC and the Arkansas Economic Development Commission to conduct assessments of environmental, ratepayer, and economic impacts of a state CPP plan before it is submitted to the Arkansas Legislative Council and ultimately to EPA. The October 9, 2015 strategy document suggests the creation of committees to evaluate the three required assessment areas. | https://www.adeq.state.ar.us/air/planning/cpp/ |

| State | Activity | Website |
|-------------------|--|---|
| California | <ul style="list-style-type: none"> • <u>September 28, 2015</u> – California Air Resources Board (ARB) staff releases Clean Power Plan Compliance Discussion Paper outlining overview of considerations in development of state plan, indicating that ARB will likely adopt a mass-based state measures plan incorporating the State’s existing cap-and-trade regulatory program. • <u>October 2, 2015</u> – ARB staff host public workshop with California Energy Commission and California Public Utilities Commission staff to explore issues in September 28 Discussion Paper and to discuss state plan for CPP compliance. • <u>November 10, 2015</u> – ARB staff hold workshop on modeling approach to state plan. • <u>November 19, 2015</u> – ARB staff provide informational update to ARB members. • <u>December 1, 2015</u> – ARB staff announce commencement of environmental analysis under California Environmental Quality Act regarding potentially significant adverse environmental impacts from CPP and related potential amendments to state regulations. • <u>December 14, 2015</u> – ARB staff hold workshop to discuss state CPP compliance plan policy options, modeling results, and the scope and schedule for potential amendments to existing state regulations relating to electricity sector emissions. | http://www.arb.ca.gov/cc/powerplants/powerplants.htm |
| Colorado | <ul style="list-style-type: none"> • <u>August 3, 2015</u> – Colorado Department of Public Health and Environment (CDPHE) issues press release on final CPP and announces development of a stakeholder process. • <u>September 25, 2015</u> – CDPHE hosts first stakeholder meeting to discuss process for developing state plan and to solicit public comment. • <u>October 9, 2015</u> – CDPHE participates in Georgetown Climate Center dialogue on CPP implementation. • <u>November 9, 2015</u> – CDPHE hosts second stakeholder opportunity to provide public comment on state plan development. • <u>December 3, 2015</u> – CDPHE releases timeline for development of state CPP compliance plan, with seven focused stakeholder meetings planned for the first half of 2016. CDPHE announces it has received more than 50 oral and written public comments on the CPP, and requests additional comment on specific topics relating to the CPP. CDPHE also announces it is working with consultants to | https://www.colorado.gov/cdphe/CleanPowerPlan |

| State | Activity | Website |
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| | <p>develop a tool to screen CPP compliance scenarios and is evaluating options for modeling the electric grid and the costs of potential emission reduction strategies.</p> <ul style="list-style-type: none"> • <u>January 14, 2016</u> – CDPHE hosts stakeholder meeting to discuss impact of final CPP on urban low income communities and the Clean Energy Incentive Program element of the final CPP. | |
| Connecticut | <ul style="list-style-type: none"> • <u>August 3, 2015</u> – Connecticut Department of Energy and Environmental Protection (DEEP) Commissioner announces launch of detailed review of final CPP to develop compliance plan. • <u>August 28, 2015</u> – CT Governor’s Council on Climate Change presents overview of final CPP to members of public. • <u>October 9, 2015</u> – DEEP participates in Georgetown Climate Center dialogue on CPP implementation. | http://www.ct.gov/deep/cwp/view.asp?a=4707&Q=569096&deepNav_GID=1511 |
| Delaware | <ul style="list-style-type: none"> • <u>November 10, 2015</u> – Delaware Department of Natural Resources and Environmental Control (DNREC) and Delaware Public Service Commission host listening session, present on entities subject to regulation under the CPP, and indicate the State is likely to adopt a mass-based, multi-state approach consistent with the Regional Greenhouse Gas Initiative of which the State is a part. DNREC disseminates questions for stakeholder consideration. • <u>December 31, 2015</u> – Deadline to submit public comments to DNREC on Delaware’s compliance with the CPP. | http://www.dnrec.delaware.gov/Air/Pages/CleanPowerPlan.aspx |
| Florida | <ul style="list-style-type: none"> • <u>August – December 2015</u> – Florida Department of Environmental Protection (DEP) staff undertake comprehensive review of final CPP, technical support documents, proposed model trading rules, and proposed federal plan released by EPA; staff participate in multiple webinars, informational calls, training sessions, and workshops, sponsored both by EPA and third-party organizations, relating to the CPP and related rules; staff meet weekly on CPP, state compliance plan, and proposed federal plan, accounting for over 1000 hours of staff time. • <u>August – December 2015</u> – DEP staff participate in multiple in-person meetings with stakeholders, associations, and interest groups, including tour of regional utilities’ power distribution center and trading floor. • <u>August – December 2015</u> – DEP staff attend multiple conference calls with utility, industry, and interest group | |

| State | Activity | Website |
|----------------|--|--|
| | <p>representatives to discuss CPP state plan development.</p> <p><u>September 24-25, 2015</u> – DEP staff participate in Nicholas Institute workshop in Durham, NC, to discuss state plan options and multi-state coordination.</p> <ul style="list-style-type: none"> • <u>October 20, 2015</u> – DEP Deputy Secretary briefs Florida Legislature on final CPP. | |
| Georgia | <ul style="list-style-type: none"> • <u>September 24-25, 2015</u> – Georgia Environmental Protection Division (EPD) staff participate in Nicholas Institute workshop in Durham, NC, to discuss state plan options and multi-state coordination. • <u>September 28, 2015</u> – EPD and Georgia Public Service Commission (PSC) staff participate in joint conference hosted by Georgia Tech School of Public Policy and Emory University’s Climate@Emory initiative to discuss Georgia’s options for implementing the CPP. • <u>October 8, 2015</u> – EPD hosts stakeholder meeting on the CPP and announces development of an engagement plan. • <u>October – December 2015</u> – EPD meets with stakeholders, including state agencies (PSC, Georgia Economic Finance Authority), utilities, and advocacy groups, to discuss state plan development. • <u>October 27, 2015</u> – EPD participates in quarterly demand side management (DSM) work group session to inform state plan development (work group separately established by the PSC to inform triennial Integrated Resource Plan development). • <u>November 12, 2015</u> – PSC hosts EPD and U.S. EPA officials at Energy Committee meeting to discuss CPP’s treatment of biomass for compliance with emission targets. • <u>November – December 2015</u> – EPD participates in EPA’s CPP Clean Energy Incentive Program (CEIP) coordination calls. • <u>December 8, 2015</u> – EPD establishes Steering Committee for Vulnerable Community Outreach as part of state plan development process. • <u>December 9, 2015</u> – EPD participates in DSM work group web meeting as part of state plan development process. • <u>December 15, 2015</u> – EPD submits comments to EPA regarding CPP CEIP. | <p>https://epd.georgia.gov/air/111dstakeholdermeetings</p> |

| State | Activity | Website |
|----------------|---|---|
| | <ul style="list-style-type: none"> • <u>January 7, 2016</u> – EPD hosts stakeholder meeting to discuss whether the State should participate in the CEIP as part of its state plan. • <u>January 19, 2016</u> – First meeting of Steering Committee for Vulnerable Community Outreach to discuss implementation of community outreach requirements for CPP state plan. | |
| Idaho | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Idaho Department of Environmental Quality announces commencement of state plan development process in conjunction with Idaho Office of Energy Resources, the Idaho Public Utilities Commission, and other stakeholders. | http://www.deq.idaho.gov/air-quality/air-pollutants/greenhouse-gases/epa-clean-power-plan-rule/ |
| Indiana | <ul style="list-style-type: none"> • <u>August 20, 2015</u> – Indiana Department of Environmental Management (IDEM) hosts stakeholder meeting on CPP. • <u>October 15, 2015</u> – IDEM official speaks on CPP at Indiana Energy Conference. | |
| Iowa | <ul style="list-style-type: none"> • <u>September 9, 2015</u> – Iowa Department of Natural Resources (DNR) hosts stakeholder meeting on CPP to review the final rule, discuss the stakeholder process, and discuss initial impressions of the rule. • <u>September 21, 2015</u> – DNR releases timeline for development of state plan. • <u>November 16, 2015</u> – DNR hosts stakeholder meeting, including presentations on the CPP’s impacts on regional transmission organizations, the Clean Energy Incentive Program, the proposed federal plan and model trading rules, and a discussion of mass vs. rate-based state plans. • <u>January 14, 2016</u> – DNR hosts stakeholder meeting. | http://www.iowadnr.gov/Environmental-Protection/Air-Quality/Greenhouse-Gas-Emissions/Carbon-Pollution-Stnds-111d |
| Kansas | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Pursuant to a July 2015 Memorandum of Understanding and HB 2233, Kansas Department of Health and Environment (KDHE) and Kansas Corporation Commission (KCC) to meet at least twice per month to develop a state plan to implement the CPP, to submit to the legislative Clean Power Plan Implementation Study Committee a plan to investigate, review, and develop the state plan by November 1, 2015, to conduct two sets of stakeholder meetings, and to submit to the legislature an outline of the CPP’s requirements by February 1, 2016. • <u>October 26, 2015</u> – KCC staff issue report and recommend to KCC the opening of a docket on the final CPP, specifically to conduct a comprehensive review of generation and dispatch options to identify least-cost | http://www.kdheks.gov/bar/caas111d/111d.html http://www.kcc.state.ks.us/pi/press/15-15.htm http://www.kcc.ks.gov/pi/public_comment.htm |

| State | Activity | Website |
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| | <p>compliance options.</p> <ul style="list-style-type: none"> • <u>November 13, 2015</u> – KCC opens docket on final CPP. • <u>December 3, 2015</u> – KCC issues order to commence investigation of generation redispatch options to comply with final CPP, including to authorize staff to engage outside consultants. It also begins to accept public comment on final rule. • <u>January 12, 2016</u> – KCC hosts open education session on CPP with KDHE and Attorney General’s office. • <u>January 30, 2016</u> – KCC staff to announce schedule for stakeholder hearings on final CPP. | |
| Kentucky | <ul style="list-style-type: none"> • <u>October 27, 2015</u> – Kentucky Energy and Environment Cabinet Deputy Secretary speaks at Kentucky Energy Management Conference on State’s plans to meet CPP requirements. | |
| Louisiana | <ul style="list-style-type: none"> • <u>August 12, 2015</u> – Louisiana Public Service Commission (LPSC) requests public comment on final Clean Power Plan under Docket No. R-33253 by September 2, 2015 (deadline later extended to September 16, 2015). • <u>September 23, 2015</u> – LPSC approves budget of \$119,370 to retain outside consultant to assist in development of state CPP compliance plan. | http://lpscstar.louisiana.gov/star/portal/lpsc/page/docket-docs/PSC/DocketDetails.aspx?DocketId=1205dce8-6985-4c34-bd60-d460b7733095 |
| Michigan | <ul style="list-style-type: none"> • <u>August 25, 2015</u> – Michigan Department of Environmental Quality (DEQ) announces the State will submit a state plan by September 6, 2016, and is assembling a stakeholder group to determine the most cost-effective compliance strategy. • <u>October 9, 2015</u> – DEQ participates in Georgetown Climate Center dialogue on CPP implementation. | http://www.michigan.gov/deq/0,4561,7-135-3310_70310_70940-346460-,00.html |
| Minnesota | <ul style="list-style-type: none"> • <u>August 3, 2015</u> – Minnesota Pollution Control Agency (MPCA) publishes notice in the State Register requesting public comment on possible rules for State’s compliance with the CPP. • <u>August 20, 2015</u> – MPCA announces commencement of drafting of rule language and statement of need and reasonableness to adopt state plan to implement CPP. • <u>October 9, 2015</u> – MPCA participates in Georgetown Climate Center dialogue on CPP implementation. • <u>November 17, 2015</u> – MPCA hosts stakeholder meeting to | http://www.pca.state.mn.us/index.php/air/air-permits-and-rules/air-rulemaking/clean-air-act-section-111d/clean-power-plan-to-cut-carbon-pollution.html |

| State | Activity | Website |
|--------------------|---|--|
| | discuss state activities on CPP. | |
| Mississippi | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Mississippi Department of Environmental Quality (MDEQ) staff analyze impacts of final rule on State. • <u>Autumn 2015</u> – MDEQ staff participate in numerous trainings and webinars on final CPP offered by U.S. EPA and independent entities, and participate in two regional consortiums analyzing and discussing impacts of the final CPP. • <u>Autumn 2015</u> – MDEQ staff engage with individual stakeholders and other interested parties on final CPP. • <u>October 8, 2015</u> – MDEQ hosts stakeholder meeting on final CPP. • <u>October 16, 2015</u> – MDEQ staff present on CPP to Mississippi Manufacturers' Association. • <u>November 16, 2015</u> – MDEQ and Public Service Commission staff meet to discuss final CPP and to schedule stakeholder and public outreach sessions. • <u>December 4, 2015</u> – MDEQ staff meet with U.S. EPA Region 4 staff to discuss final CPP. | |
| Missouri | <ul style="list-style-type: none"> • <u>September 23, 2015</u> – Missouri Department of Natural Resources (DNR) hosts stakeholder meeting to provide overview of the CPP. DNR announces participation in regular meetings, communication, and coordination with Missouri Department of Economic Development Division of Energy and Public Service Commission, 30-day public comment period on initial and final state plans, and additional stakeholder meetings. • <u>December 2, 2015</u> – DNR hosts stakeholder meeting on the CPP's Clean Energy Incentive Program. | http://dnr.mo.gov/env/apcp/cpp/ |
| Montana | <ul style="list-style-type: none"> • <u>August 12, 14, 18, and 31, 2015, and September 4, 2015</u> – Montana Public Service Commission staff transmit analyses of different issues in final CPP to Commissioners. • <u>October 9, 2015</u> – Montana Department of Environmental Quality (DEQ) participates in Georgetown Climate Center dialogue on CPP implementation. • <u>November 12, 2015</u> – Montana Governor Steve Bullock issues Executive Order No. 18-2015 creating Interim Montana Clean Power Plan Advisory Council to gather | http://governor.mt.gov/Newsroom/ArtMID/28487/ArticleID/2168 http://leg.mt.gov/content/Committees/Interim/2015-2016/EQC/111d-Subcom/Meetings/Sept-2015/psc-111d-analysis.pdf |

| State | Activity | Website |
|----------------------|--|---|
| | <p>information and provide recommendations to the DEQ by July 2016 on CPP state plan options.</p> <ul style="list-style-type: none"> • <u>November 30, 2015</u> – Deadline to submit indications of interest to serve on Clean Power Plan Advisory Council. | |
| Nebraska | <ul style="list-style-type: none"> • <u>August 2015</u> – Nebraska Department of Environmental Quality (NDEQ) commences outreach to stakeholder groups on final CPP. • <u>Autumn 2015</u> – NDEQ staff meet monthly with representatives from public power sector to discuss CPP-related issues. • <u>Autumn 2015</u> – NDEQ staff develop survey for individual, industry, and municipality stakeholders to generate appropriate materials for upcoming public meetings on CPP. • <u>Mid-January 2016</u> – Public listening sessions with formal testimony on final CPP and state implementation to begin. | |
| Nevada | <ul style="list-style-type: none"> • <u>November 12, 2015</u> – Nevada Public Utilities Commission, Governor’s Office of Energy, and Nevada Division of Environmental Protection (DEP) host public hearing on CPP, present on the final rule and plan development process, and accept public comment from attendees on whether the State should submit a state plan or allow EPA to implement a federal plan, and if it is to develop a state plan, to describe the appropriate stakeholder development process and criteria the State should use to compare and evaluate compliance pathways. • <u>December 31, 2015</u> – Deadline to submit written comments on CPP planning and implementation to DEP. | http://ndep.nv.gov/baqp/technical/CPP.html |
| New Hampshire | <ul style="list-style-type: none"> • <u>October 14, 2015</u> – New Hampshire Department of Environmental Services (DES) and Public Utilities Commission of New Hampshire issue notice requesting public comments on state compliance with the CPP and revisions to Regional Greenhouse Gas Initiative, of which New Hampshire is a part. • <u>November 20, 2015</u> – DES hosts stakeholder meeting to discuss CPP compliance options. | http://des.nh.gov/organization/divisions/air/tsb/tps/climate/rggi/documents/pubnotice-rggi-11-20-15.pdf |
| New Jersey | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – New Jersey Department of Environmental Protection updates website detailing actions relating to final CPP. | http://www.nj.gov/dep/111d/ |
| New Mexico | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – New Mexico Environment Department (NMED) staff review final CPP and technical support | https://www.env.nm.gov/aqb/CPP.htm |

| State | Activity | Website |
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| | <p>documents released by EPA, participate in webinars, trainings and workshops related to the final CPP, and meet with stakeholders, including utilities, the Rural Electric Cooperative Association, environmental organizations, and other New Mexico citizens. NMED is also working with the City of Albuquerque Environmental Health Department, the New Mexico Energy, Minerals and Natural Resources Department, and the New Mexico Public Regulation Commission. NMED established a dedicated email address for the public to submit questions or comments on the CPP and New Mexico's compliance planning efforts.</p> <ul style="list-style-type: none"> • <u>November 18, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>November 19, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>December 4, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>December 7, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>December 8, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>December 14, 2015</u> – NMED hosts public listening session on the CPP and state plan development. • <u>January 11, 2016</u> – NMED hosts public listening session on the CPP and state plan development. • <u>January 12, 2016</u> – NMED hosts public listening session on the CPP and state plan development. | <p>https://www.env.nm.gov/aqb/CPublicOutreach.htm</p> |
| New York | <ul style="list-style-type: none"> • <u>October 9, 2015</u> – New York Assistant Commissioner for Air Resources, Climate Change and Energy participates in Georgetown Climate Center dialogue on CPP implementation. • <u>December 15, 2015</u> – Department of Environmental Conservation submits comments to EPA on CEIP. | <p>http://www.dec.ny.gov/energy/97799.html</p> |
| North Carolina | <ul style="list-style-type: none"> • <u>August 18, 2015</u> – North Carolina Department of Environment and Natural Resources (NCDENR) holds special information session on the final Clean Power Plan. • <u>October 23, 2015</u> – NCDENR Division of Air Quality releases draft proposed regulations to implement the CPP, along with a 224-page Supporting Basis document, and an | <p>http://www.ncair.org/rules/EGUs/</p> <p>http://www.ncair.org/rules/hearing</p> |

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| | <p>18-page Fiscal Impact Summary.</p> <ul style="list-style-type: none"> • <u>November 16, 2015</u> – Public comment period on draft regulations begins. • <u>December 16, 2015</u> – NCDENR Division of Air Quality holds public hearing on final CPP. • <u>December 17, 2015</u> – NCDENR Division of Air Quality holds public hearing on final CPP. • <u>January 5, 2016</u> – NCDENR Division of Air Quality holds public hearing on final CPP. • <u>January 15, 2016</u> – Public comment period on draft regulations ends. | |
| North Dakota | <ul style="list-style-type: none"> • <u>October 13, 2015</u> – North Dakota Department of Health (NDDoH) solicits public comment on CPP compliance options. • <u>November 9, 2015</u> – NDDoH hosts public meeting on state plan development. • <u>November 12, 2015</u> – NDDoH hosts public meeting on state plan development. • <u>November 16, 2015</u> – NDDoH hosts public meeting on state plan development. • <u>November 18, 2015</u> – NDDoH hosts public meeting on state plan development. • <u>November 24, 2015</u> – State legislative Energy Development and Transmission Committee hosts hearing on final CPP with testimony from NDDoH officials. • <u>December 18, 2015</u> – Deadline to submit public comments to NDDoH on state plan options; NDDoH hosts public meeting on state plan development. | <p>http://www.ndhealth.gov/aq/publiccom.aspx</p> <p>http://www.ndhealth.gov/aq/cleanpowerplan.aspx</p> |
| Ohio | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Ohio Environmental Protection Agency (EPA) establishes dedicated email address to receive comments, concerns, and information on the CPP and state plan. • <u>November 18, 2015</u> – Ohio EPA official speaks about the State's CPP-related activities at a conference hosted by Ohio Advanced Energy Economy. • <u>December 2, 2015</u> – Ohio EPA and Public Utilities Commission of Ohio (PUCO) host information session for | <p>http://epa.ohio.gov/dapc/111drule.aspx</p> |

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| | <p>interested parties to explain CPP requirements, a stakeholder engagement plan, and to answer initial questions.</p> <ul style="list-style-type: none"> • <u>Early 2016</u> – Ohio EPA hosts five regional listening sessions to provide public, interested parties, and stakeholders an opportunity to submit verbal and written testimony. | |
| Oklahoma | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Oklahoma Department of Environmental Quality (DEQ) collects information and comments to assist in commenting on EPA’s model rules for state plans and the proposed federal plan. • <u>November 17, 2015</u> – DEQ hosts CPP Issues Technical Stakeholder Meeting. | http://www.deq.state.ok.us/aq/new/RulesAndPlanning/cleanpower111d/index.htm |
| Oregon | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Oregon Department of Environmental Quality announces it will work with Oregon Department of Energy, the Public Utility Commission, and regional stakeholders to begin developing state plan. | http://www.deq.state.or.us/aq/climate/co2standard.htm |
| Pennsylvania | <ul style="list-style-type: none"> • <u>September 9, 2015</u> – Pennsylvania Department of Environmental Protection (DEP) conducts webinar about the CPP. • <u>September 15, 2015</u> – DEP hosts listening session. • <u>September 21, 2015</u> – DEP hosts listening session. • <u>September 22, 2015</u> – DEP hosts two listening sessions. • <u>September 28, 2015</u> – DEP hosts listening session. • <u>September 30, 2015</u> – DEP hosts two listening sessions. • <u>October 5, 2015</u> – DEP hosts listening session. • <u>October 22, 2015</u> – DEP hosts listening session. • <u>October 28, 2015</u> – DEP hosts listening session. • <u>October 29, 2015</u> – DEP hosts listening session. • <u>October 30, 2015</u> – DEP hosts two listening sessions. • <u>November 4, 2015</u> – DEP hosts listening session. • <u>November 12, 2015</u> – Deadline to submit comments to DEP on how the State should approach a state plan, including answers to 21 questions regarding whether Pennsylvania should adopt a rate- or mass-based plan, how | http://www.dep.pa.gov/Business/Air/BAQ/ClimateChange |

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| | <p>allowances should be allocated under a mass-based approach, how new natural gas plants should be included under a mass-based target, and what methods should be used to measure compliance.</p> <ul style="list-style-type: none"> • <u>November 30, 2015</u> – DEP Secretary announces commencement of first draft of state CPP compliance plan, with goal to submit final plan to EPA in September 2016. | |
| Rhode Island | <ul style="list-style-type: none"> • <u>September 17, 2015</u> – Rhode Island Department of Environmental Management hosts meeting of Executive Climate Change Committee Coordinating Council to discuss final Clean Power Plan. | www.planning.ri.gov/documents/climate/2015/schedule_2015.pdf |
| South Carolina | <ul style="list-style-type: none"> • <u>November 12, 2015</u> – South Carolina Department of Health and Environmental Control (DHEC) and State Energy Office host public engagement session on the State Energy Plan and the final CPP. • <u>November 19, 2015</u> – DHEC and State Energy Office host public engagement session on the State Energy Plan and the final CPP. • <u>December 1, 2015</u> – DHEC and State Energy Office host public engagement session on the State Energy Plan and the final CPP. • <u>December 10, 2015</u> – DHEC and State Energy Office host public engagement session on the State Energy Plan and the final CPP. | http://www.scdhec.gov/HomeAndEnvironment/Air/CleanPower/ |
| South Dakota | <ul style="list-style-type: none"> • <u>August-October 2015</u> – South Dakota Department of Environment and Natural Resources (DENR) hosts meetings with electric utilities to discuss final CPP. • <u>November 19, 2015</u> – DENR briefs Board of Minerals and Environment on final CPP and presents timeline for state plan development and stakeholder engagement. | http://denr.sd.gov/boards/2015/bme1115pktsup.pdf |
| Tennessee | <ul style="list-style-type: none"> • <u>October 9, 2015</u> – Tennessee Department of Environment and Conservation (TNDEC) participates in Georgetown Climate Center dialogue on CPP implementation. • <u>December 16, 2015</u> – Tennessee General Assembly Joint Government Operations Committee holds status hearing on the final Clean Power Plan, including witness from TNDEC. | |
| Utah | <ul style="list-style-type: none"> • <u>October 7, 2015</u> – Utah Air Quality Board presents on final CPP and announces stakeholder meetings. | |

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| Virginia | <ul style="list-style-type: none"> • <u>August 13, 2015</u> – Virginia Department of Environmental Quality (DEQ) launches 60-day period to accept informal public comment on the CPP. • <u>September 16, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>September 22, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>September 28, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>September 30, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>October 1, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>October 6, 2015</u> – DEQ hosts listening session to gather input from the public to help inform the Commonwealth’s review and implementation of the CPP. • <u>October 2015</u> – DEQ creates stakeholder group to advise the Commonwealth on CPP state plan development. • <u>October 9, 2015</u> – Deputy Secretary for Natural Resources and DEQ participate in Georgetown Climate Center dialogue on CPP implementation. • <u>October 23, 2015</u> – DEQ forms stakeholder group to discuss elements of state compliance plan for CPP. • <u>November 12, 2015</u> – DEQ hosts first stakeholder group meeting to discuss benefits and issues of adopting a state performances standards plan versus a state measures plan. • <u>December 15, 2015</u> – DEQ hosts second stakeholder group meeting to discuss the general mechanism to use to implement the preferred compliance plan. • <u>January 22, 2016</u> – DEQ hosts third stakeholder group meeting. | <p>http://www.deq.virginia.gov/Programs/Air/GreenhouseGasPlan.aspx</p> <p>http://www.deq.virginia.gov/Portals/0/DEQ/Air/Planning/Listening%20session%20notice.pdf</p> |
| Washington | <ul style="list-style-type: none"> • <u>August 26, 2015</u> – Washington Department of Ecology (Ecology) hosts listening session to present overview of final CPP, to take comment on stakeholder and public | <p>http://www.ecy.wa.gov/climatechange/cleanpowerplan.htm</p> |

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| | <p>engagement process, and to take poll on five most important topics related the CPP for Ecology to engage with the public on.</p> <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Ecology announces drafting of state compliance plan in partnership with the Department of Commerce and the Utilities and Transportation Commission. Ecology also announces the creation of technical workgroups and the scheduling of meetings with industry, tribes, local governments, environmental groups, and the public. • <u>October 9, 2015</u> – Office of Governor participates in Georgetown Climate Center dialogue on CPP implementation. • <u>November 10, 2015</u> – Washington Department of Commerce hosts Technical Work Group meeting to discuss existing CPP analyses and analytical tools and to discuss the need for additional analyses of the rule. | |
| West Virginia | <ul style="list-style-type: none"> • <u>August 18, 2015</u> – West Virginia Department of Environmental Protection (DEP) submits request to coal-fired electric generating units in West Virginia to submit by October 1, 2015, data and information regarding unit-specific impacts of the final CPP in both a rate-based and mass-based compliance scenario, detailing consumer impacts, nonair quality health and environmental impacts, projected energy requirements, market-based considerations, the costs of achieving emission reductions due to factors such as plant age, location or basic process design, physical difficulties with or any apparent inability to feasibly implement certain emission reduction measures, the absolute cost of applying the performance standard to the unit, the expected remaining useful life of the unit, the impacts of closing the unit, including economic consequences such as expected job losses, impacts on reliability of the system, and any other factors specific to the unit that make application of a modified or less stringent standard or a longer compliance schedule more reasonable. • <u>October 16, 2015</u> – DEP announces it is working on a feasibility study related to the CPP and is accepting public comment and data on the study and the state plan through December 31, 2015. The feasibility study is mandated by House Bill 2004 to be completed within 180 days of the CPP's publication (or by April 20, 2016), and is being undertaken with the assistance of researchers from Marshall University. The feasibility study will examine the potential impacts to the State, its people, and the economy from adopting a state plan, as well as options for the State | http://www.dep.wv.gov/pio/Pages/Clean-Power-Plan.aspx |

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| | <p>to meet the requirements of the CPP.</p> <ul style="list-style-type: none"> • <u>October 27, 2015</u> – Governor Earl Ray Tomblin issues statement indicating preference to submit initial compliance plan by September 6, 2016. | |
| Wisconsin | <ul style="list-style-type: none"> • <u>Autumn 2015</u> – Public Service Commission of Wisconsin (PSCW) and Wisconsin Department of Natural Resources staff meet weekly to discuss CPP matters. PSCW staff update economic modeling developed for the proposed CPP. • <u>October 16, 2015</u> – PSCW Chair discusses impacts of final CPP on State to Municipal Electric Utilities of Wisconsin. • <u>November 12, 2015</u> – PSCW Chair discusses impacts of final CPP on energy prices and reliability and compliance challenges and opportunities to Wisconsin Manufacturers and Commerce Clean Air Act Conference. | |
| Wyoming | <ul style="list-style-type: none"> • <u>August 3, 2015</u> – Wyoming Department of Environmental Quality announces commencement of analysis and review of final CPP. | http://deq.wyoming.gov/admin/news/deq-statement-over-clean-power-plan |