

What now, after the Supreme Court stay?

Moving forward with the Clean Power Plan

Recommendations from Physicians for Social Responsibility

As you probably know, the Clean Power Plan (CPP) faces a serious legal challenge. Twenty-nine state attorneys general and state agencies sued the EPA in 2015, claiming that EPA exceeded its authority in drafting some aspects of the CPP. The Supreme Court in February 2016 issued a “stay,” or a temporary suspension, of the CPP while a lower court reviews this legal challenge.

This situation raises many questions. Will the CPP become law or won't it? How are the states reacting? What should health advocates who see the CPP as a valuable tool do now?

a. Will the CPP become law? Due to the Supreme Court stay, the CPP is not currently in force. Upcoming deadlines for the CPP, like the September 2016 deadline for submission of a draft State Implementation Plan, are no longer binding. The Court's decision, though, was *not* a judgment on the merits of the CPP. That determination will be made by the D.C. District Court of Appeals, which will hear the case in June 2016 and render a decision this summer. Current speculation holds that the District Court may well uphold the CPP. However they rule -- in support of the CPP or against it -- that decision is expected to be appealed back to the Supreme Court.

The Supreme Court's final decision may rest on the Court's makeup at the time it hears the case, probably in 2017 or even 2018. Should the Supreme Court still be lacking a ninth justice, then the decision could result in a tie vote, in which case the D.C. Circuit court's decision would stand. Should a ninth justice be named to the Supreme Court, the CPP's fate may be decided by that justice. Or not; the votes of the “swing” justices on the court may be hard to predict.

b. How are the states reacting? Twenty states have declared their commitment to move forward – either with the CPP, or with the broader transition to clean energy sources. Eighteen states will stop planning for CPP implementation. Nine states are assessing their position. (Alaska, Hawaii and Vermont are exempted from the CPP.)

i. Moving forward. Some states will “vigorously defend” the CPP. For example, shortly after the Supreme Court decision, the states of New York, California, Connecticut, Hawaii, Illinois, Maine, Massachusetts, Maryland, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Virginia, Washington, the District of Columbia, the cities of New York, Boulder, Chicago, Philadelphia and South Miami and Broward County, Florida, issued the following statement:

We are confident that once the courts have fully reviewed the merits of the Clean Power Plan, it will be upheld as lawful under the Clean Air Act. Our coalition of states and local governments will continue to vigorously defend the Clean Power Plan — which is critical to ensuring that necessary progress is made in confronting climate change.

Shortly after that, 17 state governors signed onto the Governors' Accord for a New Energy Future, pledging to promote clean energy as good for their economies. The Accord doesn't even mention climate change, but commits the governors to moving forward on renewable energy and energy

efficiency. Signatories include the Republican governors of Iowa, Michigan, Massachusetts and Nevada. This strategy demonstrates that, even in states that might otherwise oppose the CPP, focusing on your state's production of renewable energy may prove to be a pragmatic way to advance positive results for health and a livable planet.

ii. Opposition. Many of the states that sued the EPA will stop planning for CPP implementation. Yet degrees of opposition appear to differ. Some states simply took steps internally; for example, Montana announced it would cease all action on the CPP until litigation was resolved. The attorneys general of Texas and West Virginia not only will suspend their own activity, but actively encouraged other states to "put your pens down." Michigan announced a middle course, halting its stakeholder engagement process but continuing modeling of possible CPP implementation scenarios. And some states are constrained by state legislation that restricts state agencies from doing more than what the federal Clean Air Act requires. Lawyers will have to answer whether those states can legally proceed with planning for the CPP, given the stay.

c. What should we do now? As advocates for health, we need to **seize the opportunity** and **keep up the momentum**. Where there is sympathy for the CPP, take these four steps:

The support statement referenced above and the Governors' Accord indicate support for the Clean Power Plan or its eventual goal – clean energy. THANK all the policy-makers in your state who have indicated support for *either* of these desired outcomes.

1. Let your colleagues, members and other people in the state know that there is a favorable atmosphere for progress.
2. Keep on pushing your governor and state legislature to move ahead. Seek guidance on how to do this, when, and where, from activists in your state, including PSR chapters, state affiliates of the American Lung Association, Alliance of Nurses for Healthy Environments, or your local environmental group. PSR's "[Clean Energy Saves Lives](#)" campaign offers simple monthly actions to promote the Clean Power Plan, renewable energy and energy efficiency. Please consider joining.
3. Media visibility will help sway public and decision-maker opinion. Send letters to the editor. Submit op-ed articles. Finally, place articles in medical association newsletters, hospital newsletters and other publications that are read by health professionals, stressing the health benefits of clean renewable energy and opposing fossil fuels, including natural gas.

The more difficult situation, of course, is in states where there are no statements of support and the political opposition remains fierce. Take time to read the Governors' Accord; maybe it can guide you in making an appealing case for renewable energy and energy efficiency in your state:

- Strengthen existing state Renewable Energy Standards and energy efficiency standards
- Build on the five-year extension of the Production Tax Credit for wind energy and the Investment Tax Credit for solar energy, enacted by Congress in December.
- Reach out to local health, clean air, and environmental groups to work in coalition.
- Join PSR's "[Clean Energy Saves Lives](#)" campaign, offering simple monthly actions to promote the Clean Power Plan, renewable energy and energy efficiency.
(<http://bit.ly/1Riti74>)