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FREQUENTLY ASKED QUESTIONS

About the Supreme Court's Stay of the Clean Power Plan

What exactly did the Supreme Court do?

The Supreme Court granted a stay of EPA's Clean Power Plan rule, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Rule"). As of the issuance of the Court's order on Feb. 9, 2016, the Rule is not in effect at this time.

For how long is the Rule stayed?

The Rule is stayed through the entirety of the pending D.C. Circuit case and until the Supreme Court disposes of any subsequent petition for certiorari. Specifically, the stay is in effect until the earliest of the following occurs: 1) the D.C. Circuit decides the case and no petition for certiorari is filed; 2) the D.C. Circuit decides the case, a petition for certiorari is filed, and the Supreme Court denies the petition; or 3) the D.C. Circuit decides the case, a petition for certiorari is granted, and the Supreme Court decides the merits of the case.

What is the effect of the stay on the Rule's deadlines?

Any deadlines that fall during the time in which the stay is in place are not in effect during the pendency of the stay. Ultimately, we believe the stronger legal position is that, if the Rule survives this litigation, all deadlines should be tolled by the amount of time the Supreme

Court's stay is in place. The Supreme Court's order does not explicitly address that situation, but that is the relief that both the applicants and EPA understood to be on the table. *See* EPA Response in 15A773 at 70 (Feb. 4, 2016); State Reply in 15A773 at 30 (Feb. 5, 2016). Furthermore, tolling is the usual practice in cases like this. *See Michigan v. EPA*, No. 98-1497, Dkt. 524995 (June 22, 2000) (tolling deadline for submission of state implementation plans in light of stay). And the D.C. Circuit recently adopted an identical approach in the Cross-State Air Pollution Rule litigation. However, it is possible that EPA will try to argue, we believe inappropriately, that deadlines are not tolled if the stay is ultimately lifted and could attempt to use its authority to "FIP" a state as leverage to keep states working on plans in the interim.

What is the effect of the stay on the model federal plans and the CEIP?

EPA likely is legally permitted to complete the rulemaking process for the model federal plans and the CEIP, but as long as the stay remains in place, it will be unable to impose a FIP on any state. EPA may choose to halt the rulemaking process voluntarily so it does not create a rule that it then must revise or withdraw in light of pending proceedings.

What is the effect of the stay on the timeline for the judicial proceedings?

The stay does not change the briefing schedule in the D.C. Circuit. Argument in that court will be heard on June 2, with a decision likely in 2016. Depending on how quickly the D.C. Circuit issues its decision and resolves any petitions for rehearing, if certiorari is sought and granted, it is possible the Supreme Court could hear argument in the case late in the 2016 Term (meaning early 2017); however, it is at least equally likely that Supreme Court review would not occur until the 2017 Term (beginning in the fall of 2017).