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# Circumvention of U.S. Supreme Court Clean Power Plan Stay?: U.S. House of Representatives Energy and Commerce Committee Chairman/Subcommittee Chairmen May 13th Letter to U.S. Environmental Protection Agency

## Arkansas Environmental, Energy, and Water Law Blog

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United States House of Representatives Energy and Commerce Committee Chairman Fred Upton along with Energy and Power Subcommittee Chairman Ed Whitfield and Oversight and Investigation Subcommittee Chairman Tim Murphy sent a May 13<sup>th</sup> letter to U.S. Environmental Protection Agency ("EPA") Administrator Gina McCarthy alleging agency actions undermining the stay issued by the United States Supreme Court ("Court") of the Clean Power Plan ("CPP").

The Court had previously granted applications for a stay of EPA's Clean Air Act CPP rule.

The Energy and Commerce Committee members reference the Court's stay and state:

The rationale for this extraordinary action was to save states and other stakeholders from taking actions, expending resources and incurring costs in response to a rule that may not be legal. Yet from the very first weeks following the order, EPA has been taking steps that circumvent the Court's stay and potentially undermine the relief provided by the stay in the first place.

They further argue that:

We now see that, in addition to expending resources to provide "assistance" to individual states, EPA has been expending resources on several regulatory processes that are integrally related to the suspended rule and that would compel states and regulated entities in turn to expend resources to respond to these proceedings – or otherwise forego legal rights – and, indirectly, participate in implementation of the stayed rule.

The letter cites as examples the optional Clean Energy Incentive Program and Model Training Rules.

Another assertion is that EPA officials have stated that certain previous CPP compliance deadlines may not be tolled should the stay be lifted.

The Energy Committee members conclude by asking that EPA address certain questions which include:

1. What is the agency's legal basis for proceeding with a regulatory proposal to implement the CEIP when the rule establishing this program has been stayed?

2. What statutory provisions does EPA believe authorize it to move forward with derivative regulatory proposals related to the Clean Power Plan while the stay is in effect?
3. Identify all rulemakings, guidance, directives, or other regulatory actions the agency is currently pursuing that relate to the Clean Power Plan, and the statutory authority for proceeding with each such action.
4. Does EPA currently plan to finalize any of these rulemakings, guidance, directives, or other regulatory actions related to the Clean Power Plan while the stay is in effect? If yes, please identify each such rulemaking, guidance or directive.
5. Have you requested any legal analysis to ensure that the agency has the legal authority to pursue and expend resources on regulatory actions to implement aspects of the Clean Power Plan? If yes, please produce such analysis or analyses to the Committee.
6. Since issuance of the stay, what resources has the agency expended on rulemakings, guidance, and other regulatory actions relating to implementation of the Clean Power Plan?

[Click here to download a copy of the letter.](#)