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UPDATE: Coalition of states sues EPA over Clean Power Plan, with more to come

By Molly Christian

A coalition of more than 20 states, many reliant on coal-based electricity, has filed an official petition for review of the U.S. EPA's Clean Power Plan after months of attempts to strike down the rule both before and after its release.

The legal challenge was filed with the U.S. Court of Appeals for the District of Columbia on Oct. 23, the same day EPA formally [published](#) its rule in the Federal Register.

West Virginia Attorney General Patrick Morrisey, whose state is leading the attack, called the Clean Power Plan one of the "most onerous and illegal regulations coming out of Washington, D.C., that we've seen in a long time."

In addition to the petition for review, the states will file a separate request to stay the rule later on Oct. 23, Morrisey said on a call with reporters.

The [rule](#), which was released in August, is expected to cut U.S. power sector greenhouse gas emissions by 32% from 2005 levels by 2030 through several building blocks including increased coal unit efficiency and heavier reliance on natural gas and renewable electricity generation. States, which must submit compliance plans no later than 2018, must meet individual emissions rate reduction targets starting in 2022.

Morrisey called EPA's plan "flatly illegal" and said it would have a "devastating impact" on West Virginia's economy. Texas Attorney General Ken Paxton, who joined Morrisey on the call, said EPA was imposing "unrealistic" goals on the U.S. power grid and that the rule was a "major threat" to consumers.

Although both attorneys general expect to receive a stay, Morrisey said it was "hard to predict how long it will take the court to act."

The lawsuit is one of a wave of expected legal [challenges](#) against the rule now that it has been posted in the Federal Register. Prior attempts to stay or overturn the rule were [rejected](#) by the D.C. appeals court for being premature since the rule had yet to be published.

Morrisey said he believed the number of opponents filing lawsuits against the rule will grow "larger and larger by the day." Coal producer [Murray Energy Corp.](#) has also already lodged new [complaints](#) against the Clean Power Plan following its addition to the Federal Register.

Manufacturing and business groups followed suit. The U.S. Chamber of Commerce filed a legal challenge and stay request in the D.C. appeals court along with a dozen other business groups, including the National Association of Manufacturers.

NAM Senior Vice President and General Counsel Linda Kelly said, "This regulation unlawfully exceeds the EPA's authority, proposing a seismic change to the power industry and our national economy. The NAM filed hundreds of pages of comments with the EPA seeking to improve the proposed rule; these comments were largely ignored, leaving manufacturers no choice but to seek judicial intervention."

Although a decision on the stay request could arrive quickly, many legal experts expect a [protracted](#) legal battle in the courts. Many rule challengers fear that uncertainty will spur electric generators to take action to comply with the regulations even if they ultimately succeed in overturning the rule.

"Today is the beginning of a long fight," Morrisey said. The new legal challenges to the rule hinge on many of the same arguments brought up in prior complaints. Morrisey said EPA cannot regulate carbon emissions under section 111(d) of the Clean Air Act from sources already regulated under section 112 for hazardous air pollutants. He also said the Clean Power Plan's goals are "well beyond" EPA's ability to manage power plant emissions.

EPA is "trying to transform itself from an environmental regulatory authority to an [energy] planning authority," he said.

But the agency defended the plan and its right to create the first national standards to cut power sector carbon emissions.

"The Clean Power Plan has strong scientific and legal foundations, provides states with broad flexibilities to design and implement plans, and is clearly within EPA's authority under the Clean Air Act," EPA administrator Gina McCarthy said. "We are confident we will again prevail against these challenges."

Despite the states' optimism on obtaining a stay, Sierra Club's chief climate counsel Joanne Spalding said halting a rule before the court hears the merits of the case is an "extraordinary, rarely successful remedy."

"The coal industry and its allies are likely to fail in their efforts to obtain a stay," she said.

The states filing the new challenge are West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin and Wyoming, as well as the Louisiana Department of Environmental Quality, the Arizona Corporation Commission and the North Carolina Department of Environmental Quality.

Updates article at 3:18 p.m. ET on Oct. 23, 2015, to add that the U.S. Chamber of Commerce and other business groups have filed suit against the Clean Power Plan.