

April 28, 2016

Janet McCabe
Acting Assistant Administrator for the Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Request for Additional Information and Technical Assistance Related to the Clean Power Plan

Dear Acting Assistant Administrator McCabe:

We are a group of state environmental agency officials writing to request additional information and technical assistance related to the final Clean Power Plan in a manner that is respectful of the Supreme Court's stay of the regulations until the conclusion of pending litigation. This additional information and assistance will be important to our state efforts to prudently plan for and implement a variety of state and federal obligations.

As you know, state environmental agencies have important obligations to protect public health and the environment. We strive to prudently conduct our public engagement, planning, and regulatory activities in a way that comprehensively integrates our own state statutory obligations and policy goals as well as existing and future federal regulations. Among the states signing onto this letter, individual states are currently planning for federal ozone standards that will affect the power sector, engaging with energy agencies on integrated resource plans for electric utility companies, developing state climate and energy plans, reviewing and revising state greenhouse gas regulations

for the power sector, working with other agencies to set renewable energy targets, and planning for compliance with the Clean Power Plan, depending on the eventual outcome of pending litigation.

We understand that the Supreme Court has stayed the Clean Power Plan until litigation is resolved and that neither the D.C. Circuit Court of Appeals nor the Supreme Court has ruled on the merits of the case. The final resolution of this litigation is uncertain; however, having more information about how states might comply with the Clean Power Plan should it be upheld will better inform state engagement and agency decision-making in the different contexts identified above.

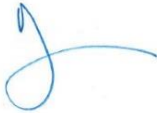
We are pleased that EPA has already committed to provide technical assistance related to state plan development when such requests are made by states. In addition to providing such assistance, we request that EPA provide a final model rule or rules. Of course, the relevance of such a rule will depend on the outcome of litigation, however our states would find the information helpful in the near term for the planning purposes described above. We also ask that EPA provide additional information on the Clean Energy Incentive Program; tracking systems for allowances or credits; and energy efficiency evaluation, measurement, and verification, along with appropriate technical assistance related to this additional information.

We recognize that the EPA must respect the stay of the Clean Power Plan regulations in providing additional information and that this information would be subject to the outcome of the federal Clean Power Plan litigation. We believe EPA can provide information helpful to states consistent with the stay, as EPA has done previously when litigation is pending and a stay is in effect.¹

¹ See, e.g., EPA's February 21, 2012, final revision rule making changes to the Cross State Air Pollution rule and federal plan while the rule was stayed by order of the D.C. Circuit Court of Appeals. In that action, EPA revised budgets for specific states based on updated modelling assumptions and made other changes. EPA noted that the action was "consistent with" and "unaffected by" the stay order and that it did not impose any requirements in and of itself on regulated units or states. Cross State Air Pollution Rule Final Revisions Rule, 77 Fed. Reg. 10,324, 10,326 (Feb. 21, 2012). EPA also proposed and finalized other changes to the rule during the stay, see Cross State Air Pollution Rule June Revisions Rule, 77 Fed. Reg. 34,830 (June 12, 2012).

Providing such information and technical assistance could help our states make informed decisions that take into account potential Clean Power Plan obligations along with other factors as we fulfill diverse state and federal commitments.

Sincerely,



Edie Chang
Deputy Executive Officer
California Air Resources Board



Martha E. Rudolph
Director of Environmental Programs
Colorado Department of Public Health
and Environment



Robert Klee
Commissioner
Connecticut Department of Energy and
Environmental Protection



David S. Small
Secretary
Delaware Department of Natural
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Ben Grumbles
Secretary
Maryland Department of the
Environment



Martin Suuberg
Commissioner
Massachusetts Department of
Environmental Protection

John Linc Stine
Commissioner
Minnesota Pollution Control Agency

Thomas S. Burack
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