

Montana Joins Bipartisan Coalition Warning EPA Not to Violate U.S. Supreme Court Order

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Montana Attorney General Tim Fox and the Montana Public Service Commission, along with 25 other state attorneys general, two other state public utility commissions, and four state environmental quality departments, submitted joint comments Tuesday to the U.S. Environmental Protection Agency, criticizing EPA for ignoring the U.S. Supreme Court's stay of the agency's proposed carbon emissions regulations (the so-called "Clean Power Plan").

In February, after Montana and other states challenged the EPA's carbon regulations, the U.S. Supreme Court issued an injunction until legal challenges have concluded. Despite an explicit order from the court, EPA has chosen to move forward with the rulemaking process for a regulatory scheme known as the Clean Energy Incentive Program (CEIP), a component of the larger plan. EPA's action is in direct violation of the Supreme Court's stay.

"By moving forward with this rulemaking, EPA has ignored explicit instruction from the court, throwing years of well-established case law out the window," Fox said. "It's unacceptable for the EPA to flout the rule of law and treat our nation's highest court in this manner, and for the sake of preserving the integrity of the institution, I encourage the agency officials to rethink their actions."

The Clean Energy Incentive Program is a regulatory mechanism used to create an artificial incentive for renewable energy development across the country by providing emission reduction credits that count toward states' carbon reduction goals. The CEIP is one component of the larger carbon emission regulation proposal, however, its existence is dependent on the full regulation being upheld in court. The EPA cannot adopt a regulation to implement another regulation that has been stayed by the federal court.

In representing EPA before the court, the U.S. Solicitor General argued that the Supreme Court's stay would require

EPA to halt any further rulemaking action, stating “implementation of each sequential step mandated by the Rule would be substantially delayed” if the carbon regulations were stayed but ultimately upheld.

The Montana Public Service Commission also signed on to the comments. Speaking to EPA’s decision to move forward with the rulemaking, Montana PSC Chairman Brad Johnson said, “The EPA’s decision to proceed with rulemaking for the Clean Energy Incentive Plan (CEIP) in light of the Supreme Court’s stay of the carbon regulations is another stark example of the administration’s high-handed disregard for the rule of law. I am extremely pleased that the PSC voted to pass my motion to join with Attorney General Fox in pushing back against the EPA’s abuse of its rulemaking authority.”

EPA accepted comments on the proposed rulemaking for the CEIP until November 1, 2016.

Links:

- [Multi-state letter to EPA](#)
- [U.S. Supreme Court order halting EPA carbon regulations](#)