

**To:** Szymanski, Tauna M.[tszymanski@hunton.com]; Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]; Lynch, Lissa[llynch@nrdc.org]  
**From:** Thaker, Rahul  
**Sent:** Mon 5/22/2017 2:14:07 PM  
**Subject:** Panel Session Summary - A&WMA's Annual Conference, Pittsburgh, PA, June 5-8, 2017  
FINAL EXTENDED ABSTRACT.docx

Tauna, Mandy, and Lissa:

I am summarizing below information you need for the panel session on Clean Power Plan (CPP) Litigation Updates and Road Ahead, at the subject conference:

(i) The panel session timing is Thursday, June 8<sup>th</sup>, 8 am - 9:40 am. There will be a total of four panelists as below:

Mandy Gunasekara

Senior Policy Advisor, Office of the Administrator, EPA, Washington, D.C.

[providing EPA perspectives]

State Environmental Agency Official

[providing state agencies' perspectives, still in process of confirming the panelist, probably from PA environmental agency]

Tauna M. Szymanski

Senior Attorney, Hunton & Williams, Washington, D.C.

[providing electric power generation industry perspectives]

Lissa Lynch

Climate Litigation Fellow, Natural Resources Defense Council, Washington, D.C.

[providing environmental organizations' perspectives]

Each panelist will have a 20 minutes maximum for presentation. You need to talk / present on the assigned task as above, providing perspectives and latest information on various issues in this litigation. You need to also provide viewpoints on road ahead for everyone on this matter. You can also talk anything else if it is pertinent to this topic and if you have time available. You can have slides for presentation, but, it is not mandatory. The order of presentations will be as above. There will be a Q&A at the end of the session. The session abstract is attached with this message for your use.

(ii) The conference web page is <https://www.awma.org/ace2017>.

If you have not yet registered for the conference, please take care of it via the above page. If you are to come to this session only and do not attend any other sessions at the conference, it is possible to get a conference registration fees waiver.

In addition, the hotel accommodation information, technical program, etc. are also located at the same website.

(iii) I will be in Pittsburgh for the entire conference. If you need to contact me in Pittsburgh, my cellular number is (919) 285-9541.

(iv) If you are to have slides for your presentation, please remember to email me by June 2<sup>nd</sup>. Also, please send me your bio-sketch (1-2 paragraphs would be sufficient) by the same date, which would help in introducing you at the conference.

In summary, I thank each of you for your participation. I am delighted to have you on the panel. But, importantly, the conference attendees would benefit from your expert viewpoints.

Let me know if you have any other questions or if I can help.

Rahul

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# Clean Power Plan (CPP) Litigation Updates and Road Ahead

## A&WMA's 110th Annual Conference & Exhibition

Pittsburgh, Pennsylvania

June 5-8, 2017

### Panel Extended Abstract # 260246

#### Rahul P. Thaker, P.E., QEP

NCDEQ Division of Air Quality, 217 West Jones Street, Raleigh, NC 27603

## INTRODUCTION

The United States Environmental Protection Agency (EPA) promulgated Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units [EGUs], commonly known as Clean Power Plan [CPP], on October 23, 2015 (80 FR 64662) in accordance with §111(d) of the Clean Air Act (CAA).

Various challenges to this rule were filed with the courts on a number of issues.

On February 9, 2016, the Supreme Court of the United States (SCOTUS) stayed the implementation of the CPP, pending disposition of the challenges to the merits of the rule by the US Court of Appeals Court for the District of Columbia Circuit (USDC) and disposition of a writ of certiorari, if such writ is sought from the SCOTUS.

On September 27, 2016, all active judges of the USDC heard initial and final arguments (en banc review) on a number of issues: statutory issues, Section 112 issues, constitutional issues, notice issues, and record-based issues. This direct en banc review has been deemed unprecedented by the court observers, considering that the court initially hears any case via a randomly selected 3-judge panel. Only after the completion of this initial review (3-judge panel), the court reviews any petition for an en banc review on a particular case.

The decision from the USDC court is expected by early 2017. In addition, it is expected that the losing party generally would file a writ of certiorari to the SCOTUS.

With respect to EPA, states are not required to work towards any state plans and they have no obligation to spend resources to comply with the CPP, as per the EPA Administrator's letters to various Governors.<sup>1</sup>

In addition, on March 28, 2017, President Trump issued an Executive Order on "Promoting Energy Independence and Economic Growth", directing EPA to review the final rules in CPP and, if appropriate, suspend, revise, or rescind the rule, through federal register (FR) public

<sup>1</sup> See for example, letter from E. Scott Pruitt, EPA Administrator to Matt Bevin, Governor of Kentucky, March 30, 2017.

notice and comment process. The EPA Administrator announced on April 4, 2017, the initiation of review of CPP through FR notice. Separately, the US Department of Justice (DOJ) on March 28, 2017, on behalf of EPA, noticed the USDC, requesting this court to keep the CPP litigation in abeyance while the agency conducts its review of CPP. Finally, if the rule is ultimately upheld by the courts, the new Trump administration is also likely shape the implementation of the CPP and could revise the rule.

Knowing all of the above, it is apparent that the clarity and finality on CPP litigation and its implementation is probably months to a year or more away.

## **OBJECTIVE**

This panel session will include presentations/discussions on litigation updates and the possible road ahead for everyone involved in the implementation of CPP. Specifically, the speakers will discuss the upcoming USDC decision and how it affects the states. The speakers are also expected to discuss any writ to the SCOTUS (if a writ was granted) and its resulting effects. Moreover, the panel will explore potential changes in the EPA's position and direction, related to the regulation of CO<sub>2</sub> emissions from power plants under the administration of President Trump.

## **PANEL MEMBERS**

The expert panel will include four speakers. Some of them are expected to be the some of the same attorneys who had argued the case before the USDC and / or helped obtain a stay from the SCOTUS. They will be from EPA or US Department of Justice, state agencies, and private law firm attorneys, providing perspectives of EPA, states, industry, and environmental petitioners.

They are as follows:

- Mandy Gunasekara (Invited)  
Senior Policy Advisor, Office of the Administrator, EPA, Washington, D.C.
- Tauna M. Szymanski  
Senior Attorney, Hunton & Williams, Washington, D.C.
- Sean Donahue (Invited)  
Donahue & Goldberg, LLP, Washington, DC
- State Environmental Agency Representative

## **SUMMARY**

The information provided by this high-level panel is expected to bring out discussions on litigation outcomes and provide insights on possible road ahead for the States, considering the new administration. It is the panel's sincere wish to better educate the attendees regarding various issues with this complicated regulation.

## ACKNOWLEDGEMENTS

The author expresses his gratitude to John C. Evans from the North Carolina Division of Air Quality, for reviewing and critiquing this abstract.

## REFERENCES

1. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 FR 64662 (October 23, 2015).
2. West Virginia, et al. v. EPA, No. 15A773, Order in Pending Case, Approving the Application for a Stay of the EPA's Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (October 23, 2015), SCOTUS, Washington, D.C, February 9, 2016.
3. State of West Virginia v. EPA, No. 15-1363, Order (scheduling the arguments format, time and location - Courtroom 20 at 9:30 AM on Tuesday, September 27, 2016), USDC, Washington, D.C. August 17, 2016.
4. State of West Virginia v. EPA, No. 15-1363, Parts I and II Oral Argument Recordings, USDC,  
<https://www.cadc.uscourts.gov/recordings/recordings.nsf/DocsByRDate?OpenView&count=100&SKey=201609>.
5. Presidential Executive Order on Promoting Energy Independence and Economic Growth, The White House Office of the Press Secretary, March 28, 2017,  
<https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1>.
6. State of West Virginia v. EPA, No. 15-1363 (and consolidated cases), in the USDC, Notice of Executive Order, EPA Review of Clean Power Plan and Forthcoming Rulemaking, and Motion to Hold Cases in Abeyance, US DOJ, March 28, 2017.
7. Review of the Clean Power Plan, 82 FR 16329 (April 4, 2017).

## KEYWORDS

Clean Power Plan, CPP, 111(d), State Plan, Clean Air Act, CAA, US Appeals Court for the District of Columbia, USDC, Supreme Court of the United States, SCOTUS, Trump Administration, Trump EPA, EPA.

