UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 18 2016

OFFICE OF
AIR AND RADIATION

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of May 13, 2016, to U.S. Environmental Protection Agency Administrator Gina McCarthy regarding the Supreme Court stay of the Clean Power Plan (CPP) and assistance the EPA is providing to states while the stay is in effect. The Administrator asked that I respond on her behalf.

On February 9, 2016, the Supreme Court stayed the CPP pending judicial review before the U.S. Court of Appeals for the D.C. Circuit and any subsequent proceedings in the Supreme Court. The EPA firmly believes the CPP will be upheld when the courts address its merits because it rests on strong scientific and legal foundations. However, it is clear that no one has to comply with the CPP while the stay is in effect. During the pendency of the stay, states are not required to submit anything to the EPA, and the EPA will not take any action to impose or enforce any obligations under the CPP. For example, we have clearly communicated to states that they are not required to make initial submittals on September 6, 2016.

On June 16, 2016, Administrator McCarthy signed a proposed rule providing details about the optional Clean Energy Incentive Program (CEIP). When final, this will help guide states and tribes that choose to participate in the CEIP when the CPP becomes effective. You asked a number of questions about the EPA's legal authority to proceed with the CEIP and other matters related to the CPP. In Section II of the preamble, we discuss why we are issuing the CEIP Design Details proposal, including the legal authority for doing so while the stay is in effect. The proposal is currently out for public comment and is available at https://www.epa.gov/cleanpowerplan/clean-energy-incentive-program. The proposal was published in the Federal Register June 30, 2016. The public comment period will be open until September 2, 2016. We held a public hearing in Chicago on August 3, 2016. We encourage interested parties to submit comments, identified by Docket ID No. EPA-HQ-OAR-2016-0033. As with all the EPA's rulemakings, we will take the concerns expressed at these hearings, as well as those expressed in written comments, into consideration as we move forward.

With respect to other activities, EPA intends to continue providing assistance to states, while being clear that we will respect the stay so long as it is in effect.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kevin Bailey in the EPA's Office of congressional and Intergovernmental Relations at bailey.kevinj@epa.gov or at (202) 564-2998.

Sincerely,

Janet G. McCabe
Acting Assistant Administrator