

West Virginia v. EPA, No. 15-1363:

ATTACHMENT to

**[CORRECTED] RESPONDENT-INTERVENOR PUBLIC HEALTH AND
ENVIRONMENTAL ORGANIZATIONS' OPPOSITION TO
MOTION TO HOLD CASES IN ABEYANCE**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

THE ADMINISTRATOR

March 30, 2017

The Honorable Matt Bevin
Governor of Kentucky
700 Capitol Avenue
Suite 100
Frankfort, Kentucky 40601

Dear Governor Bevin:

On February 9, 2016, the Supreme Court of the United States stayed implementation of the Clean Power Plan (CPP) effectively "suspend[ing] administrative alteration of the status quo." *Nken v. Holder*, 556 U.S. 418, 428 n.1 (2009). Further, pursuant to the Administrative Procedure Act, the Supreme Court has authority to "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings." 5 U.S.C. § 705.

Under that precedent, States and other interested parties have neither been required nor expected to work towards meeting the compliance dates set in the CPP. It is the policy of the Environmental Protection Agency (EPA) that States have no obligation to spend resources to comply with a Rule that has been stayed by the Supreme Court of the United States. To the extent any deadlines become relevant in the future, case law and past practice of the EPA supports the application of day-to-day tolling.

The days of coercive federalism are over. Accordingly, I look forward to working with you, your state experts and local communities as we develop a path forward to improve our environment and bolster the economy in a manner that is respectful of and consistent with the rule of law.

Respectfully yours

A handwritten signature in black ink that reads "Scott Pruitt". The signature is stylized and written over the typed name.

E. Scott Pruitt