

D.C. Circuit Considers Whether USEPA Has Authority to Finalize Carbon Rules

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Murray Energy Corp. Suit Allowed to Proceed

Upon publication of the proposed “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units” (also referred to as the Proposal or Clean Power Plan), on June 18, 2014, Murray Energy Corp. filed a petition for writ of extraordinary relief, alleging that the United States Environmental Protection Agency (USEPA) does not have the legal authority under the Clean Air Act to finalize performance standards for existing sources under Section 111(d). *Murray Energy Corporation v. U.S. Environmental Protection Agency*, No. 14-1112 (D.C. Cir. filed June 18, 2014). A week later, on June 25, 2014, a group of nine states filed an amicus curiae brief, urging the D.C. Circuit to grant Murray Energy’s petition for writ, prohibiting USEPA to continue with its rulemaking.

On Thursday, September 18, the D.C. Circuit court ordered USEPA to file a response within 30 days and permitted Murray Energy 15 days to respond, if it so chooses. The court’s decision comes two days after USEPA extended the deadline to December 1, 2014, to file public comments on the Proposal, thereby opening up the possibility of a court decision on USEPA’s authority before expiration of the public comment period.

Judicial review is generally not granted as a matter of right until after administrative rules are final, so agreeing to consider argument on the question is rare indeed. This order of the court shows that Murray Energy has at least engaged the interest of the court, considering that the question involved is one of pure legal interpretation. Given the sheer amount of resources already invested into commenting on the proposal (over 750,000 comments have been filed nearly a month before the comment period was initially set to close), the briefing from USEPA will be highly anticipated.

On August 1, 2014, West Virginia and 11 other states filed a suit similarly challenging USEPA’s authority to promulgate carbon rules under Section 111(d) of the CAA. *State of West Virginia, et.al., v. United States Environmental Protection Agency*, No 14-1146 (D.C. Cir. filed Aug. 1, 2014).

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