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A Win for Workers: The EPA's Duty to Consider Impacts on Coal Industry's Employment (/full-blog/eaton)

Natural Resource (/full-blog?category=Natural+Resource)

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Murray Energy Corporation, along with eleven of its subsidiaries located in Kentucky, Illinois, West Virginia, Utah, and Pennsylvania, filed suit against the Environmental Protection Agency (EPA) in March, arguing that the EPA has undergone a "war on coal" by increasing regulation of coal production.[i] Recently, the EPA's motion to dismiss the suit was denied, allowing Murray's claim to proceed.[ii] The Clean Air Act (CAA) allows industry to file suit against the EPA when the challenging industry can allege the EPA failed "to perform any act or duty under [the CAA] which is not discretionary."[iii] Murray claims the EPA failed to fulfill Section 321,[iv] which requires the agency to consider regulations' effects on industry jobs.[v]

Under Section 321 of the CAA, the EPA has a duty to "conduct continuing evaluation of potential loss or shifts of employment which may result from administration or enforcement."[vi] The EPA argued Section 321 imposes a discretionary duty, citing the statute's omission of a deadline by which to perform the analysis.[vii] Therefore, according to the EPA, Murray's suit should be dismissed because the EPA acted within its discretion.[viii] Relying on the statute's language and legislative history, however, the court found that Section 321 imposes a non-discretionary duty on the EPA.[ix] The court concluded that, because Murray showed that the EPA failed to consider a non-discretionary duty, Murray's suit should proceed.[x]

The court's decision is a tremendous victory for the coal industry. Murray's lawsuit challenges several of the regulations that, in Murray's words, "encourag[e] facilities to switch from coal to other fuels, impos[e] costly regulations that have compelled or incentivized existing coal-burning facilities to shut down, engag[e] in enforcement activities that discourage the repair and continued operation of existing coal-burning facilities, [and] develo[p] regulations and guidance that will make it more costly" to construct new facilities. [xi] Should Murray be awarded the relief it seeks, the EPA would have to reconsider their regulations, and the EPA would be enjoined from imposing further regulations without considering effects on employment.[xii]

[i] Complaint at 7, *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2014 WL 4656221, at *1 (N.D.W. Va. Sept. 16, 2014); *See* David Siegel, *EPA Can't Shake Murray Energy's Job Loss Suit*, Law360.com, http://www.law360.com/articles/577932/epa-can-t-shake-murray-energy-s-job-loss-suit (last visited Oct. 19, 2014).

[ii] *Murray Energy Corp. v. McCarthy*, 2014 WL 4656221, at *1.

[iii] Clean Air Act of 1990, § 304, 42 U.S.C.A. § 7604 (1990).

[iv] Siegel, *supra* note 1.

[v] Clean Air Act of 1977, § 321, 42 U.S.C.A. § 7621 (1977).

[vi] *Id.*

[vii] *Murray Energy Corp. v. McCarthy*, 2014 WL 4656221, at *1.

[viii] *Id.*

[ix] *Id.*

[x] *Id.*

[xi] Complaint at 7, *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2014 WL 4656221, at *1 (N.D.W. Va. Sept. 16, 2014).

[xii] Complaint at 7, *Murray Energy Corp. v. McCarthy*, No. 5:14-CV-39, 2014 WL 4656221, at *1 (N.D.W. Va. Sept. 16, 2014).

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