

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MURRAY ENERGY CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	Civil Action No. 5:14-CV-00039
v.)	Judge Bailey
)	
CATHERINE MCCABE, Acting Administrator,)	
United States Environmental Protection Agency, ¹)	
)	
Defendant.)	

**EXPEDITED JOINT MOTION TO EXTEND DEADLINES
IN THE JANUARY 11 FINAL ORDER**

Defendant Catherine McCabe, Acting Administrator, United States Environmental Protection Agency, acting in her official capacity (“EPA”), and Plaintiffs Murray Energy Corporation, et al. (“Murray Energy”) (collectively, the “Parties”) jointly request that this Court extend the deadlines set out in the Court’s January 11, 2017 Final Order, ECF No. 314, for the reasons set forth below. EPA’s opening brief in the appeals of this matter, Fourth Circuit Case Numbers 16-2432(L), 17-1093, and 17-1170, is due on February 21, 2017. The Parties respectfully request that this Court grant this Motion by Thursday, February 16, 2017, to allow the Parties adequate time to file a joint motion to reset the appellate briefing schedule, and for the Fourth Circuit to resolve that motion before February 21, 2017.

In support of this Motion, the Parties state that:

1. On October 17, 2016, this Court denied EPA’s New Motion for Summary Judgment and entered summary judgment for Plaintiffs, with instructions for EPA to submit a

¹ Pursuant to Fed. R. Civ. P. 25(d), Acting Administrator Catherine McCabe “is automatically substituted as a party” because she is the successor to former Administrator Gina McCarthy, who was named in Plaintiffs’ Complaint.

plan and schedule for compliance with § 321(a) both generally and in the specific area of the effects of its regulations on the coal industry. ECF No. 293.

2. On January 11, 2017, this Court issued its Final Order in this case, in which the Court ordered that EPA: (1) “[p]repare and submit to the Court a § 321(a) evaluation of the coal industry and other entities affected by the rules and regulations affecting the coal mining and power generating industries as expeditiously as practicable and by no later than July 1, 2017”; (2) “as expeditiously as practicable, but by no later than December 31, 2017, submit evidence to the Court demonstrating that EPA has adopted measures to continuously evaluate the loss and shifts in employment which may result from its administration and enforcement of the Clean Air Act”; and (3) submit to the Court within sixty (60) days “a comprehensive filing detailing the actions the agency is taking to comply with Section 321(a) and this Court’s orders.” ECF No. 314 at 26-27. The sixty (60)-day deadline for the detailed report of the Agency’s actions to comply falls on March 13, 2017.

3. EPA appealed the summary judgment decision on December 16, 2016, ECF No. 303, and the Final Order, as well as this Court’s order closing the case, on February 3, 2017, ECF No. 332.² On February 6, 2017, the Fourth Circuit consolidated all appeals stemming from this action. On February 7, 2017, EPA filed an unopposed motion to set a briefing schedule in the Fourth Circuit that would allow the case to be argued and decided prior to the current July 1, 2017 deadline in the Final Order. In that schedule, EPA’s opening brief is due on February 21, 2017. The Fourth Circuit entered the briefing schedule on February 13, 2017.

4. The Parties seek to continue the deadlines in the Final Order because of the

² Three West Virginia non-governmental organizations (“NGOs”) moved to intervene on December 13, 2016, ECF No. 300. This Court denied the motion as moot on January 17, 2017, ECF No. 315, and the NGOs appealed on January 20, 2017, ECF No. 316.

federal government's change in administration, which took place on January 20, 2017.

Postponing the deadlines will allow EPA time to brief incoming administration officials with decision-making responsibility about this case, so that they may become familiar with the subject matter and issues presented. Requests to continue proceedings to allow time for new administration officials to become familiar with cases under their authority are customary. *See, e.g., Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 10 (D.D.C. 2009) (noting that an extension of a preliminary injunction briefing schedule was granted after a change in administration). Accordingly, the Parties request that the deadlines in the Final Order be extended.

5. The Parties propose the following extended schedule for the deadlines in the Final

Order:

Filing	Old Deadline	New Deadline
Comprehensive filing detailing the actions the agency is taking to comply with Section 321(a) and this Court's orders	March 13, 2017	June 12, 2017
§ 321(a) evaluation of the coal industry and other entities affected by the rules and regulations affecting the coal mining and power generating industries	July 1, 2017	November 1, 2017
Submission of evidence demonstrating that EPA has adopted measures to continuously evaluate loss and shifts in employment which may result from EPA's administration and enforcement of the CAA	December 31, 2017	April 1, 2018

If this Court amends its Final Order to reflect the deadlines set out above, the Parties will jointly move in the Fourth Circuit to extend each briefing deadline by ninety (90) days.

WHEREFORE, the Parties respectfully request that this Court enter an order extending the deadlines in the Final Order as set forth above.

DATED: February 16, 2017

Respectfully Submitted,

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Judge Bailey**

CERTIFICATE OF SERVICE

I, Erin Carter Tison, hereby certify that on this 16th day of February, 2017, the foregoing Expedited Joint Motion to Extend Deadlines in the January 11 Final Order was filed using the CM/ECF system, which will cause a copy to be served upon counsel of record.

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