

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
AUG 15 2014
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FOR DISTRICT OF COLUMBIA CIRCUIT
FILED AUG 15 2014
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

<p>MURRAY ENERGY CORPORATION, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and REGINA A. McCARTHY, Administrator, U.S. Environmental Protection Agency, Respondents.</p>	<p>Case No. <u>14-1151</u></p>
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PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 307(b)(1) of the Clean Air Act, 42 U.S.C. §7607(b)(1), Murray Energy Corporation hereby petitions the Court for review of a final action of Respondents—the United States Environmental Protection Agency, and Gina A. McCarthy, Administrator, U.S. Environmental Protection Agency—initiating a rulemaking without authority and in violation of the Clean Air Act by publishing a notice of proposed rulemaking entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” in the *Federal Register* on June 18, 2014. 79 Fed. Reg. 34,830 (June 18, 2014) (attached hereto).

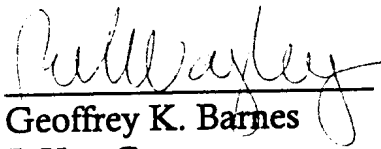
EPA's action is final for purposes of this limited challenge asserting the absence of authority to initiate the rulemaking. *See Dow Chemical USA v. EPA*, 491 F. Supp. 428, 431-32 (M.D.L.A. 1980) (granting EPA's motion to dismiss a challenge to EPA's authority to initiate a rulemaking because this Court had exclusive jurisdiction to review EPA's "final action" of issuing a proposed rule "even though the proposed regulations may, after comment, be revised"). Because the agency has illegally initiated a rulemaking in violation of an express statutory prohibition barring EPA from doing so, this Court has jurisdiction and is a proper venue for this action under 42 U.S.C. §7607(b)(1). Under that provision, this Court has jurisdiction to review EPA "action" that "'mark[s] the consummation of the agency's decisionmaking process" when "'EPA has rendered its last word on the matter' in question." *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 478 (2001).

The publication on June 18, 2014 of the proposed rule culminated EPA's decision-making process that commenced with the publication of an advance notice of proposed rulemaking. 73 Fed. Reg. 44,354 (July 30, 2008). In that advance notice, EPA considered its legal authority to regulate emissions of greenhouse gases. EPA stated it would have authority to subject sources to duplicative regulation under Section 111(d) even if EPA were to have already have subjected the sources to regulation under Section 112. *Id.* at 44,487-93. After EPA finally subjected power plants to regulation under Section 112 in 2012, 77 Fed. Reg. 9,304 (Feb. 15, 2012), and thus rendered any future attempt to regulate power plants under Section 111(d) illegal, the

President ordered EPA to do so anyway. President Barack Obama, "Power Sector Carbon Pollution Standards," Memorandum for the Administrator of the Environmental Protection Agency (June 25, 2013). Several trade groups in a separate rulemaking had already warned EPA that the agency could not lawfully regulate power plants under both Section 112 and Section 111(d). EPA-HQ-OAR-2011-0660-9998, at 63 (June 25, 2012). Then on June 6, 2014, the Attorney General of West Virginia informed EPA that the agency could not lawfully initiate a Section 111(d) rulemaking for power plants because they were regulated under Section 112. Letter from Patrick Morrissey to Gina McCarthy (June 6, 2014), available at <http://www.ago.wv.gov/publicresources/Documents/Letter%20to%20EPA%20on%20section%20111%28d%29%20authority.pdf>. EPA nonetheless initiated this rulemaking on June 18, 2014. In doing so, EPA has taken a final action to the extent that EPA has initiated a rulemaking without the authority to do so and has stripped power plants of their statutorily guaranteed regulatory immunity from the Section 111(d) program as sources that are already regulated under the Section 112 program.

Petitioner notes that unlike the petitions for review resolved by this Court in the per curiam order issued in *Las Brisas Energy Center, LLC v. EPA*, No. 12-1248, this petition for review does not challenge the *substance* of a proposed rule. Rather, this petition for review challenges whether EPA had any authority to initiate a rulemaking at all when doing so violates an express prohibition and unlawfully strips power plants of their regulatory immunity.

Respectfully submitted,



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Counsel for Petitioner

Murray Energy Corporation

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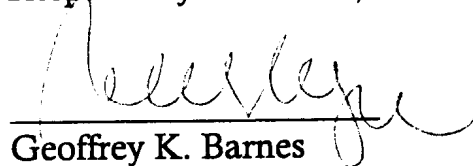
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RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioner, Murray Energy Corporation, makes the following disclosure: Murray Energy Corporation has no parent corporation and no publicly held corporation owns ten percent (10%) or more of its stock.

Murray Energy Corporation is the largest privately-owned coal company in the United States and the fifth largest coal producer in the country, employing approximately 7,300 workers in the mining, processing, transportation, distribution and sale of coal.

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CERTIFICATE OF SERVICE

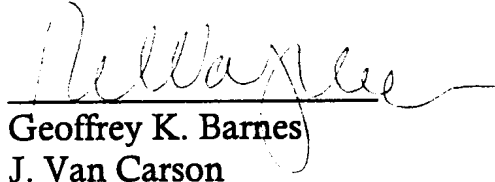
I hereby certify that the foregoing PETITION FOR JUDICIAL REVIEW and
RULE 26.1 STATEMENT have been served by Petitioner, Murray Energy
Corporation, by United States first-class mail this 2nd day of August, 2014,
upon each of the following:

United States Environmental
Protection Agency
Correspondence Control Unit
Office of General Counsel (2344-A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Regina A. McCarthy, Administrator
U.S. Environmental Protection Agency
Ariel Rios Building, 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Eric H. Holder, Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

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Counsel for Petitioner

Murray Energy Corporation

General Information

Court	United States Court of Appeals for the District of Columbia Circuit; United States Court of Appeals for the District of Columbia Circuit
Docket Number	14-01151
Status	Open