

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-1140

September Term, 2022

EPA-84FR32520

Filed On: October 27, 2022

American Lung Association and American
Public Health Association,

Petitioners

v.

Environmental Protection Agency and Jane
Nishida, Acting Administrator,

Respondents

AEP Generating Company, et al.,
Intervenors

Consolidated with 19-1165, 19-1166,
19-1173, 19-1175, 19-1176, 19-1177,
19-1179, 19-1185, 19-1186, 19-1187,
19-1188

BEFORE: Millett, Pillard, and Walker, Circuit Judges

ORDER

Upon consideration of the parties' motions to govern, it is

ORDERED that the joint motion to govern filed by the EPA, et al., be granted; and the motions to govern filed by the State of North Dakota and Biogenic be denied. It is

FURTHER ORDERED that, in light of the Supreme Court's decision in West Virginia v. EPA, 142 S. Ct. 2587 (2022), the judgment issued on January 19, 2021, be amended to deny the petitions for review challenging the repeal of the Clean Power Plan and to hold the remaining challenges to the ACE Rule in abeyance pending completion of rulemaking by the EPA. It is

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FURTHER ORDERED that respondents file status reports every 90 days, beginning 90 days from the date of this order. Respondents are further directed to notify the court promptly upon completion of the agency rulemaking.

The Clerk is directed to recall the partial mandate issued March 5, 2021, and issue the amended judgment. The Clerk is further directed to issue a new partial mandate forthwith as to the denial of the coal industry petitioners' petitions for review of the ACE Rule; the grant of the petitions for review challenging the timing portion of the implementing regulations; and the denial of the petitions for review of the CPP Repeal Rule.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk