

ORAL ARGUMENT OCCURRED OCTOBER 8, 2020  
JUDGMENT AND OPINION ISSUED JANUARY 19, 2021

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

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AMERICAN LUNG ASSOCIATION, ET AL.,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY,

*Respondent.*

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No. 19-1140 and  
consolidated cases

**STATUS REPORT**

1. The consolidated petitions for review in this case challenged three rules: the Clean Power Plan (CPP) Repeal Rule; the Affordable Clean Energy (ACE) Rule which established emissions guidelines for existing coal-fired power plants under the Clean Air Act, 42 U.S.C. § 7411(d); and updated regulations for implementation of emissions guidelines under Section 7411(d). *See* 84 Fed. Reg. 32,520 (July 8, 2019).

2. On January 19, 2021, this Court issued its decision, vacating the CPP Repeal Rule, the ACE Rule, and the timing provisions within the implementing regulations. *See* ACE Decision, Doc. Id. No. 1880546.

3. The Supreme Court granted certiorari, and issued its decision on June 30, 2022. The Supreme Court issued its judgment on August 1, 2022. Doc. Id. No. 1957250.

4. At this Court's direction, the parties then filed motions to govern. Doc. Id. No. 1964911. On October 27, 2022, the Court granted the joint motion to govern filed by EPA, and denied the motions filed by the State of North Dakota and Biogenic CO2 Coalition. Doc. Id. No. 1970895. It directed EPA to file status reports every 90 days. *Id.*

5. Pursuant to the October 27, 2022 order, EPA states that administrative proceedings for a new rulemaking action are ongoing. On May 8, 2023, the EPA Administrator signed a proposed rule entitled, New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule." *See*

<https://www.epa.gov/system/files/documents/2023-05/FRL-8536-02->

[OAR%20111EGU%20NPRM%2020230504\\_Admin.pdf](#). That rule has

not yet been published in the Federal Register.

Respectfully submitted,

Dated: May 15, 2023

/s/ Caitlin McCusker

MEGHAN E. GREENFIELD

CAITLIN MCCUSKER

Attorneys

Environment and Natural Resources

Division

U.S. Department of Justice P.O. Box 7411

Washington, D.C. 20044

(202) 514-1950

caitlin.mccusker@usdoj.gov

Counsel for EPA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing was served on May 15, 2023, through the ECF filing system and will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Caitlin McCusker