



State of West Virginia
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August 6, 2015

VIA ELECTRONIC FILING

Mr. Mark Langer
Clerk of the Court
United States Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *In re Murray Energy*, Nos. 14-1112 and 14-1151 (consolidated with 14-1112).

Dear Mr. Langer,

The parties opposing EPA submit this letter under FRAP 28(j), to notify the Court that on August 3, 2015, EPA issued the final Section 111(d) Rule. Exh. A. In that Rule, EPA admits that if the challengers' interpretation of the Section 112 Exclusion is correct, the Rule is unlawful. *Id.* at 262-63. This supports the pending Petitions For Rehearing And Rehearing *En Banc* because EPA has now confirmed that the position on the meaning of the Exclusion that the agency has articulated from the day it announced the proposed Rule, including in this litigation, is the same position it has taken in the final Rule. *Id.* at 245-70.

Rehearing is also appropriate because the final Rule takes the extremely unusual course of imposing upon the States a date-certain obligation to submit initial

State Plans by September 6, 2016. *Id.* at 38. This fixed deadline applies without regard to when the final Rule is published in the Federal Register, or when motions to stay the final Rule can be adjudicated. Publication of the massive 1560 page final Rule could take several months, which means the States may be halfway through their period for preparing initial State Plans before a petition for review could be filed and a stay of the Rule could be issued. *See* 80 Fed. Reg. 21,302, 21,467 (Apr. 17, 2015) (nearly four months from signature to publication for power plant rule); 79 Fed. Reg. 48,300, 48,424 (Aug. 15, 2014) (nearly three months from signature to publication for power plant rule); *EME Homer City v. EPA*, Order, No. 11-1302, ECF 1350421, slip op. at 2 (D.C. Cir. Dec. 30, 2011) (granting motion to stay a rule where the motion was filed four months previously).

Dated: August 6, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 6th day of August, 2015, a copy of the foregoing Federal Rule of Appellate Procedure 28(j) Letter was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elbert Lin

Elbert Lin