

Summary of Actions by State Attorneys General Related to 111(d)

The actions described herein represent cases, regulatory proceedings and other actions taken by State Attorneys General in opposition to, or in support of, EPA's Clean Power Plan, 111(d).

- **States' Letters Request Missing Information:** On August 25, 2014, thirteen State Attorneys General, led by West Virginia Attorney General Patrick Morrisey, Nebraska Attorney General Jon Bruning and Oklahoma Attorney General Scott Pruitt, sent EPA a letter requesting the Agency withdraw the proposed rule in light of missing "key materials" from the rulemaking docket. The undersigned Attorneys General cited Section 307(d) of the Clean Air Act as the legal basis for their request. Separately, Kentucky Attorney General Jack Conway sent EPA a similar letter requesting the Agency make these missing materials publically available, and after which extend the comment period.

Supported the Withdrawal Request or Comment Extension: WV, NE, OK, AL, IN, KS, KY, LA, MT, ND, OH, SC, SD and WY

- **Murray Energy Petition for Judicial Review:** *Murray Energy Corporation v. EPA* (D.C. Cir. 2014). Arguing EPA is precluded from regulating CO<sub>2</sub> emissions from coal-fired power plants under Section 111(d) of the Clean Air Act because this source category is already regulated under Section 112 of the Act, Murray Energy filed a petition for review seeking to prohibit EPA from promulgating the 111(d) proposal. The petition was filed on August 15, 2014.
- **West Virginia Petition for Judicial Review:** *West Virginia et al v. EPA* (D.C. Cir. 2014). On August 1, 2014, West Virginia Attorney General Patrick Morrisey filed a petition for review in the D.C. Circuit challenging the lawfulness of the settlement agreement EPA, the Sierra Club and certain states entered into that prompted the NSPS rulemakings for new and existing EGUs. General Morrisey et al argue EPA is precluded from regulating EGU CO<sub>2</sub> emissions under Section 111(d) of the Clean Air Act, because the Agency is already regulating this source under Section 112 of the Act, i.e. MATS. EPA approved the settlement agreement as final on March 2, 2011, but West Virginia believes its challenge is lawful despite occurring outside the Act's 60-day statutory period for challenging final agency actions because, during that 60-day period, EPA was not yet regulating EGUs under Section 112. A bipartisan group of 11 states joined with West Virginia in filing this lawsuit.

Supported the Petition for Review: WV, AL, IN, KS, KY, LA, NE, OH, OK, SC, SD and WY

States Petitioners - 2010 Settlement Agreement: NY, CA, CT, DE, ME, NM, OR, RI, VT and WA

- **Murray Energy Extraordinary Writ:** *Murray Energy Corporation v. EPA* (D.C. Cir. 2014). Arguing EPA is precluded from regulating CO<sub>2</sub> emissions from coal-fired power plants under Section 111(d) of the Clean Air Act because this source category is already regulated under Section 112 of the Act, Murray Energy sought a writ prohibiting the Agency from promulgating the proposed rule. “The need for prohibiting double regulation is evident from the structure of the Clean Air Act’s emission standard programs . . . the Act’s evolution . . . confirms that ignoring this important prohibition would disrupt Congress’s careful balance between national and state control and jeopardize existing sources in a manner Congress consistently avoided,” they wrote. Nine states, led by West Virginia, filed an amicus brief in support of the Murray Energy writ, reiterating “What EPA is attempting is nothing short of extraordinary, and warrants relief . . .” The writ was filed on June 18, 2014.

Supported the Writ: WV, AL, AK, KY, NE, OH, OK, SC and WY

Opposed the Writ: NY, CA, CT, DE, ME, MD, MA, NH, NM, OR, RI, VT and WA

- **NSPS 111(d) White Papers:** With EPA set to begin developing New Source Performance Standards for existing power plants, State Attorneys General have been active in weighing in on the legal questions surrounding Section 111(d) of the Clean Air Act. In one white paper, dated September 11, 2013, 18 bipartisan State Attorneys General authored an analysis that spoke to the limited authority EPA has under 111(d). If EPA is given too much latitude it will “seek to expand the scope of its jurisdiction at the cost of relegating the role of the States to merely implementing whatever Washington prescribes,” they wrote. In reaction, a group of State Attorneys General from New York, California, Massachusetts, etc. argued that EPA has a “vital obligation” to use its “backstop” authority under 111(d) to curtail CO<sub>2</sub> emissions from the power sector, and that the best way to achieve these reductions is to pursue a “system-wide approach,” i.e. a program similar to the one advocated for by NRDC.

Joined on the Limited EPA Authority White Paper: AL, AK, AZ, FL, GA, IN, KS, KY, MI, MT, NE, ND, OH, OK, SC, SD, WI, and WV

Joined on the Expansive EPA Authority and “System-Wide” White Paper: CA, CT, DE, ME, MA, MD, NM, NY OR, RI, VT, and WA