ORAL ARGUMENT NOT YET SCHEDULED
No. 14-1112 (and Consolidated Case)

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

MURRAY ENERGY CORPORATION,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, et al.,

Respondents.

On Petition for an Extraordinary Writ and
For Review of Final Agency Action

BRIEF OF AMICUS CURIAE THE NATIONAL MINING ASSOCIATION AND THE AMERICAN COALITION FOR CLEAN COAL ELECTRICITY

Peter S. Glaser
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 200jk01
(202) 274-2998
peter.glaser@troutmansanders.com

Carroll W. McGuffey
TROUTMAN SANDERS LLP
600 Peachtree Street NE, Suite 5200
Atlanta, Georgia 30308
(404) 885-3000

Counsel for National Mining Association and American Coalition for Clean Coal Electricity

DATED: December 22, 2014

DISCLOSURE STATEMENT

The National Mining Association ("NMA") is a non-profit, incorporated national trade association whose members include the producers of most of America's coal, metals, and industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment, and supplies; and engineering and consulting firms that serve the mining industry. NMA has no parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public, although NMA's individual members have done so.

The American Coalition for Clean Coal Electricity ("ACCCE") is a non-profit, incorporated national trade organization comprised of industries involved in producing electricity from coal. ACCCE's members include coal producing companies, electric utilities that use coal to generate electricity, railroads that transport coal to electric generating stations, and other companies interested in coal-based electric generation. ACCCE has no parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public, although ACCCE's individual members have done so.

Respectfully submitted,

/s/ Peter S. Glaser
Peter S. Glaser
Troutman Sanders LLP
401 Ninth Street N.W., Suite 1000
Washington, D.C. 20001
202.274.2998 telephone

202.654.5611 facsimile
peter.glaser@troutmansanders.com

Dated: December 22, 2014

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GLOSSARY

CAA	Clean Air Act
EPA	Environmental Protection Agency
MATS	Mercury and Air Toxics Standards

STATEMENT OF IDENTITY, INTEREST IN CASE, AND AUTHORITY TO FILE

This amicus brief is submitted by the National Mining Association ("NMA") and the American Coalition for Clean Coal Electricity ("ACCCE") (collectively "Coal Amici"). NMA is a non-profit, incorporated national trade association whose members include the producers of most of America's coal, metals, and industrial and agricultural minerals; manufacturers of mining and mineral processing machinery, equipment, and supplies; and engineering and consulting firms that serve the mining industry. NMA members include companies that generate electricity from coal. NMA's purpose is to advocate the interest of its members in legislative, regulatory and judicial forums and before the public.

ACCCE is a non-profit, incorporated national trade organization comprised of industries involved in producing electricity from coal. ACCCE's members include coal producing companies, electric utilities that use coal to generate electricity, railroads that transport coal to electric generating stations, and other companies interested in coal-based electric generation. ACCCE's purpose is to advocate on behalf of coal-based electricity in legislative, regulatory and judicial forums and before the public.

As discussed in more detail below, these consolidated cases concern rulemaking by the Environmental Protection Agency ("EPA" or "Agency") that will have, and

indeed already is having, serious consequences for the use of coal for electric generation. These cases therefore directly affect ACCCE's and NMA's members.

Counsel for the other parties have informed for Coal Amici and counsel for the other amicus curiae that intends to file an amicus brief in this case that they do not oppose the filing of this and the other amicus brief so long as both briefs together do not exceed 7,000 words. Counsel for the two amici have agreed to that condition.

RULE 29(C)(5) STATEMENT

Counsel for Coal Amici states that:

(A) no party's counsel authored this brief in whole or in part;

(B) no party or its counsel contributed money that was intended to fund preparing or submitting this brief; and

(C) no person—other than the amicus curiae, their members, or its counsel—contributed money that was intended to fund preparing or submitting this brief.

LOCAL RULE 29(d) CERTIFICATE

To counsel's knowledge, one other amicus brief will be filed in this case. Counsel has conferred with counsel for that other party and they have agreed, with the consent of all the parties in this case, to file two amicus briefs with a total word count of no more than 7,000 words.

The two amicus briefs address two different subjects and so will not duplicate each other. Counsel for both amici believe that filing two briefs within the 7,000 word limit, rather than a single combined brief, will allow for a more readable presentation of each issue and so will aid the Court's and the parties' understanding of these separate issues.

Respectfully submitted,

/s/ Peter S. Glaser
Peter S. Glaser
Troutman Sanders LLP
401 Ninth Street N.W., Suite 1000
Washington, D.C. 20001
202.274.2998 telephone
202.654.5611 facsimile
peter.glaser@troutmansanders.com

Dated: December 22, 2014

INTRODUCTION

In Case No. 14-1511, Murray Energy Corporation ("Murray") challenges EPA's final action in deciding to regulate carbon dioxide ("CO_2") emissions from existing coal-fueled electric generation facilities under Section 111(d) of the Clean Air Act ("Act"), 42 U.S.C. § 7411(d). Murray argues that EPA has no authority to regulate these emissions given that the Agency regulates electric generators under Section 112 of the Act, 42 U.S.C. § 7412.[1]

In moving to dismiss Murray's petition, EPA attempted to distract from the central issue of whether Section 111(d) applies to electric generators and maintained that its decision to regulate emissions of CO_2 from existing coal generators under Section 111(d) is not final agency action. Respondent EPA's Motion to Dismiss for Lack of Subject Matter Jurisdiction at 12-15.[2] Coal Amici's brief directly addresses the finality question. Under *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997), agency action is final if (a) the action "mark[s] the consummation of the agency's decisionmaking process" and (b) the action is "one by which rights or obligations have been determined, or from which legal consequences will flow." The EPA action Murray challenges meets both tests.

[1] Hereafter, statutory citations are to the Clean Air Act. Parallel citations to the U.S. Code are included in the Table of Authorities.
[2] By order of November 13, 2014, the Court assigned this motion to the merits panel for decision.

As to the first test, EPA claims that its determination that it has authority to regulate, and will regulate, coal generator CO_2 emissions under Section 111(d) is only "tentative." EPA states that it has only *proposed* to regulate, that it "has sought comments on all aspects of the proposal – including on the legal questions at the heart of Murray's challenge," and that it "*may modify its final action in any number of ways in response to those comments*." *Id.* at 14 (emphasis in original). EPA goes so far as to say that its proposed rules "may never be adopted at all." *Id.* at 15.

EPA's contention that it has an open mind on the basic question of its authority to issue Section 111(d) regulations and that it therefore may not issue a final Section 111(d) rule *at all* is absurd. The Agency has not only made a final decision to regulate, it has made that regulation its highest priority. Indeed, the regulations are a critical Administration priority, with the President directing the Agency to issue the regulations on an assigned timetable. The Agency has devoted unprecedented resources to the rulemaking effort, engaged in what it describes as an intensive stakeholder outreach process involving literally hundreds of meetings around the country, and received more rulemaking comments than it has ever received in any prior proceeding (millions of comments).[3] The proposed regulations consume 128 pages of the Federal Register and are supported by extensive computer modeling, data

[3] June 25, 2013 Presidential Memorandum, Power Sector Carbon Pollution Standards ("Presidential Memorandum"), available at http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards.

files, spreadsheets, and Technical Support Documents, including a 104-page Legal Memorandum devoted to showing that the Agency has legal authority to regulate.[4] The breadth of the regulations is astonishing; EPA proposes nothing less than a comprehensive reengineering of the American electric power sector. It is scarcely believable that the Agency's lawyers are seriously representing to this Court that, in the end, the Agency will say the equivalent of "never mind."

As to the second *Bennett* test, EPA is wrong that its determination to regulate under Section 111(d) has not determined rights and obligations or that legal consequences will not flow. By determining that it has the authority to regulate and will regulate, the Agency has fixed a concrete set of legal obligations under the statute and its own regulations that commit EPA, states, and industry to a defined regulatory future. The market is aware of the legal consequences that flow from EPA's decision to regulate. It has set off a wave of actual and announced future retirements of coal generators, with the upstream result of shuttered coal mines and laid off coal workers.

For these reasons, EPA's action is final and reviewable.

ARGUMENT

I. EPA Has Made a Final Decision to Issue Section 111(d) Regulations.

It is surprising, to say the least, that EPA would even suggest that it has not already made up its mind to regulate under Section 111(d). Indeed, President Obama

[4] *See* http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule-technical-documents.

instructed EPA to issue these regulations. In a June 25, 2013 Presidential Memorandum, the President "direct[ed]" EPA to "use your authority under sections 111(b) and 111(d) of the Clean Air Act to issue standards, regulations, or guidelines, as appropriate, that address carbon pollution from modified, reconstructed, and existing power plants." He put EPA on a timetable for Section 111(d) rulemaking: June 1, 2014 for proposed rules, June 1, 2015 for final rules, and June 30, 2016 for states to submit the plans restricting electric generator CO_2 emissions that EPA's final rules will call for.[5]

The Presidential Memorandum reflects the President's belief, shared by EPA, that potential climate change is the most serious environmental problem of our time. On the same day that the President issued his Memorandum, he gave a speech at Georgetown University expressing his view that human-induced climate change that "will have profound impacts on all of humankind" is underway.[6] The President committed "to act," and simultaneously issued a comprehensive Climate Action Plan[7] of which the Memorandum is the centerpiece. Furthermore, more recently, the President announced to the world that the very regulation at issue in this case is a centerpiece of the U.S.-China Joint Announcement on Climate Change noting the

[5] Presidential Memorandum at 1.
[6] "Remarks by the President on Climate Change," Georgetown University, June 25, 2013, available at http://www.whitehouse.gov/the-press-office/2013/06/25/remarks-president-climate-change.
[7] http://www2.epa.gov/carbon-pollution-standards/learn-about-carbon-pollution-power-plants.

regulation is integral to cutting net greenhouse gas emissions 26-28 percent below 2005 levels by 2025.[8] For EPA to reverse course on this regulation, the Agency would have to defy the President's clear and unwavering direction to move forward with this regulation.

Moreover, EPA shares the President's concern about potential climate change and his commitment to act. In testimony to Congress, EPA Administrator Regina McCarthy described potential climate change as "one of the greatest challenges of our time," one that "if left unchecked, [] will have devastating impacts on the United States and the planet." "The science is clear," she said. "The risks are clear. And the high costs of climate inaction are clear. *We must act.* That's why President Obama laid out a Climate Action Plan and why on June 2 I signed the proposed Clean Power Plan—to cut carbon pollution, build a more resilient nation, and lead the world in our global climate fight."[9]

And the Agency left no doubt that it views the power sector as a priority regulatory target given that, as EPA says, electric generators are the largest source of

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[8] U.S.-China Joint Announcement on Climate Change and Clean Energy Cooperation released Nov. 11, 2014 available at http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-us-china-joint-announcement-climate-change-and-clean-energy-c

[9] Testimony of Gina McCarthy, Administrator U.S. Environmental Protection Agency, Hearing on EPA's Proposed Clean Power Plan, Before the Senate Committee on Environment and Public Works (July 23, 2014) ("McCarthy EPW Testimony") (emphasis added), available at http://www.epw.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8655edd9-03ac-bb36-cab8-7913ec6c2b94.

CO_2 emissions in the economy.[10] As a result, in her press release accompanying the proposed Section 111(d) regulations, the Administrator emphasized that, in line with the President's directive, the Agency intends to regulate electric generator CO_2 emissions under Section 111(d). "Climate change, fueled by carbon pollution, supercharges risks to our health, our economy, and our way of life," she said.[11] By proposing the regulations, "EPA is delivering on a vital piece of President Obama's Climate Action Plan…."

The Agency has made this rulemaking its number one priority. In October of this year, EPA stated that "since proposing the Clean Power Plan in June, EPA has engaged in unprecedented outreach to a broad range of stakeholders, including states, utilities, industry, public health and environmental groups, labor, and community groups."[12] That followed on an even more intensive outreach process before the rule was even proposed. According to the Administrator, "[t]he EPA's stakeholder outreach and public engagement in preparation for this rulemaking was unprecedented. Starting last summer, we held eleven public listening sessions around

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[10] http://epa.gov/climatechange/.
[11] EPA June 2, 2014 press release, available at http://yosemite.epa.gov/opa/admpress.nsf/bd4379a92ceceeac8525735900400c27/5bb6d20668b9a18485257ceb00490c98!OpenDocument.
[12] "Fact Sheet: Clean Power Plan Notice of Data Availability," available at http://www2.epa.gov/carbon-pollution-standards/fact-sheet-clean-power-plan-notice-data-availability.

the country. We participated in hundreds of meetings with a broad range of stakeholders across the country, and talked with every state."[13]

EPA lists addressing climate change as its first priority in its FY 2014-2018 Strategic Plan.[14] As a result, although EPA's overall FY 2015 budget will be cut as part of the general tightening of discretionary spending throughout the government, Administrator McCarthy has ensured that "priority work" on climate change will be funded.[15] Testifying on its FY 2015 budget request, the Administrator confirmed, referring specifically to its Section 111 rulemakings, that "[t]he Agency will focus resources on the development of common sense and achievable greenhouse gas standards for power plants—the single largest source of carbon pollution."[16] EPA is poised to make the same commitment for its FY 2016 budget.[17]

The sheer magnitude of what EPA has proposed further demonstrates the Agency's determination to regulate. In past Section 111(d) rulemakings for other

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[13] McCarthy EPW Testimony at 3.

[14] http://www2.epa.gov/planandbudget/strategicplan (last visited December 22, 2014).

[15] "President Proposes Cut to EPA Funding for Fiscal Year 2015," Bloomberg, May 26, 2014, http://www.bloomberg.com/news/2014-03-06/president-proposes-cut-to-epa-funding-for-fiscal-year-2015.html.

[16] Testimony of EPA Administrator Gina McCarthy Before House Appropriations Committee on Proposed FY 2015 Budget March 3, 2014, available at http://yosemite.epa.gov/opa/admpress.nsf/596e17d7cac720848525781f0043629e/dc1fa2e65c2dc69c85257ca80055b153!OpenDocument.

[17] "EPA Suggests Climate As FY16 Budget Priority, Prompting States' Caution," Inside Washington Publishers, June 26, 2014, http://iwpnews.com/201406262475251/EPA-Daily-News/Daily-News/epa-suggests-climate-as-fy16-budget-priority-prompting-states-caution/menu-id-1046.html.

industries and other pollutants, EPA has chosen the Section 111(a)(1) "best system of emission reduction" by determining the most cost-effective and efficient pollution controls or methods of operation that regulated facilities could undertake to reduce the emissions in question.[18] In contrast, for coal generator CO_2 emissions, EPA has proposed to set CO_2 emission reduction goals not for the coal generators it is supposedly regulating but for every state's electric utility system.[19] EPA has examined each state's utility system and, on a state-by-state basis, determined how the state's system should be reorganized to dramatically reduce coal generation and dramatically increase natural gas and renewable energy generation and reduce the public's consumption of electricity.[20] For instance, EPA estimates that, under its proposal, coal generation will fall from its 2010 level of 317 gigawatts to 198 gigawatts by 2020, with coal generation disappearing altogether in 12 states.[21] Natural gas and renewable generation would take up the slack,[22] and electric consumption would actually

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[18] *See* 40 C.F.R. Subparts Cb, Cc, Cd, and Ce.

[19] "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule," 79 Fed. Reg. 34,830, 34,835-37 (June 18, 2014).

[20] *Id.*

[21] The 2010 number is from EPA's MATS Regulatory Impact Analysis ("MATS RIA"), Table 3-8 at 3-19, available at http://www.epa.gov/mats/actions.html (last visited December 22, 2014). The 2020 number is from EPA's Clean Power Plan Regulatory Impact Analysis (CPP RIA), Table 3-12 at 3-34, available at http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule.

[22] 79 Fed. Reg. at 34,835-37.

decline,[23] even though the Census Bureau estimates that the country will add more than 2 million people per year.[24] The Agency, of course, may change some of the details of its proposal when it issues final regulations—it may even make significant changes—but it has obviously not proposed something of this magnitude with the view that it may ultimately withdraw the proposal and issue no regulation at all.

As EPA knew would be the case, its determination to regulate coal generator CO_2 emissions under Section 111(d) has set off an enormous amount of activity among states, stakeholders and the public. EPA estimates that millions of comments were filed on the proposed rule, including by all 49 states for which it proposed regulatory requirements –in some cases including multiple agencies within the state such as state environmental and utility regulators—as well as all of the nation's regional grid operators, virtually every electric utility and all of their trade associations, various other businesses and business associations, numerous environmental groups, and many others.[25] Many state public service commission's and state environmental regulators have held hearings or stakeholder meetings concerning EPA's prospective

[23] *See* Data File: GHG Abatement Measures Scenarios 1 and 2 (3,773,750 gigawatthours of consumption in 2014, rising to only 3,792,371 gigawatthours in 2030).

[24] *See* Census Bureau, http://www.census.gov/population/projections/data/national/2012/summarytables.html, Table 1, middle series projection.

[25] These comments are collected at Regulations.gov, under Docket No. EPA–HQ-OAR-2013-060.

rules.[26] Again, EPA has not triggered all of this furious activity without a firm view that it will finalize regulations.

In sum, EPA's decision to regulate is "unequivocal," *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 436 (D.C. Cir. 1986), and not "tentative or interlocutory," *Bennett*, 520 U.S. at 178, or "contingent," *AT&T Co. v. EEOC*, 270 F.3d 973, 975 (D.C. Cir. 2001). "EPA ha[s] spoken its 'last word'" on the legal issue in dispute, *Alaska Dep't of Environmental Conservation v. EPA*, 540 U.S. 461, 483 (2004), that is whether EPA has authority to issue CO_2 performance standards for electric generators. Indeed, given EPA's emphatically-expressed commitment to regulate, the suggestion that EPA may change its mind and not regulate can only be described as unserious.

II. EPA's Determination to Regulate Creates Obligations and Results in Legal Consequences.

EPA's decision that it has authority to regulate and will regulate undeniably creates legal obligations for EPA, the States, and coal generators both under Section 111(d) and EPA's generic Section 111(d) regulations. These obligations have already been triggered; they do not depend on further EPA rulemaking.

For EPA, its decision that it has authority to regulate coal generator CO_2 emissions under Section 111(d) means that it now "*shall* prescribe regulations" and that these regulations "*shall* establish a procedure…under which each State *shall* submit to the Administrator a plan which (A) establishes standards of performance,"

[26] *See, e.g.*, http://www.azdeq.gov/environ/air/stakeholder.html, for Arizona.

and "provides for the implementation and enforcement of such standards of performance," for those emissions." *See* Section 111(d)(1) (emphasis added). EPA is now also obligated to judge whether the State plans are "satisfactory," to impose a federal plan if the State plan is unsatisfactory, and to enforce the provisions of a State plan if the State fails to do so. *See* Section 111(d)(2).

States are now obligated to submit plans, on an already-determined timeline,[27] setting forth performance standards that reflect "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." *See* Section 111(a)(1). EPA's generic Section 111(d) regulations further describe the legal requirements that states are now subject to given EPA's decision to regulate. In developing their plans, states will be required to hold a public hearing. 40 C.F.R. § 60.23 (c)(1). The state plans will be required to include both emission standards and performance schedules. *Id.* at 60.24(a). Unless it is "clearly impracticable," the emission standards must be based on an "allowance system" or prescribe "allowable rates of emission." *Id.* at 60.24(b)(1). The plan must also specify "[t]est measures and procedures for determining compliance with the

[27] EPA's generic Section 111(d) regulations provide that, unless EPA specifies otherwise, states have only nine months to submit a plan following issuance of a final Section 111(d) rule. 40 C.F.R. § 60.23. The President's specification of the June 30, 2016 deadline, 13 months after the date by which President instructed EPA to issue its final rule, thus is actually an extension of the normal nine-month period.

emission standards." *Id.* at 60.24(b)(2). The plan must include an inventory of all "designated facilities" in the state (facilities within the regulated source category to which the performance standards will apply, here coal generators), including detailed information as to the facility's operations, fuel use, emissions, the type and efficiency of the pollution-control equipment. *Id.* at 60.25(a) and Appendix D to 40 C.F.R. Part 60.

State plans must also provide for monitoring the status of compliance with applicable emission standards, including, at least (a) legally enforceable procedures for requiring owners or operators of designated facilities to maintain records and periodically make compliance reports and (b) periodic State inspection and, where applicable, testing of regulated facilities. *Id.* at 60.25(b). The State must show that it has legal authority to adopt the plan. *Id.* at 60.26. The State plan must require facilities to comply with the performance standards in the State plan within one year unless the State plan establishes "legally enforceable increments of progress," which, unless impracticable, must include all of the measures set forth in 40 C.F.R. § 60.21(h). *Id.* at § 60.24(e)(1).

EPA's decision to regulate also creates obligations for coal generators that will now be the target of regulation under Section 111(d). Although coal generators do not know the exact contours of the regulation, it is now certain that they will be subject to the requirements, listed in the preceding paragraphs above, that Section 111(d) and EPA's generic Section 111(d) regulations require State plans to include.

They will thus be required to restrict their emissions of CO_2 according to the Section 111(a)(1) "standards of performance" that States will establish in their Section 111(d) plans. And they will be subject to the inspection, testing, monitoring and reporting requirements set forth in the preceding paragraph above.

The consequences of these new EPA, state, and industry obligations are more than just hypothetical; the market understands the consequences of the new regulatory regime that EPA has triggered and it has reacted accordingly. In February 2012, when EPA adopted its Mercury and Air Toxics Standards ("MATS"), *see White Stallion Energy Ctr. v. EPA*, 748 F.3d 1222 (D.C. Cir 2014), EPA estimated that 4.7 gigawatts of coal generation would retire rather than install the pollution controls necessary to comply with that rule.[28] EPA estimated that these installations, for the industry as a whole, will cost $9.6 billion per year.[29] EPA's determination to regulate under Section 111(d) has dramatically changed its estimate of how many units will retire, as numerous coal units have decided that it would be foolish to install hundreds of millions in controls to comply with MATS given that they are now faced with Section 111(d) regulation as well. EPA's own analysis reflects the change that its decision to invoke Section 111(d) has brought about. In its 2014 Section 111(d) proposal, EPA now estimates that by 2016, before electric generators are even

[28] MATS RIA at 3-17.
[29] *Id.* at ES-14.

required to comply with CO_2-reduction requirements under Section 111(d),[30] *66* gigawatts of coal generation will have chosen to retire,[31] nearly 25 percent of the entire coal generation fleet and more than *13 times* what EPA projected just two years ago when it adopted MATS.

Similarly, when EPA projected the impact of MATS on coal production for the electric sector, it estimated production of 998 million tons in 2015 without the rule and 989 million tons in 2015 with the rule, not a great change and both figures up from 2009 electric sector coal production of 942 million tons.[32] Yet two years later in its proposed Section 111(d) rule, EPA projected 2016 electric sector coal production—again before industry compliance is even required—dramatically declining to 809 million tons.[33] EPA projects that coal production will decline even more precipitously in 2020 if the rule is implemented as proposed,[34] but clearly, just the widespread expectation of EPA's decision to regulate under Section 111(d), even before the specific requirements are known, has triggered massive consequences in the market.

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[30] EPA's proposed rule requires industry to begin complying in 2020. 79 Fed. Reg. at 34,838.
[31] EPA Model Run of Base Case for the proposed Clean Power Plan ("CPP Base Case Model Run"), available at http://www.epa.gov/airmarkets/powersectormodeling/cleanpowerplan.html.
[32] MATS RIA, Table 3-10, p. 3-21.
[33] CPP Base Case Model Run.
[34] CPP RIA at Table 3-15, p. 3-36.

In sum, EPA has taken a "'definitive' legal position concerning its statutory authority, *CSI Aviation Servs., Inc. v. DOT*, 637 F.3d 408, 412 (D.C. Cir. 2011) *quoting Ciba-Geigy, 801 F.2d at* 436, and the validity of that position presents "'a purely legal' question of 'statutory interpretation,'" *id.*, *quoting Ciba-Geigy*, 801 F.2d at 435. The "burden" on industry as a result of this action has been "immediate and significant." *Id.*

CONCLUSION

EPA's determination that it has authority to regulate electric generator CO2 emissions under Section 111(d) is final agency action subject to judicial review by this Court.

Dated: December 22, 2015

Respectfully submitted,

Peter S. Glaser
TROUTMAN SANDERS LLP
401 Ninth Street, N.W., Suite 1000
Washington, D.C. 200jk01
(202) 274-2998
peter.glaser@troutmansanders.com

Carroll W. McGuffey
TROUTMAN SANDERS LLP
600 Peachtree Street NE, Suite 5200
Atlanta, Georgia 30308
(404) 885-3000

Counsel for National Mining Association and American Coalition for Clean Coal Electricity

CERTIFICATE OF COMPLIANCE

In accordance with Circuit Rule 32(a) and Rule 32(a)(7) of the Federal Rules of Appellate Procedure, the undersigned certifies that the accompanying brief has been prepared using 14-point Garamond Roman typeface, and is double-spaced (except for headings and footnotes).

The undersigned further certifies that the brief is proportionally spaced and contains 3,401 words exclusive of the disclosure statement, the statement of identify, interest in case, and authority to file, the Rule 29(c) statement, the Local Rule 29(d) certificate, the tables of contents and authorities, the glossary, the signature lines, and the certificates of service and compliance. The undersigned used Microsoft Word 2007 to compute the count.

/s/ Peter S. Glaser
Peter S. Glaser

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Peter S. Glaser
Peter S. Glaser