

ORAL ARGUMENT NOT YET SCHEDULED

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

MURRAY ENERGY CORPORATION,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and REGINA
A. McCARTHY, Administrator, U.S.
Environmental Protection Agency,

Respondents.

Case No. 14-1151

STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court's Order of August 18, 2014 in Case No. 14-1151, Petitioner Murray Energy Corporation submits the following non-binding Statement of Issues to be Raised in this proceeding to review the final action of the Administrator of the United States Environmental Protection Agency (EPA) initiating a Section 111(d) rulemaking without legal authority and in violation of the Clean Air Act by publishing a notice of proposed rulemaking entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" in the *Federal Register* on June 18, 2014. 79 Fed. Reg. 34,830 (June 18, 2014).

NON-BINDING STATEMENT OF ISSUES

1. Whether EPA has any legal authority to mandate state-by-state emission standards for existing power plants under Section 111(d) of the Clean Air Act when EPA already promulgated a national emission standard for power plants under Section 112 of the Clean Air Act given the express statutory limitation that EPA may only mandate state-by-state standards for emissions that are not “from a source category which is regulated under section 112.”
2. Whether the Code of Laws of the United States accurately reflects the text of Section 111(d) after the 1990 Amendments to the Clean Air Act.
3. Whether the determinations of the House Office of Law Revision Counsel — a nonpartisan legislative agency — in applying amendments to statutes in the Code of Laws of the United States that 1 U.S.C. § 204 provides “shall . . . establish prima facie the laws of the United States” are entitled to deference by this provision and by separation of powers concerns.
4. Whether executive agencies are entitled to deference in rejecting reasonable determinations of the House Office of Law Revision Counsel in applying amendments to statutes in the Code of Laws of the United States.
5. Whether EPA’s assertion of authority to regulate power plants under both Section 111(d) and Section 112 is arbitrary, capricious, or unlawful because it rests on reasoning divorced from the current statutory text and inconsistent with the design and structure of the Clean Air Act following the 1990 Amendments.

Petitioner reserves the right to present and argue any other issues that have been preserved for judicial review or that arise during these proceedings.

Dated: September 17, 2014

Respectfully submitted,

/s/ Geoffrey K. Barnes

Geoffrey K. Barnes

J. Van Carson

Robert D. Cheren

SQUIRE PATTON BOGGS (US) LLP

4900 Key Tower

127 Public Square

Cleveland, Ohio 44114

(216) 479-8646

geoffrey.barnes@squirepb.com

Counsel for Murray Energy Corporation

CERTIFICATE OF SERVICE

I hereby certify that the foregoing STATEMENT OF ISSUES TO BE RAISED has been served electronically by Petitioner, Murray Energy Corporation, through the Court's CM/ECF system on all ECF registered counsel.

Dated: September 17, 2014

Respectfully submitted,

/s/ Geoffrey K. Barnes

Geoffrey K. Barnes

J. Van Carson

Robert D. Cheren

SQUIRE PATTON BOGGS (US) LLP

4900 Key Tower

127 Public Square

Cleveland, Ohio 44114

(216) 479-8646

geoffrey.barnes@squirepb.com

Counsel for Murray Energy Corporation