

Message

From: Kovacs, William [WKovacs@USChamber.com]
Sent: 4/11/2017 1:23:07 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: ICYMI: 16 States Urge 4th Circ. To Uphold Coal Jobs Analysis Order

Brittany:

See article below in Law 360 regarding Section 321 and the Murray case. This case represents the first time in almost 40 years that an evaluation of the impact of regulations on jobs would be required.

Best,

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Ex. 6

16 States Urge 4th Circ. To Uphold Coal Jobs Analysis Order

Share us on: By **Juan Carlos Rodriguez**

Law360, New York (April 10, 2017, 4:27 PM EDT) -- West Virginia and 15 other states on Friday asked the Fourth Circuit to uphold a district judge's order compelling the U.S. Environmental Protection Agency to evaluate the consequences of its air pollution regulations on jobs.

The states said they face "unique challenges" resulting from the lack of information about the impact of regulations on jobs caused by the EPA's alleged lack of compliance with Section 321 of the Clean Air Act, which directs the EPA to conduct evaluations of potential loss or shifts of employment that may result from regulations.

"States need Section 321 information to assist in advancing their sovereign interest in promoting economic prosperity among their citizens, particularly when EPA's CAA actions may negatively impact state economies," the states' brief said. "The type of information evaluated by EPA under Section 321 is important because it can help states anticipate and mitigate those negative impacts."

The brief also said that information related to jobs gleaned under Section 321 can be useful for preparing state budgets.

"Unexpected declines in those industries affected by CAA regulations and the resulting tax revenue shortfalls threaten to leave states facing difficult decisions about how best to prioritize competing public interests," the states said.

The dispute over the information began when Murray Energy Corp. and other coal industry players accused the EPA of failing to gather that information, and West Virginia U.S. District Judge John Preston Bailey **agreed in October**. The judge ordered the EPA to come up with a an analysis of the impact of its regulatory and enforcement actions under the CAA on coal mining and power generating industries by July 1.

The EPA, however, has appealed that ruling, arguing that there was no CAA violation that warranted such a remedy. The agency said the district court lacked jurisdiction because Section 321(a) does not impose a nondiscretionary duty and Section 321(a)'s "continuing evaluations" aren't subject to a deadline and don't stand alone as distinct tasks, so they cannot be compelled in a nondiscretionary duty suit.

It also said Judge Bailey lacked jurisdiction at the summary judgment stage because Murray's allegation that the coal industry, in general, is economically harmed when the EPA regulates under the act isn't an injury that is either specific to the company or traceable to the EPA's duties under Section 321. Nor can the alleged economic damage be remedied by Section 321 studies, the EPA said.

The other states are Arizona, Arkansas, Georgia, Kansas, Louisiana, Michigan, Nebraska, Nevada, Ohio, Oklahoma, South Carolina, Texas, Utah, Wisconsin and Wyoming.

The states are represented by their attorneys general.

The EPA is represented by Matthew Littleton, Jennifer Scheller Neumann, Patrick R. Jacobi, Richard Gladstein, Laura J.S. Brown and Sonya Shea of the U.S. Department of Justice, and Gautam Srinivasan and Matthew C. Marks of the EPA.

The case is Murray Energy Corp. et al. v. Administrator, U.S. Environmental Protection Agency, number 16-2432, in the U.S. Court of Appeals for the Fourth Circuit.

--Additional reporting by Keith Goldberg. Editing by Stephen Berg.