



MEMORANDUM

To: President Mitch Carmichael, Chair
Speaker Tim Armstead, Chair
Joint Committee on Government and Finance

cc: Nick Casey, Chief of Staff
Woody Thrasher, Cabinet Secretary, West Virginia Department of Commerce
Joshua Jarrell, Deputy Secretary/General Counsel, West Virginia Department of Commerce

From: West Virginia Division of Energy

Date: January 17, 2017

Re: Quarterly Report Ending, December 31, 2016
Legal Challenges Potentially Impacting the Energy Industry

As mandated by West Virginia Code §5B-2F-2(s), the following information presents legal challenges with the potential to impact the state's energy industry. This submission was prepared by David Flannery, Steptoe & Johnson PLLC. Reports are submitted on a quarterly basis.

**REPORT ON LITIGATION RELATED TO
ENERGY AND NATURAL RESOURCES IN WEST VIRGINIA**

FOURTH QUARTER 2016

**Federal Judge Rules That EPA has Failed to Conduct Required Studies of
Effects of its Clean Air Act Enforcement and Implementation on Employment**

The federal court in the Northern District of West Virginia ruled on October 17, 2017, that EPA failed to conduct mandatory evaluations of the employment effects of its administration and enforcement of the Clean Air Act. In its opinion, the Court made three significant, substantive rulings:

1. The court rejected EPA's argument that for the court to find it had a non-discretionary duty, date certain must be established in the Clean Air Act.
2. The court reiterated its earlier finding that Murray Energy's allegations were sufficient to establish it had standing to pursue the action. Murray claimed that a combination of EPA's regulatory actions and its failure to evaluate their effect on employment had a coercive effect on the use of coal to generate electricity and on Murray Energy's ability to obtain required evaluations with which it could lobby for change in Congress.
3. EPA asserted that it had many documents in its possession that constituted compliance with its obligation to conduct continuing evaluations. The court rejected these claims finding that the documents cited by EPA were documents that assessed economic impact under other legal requirements and were not sufficient to satisfy CAA §321.

U.S. District Judge John Preston Bailey stated in his order:

“Due to the importance, widespread effects, and the claims of the coal industry, it would be an abuse of discretion for the EPA to refuse to conduct a Section 321(a) evaluation on the effects of its regulations on the coal industry.”

In response to court's order that EPA to file a plan for how it would assess job losses, in late October, EPA said it would consult with its Science Advisory Board to comply with the regulations found in Section 321(a) of the CAA. On January 12, 2017 Judge Bailey ordered the agency to come up with an economic analysis of the effects of its regulations on the coal mining and power generating industries by July 1, 2017 and to show the court by the end of the year that it has put measures in place to continually monitor any losses or shifts in employment that result from its regulations.