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Murray Energy Corporation v. McCarthy

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Murray Energy Corporation v. McCarthy, No. 5:14-CV-39, 2016 U.S. Dist. LEXIS 143404, 2015 WL 7017009 (N.D. W. Va. Oct. 17, 2016)

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Holding that the widespread effects of environmental regulation on the coal industry constituted sufficient importance, the Northern District of West Virginia ordered the Environmental Protection Agency to conduct analysis on employment loss and plant reduction resulting from regulatory effects. In admonishing the EPA's inaction, the court ruled that the Agency had a non-discretionary duty to evaluate employment and plant reduction. Furthermore, the court held that the EPA's attempt to put forth general reports in place of required evaluations was an invalid attempt to circumvent its statutory duty.

I. INTRODUCTION

In *Murray Energy Corp. v. McCarthy*, the Murray Energy Corporation along with its subsidiary companies (collectively "Murray") challenged the Environmental Protection Agency's ("EPA") failure to evaluate potential shifts or loss in the coal industry's employment resulting from enforcement of the Clean Air Act ("Act").[1] Murray claimed under § 321 of the Act, the EPA has a non-discretionary duty to evaluate and investigate employment reduction and threatened plant closures resulting from the Act's enforcement.[2] Murray further argued the Act's effects and the EPA's failure to evaluate the impact of those effects on the coal industry and its employees irreparably harmed Murray.[3] Holding that the EPA had a non-discretionary duty to evaluate employment loss and threatened plant closures, the United States District Court for the Northern District of West Virginia denied the EPA's Motion to Dismiss.[4] After significant proceedings, the EPA then filed a Motion for Summary Judgment.[5] Determining Summary Judgment inappropriate, the court held the EPA had a non-discretionary duty under § 321(a) of the Act and ordered it to fully comply with the requirement to evaluate the effects of the Act on the coal industry.[6]

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1. Murray Energy Corp. v. McCarthy, No. 5:14-CV-39, 2016 U.S. Dist. LEXIS 143404, 2015 WL 7017009 (N.D. W. Va. Oct. 17, 2016).
2. *Id.* at *3 (section 321(a) of the Clean Air Act is codified at 42 U.S.C. § 7621(a) (2012)).
3. *Id.* at *3.
4. *Id.* at *83.
5. *Id.* at *5, *6, *9.
6. *Id.* at *83.

II. FACTUAL AND PROCEDURAL BACKGROUND

The risk of economic depression affecting communities and workers was a significant congressional concern during the passage of environmental statutes, including the Act.[7] In 1977, Congress amended the Act to include a provision requiring the EPA to complete an ongoing evaluation of employment loss resulting from implementation of the Act's requirements.[8] The evaluation requirement included undertaking investigations of employment reductions or potential and actual plant closures.[9]

As "the largest underground coal mining operation in the United States," Murray argued that its financial livelihood depends on an active coal market.[10] Murray claimed that in the past five years, the EPA has waged war on coal by using the Act to promote other energy sources and incentivize a reduction in coal consumption.[11] Murray further alleged if the EPA evaluated the potential and actual plant closures occurring in the United States, combined with their resulting unemployment, the EPA's harmful policy practices would be exposed and necessitate reevaluation.[12]

Seeking declaratory and injunctive relief for the EPA's apparent refusal to conduct employment loss and plant closure evaluations, Murray filed its initial complaint against the EPA.[13] The EPA filed a motion to dismiss the complaint asserting the court lacked subject matter jurisdiction.[14] The court denied the Motion and found that the court had subject matter jurisdiction to hear the case and that the EPA had a non-discretionary duty to evaluate employment loss and plant closures.[15] Numerous procedural motions on behalf of the EPA followed culminating in a motion for summary judgment.[16]

In an effort to dismiss the case, the EPA sought Summary Judgment on three grounds.[17] First, the EPA asked the court to reevaluate its finding that § 321(a) of the Act places a non-discretionary duty on the EPA.[18] Second, the EPA reasserted its previous argument that Murray lacked Article III standing.[19] Third, the EPA maintained it was in full compliance with § 321(a)'s requirements.[20] In a lengthy opinion, the

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7. *Id.* at *48–*51.
8. *Id.* at *55 (citing H.R. REP. NO. 95-294, at 317 (1977)).
9. *Id.*
10. *Id.* at *28.
11. Pls.' Compl. 7 (Mar. 24, 2014) No. 5:14-cv-39.
12. *Murray Energy Corp*., 2016 U.S. Dist. LEXIS 143404, at *28.
13. *Id.* at *2–*3.
14. *Id.* at *3–*4.
15. *Id.* at *4.
16. *Id.* at *4–*9.
17. *Id.* at *11.
18. *Id.*
19. *Id.* at *11–*12.
20. *Id.* at *12.

court addressed each of the EPA's assertions and denied its Motion for Summary Judgment.

III. ANALYSIS

The District Court for the Northern District of West Virginia reviewed the EPA's Motion for Summary Judgment by first discussing the legal standard for Summary Judgment as governed by Federal Rule of Civil Procedure 56.[21] The court then examined each of the three grounds asserted by the EPA.[22]

A. Clean Air Act § 321(a) Creates a Non-Discretionary Duty

The court began its analysis of the statutory duty by examining the statute itself.[23] Using the canons of statutory interpretation, the court interpreted the provision's use of the word "shall" to impose a statutory mandate.[24] Citing case law, the court explained, "[t]he word 'shall' does not convey discretion. It is not a leeway word, but a word of command."[25] The court also examined the legislative history of § 321(a) for further support.[26] The court referenced the House Interstate and Foreign Commerce Committee report which stated that under § 321(a) the EPA is "mandated" to evaluate employment loss.[27]

Upon concluding the plain text and legislative history of § 321(a) support a non-discretionary reading of the statute, the court addressed the EPA's argument that the provision is discretionary because it does not include an "date-certain deadline."[28] The court found the provision promulgates a "continuing" timing requirement, which constitutes an "express unambiguous requirement on the agency of a continuing nature."[29] Further, the court relied on case law to show the absence of a bright line rule that only duties with date-certain deadlines are non-discretionary.[30] Conceding the EPA may have discretion regarding the timing of its evaluations, the court declined to accept that the EPA has the discretion to decline to conduct any evaluations at all.[31] The court reasoned the EPA cannot ignore required procedures placed on it by the

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21. *Id.* at *9.
22. *Id.* at *12, *25, *47.
23. *Id.* at *18.
24. *Id.* at *18, *19 (citing Alabama v. Bozeman, 533 U.S. 146, 153 (2001)).
25. *Id.* at *21 (quoting United States v. Fleet, 498 F.3d 1225, 1229 (11th Cir. 2007)).
26. *Id.* at *21.
27. *Id.* (citing H.R. REP. NO. 95-294, at 317 (1977)).
28. *Id.* at *21.
29. *Id.* at *22.
30. *Id.* at *24 (citing Sierra Club v. Johnson, No. C 08-01409, 2009 U.S. Dist. LEXIS 68436, 2009 WL 2413092, *3 (N.D. Cal. Aug. 5, 2009)).
31. *Id.* at *24.

statute and § 321(a)'s purpose is to place a non-discretionary duty on the EPA.[32]

B. Murray had Article III Standing to Maintain This Action

Article III standing is a jurisdictional requirement ensuring that a court may hear a case or controversy.[33] Standing consists of injury-in-fact, causation, and redressability.[34] A party seeking injunctive relief must show the injury-in-fact is concrete and particularized, actual and imminent, and not conjectural or hypothetical.[35] Further, the injury must be fairly traceable to the party's conduct and likely redressable upon a favorable judicial decision.[36]

The court applied Article III standing principles to *Murray* and reasserted its previous finding that Murray had standing to maintain its action.[37] In an action where the plaintiff is not the object of the challenged conduct, standing is "substantially more difficult to establish."[38] Upon recognizing a higher threshold applied in this case, the court addressed the EPA's arguments.[39]

The EPA argued that Murray made an insufficient showing of its alleged concrete economic injury by relying on an ambiguous reduction in the coal market.[40] The court disagreed, finding that any lack of evidentiary support rested on the EPA's failure to conduct evaluations as required by § 321(a).[41] The court further reasoned that the lack of evidence carried less weight in assessing concreteness than Murray's high personal stake in outcome.[42] The court concluded that Murray's high personal stake and the ability of economic injury to serve as an injury-in-fact combined to provide Murray with sufficient showing of a concrete and particularized injury-in-fact.[43]

The court then evaluated the causation element of standing and ultimately rejected the EPA's arguments asserting Murray failed to show causation.[44] The court found Murray's allegation that the EPA had a

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32. *Id.* at *25.
33. *Id.* (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).
34. *Id.* (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)).
35. *Id.* at *27 (quoting Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009)).
36. *Id.* at *27 (quoting *Summers*, 555 U.S. at 493).
37. *Id.* at *29.
38. *Id.* at *29, *30 (quoting *Summers*, 555 U.S. at 493-94).
39. *Id.* at *30.
40. *Id.*
41. *Id.*
42. *Id.* (citing Baker v. Carr, 369 U.S. 186, 204 (1962)).
43. *Id.* at *31 (citing White Oak Realty, LLC v. U.S. Army Corps of Eng'rs, 2014 U.S. Dist. LEXIS 123227, 2014 WL 4387317 (E.D. La. Sept. 4, 2014)).
44. *Id.* at *32, *38.

coercive effect on the energy industry sufficiently showed Murray's injuries were fairly traceable to the EPA's actions.[45] The EPA argued that only its previous actions would be fairly traceable to Murray's injuries.[46] The court rejected this argument and reasoned that Murray's injuries may also be fairly traceable to the EPA's failure to conduct § 321(a) evaluations.[47]

The EPA also argued that Murray failed to quantify its economic losses resulting from a reduced coal market.[48] The court refused to accept this argument. The court concluded that Murray was not required to quantify an economic injury to establish standing.[49] The court relied on one of Murray's experts to substantiate its rationale that Murray would likely suffer economic injury as a result of current Act's regulations and future EPA actions, including the Clean Power Plan.[50] The court also rejected the EPA's argument that because Murray is a larger corporation today than it was in 2009, it would not be injured by a depressed coal market; "EPA does not need to kill a company to injure it."[51]

Lastly, the court addressed redressability and found that Murray's injuries would likely be redressed upon a favorable judgment.[52] The court reasoned that if it granted Murray injunctive relief, the EPA's evaluation results may convince the EPA, Congress, or the public to amend the EPA's prior actions.[53] The court hypothesized that if the EPA refused to alter its actions after completing evaluation measures, the evaluation itself would lead to heightened congressional oversight of the EPA actions.[54]

C. The EPA Failed or Refused to Conduct Evaluations Required by Clean Air Act § 321

Addressing the EPA's third assertion for summary judgment, the court evaluated the EPA's arguments, considered its actions, and found that the EPA was not in compliance with the requirements of § 321(a).[55] The EPA's chiefly argued it had completed some evaluations that should satisfy § 321's requirements.[56] However, the court found the identified evaluations were not conducted under the statute and the EPA's

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45. *Id.* at *34.
46. *Id.*
47. *Id.*
48. *Id.* at *35, *36.
49. *Id.* at *36 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 578 (1992)).
50. *Id.* at *36, *37 (internal citation omitted).
51. *Id.* at *37; *see also* Halbig v. Burwell, 758 F.3d 390, 396 (D.C. Cir. 2014).
52. *Murray Energy Corp*., 2016 U.S. Dist. LEXIS 143404, 2015 WL 7017009 at *39.
53. *Id.*
54. *Id.*
55. *Id.* at *73
56. *Id.* at *47.

argument contradicts the statute's legislative history and the agency's own actions.[57]

First, the court evaluated the legislative intent of § 321(a) and found that Congress "unmistakably intended" to conduct evaluations of the Act's effects on employment in order to address and improve issues with job loss and plant closures.[58] The court cited various hearings and proposals exhibiting Congress's concern with economic depression resulting from environmental regulations.[59] Interestingly, when Congress added § 321(a) to the Act amendments in 1977,[60] the EPA had already taken action to evaluate employment loss through a program called Economic Dislocation Early Warning System ("EDEWS").[61]

EDEWS was a system designed to track employment loss and complete economic analysis aimed at identifying other potential losses resulting from regulation.[62] During the first ten years of implementing EDEWS, the EPA identified disruption and closures in 155 plants as a result of regulation.[63] However, the EPA discontinued the EDEWS program for unknown reasons and in *Murray* argued § 321 had not been interpreted to require the EPA to conduct employment evaluations.[64] The EPA's previous actions through EDEWS directly contradict the agency's interpretation.[65]

The record repeatedly set forth the EPA's argument that it had not interpreted § 321 as requiring the agency to conduct employment evaluations and that any employment investigations it conducted would have limited utility.[66] However, in the EPA's Motion for Summary Judgment it requested that the court recognize 64 documents as satisfying compliance with § 321(a).[67] The court found the EPA failed to explain this contradiction and none of the 64 documents mention § 321(a) or present a continuing evaluation of employment loss and plant closures.[68] The Court found the EPA's attempt to establish compliance with § 321(a) insufficient and reasserted its holding that the EPA was not in compliance with the provision's requirements.[69]

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57. *Id.* at *48, *58, *65.
58. *Id.* at *48, *49 (citing H.R. REP. 95-294, at 316 (1977)).
59. *Id.* at *50–*56.
60. *Id.* at *55.
61. *Id.* at *56.
62. *Id.*
63. *Id.* at *58.
64. *Id.*
65. *Id.* at *58–*59.
66. *Id.* at *58–*61 (citing EPA Administrator McCarthy's response to various requests for the EPA's continuing evaluations of employment loss due to environmental rulemakings).
67. *Id.* at *65.
68. *Id.* at *66, *71.
69. *Id.* at *73.

IV. CONCLUSION & IMPLICATIONS

Defeating each of the EPA's arguments, the court granted Summary Judgment in favor of Murray.[70] The court reasoned that the importance, effects, and claims of the coal industry require the EPA to conduct evaluations on the effects environmental regulations impose on the industry, and the EPA's refusal to do so would be an abuse of discretion.[71] This decision reflects issues surrounding the ongoing Clean Power Plan litigation and the opposition of many coal producing states regarding environmental regulation and the economic burden it imposes on the energy sector. This claim can largely be viewed as an attempt to limit the looming effects the Clean Power Plan imposes on the coal industry. Notwithstanding the Clean Power Plan, due to recent political developments coal companies may abandon this litigation although they have established economic injury sufficient to force the EPA to wholly adhere to the Clean Air Act.

70. *Id.* at *83.
71. *Id.* at *83.