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Murray Energy Corporation v. Administrator of Environmental Protection Agency

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***Murray Energy Corporation v. Administrator of Environmental Protection Agency*, 861 F.3d 529 (4th Cir. 2017)**

Peter B. Taylor

Congress amended the Clean Air Act in 1977 because of public concern that enforcement of the Clean Air Act would have adverse effects on employment. Section 321(a) tasks the Administrator of the Environmental Protection Agency with a continuous duty to evaluate the potential employment impact of the administration and enforcement of the Clean Air Act. In *Murray Energy Corporation v. Administrator of Environmental Protection Agency*, the United States Court of Appeals for the Fourth Circuit ruled on whether the federal court’s authority to review and enforce non-discretionary Clean Air Act duties extended to the EPA’s Section 321(a) duty to continuously evaluate the employment ramifications of the Clean Air Act. Ultimately, the Fourth Circuit ruled that the EPA’s Section 321(a) duty was discretionary and not reviewable by federal courts.

I. INTRODUCTION

Murray Energy Corporation and associated companies (“Murray”) sued the Administrator of the Environmental Protection Agency (“EPA”) under Section 304(a)(2) of the Clean Air Act (“CAA”), which provides any person the right to file a civil action against an EPA administrator failing to perform a non-discretionary duty under the CAA.¹ At question in *Murray Energy Corporation v. Administrator of Environmental Protection Agency* was Section 321(a) of the CAA, which requires the EPA to continuously monitor and evaluate potential employment impacts of the CAA’s acts and duties.² Murray asserted that Section 321(a) created a non-discretionary duty for the EPA Administrator, therefore granting authority of review and enforcement to federal courts under Section 304(a)(2).³

The United States District Court for the Northern District of West Virginia ruled in favor of Murray’s assertion that Section 321(a) was enforceable under the CAA’s citizen suit provision, and Murray “possessed standing to seek redress for alleged procedural, economic, and informational injuries.”⁴ However, the United States Court of Appeals for the Fourth Circuit overturned the ruling, holding that the employment evaluation provision was a matter of EPA discretion, and, as such, not reviewable under Section 304(a)(2).⁵

1. *Murray Energy Corporation v. Administrator of Environmental Protection Agency*, 861 F.3d 529, 533 (4th Cir. 2017) (citing 42 U.S.C. § 7604(a)(2) (2017)).

2. *Id.* at 532.

3. *Id.* at 533.

4. *Id.* at 534.

5. *Id.* at 537.

II. FACTUAL AND PROCEDURAL BACKGROUND

Murray filed suit in 2014 alleging that the EPA failed to comply with Section 321(a) of the CAA.⁶ The EPA sought to dismiss the suit on jurisdictional grounds, maintaining that Section 321(a) was a discretionary duty for the Administrator and, therefore, not “cognizable” to the citizen suit language of Section 304(a)(2).⁷ Additionally, the EPA asserted that Murray lacked standing to challenge the EPA’s alleged non-compliance.⁸ However, the district court declined to dismiss the suit at the pleading stage.⁹

Following the district court’s refusal to dismiss on its jurisdictional arguments, the EPA moved for summary judgment and “simultaneously proffered fifty-three documents to prove Section 321(a) compliance.”¹⁰ The documents included a “regulatory impact analysis, economic impact analysis, white papers, and other reports.”¹¹ While the documents proffered were not specifically created for Section 321(a) compliance, the EPA requested that the court grant summary judgment on the evidence, or, alternatively, grant summary judgment in favor of Murray if the court found the evidence insufficient.¹² Upon Murray’s request, the court held the EPA’s motion in abeyance until the close of discovery.¹³

At the close of discovery, the EPA filed a renewed motion for summary judgment.¹⁴ The EPA again argued that the court did not have the authority to rule on Section 321(a) compliance because it was Administrator’s discretionary duty, and that Murray lacked standing.¹⁵ Additionally, the EPA “renewed its request for an up-or-down merits ruling” on their documentation proffer, which, due to its continuous duty under Section 321(a), had grown to sixty-four documents.¹⁶

The district court granted summary judgment to Murray on October 17, 2016.¹⁷ The court ruled that 1) Section 321(a) creates a non-discretionary duty for the Administrator, which gave the court jurisdiction to enforce it under Section 304(a)(2); 2) Murray had standing to seek redress for its alleged procedural, economic, and informational injuries; and 3) the CAA obligated the EPA to evaluate site specific employment

6. *Id.* at 533.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

effects of CAA implementation, which the EPA did not meet.¹⁸ The court ordered the EPA to file a “plan and schedule for compliance with [Section] 321(a) both generally and in the specific area of the effects of its regulations on the coal industry.”¹⁹

On October 31, 2017, the EPA responded to the district court’s Summary Judgment Opinion by renewing objections to the court’s jurisdictional, merits, and preliminary remedial rulings, and outlining a proposed plan and schedule to comply with Section 321(a)’s evaluations.²⁰ Murray criticized the plan and the court ultimately rejected it.²¹

The district court issued an opinion and order outlining the appropriate remedy on January 11, 2017.²² The court demanded the EPA conduct evaluations identifying facilities at risk of closure or reductions in employment due to CAA losses and evaluate the impacts on families and communities.²³ The court’s remedy did not grant Murray complete relief, as it did not stay pending CAA regulations or limit the EPA’s authority to propose or finalize new CAA regulations.²⁴ Section 321(d) imposed the limits on the court’s remedy.²⁵

The EPA appealed the summary judgment opinion, the remedial opinion, and the intervention order, challenging the jurisdictional, merits, and remedial rulings.²⁶

III. ANALYSIS

The Fourth Circuit began its analysis of the district court’s ruling by examining Section 304(a)(2), which authorized Murray’s Section 321(a) claim.²⁷ The courts define Section 304(a)(2) “‘narrowly’ by confining its scope to the enforcement of legally required acts or duties of a specific and discrete nature that precludes broad agency discretion.”²⁸ The courts favor narrow construction of Section 304(a)(2) because it “reduces the risk of judicial disruption of complex agency process,” and parallels the congressional intent suggested by the non-discretionary requirement in the statute.²⁹ The narrow construction of Section 304(a)(2) is also in line with the traditional principle for judicial review of mandamus and the modern mechanism defined in Section 706(1) of the

18. *Id.* at 534. (citing *Murray Energy Corp. v. McCarthy*, No. 5:14-cv-39, 2016 WL 6083946 (N.D.W. Va. Oct. 17, 2016).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* (citing *Murray Energy Corp. v. McCarthy*, No. 5:14-cv-39, — F.Supp.3d—, 2017 WL 150511 (N.D.W. Va. Jan. 11, 2017).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 535.

28. *Id.* (citations omitted).

29. *Id.*

Administrative Procedure Act (APA).³⁰ “A claim under Section 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take.”³¹

Having defined the scope of Section 304(a)(2), the court examined whether suits authorized under Section 321(a) fit within the narrow parameters of that definition.³² Examining the plain language of Section 321(a), the court did not find that the statutory language “imposed on the EPA a specific and discrete duty amenable to Section 304(a)(2) review.”³³ The court noted several factors in its interpretation of the statutory language: 1) evaluations of the potential impacts of CAA enforcements and procedures demand the exercise of agency judgment; 2) the evaluations are not confined to a discrete time period but instead are ongoing; 3) the open ended nature of Section 321(a) does not specify any guidelines and procedures for evaluation; and 4) Section 321(a) is not in line with other CAA provisions that “offer discrete directives accompanied by specific guidance on matters of content, procedure, and timing.”³⁴

Since the court did not find the statutory language contained in Section 321(a) specific or discrete, the court determined it to be a discretionary duty.³⁵ The court, narrowly construing Section 304(a)(2), held the statute did not authorize Murray to sue the EPA and the district court lacked jurisdiction over the suit.³⁶ The court vacated the district court’s judgments for lack of jurisdiction.³⁷

IV. CONCLUSION

This decision is in line with prior rulings made under the narrow scope of Section 304(a)(2), which lends itself to judicial predictability under the CAA. Consequently, by defining Section 304(a)(2) narrowly, those provisions of the CAA deemed discretionary may be left without the teeth of judicial review. Section 321(a)’s legislative intent was to assure that the EPA accounted for employment concerns when enforcing CAA regulations. However, by finding Section 321(a) exempt from judicial review, ensuring that the EPA fulfils the Congressional intent has become more difficult. This ruling may prompt Congress to revisit the language in Section 321(a) of the CAA to add specific guidelines and parameters, such that it can fit within the narrow scope of Section 304(a)(2) review.

30. *Id.*

31. *Id.* (citing *Norton v. S. Utah Wilderness All.*, 542 U.S. 55 (2004)).

32. *Id.*

33. *Id.* at 536.

34. *Id.*

35. *Id.*

36. *Id.* at 537.

37. *Id.*