

ORAL ARGUMENT OCCURRED OCTOBER 8, 2020
JUDGMENT AND OPINION ISSUED JANUARY 19, 2021

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

AMERICAN LUNG ASSOCIATION, ET AL.,)
)
)
 Petitioners,)
)
) No. 19-1140 and
 v.) consolidated cases
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
)
 Respondent.)
)
)

STATUS REPORT

1. The consolidated petitions for review in this case challenged three rules: the Clean Power Plan (CPP) Repeal Rule; the Affordable Clean Energy (ACE) Rule which established emissions guidelines for existing coal-fired power plants under the Clean Air Act, 42 U.S.C. § 7411(d); and updated regulations for implementation of emissions guidelines under Section 7411(d). *See* 84 Fed. Reg. 32,520 (July 8, 2019).

2. In merits briefing, the environmental and state petitioners challenged all three rules. Env. Br. at 45-46, Doc. Id. No. 1838680;

States Br., Doc. Id. No. 1838735. The environmental petitioners further asserted that if their petition challenging the CPP Repeal Rule was granted, the CPP should not be reinstated because the deadlines provided for by the rule had long passed, and the emissions targets were out of date. Env. Br. at 45-46. EPA likewise argued that if the CPP Repeal Rule was invalidated, the CPP rule should not be reinstated. EPA Br. at 266-67, Doc. Id. No. 1856430.

3. On January 19, 2021, this Court issued its decision, vacating the CPP Repeal Rule, the ACE Rule, and the challenged timing provisions within the implementing regulations. See ACE Decision, Doc. Id. No. 1880546. The decision did not specifically address whether the CPP should be reinstated upon vacatur of the CPP Repeal Rule. *See id.* The Court stayed issuance of the mandate until seven days after the deadline for petitions for rehearing en banc. Jan. 19, 2021 Order, Doc. Id. No. 1880547. The time for filing such petitions expired on March 5, 2021.

4. On February 12, 2021, EPA filed a motion for partial stay of the issuance of the mandate. Doc. Id. No. 1885168. Specifically, EPA requested that the Court stay the issuance of the mandate for the

vacatur of the Clean Power Plan Repeal Rule until EPA responds to the Court's remand in a new rulemaking action. *Id.* at 5.

5. The Court granted EPA's motion on February 22, 2021. Order, Doc. Id. No. 1886386. It further directed EPA to file status reports at 90-day intervals. Pursuant to this order, EPA states that administrative proceedings to respond to the Court's remand in a new rulemaking action are ongoing. EPA's next status report is due on August 23, 2021.

Respectfully submitted,

Dated: May 24, 2021

/s/ Benjamin Carlisle

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served on May 24, 2021, through the ECF filing system and will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Benjamin Carlisle

BENJAMIN CARLISLE