

## Energy and Environment Monitor

June 12, 2015

### **Court Compels EPA to Respond to Murray Energy's Discovery Requests in WV Clean Air Act Case**

In March 2014, Murray Energy sued EPA in West Virginia. Murray claimed EPA had failed to conduct "continuing evaluations of potential loss or shifts of employment which may result from the administration of" the Clean Air Act as required by Section 321(a) of that Act. In particular, Murray claimed EPA had not conducted the required evaluations of the effect of its programs on the coal industry and sought to enjoin EPA from finalizing its Clean Power Rule until it did.

As [previously noted](#), EPA's early efforts to have the case dismissed were denied. EPA then filed a motion for summary judgment, claiming that it had already performed the required evaluations. As part of that motion, it produced some 50 reports, though it is far from clear that any of them were prepared to comply with Section 321. It was also unclear whether there were other papers which EPA has not produced. Murray Energy then sought to compel discovery from EPA, arguing that it could not respond adequately to EPA's motion for summary judgment until it could assess exactly what evaluations EPA has or has not undertaken. EPA sought to block discovery, but by [order of May 29, 2015](#), a federal court in West Virginia ordered EPA to submit discovery and held its motion for summary judgment in abeyance. By order of June 4, 2011, the Court denied EPA's motion to reconsider or for clarification.

This article was authored by [Robert G. McLusky](#).