

ORAL ARGUMENT HELD SEPTEMBER 27, 2016

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

STATE OF WEST VIRGINIA, ET AL.,)	
)	
Petitioners,)	
)	
v.)	No. 15-1363 (and
)	consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, ET AL.,)	
)	
Respondents.)	

**EPA’S RESPONSE IN SUPPORT OF
PETITIONERS’ MOTION TO DISMISS**

EPA supports the Petitioners’ motion to dismiss the petitions in this matter. On July 8, 2019, EPA published in the Federal Register a final rule repealing the challenged Clean Power Plan.¹ Petitioners have thus secured the relief they sought in this lawsuit.

Because these petitions challenge an agency rule that has been repealed, they are moot and must be dismissed because there is no longer an Article III case or controversy. *See Akiachak Native Cmty. v. United States DOI*, 827 F.3d 100, 113-15

¹ “Repeal of the Clean Power Plan: Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” 84 Fed. Reg. 32,520 (July 8, 2019).

(D.C. Cir. 2016) (dismissing appeal based on this “perfectly uncontroversial and well-settled principle of law” and collecting cases). Indeed, such occurrences are so routine that they are “ordinarily . . . handle[d] in an unpublished order.” *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 46 (D.C. Cir. 1992); *see, e.g., Am. Lung Ass'n v. EPA*, No. 17-1172, 2019 U.S. App. LEXIS 34, at *4-6 (D.C. Cir. Jan. 2, 2019) (unpublished); *EDF v. EPA*, No. 18-1190, 2018 U.S. App. LEXIS 24040, at *5 (D.C. Cir. Aug. 22, 2018) (unpublished). Further underscoring the lack of any remaining live case or controversy here, Petitioners themselves have moved voluntarily for dismissal.

For the foregoing reasons, the Court should dismiss all of the petitions in these consolidated cases as moot.

Respectfully submitted,

JONATHAN D. BRIGHTBILL
Principal Deputy Assistant Attorney
General

Dated: July 17, 2018

/s/ Benjamin Carlisle
BENJAMIN CARLISLE
MEGHAN GREENFIELD
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
Phone: (202) 514-9771
Email: benjamin.carlisle@usdoj.gov

*Counsel for Respondent Environmental
Protection Agency and Andrew Wheeler,
Administrator*

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that the foregoing complies with the type-volume limitation because it contains 241 words, according to the count of Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c), that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

/s/ Benjamin Carlisle
Benjamin R. Carlisle