

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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APPALACHIAN VOICES, <u>et al.</u> ,))	
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Plaintiffs,))	
))	
v.))	Civil Action No. 12-0523 (RBW)
))	
GINA MCCARTHY, ¹))	Consolidated Case Nos. 12-0585 (RBW)
In her official capacity as Administrator,))	12-0629 (RBW)
United States Environmental))	
Protection Agency,))	
))	
Defendant, and))	
))	
UTILITY SOLID WASTE))	
ACTIVITIES GROUP, and))	
))	
NATIONAL MINING ASSOCIATION,))	
))	
Intervenor-Defendants.))	
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ORDER

In accordance with the Memorandum Opinion issued on this same date and the Order issued on September 30, 2013, it is hereby

ORDERED that Appalachian Voices, et al.'s motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. Accordingly, the Court grants summary judgment to defendant Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"), and to intervenor-defendants Utility Solid Waste Activities Group and National Mining Association on the Environmental Plaintiffs' first and third claims for relief, which are hereby **DISMISSED**. In addition, the Court grants

¹ The plaintiffs filed suit against Lisa P. Jackson, then Administrator of the United States Environmental Protection Agency, in her official capacity. Pursuant to Federal Rule of Civil Procedure 25(d), the Court substitutes Gina McCarthy, who succeeded Jackson as Administrator.

summary judgment to Appalachian Voices, et al. on the merits of their second claim for relief, but denies their request for an order directing the EPA to comply with its obligation to review and, if necessary, revise its Subtitle D regulations concerning coal ash within six months of this Court's decision. It is further

ORDERED that Headwaters Resources, Inc.'s and Boral Material Technologies Inc.'s motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**.

Accordingly, the Court grants summary judgment to Headwaters Resources, Inc. and Boral Material Technologies Inc. on the merits of their claim for relief, but denies their joint request that the Court order the EPA to announce its regulatory direction and authority for regulation within three months of this Court's decision. It is further

ORDERED that the EPA's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. Accordingly, the Court grants summary judgment to the EPA on Appalachian Voices, et al.'s first and third claims for relief, but denies its motion for summary judgment as to Headwaters Resources, Inc.'s and Boral Material Technologies Inc.'s sole claim for relief. The Court further denies the Agency's request to submit to the Court its proposed deadline for compliance with its obligation to review and, if necessary, revise its Subtitle D regulations concerning coal ash within six months of this Court's decision. It is further

ORDERED that the Utility Solid Waste Activities Group's and National Mining Association's motion for summary judgment is **GRANTED IN PART AND DENIED IN PART**. Accordingly, the Court grants summary judgment to the Utility Solid Waste Activities Group and the National Mining Association on Appalachian Voices, et al.'s first and third claims for relief, but denies its motion for summary judgment as to Appalachian Voices, et al.'s second

claim for relief and Headwaters Resources, Inc.'s and Boral Material Technologies Inc.'s sole claim for relief. It is further

ORDERED that the EPA shall file a written submission with this Court setting forth a proposed deadline for its compliance with its obligation to review and revise if necessary its Subtitle D regulations concerning coal ash, along with its legal justification for its proposed deadline, within sixty days of this Court's order. It is further

ORDERED that the plaintiffs may file a response to the EPA's submission thirty days thereafter; and that the EPA may respond fourteen days thereafter. It is further

ORDERED that the previously-scheduled status conference set for November 7, 2013, is **CONTINUED** to a date to be determined by the Clerk.

SO ORDERED this 29th day of October, 2013.

REGGIE B. WALTON
United States District Judge