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D.C. Circuit Leaves US EPA's Mercury Rule in Place During Remand

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On December 15, 2015, the United States Court of Appeals for the District of Columbia [rejected](#) challenges by energy industry groups and several states that are seeking to scrap US EPA's **Mercury and Air Toxics Standards** ("MATS") final rule. **White Stallion Energy Center, LLC v. EPA**, Case No. 12-1100. The Court remanded the rule to US EPA for further consideration, but without vacatur, allowing the rule to remain in effect until it is revised by the agency.

The ruling comes after the June 29, 2015 [decision](#) by the US Supreme Court (a 5-4 decision) holding that US EPA interpreted 42 U.S.C. §7412(n)(1)(a) unreasonably in finding costs irrelevant to its decision to regulate power plants, and remanding the case to the Court of Appeals. The Court found that "The Agency must consider cost—including, most importantly, cost of compliance—before deciding whether regulation is appropriate and necessary."

On November 20, 2015, US EPA issued a proposed [supplemental finding](#) in response to the Court's decision that indicated "a consideration of costs does not alter the EPA's previous determination that it is appropriate to regulate air toxics, including mercury, from power plants." The supplemental finding indicates that it "does not affect power plants' compliance obligations, which began in April of this year, or the steps that many plants across the country have already taken and are continuing to take to meet those obligations by installing controls and technologies to reduce toxic air emissions." The supplemental finding was published in the Federal Register on December 1, 2015, and provides that public comments will be accepted through January 15, 2016.

The Court's order noted that US EPA has represented that it is on track to issue a final finding by April 15, 2016.

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