

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES SUGAR)	
CORPORATION,)	
)	
Petitioners,)	
)	
v.)	Docket No. 11-1108
)	(and consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
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**EPA’S MOTION TO SUSPEND THE BRIEFING SCHEDULE
PENDING RESOLUTION OF EPA’S MOTION FOR REMAND
OF THE RECORD AND FOR PARTIAL VOLUNTARY
REMAND WITHOUT VACATUR**

Respondents United States Environmental Protection Agency, et al.,
(collectively “EPA”) hereby move to suspend the briefing schedule in this case pending the Court’s resolution of EPA’s Motion for Remand of the Record and for Partial Voluntary Remand Without Vacatur (ECF No. 1482091). The undersigned counsel has contacted counsel for the other parties. Petitioners Sierra Club, et. al., have represented that they do not oppose this motion. Petitioners United States Sugar Corporation, American Forest & Paper Association, et al., Coalition for Responsible Waste Management, Council of Industrial Boiler Owners, American

Municipal Power, Inc., JELD-WEN, Inc. and Intervenor Auto Industry Forum have represented that they take no position at this time and reserve the right to file a response. No response was received from the remaining parties.

The consolidated petitions in this action seek review of two EPA rulemakings, “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” 76 Fed. Reg. 15,608 (March 21, 2011) (“Major Boiler MACT Rule”), and EPA’s action on reconsideration of certain issues from the Major Boiler MACT Rule, 78 Fed. Reg. 7138 (January 31, 2013) (“Reconsideration Rule”). These rules set standards pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, for industrial, commercial and institutional boilers and process heaters that are major sources of hazardous air pollutants.

EPA has filed today a motion (1) for a remand of the record to EPA for 60 days so that EPA can supplement the record in light of this Court’s decision in *National Association of Clean Water Agencies v. EPA*, 734 F.3d 1115 (D.C. Cir. 2013) (“*NACWA*”), in order to provide further explanation of the analysis of variability used in setting the numeric standards; and (2) for voluntary remand without vacatur of certain of the numeric standards in the rule so that EPA can review the appropriateness of applying that variability analysis to limited data sets

in light of the *NACWA* decision. In this motion, EPA seeks a suspension of the briefing schedule pending the Court's resolution of the remand motion.

The Court established a briefing schedule in this case by Order dated January 31, 2014. ECF No. 1477836. Pursuant to that Order, Petitioners' briefs are currently due March 28, 2014. If granted, EPA's remand motion would alter the issues to be briefed in this case by remanding certain standards to EPA. It would also provide a 60-day period for EPA to provide further explanation of the analysis used by EPA in establishing the numeric standards in the rule under review. Thus, if the motion were granted it would be appropriate to delay briefing until the remand of the record is complete to allow Petitioners to address EPA's further explanation. Furthermore, given that the issues in the case will change if the remand is granted, it would be appropriate to suspend briefing while the Court considers the remand motion so that Petitioners will have certainty as to what issues remain in the case, and thus require briefing. As discussed in the remand motion, EPA is requesting that briefing in this case resume 30 days after the end of the remand of the record.

Accordingly, EPA's Motion to Suspend Briefing Pending Resolution of EPA's Motion for Remand of the Record and for Partial Remand Without Vacatur should be granted.

Respectfully submitted,

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February 28, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 2014, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on all counsel of record in this matter.

/S/ Norman L. Rave, Jr.
Norman L. Rave, Jr.