

ORAL ARGUMENT NOT YET SCHEDULED
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TRUCK TRAILER
MANUFACTURERS ASS'N, INC.,

No. 16-1430

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY; SCOTT
PRUITT, in his official capacity
as Administrator, U.S. Environmental
Protection Agency; NATIONAL
HIGHWAY TRAFFIC SAFETY
ADMINISTRATION; and JACK
DANIELSON, in his official capacity as
Acting Deputy Administrator, National
Highway Traffic Safety Administration,¹

Respondents, and

CALIFORNIA AIR RESOURCES
BOARD, et al,

Intervenors.

¹ Pursuant to Fed. R. App. P. 43(c)(2), Scott Pruitt has been substituted for Gina McCarthy and Jack Danielson for Mark Rosekind.

RACING ENTHUSIASTS AND
SUPPLIERS COALITION,

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and SCOTT
PRUITT, in his official capacity as
as Administrator, U.S. Environmental
Protection Agency,¹

Respondents.

No. 16-1447

MOTION TO HOLD CASES IN ABEYANCE FOR 90 DAYS

Respondents U.S. Environmental Protection Agency et al. respectfully request that the Court hold these consolidated cases in abeyance for 90 days, until July 20, 2017, to give Respondents time to review a request for review and reconsideration submitted by Petitioner Truck Trailer Manufacturers Association (Trailer Petitioner). Within the 90-day abeyance period, Respondents will file a motion to govern further proceedings. Counsel for Respondents has conferred with counsel for the parties: Trailer Petitioner opposes this motion; Petitioner

Racing Enthusiasts and Suppliers Coalition supports this motion; and Intervenors² take no position on this motion. In support of this motion Respondents state:

1. These consolidated cases seek review of the action “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2,” 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the Rule). The petitions for review were filed on December 22, 2016 (No. 16-1430) and December 27, 2016 (No. 16-1447). The Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and National Highway Traffic Safety Administration on behalf of the U.S. Department of Transportation (DOT) under the Clean Air Act and the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act.
2. A briefing schedule has not been established. On March 22, 2017, the Court ordered the parties to submit proposed briefing formats by April 21, 2017.
3. On April 3, 2017, Trailer Petitioner submitted a letter to EPA and DOT requesting that the agencies review, reconsider, and, in the interim, stay the

² Intervenors are the California Air Resources Board, State of Connecticut, State of Iowa, State of Massachusetts, State of Oregon, State of Rhode Island, State of Vermont, State of Washington, Center for Biological Diversity, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and the Union of Concerned Scientists.

effectiveness of the Rule's trailer standards.³ Respondents recently began the process of reviewing Trailer Petitioner's request and will require additional time for that review.

4. Abeyance would preserve the resources of the parties and the Court, especially where briefing has not begun and oral argument has not been scheduled. It is possible that after reviewing the request, the agencies could decide to conduct further rulemaking or undertake other actions that could obviate the need for judicial resolution of some or all the issues raised by Trailer Petitioner. As such, abeyance is warranted.
5. No party will be prejudiced by the relief requested in this motion: No briefing schedule has been set and the requested 90-day abeyance will preserve the parties' positions while Respondents review Trailer Petitioner's request.
6. Respondents will file a motion to govern further proceedings in which they will advise the Court whether further abeyance is appropriate.

Respondents therefore respectfully request that the Court grant their motion to hold these consolidated cases in abeyance for 90 days, until July 20, 2017.

³ Trailer Petitioner's request contends in part that reconsideration is warranted because the President's March 28, 2017, Executive Order, entitled "Promoting Energy Independence and Economic Growth," requires review of actions relating to or arising from the President's June 2013 Climate Action Plan.

Dated: April 20, 2017

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General

/s/ Sue Chen

SUE CHEN
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 305-0283
Sue.Chen@usdoj.gov

CHAD A. READLER
Acting Assistant Attorney General

DOUGLAS N. LETTER
H. THOMAS BYRON III
U.S. Department of Justice
Civil Division, Appellate Staff
950 Pennsylvania Avenue, N.W.
Room 7529
Washington, D.C. 20530
Tel: (202) 616-5367
H.Thomas.Byron@usdoj.gov

Counsel for Respondents

Certificate of Compliance

I certify that this filing complies with Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

I further certify that this filing complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A), because it contains 562 words, excluding the parts of the filing exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Sue Chen

SUE CHEN

Certificate of Service

I certify that on April 20, 2017, I filed the foregoing with the Court's CMS/ECF system, which will send notice to each party.

 /s/ Sue Chen

SUE CHEN