

ORAL ARGUMENT NOT YET SCHEDULED

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

National Waste & Recycling Association, et al.,)	
)	
)	
)	
Petitioners,)	
)	
v.)	No. 16-1371
)	Consolidated with No. 16-1374
United States Environmental Protection Agency, and Scott Pruitt, Administrator, United States Environmental Protection Agency,)	
)	
)	
Respondents.)	

JOINT MOTION TO GOVERN FURTHER PROCEEDINGS

On June 14, 2017, the Court ordered these consolidated cases held in abeyance for 90 days and directed the parties to file motions to govern further proceedings by September 12, 2017. ECF No. 1679697. Respondents (EPA) and Petitioners jointly move that the Court continue to hold these consolidated cases in abeyance for another 90 days.¹ Counsel for EPA conferred with counsel for Intervenors, who indicated they take no position on the relief requested in the motion.

In support of this motion, Petitioners and EPA state as follows:

¹ A similar motion is being filed in Case No. 16-1372, where the Court entered a June 14, 2017 Order holding that case in abeyance for 90 days. ECF No. 1679699.

1. On October 27, 2016, National Waste & Recycling Association, Solid Waste Association of North America, Inc., Waste Management, Inc., Republic Services, Inc., and Waste Management Disposal Services of Pennsylvania, Inc. (the Landfill Petitioners) filed a petition for judicial review of the final rule challenged in these cases, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) (the Landfill Emission Guidelines) (Case No. 16-1371). The Utility Air Regulatory Group filed a petition for judicial review on October 28, 2016 (Case No. 16-1374). The Court consolidated the two cases on November 1, 2016. ECF No. 1644017.

2. On October 27, 2016, the Landfill Petitioners submitted a Petition to EPA for Reconsideration, Rulemaking, and Administrative Stay of the Landfill Emission Guidelines.

3. In a May 5, 2017 letter to the Landfill Petitioners, EPA Administrator Scott Pruitt convened a proceeding for reconsideration to address six topics related to the Landfill Emission Guidelines. In the letter, Administrator Pruitt also announced that the EPA will prepare a notice of proposed rulemaking to provide an opportunity for comment on those topics, as well as “any other matter” that EPA concludes may benefit from additional comment.

4. On May 26, 2017, EPA filed an unopposed Motion to Hold Consolidated Cases in Abeyance for 90 Days, ECF No. 1676980, which the Court

granted by Order dated June 14, 2017, ECF No. 1679697. The Court further directed the parties to file motions to govern further proceedings by September 12, 2017. *Id.*

5. At this time, EPA has not completed its reconsideration of issues concerning the Landfill Emission Guidelines. To promote judicial efficiency, conserve resources, and avoid potentially unnecessary litigation, Petitioners and EPA propose that the Court continue to hold these cases in abeyance for an additional 90 days, and direct the parties to submit another motion to govern further proceedings at the conclusion of that abeyance. *See Basardh v. Gates*, 545 F.3d 1068, 1069 (D.C. Cir. 2008) (finding cause for abeyance when other pending proceedings may affect the outcome of the case).

Accordingly, Petitioners and EPA request that the Court (1) order these consolidated cases be held in abeyance for another 90 days from the issuance of the Court's order, and (2) order the parties to file motions to govern further proceedings at that time.

Dated: September 12, 2017

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH
FEDERAL RULE OF APPELLATE PROCEDURE 27(D)**

I certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 471 words, excluding the parts of the motion exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Justin D. Heminger
Justin D. Heminger

CERTIFICATE OF SERVICE

I certify that on September 12, 2017, I electronically filed the foregoing with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

/s/ Justin D. Heminger
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