

**U.S. Department of Justice**

Environment and Natural Resources Division

Environmental Defense Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 514-2219
Facsimile (202) 514-8865

Oral Argument Scheduled for September 6, 2019

August 13, 2019

VIA ELECTRONIC FILING

The Hon. Mark J. Langer
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
Room 5523
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: *State of California, et al. v. EPA*: No. 18-1114 (and consolidated cases); EPA Response to Petitioners' August 7, 2019 Notice of Supplemental Authority

Dear Mr. Langer:

Respondents United States Environmental Protection Agency et al. (EPA) hereby respond to Petitioners' August 7, 2019, 28(j) Letter, ECF No. 1801154, citing to a final rule recently issued by the National Highway Traffic Safety Administration (NHTSA), 84 Fed. Reg. 36,007. The cited NHTSA rule does not bear upon the finality of the EPA action under review.

Petitioners in this matter challenge EPA's decision to initiate a Clean Air Act rulemaking to potentially revise greenhouse gas emission standards for model year 2022-2025 light-duty vehicles. As set forth in EPA's brief, that preliminary action is not a reviewable final agency action under the Act.

The cited NHTSA rule addresses a different regulatory program under a different statute. NHTSA's rule does not address the mid-term evaluation of EPA's vehicle greenhouse gas standards, but rather addresses the civil penalty rate applicable to automobile manufacturers that fail to meet corporate average fuel economy standards (CAFE) under the Energy Policy and Conservation Act. In its CAFE civil penalty rule, NHTSA concluded, among other things, that increasing the penalty rate could adversely affect competition or have negative economic impact. In the context of responding to comments on those conclusions, NHTSA indicated that it would not give weight to certain EPA statements cited in comments because they were being reconsidered by EPA as part of its ongoing Clean Air Act rulemaking. NHTSA's responses to comments in this regard are consistent with a conclusion that EPA has not taken final action. EPA has not concluded its pertinent decision-making process concerning the potential revision of light-duty vehicle greenhouse gas emission standards.

Sincerely,

/s/ Eric G. Hostetler

Eric G. Hostetler

cc: Counsel of record, via CM/ECF

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, I electronically filed the foregoing Rule 28(j) response letter with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Eric G. Hostetler

ERIC G. HOSTETLER

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 28(j) because it contains approximately 261 words according to the count of Microsoft Word and therefore is within the word limit of 350 words.

Dated: August 13, 2019

/s/ Eric G. Hostetler
Counsel for Respondent