

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA COURTRACING ENTHUSIASTS AND
SUPPLIERS COALITION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; and MICHAEL S. REGAN, in
his official capacity as Administrator, U.S.
Environmental Protection Agency,

Respondents.

No. 16-1447

Unopposed Motion to Lift Abeyance and Set a Briefing Schedule

Petitioner Racing Enthusiasts and Suppliers Coalition (the Coalition) files this unopposed motion for this Court to lift the abeyance currently applicable to this case and to set a briefing schedule. The Coalition filed this action on December 27, 2016, seeking 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 Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration on behalf of the U.S. Department of Transportation under the Clean Air Act and the Energy Policy and Conservation Act. On October 26, 2017, the

Court granted EPA's motion to place this case in abeyance. More recently, on December 26, 2019, the Court directed EPA and the Coalition to file motions to govern future proceedings after discussion between the parties have concluded. While counsel for Petitioner and Respondent conferred prior to filing of this motion, substantive discussions between the parties are not ongoing, and the Coalition submits this motion to remove the case from abeyance and set a briefing schedule.

BACKGROUND

The Coalition seeks judicial review of the Rule, which was promulgated jointly by EPA and NHTSA. The Coalition's petition for review was originally consolidated with Case No. 16-1430, a separate petition challenging the Rule filed by the Truck Trailer Manufacturers Association (TTMA). In their respective challenges, TTMA and the Coalition each raised separate and distinct issues. TTMA challenged the Rule's trailer provisions. The Coalition's challenge related to EPA's assertions in the Rule that individuals who modify certain vehicles and/or engines for off-road racing/competition purposes or that manufacturers of parts for these individuals and companies could be considered in violation of the Clean Air Act.

On September 18, 2017, Respondents moved to hold the consolidated petitions in abeyance pending EPA's reconsideration of the trailer provisions in the Rule. On October 26, 2017, the Court granted the motion and ordered status reports every 90 days.

On December 3, 2019, TTMA filed a motion to lift the abeyance. The Coalition took no position on the motion but requested that if the motion was granted, the Court would continue the abeyance as to the issues raised by the Coalition. On December 26, 2019, the Court severed the Coalition's petition from Case No. 16-1430, and directed that the case continue to be held in abeyance pending further order of the Court. The Court directed EPA to file status reports every 90 days, until conclusion of discussions between the Coalition and EPA.

ARGUMENT

The Coalition respectfully requests that the Court lift the abeyance and set a briefing schedule in this case. It has been nearly five years since the Coalition filed this lawsuit, and any reasonable prospect of the parties making progress toward settlement no longer exists. The Coalition did not oppose the abeyance initially, in part because the Coalition had entered into discussions with EPA to explore potential opportunities to informally resolve some or all of the issues in this case. *See* Petitioner's Resp. to Mot to Lift Abeyance and Set Briefing Schedule at 1-3 (Dec. 13, 2019). The Coalition, however, has maintained that it would seek to remove the case from abeyance should such discussions become unproductive or otherwise stall. *See, e.g., id.* at 2-3. That point has been reached, and productive discussions between the parties are not ongoing.

In its September 27, 2021 status report, EPA reported that the Coalition and EPA have had three meetings - on October 25, 2019, November 14, 2019, and February 18, 2020 - at which issues relevant to the case were discussed.

Unfortunately, notwithstanding those meetings, no settlement has been achieved, and no future settlement discussions are planned.

In its status report, EPA also suggested that two bills that were introduced in the U.S. House of Representatives (H.R. 5434) and the U.S. Senate (S. 2602), entitled “Recognizing the Protection of Motorsports Act of 2019” or the “RPM Act of 2019,” could potentially impact the issues in this case. *See* Status Report at 3 (Sept. 27, 2021). Neither of those bills has been enacted, even though versions of these same bills have been introduced during several previous Congresses.

Counsel for the Coalition contacted EPA’s counsel for its position on this motion, who represented that EPA does not oppose the briefing schedule in this motion and does not intend to file a response.

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), the Coalition has a right to judicial review in this Court of the Rule. Continued delay without any prospect of resolution deprives the Coalition of its right to judicial review, is unwarranted, and will prejudice the Coalition’s members. The Coalition therefore respectfully requests that

the Court lift the abeyance of this case and enter the briefing schedule set forth below in order to allow for argument and resolution of this case before the summer recess.

Proposed Briefing Schedule

| Brief | Due Date |
|-----------------------------|-------------------|
| Petitioner's opening brief | December 23, 2021 |
| Respondents' response brief | February 23, 2022 |
| Petitioner's reply brief | March 16, 2022 |
| Deferred Joint Appendix | March 23, 2022 |
| Final briefs | March 30, 2022 |

CONCLUSION

For the reasons above, Petitioner respectfully requests the Court to lift the current abeyance and set a briefing schedule.

Dated: November 23, 2021

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Certificates of Compliance and Service

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

I also certify that this motion complies with Fed. R. App. P. 27(d)(2)(A), because by Microsoft Word's count, it has 885 words, excluding the parts exempted under Fed. R. App. P. 32(f).

Finally, I certify that on November 23, 2021 the foregoing was electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

Dated: November 23, 2021

/s/ Shannon S. Broome
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