

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 06-1322****September Term, 2007****Filed On: September 24, 2007**

[1068502]

State of New York, et al.,  
Petitioners

v.

Environmental Protection Agency,  
Respondent

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Utility Air Regulatory Group, et al.,  
Intervenors**BEFORE:** Henderson, Griffith, and Kavanaugh, Circuit Judges**ORDER**

Upon consideration of petitioners' motion to govern further proceedings; EPA's motion to govern further proceedings filed May 2, 2007, which includes a request for an extension of time to file motions to govern further proceedings, and the response thereto; EPA's motion for an extension of time for EPA and intervenors to respond to petitioners' motion to govern, and the response thereto; EPA's lodged combined motion to govern further proceedings and response to petitioners' motion to govern; intervenors' lodged combined motion to govern further proceedings and response to petitioners' motion to govern; and petitioners' lodged combined response and reply, it is

**ORDERED** that EPA's requests for extensions of time be granted. The Clerk is directed to file the lodged documents. It is

**FURTHER ORDERED** that this case be remanded to EPA for further proceedings in light of Massachusetts v. EPA, 127 S. Ct. 1438 (2007). It is

**FURTHER ORDERED** that petitioners' request for vacatur and summary reversal of EPA's decision be denied. Petitioners have not shown that vacatur is warranted, see A.L. Pharma, Inc., v. Shalala, 62 F.3d 1484, 1492 (D.C. Cir. 1995); and the merits of the parties' positions are not so clear as to warrant summary action, see Cascade Broadcasting Group, Ltd. v. FCC, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution

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of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**