



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
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September 25, 2017

VIA ECF & E-mail (Torres NYSDChambers@nysd.uscourts.gov)

The Honorable Analisa Torres
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Clean Air Carolina v. U.S. Department of Transportation*, 17 Civ. 5779 (AT)

Dear Judge Torres:

This Office represents defendants United States Department of Transportation (“DOT”), Elaine Chao (in her official capacity as Secretary of Transportation), the Federal Highway Administration (“FHWA”), and Brandye Hendrickson (in her official capacity as Deputy Administrator of the FHWA) (collectively, “Defendants”) in the above-referenced action commenced under the Administrative Procedure Act (“APA”), 5 U.S.C. § 551 *et seq.* I write respectfully to request that the deadlines set forth in the Court’s order dated September 14, 2017 [Dkt No. 23], which granted Plaintiffs leave to file a motion for summary judgment, be adjourned *sine die*. Plaintiffs consent to the request to adjourn the deadlines in the Court’s September 14, 2017 order.

Earlier today, DOT submitted to the Office of the Federal Register for publication in the *Federal Register* a final rule entitled *National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program* (“GHG Rule”). The effective date of the GHG Rule is the date of its publication in the *Federal Register*, which Defendants anticipate will be this Thursday, September 28, 2017. In the meantime, a copy of the submitted GHG Rule is publicly available on the FHWA’s website at <https://www.fhwa.dot.gov/tpm/rule/23cfr490fr.pdf>. Plaintiffs’ complaint challenges Defendants’ prior extension and suspension of the effective date of the GHG Rule. *See, e.g.*, Compl. ¶¶ 53-56. It is Defendants’ view that the impending publication of the GHG Rule in the *Federal Register* will have the effect of rendering Plaintiffs’ claims moot, because it will put the rule into effect.

The parties propose that they submit a joint letter to the Court no later than 21 days after the GHG Rule is published in the *Federal Register* to outline any outstanding matters to be addressed in connection with this lawsuit, as well as a proposed schedule for presenting any such issues to the Court.

This is Defendants' first request to adjourn the briefing schedule set by the Court's September 14, 2017 order, and as previously noted, Plaintiffs consent to the request for an adjournment *sine die*.

We thank the Court for its consideration of this request.

Respectfully submitted,

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