

ORAL ARGUMENT NOT YET SCHEDULED

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

GROWTH ENERGY, <i>et al.</i> ,)	
)	
)	
Petitioners,)	
)	No. 19-1023 (and
)	consolidated cases)
v.)	
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and ANDREW)	
WHEELER, ADMINISTRATOR,)	
)	
Respondents.)	
)	

**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS AND
MONROE ENERGY, LLC’S OPPOSITION TO
MOTION TO SEVER AND HOLD IN ABEYANCE**

INTRODUCTION

Petitioners Growth Energy, National Biodiesel Board, and Producers United for Integrity Truth and Transparency (collectively, “Biofuel Petitioners”) ask that the Court hear and resolve this challenge to an EPA annual rulemaking¹ *piecemeal*, based on nothing more than the fact that other panels of this Court will at some point issue decisions on pending challenges to other agency actions. For the

¹ See “Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020,” 83 Fed. Reg. 63,704 (Dec. 11, 2018) (“2019 RFS”).

reasons articulated in EPA's Opposition to Biofuel Petitioners' Motion to Sever the Small Refinery Exemption Issue (Doc. 1778332) and the reasons articulated below, Petitioners American Fuel & Petrochemical Manufacturers ("AFPM") and Monroe Energy, LLC ("Monroe") (collectively, "Opposing Petitioners"), request that this Court deny Biofuel Petitioners' request to sever and hold their issues in abeyance.

ARGUMENT

To avoid duplication or repetition of arguments, Opposing Petitioners adopt and incorporate by reference the arguments in EPA's Opposition explaining why severance and abeyance is inappropriate in this circumstance. *See generally* D.C. Cir. R. 28(d)(2) (directing intervenors to avoid repeating facts or legal arguments made in a principal brief); D.C. Cir. Handbook of Internal Procedures § IX.A.2 (allowing parties in consolidated or joint appeals to "adopt or incorporate by reference all or any part of the brief of another").

Opposing Petitioners add only that should the Court remain concerned about the potential for inefficiency, the Court has plenty of tools to avoid superfluous briefing, such as setting a briefing and argument schedule for the consolidated petitions that would accommodate the anticipated dates of decisions in the pending litigation. We note in this regard that the 2018 RFS case was argued in February 2019; a decision in the next few months is likely. Alternatively, if a decision in a

related case issues after briefing on the 2019 RFS has commenced or concluded, the Court could order supplemental briefing to address the effect of the new decision(s). But severance and abeyance would almost certainly delay final resolution of the lawfulness of the 2019 RFS rule and frustrate the annual compliance process. Severance and abeyance is simply too blunt an instrument for the minor concern Biofuel Petitioners raise, and it risks possibly delaying any ruling on at least some critical issues until very near or possibly even after the compliance deadline for the 2019 rule has passed.

CONCLUSION

For the foregoing reasons, Opposing Petitioners respectfully request that the Court deny Biofuel Petitioners' motion to sever and hold in abeyance their petitions.

Respectfully submitted,

s/ Robert J. Meyers _____

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Dated: March 21, 2019

CERTIFICATE OF COMPLIANCE

1. This response complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 412 words as counted by Microsoft Word, excluding the parts exempted by Fed. R. App. P. 32(f).

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/s/ Robert J. Meyers _____

Robert J. Meyers

Dated: March 21, 2019

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing through the CM/ECF system,
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s/ Robert J. Meyers _____

Robert J. Meyers

Dated: March 21, 2019