Filed: 07/29/2022

NOT YET SCHEDULED FOR ORAL ARGUMENT

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RFS POWER COALITION, et al. Petitioners,))))
v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	No. 20-1046 (and consolidated cases)
Respondent.)))

SUPPLEMENT TO REPLY REGARDING RESPONDENT EPA'S JULY 26, 2022 NOTICE

Petitioner Clean Fuels Alliance America ("Clean Fuels") respectfully submits this supplement regarding EPA's recent notice informing the Court of a development relevant to Clean Fuels' motion to sever its challenge regarding food waste recordkeeping provisions. Dkt No. 1956411. In its motion, Clean Fuels explained that the food waste challenge presents a ripe, urgent issue that should be decided now, even if unrelated issues presented in this consolidated proceeding are held in further abeyance. Dkt No. 1952076. In opposition, EPA argued that the case should continue to be held in abeyance in part because EPA planned to solicit comment regarding its food waste recordkeeping regulations in a proposed rule by September

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16, 2022. Dkt No. 1953329. EPA recently entered a consent decree that delays the deadline for that proposed rule until November 16, 2022. Dkt No. 1956411. The background of that consent decree is summarized in the notice filed by EPA, *id.*, but Clean Fuels is submitting this supplement to briefly explain the relationship between that development and Clean Fuels' challenge.

The delay in EPA's proposed rule compounds the delays in this litigation and makes it even clearer that severing the food waste issue is necessary to achieve a resolution of Clean Fuels' challenge. As Clean Fuels outlined in its motion, this case has been held in abeyance six times already, and there is reason to suspect that EPA and the parties will continue to seek further abeyances in the future. EPA's administrative process is now similarly delayed—EPA's proposal to publish its 2023 proposed rule by September was already almost eleven months past the statutory deadline for doing so, and EPA has now kicked the process back even further. Now, the rule that EPA is proposing in the fall is not required to be finalized until June 14, 2023. *Id.* And that does not necessarily mean EPA fill finalize *anything* with respect to food waste by that time; the consent decree applies only to EPA's obligation to determine volumes for 2023.

Because there is no clear timeline for either this litigation as a whole being adjudicated or for EPA addressing food waste administratively, it is imperative for the court to address Clean Fuels' challenge now.

Dated: July 29, 2022

Respectfully submitted,

/s/ Bryan M. Killian

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CERTIFICATE OF WORD COUNT

I hereby certify that the foregoing contains 365 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f). I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this motion was prepared in Microsoft Word using 14-point Times New Roman font.

/s/ Bryan M. Killian

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2022 I caused the foregoing to be electronically filed with the Clerk of the U.S. Court of Appeals for the D.C. Circuit by using the Court's appellate CM/ECF system and that service will be accomplished by the appellate CM/ECF system.

/s/ Bryan M. Killian

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