

ORAL ARGUMENT OCCURRED OCTOBER 8, 2020  
JUDGMENT AND OPINION ISSUED JANUARY 19, 2021

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

AMERICAN LUNG ASSOCIATION, *et al.*,

*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

*Respondents.*

Case No. 19-1140  
(and consolidated cases)

**BIOGENIC CO2 COALITION'S MOTION TO GOVERN**

The Biogenic CO2 Coalition, petitioner in *Biogenic CO2 Coalition v. EPA*, No. 19-1185 (filed Sept. 5, 2019) (consolidated with No. 19-1140) (“Biogenic Petitioners”), respectfully files this motion in response to this Court’s order dated September 19, 2022 (ECF# 1964911).

1. Biogenic Petitioners incorporate by reference the background and procedural history set forth in the government’s Motion to Govern (ECF# 1967282) filed this same date.<sup>1</sup> Biogenic Petitioners move separately to request

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<sup>1</sup> Biogenic Petitioners requested that the government include this position in their Motion to Govern in order to avoid multiple filings, but counsel for the government declined to do so, without explanation. No party objected to the Biogenic Petitioners’ position.

that the Court remand the ACE Rule to Respondent U.S. Environmental Protection Agency for further action consistent with Part II.A.3 of this Court's January 19, 2021 opinion (ECF# 1880543) ("January 19 Opinion").

2. The petition in No. 19-1185, including the issues raised by Biogenic Petitioners and decided in the January 19 Opinion, was not the subject of any petition for certiorari nor the subject of the Supreme Court's grant of certiorari as were certain other petitions consolidated under No. 19-1140 (as described in the government's motion), and therefore the judgment of this Court with respect to No. 19-1185 was unaffected by the Supreme Court's disposition of the petitions for certiorari.

3. Thus, there is no need for abeyance with respect to No. 19-1185 and the ACE Rule should be remanded, at least insofar as those aspects of the rule that were at issue in No. 19-1185, to the agency for further proceedings consistent with the Court's judgment granting the petition for review in No. 19-1185.

Respectfully submitted,

/s/ David M. Williamson

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*Counsel for Biogenic CO2 Coalition*

October 3, 2022

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing complies with this Court's September 19, 2022 Order because it contains 274 words.

/s/ David M. Williamson

David M. Williamson

**CERTIFICATE OF SERVICE**

I hereby certify that on October 3, 2022, I electronically filed the above document with the Clerk of the Court and served on the counsel of record for all parties through the CM/ECF system.

/s/ David M. Williamson

David M. Williamson