

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

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STATE OF MISSISSIPPI, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

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) No. 08-1200 and consolidated cases  
) (Ozone NAAQS Litigation)  
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UNOPPOSED MOTION TO VACATE THE BRIEFING SCHEDULE  
AND HOLD THESE CONSOLIDATED CASES IN ABEYANCE

Respondent United States Environmental Protection Agency ("EPA")

requests that the Court vacate the existing briefing schedule and hold these consolidated cases in abeyance. Counsel or representative counsel for Environmental Petitioners (which is comprised of a number of environmental groups), the New York State Petitioners (which comprises a number of States and related governmental entities), the intervenors supporting the Environmental Petitioners and New York State Petitioners, and Amicus the Province of Ontario have authorized the undersigned counsel for EPA to represent that these parties do not oppose the relief requested by this motion, as detailed in paragraph 6 and the paragraph setting out the Relief Requested below. Counsel or representative

counsel for Petitioner the State of Mississippi, Industry Petitioners and Intervenor (which comprises the National Association of Home Builders, Ozone NAAQS Litigation Group, and the Utility Air Regulatory Group), and Intervenor-Respondent Missouri Department of Natural Resources have authorized the undersigned counsel for EPA to represent that they do not oppose an extension of the briefing schedule as a litigation courtesy to EPA and, therefore do not oppose the relief requested in paragraph 6 and the paragraph setting out the Relief Requested below. This motion is therefore unopposed. The grounds for this motion are as follows:

1. Petitioners challenge in these consolidated cases a regulation promulgated by EPA under the Clean Air Act entitled the "National Ambient Air Quality Standards for Ozone" (hereinafter "Ozone NAAQS Rule"), 73 Fed. Reg. 16,436 (March 27, 2008).
2. The current briefing schedule in these consolidated cases provides, among other dates, that the four separate Petitioners' briefs are to be filed by April 1, 2009, and EPA's Respondent brief is to be filed by July 10, 2009. Order (dated December 23, 2008).
3. EPA requests that the Court vacate the current briefing schedule and hold these consolidated cases in abeyance. EPA requests this extension to allow time for appropriate EPA officials that are appointed by the new Administration to

review the Ozone NAAQS Rule to determine whether the standards established in the Ozone NAAQS Rule should be maintained, modified or otherwise reconsidered. Accordingly, to permit this review to proceed, EPA requests that the current briefing schedule be vacated.

4. EPA further requests that it be directed to notify the Court and the Parties within 180 days of the Court's order vacating the briefing schedule of the actions the Agency has taken or intends to take, if any, with regard to the Ozone NAAQS Rule, and the anticipated time frame for any such actions. After the filing of such a notice, any party may file a motion to govern further proceedings in this case. In the event that a party concludes in such a motion that briefing on the Ozone NAAQS Rule should resume, the existing briefing format and time between briefs would be utilized, with appropriate modifications to the specified dates for filing. In any such request to reinstate the briefing schedule, the reinstated schedule shall provide no less than 60 days before the Petitioners' opening briefs are to be filed.

5. In view of the above, vacating the existing briefing schedule may preserve the resources of the parties and the Court in the event that EPA elects to reconsider all or part of the rule challenged in these consolidated cases. An argument date has not yet been scheduled, and thus this extension request would not disrupt the Court's argument calendar.

6. Counsel or representative counsel for each of the parties or groups of parties in these cases have authorized the undersigned counsel for EPA to represent that these parties do not oppose the specific relief requested by this motion. The undersigned counsel for EPA has further been authorized to state that the Petitioners National Association of Home Builders, Ozone NAAQS Litigation Group, and the Utility Air Regulatory Group are willing to agree to this extension of briefing solely as a litigation courtesy to EPA. Accordingly, this non-opposition is provided with each party reserving its right to oppose any administrative actions EPA has taken or may take with regard to the Ozone NAAQS Rule, including any decision to reconsider that Rule.

#### Relief Requested

Wherefore, EPA requests that the briefing schedule in this case set out in the Order, dated December 23, 2008, be vacated, that the case be held in abeyance, and that: (1) EPA be directed to notify the Court and the Parties within 180 days of the Court's order vacating the briefing schedule of the actions the Agency has taken or intends to take, if any, with regard to the Ozone NAAQS Rule, and the anticipated time frame for any such actions; (2) after EPA files its notice, any party may file a motion to govern further proceedings in this case; (3) any request to resume briefing on the Ozone NAAQS Rule in a motion to govern further proceedings shall request that the prior briefing format and time between briefs be utilized, with

appropriate modifications to the specified dates for filing; and (4) any reinstatement of a briefing schedule will provide no less than 60 days before the Petitioners' opening briefs are to be filed.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "David J. Kaplan", is written over a horizontal line.

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Dated: March 10, 2009

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing filing to be served by U.S. Mail, postage pre-paid, on March 10, 2009, to the following counsel:

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A handwritten signature in black ink, appearing to read "Darl Ogden", with a long horizontal flourish extending to the right.