

ORAL ARGUMENT HELD MARCH 16, 2018

DECISION ISSUED AUGUST 17, 2018

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

AIR ALLIANCE, et al.,)	
)	
Petitioners,)	
)	
v.)	
)	
U.S. ENVIRONMENTAL)	Nos. 17-1155; 17-1181
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
)	

**INDUSTRY INTERVENORS’ MOTION FOR
RECONSIDERATION OF THE COURT’S DECISION TO GRANT
PETITIONERS’ JOINT MOTION FOR EXPEDITED ISSUANCE
OF THE MANDATE AND FOR RECALL OF THE MANDATE**

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, Industry Intervenors¹ submit this Motion for Reconsideration Of The Court’s Decision To Grant Petitioners’ Joint Motion For Expedited Issuance Of The Mandate and for recall of the mandate. *See* August 31, 2018 Order (Doc. No. 1748554) (the “Order”).

¹ Industry Intervenors are comprised of the American Chemistry Council, the American Fuel & Petrochemical Manufacturers, the American Petroleum Institute, the Chamber of Commerce of the United States of America, and the Chemical Safety Advocacy Group.

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INTRODUCTION

The Court granted Petitioners' motion before giving Industry Intervenors (or EPA and the State Intervenors) the time to respond provided by the Federal Rules of Appellate Procedure and this Court's Rules. The Court should rescind its Order and recall its mandate.

ARGUMENT

Rule 27 of the Federal Rules of Appellate Procedure provides that “[a]ny party may file a response to a motion ... [t]he response must be filed within 10 days after service of the motion unless the court shortens or extends the time.” Fed. R. App. P. 27(a)(3)(A). Motions “authorized by Rule[] 41,” however, “may be granted before the 10-day period runs *only if* the court gives reasonable notice to the parties that it intends to act sooner.” Fed. R. App. P. 27(a)(3)(A) (emphasis added). Here, the Court granted Petitioners' motion to expedite issuance of the mandate without affording EPA or Intervenors notice or an opportunity to respond.

The Court issued its judgment on August 17, 2018 and provided that its mandate would issue 7 days following the disposition of any rehearing petition. August 17, 2018 Order (Doc. No. 1746107). On

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August 24, 2018, Petitioners filed a motion to expedite the mandate, citing Circuit Rule 41(a)(1) and Federal Rule of Appellate Procedure 41(b). Petitioners requested that the mandate issue on September 7, 2018, which would allow the Court to “consider any response (if filed) pursuant to Fed. R. App. 27(a)(3) and D.C. Cir. R. 27.” Pet. Mot. 12.

Industry Intervenors have been preparing a response in opposition to Petitioners’ motion and were planning to file that response on Tuesday, September 4, 2018, which is within the 10-day period afforded by Federal Rules of Appellate Procedure. However, the Court never gave Industry Intervenors notice of its decision to grant Petitioners’ motion before the running of this 10-day period and thereby violated Federal Rule of Appellate Procedure 27(a)(3)(A). The Court should accordingly rescind the Order and recall its mandate to give Industry Intervenors the opportunity to exercise their right to respond.²

² We have requested the position of the parties, but due to the exigency of the circumstances, we have heard from only Petitioner United Steel Workers, which opposes the motion.

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CONCLUSION

For the foregoing reasons, the Court should rescind the Order and recall its mandate.

Respectfully submitted,

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August 31, 2018

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1) and 27(d)(2)(A), I certify that the foregoing Motion contains 460 words as counted by Microsoft Word and thus complies with the 5,200 word limit.

Further, this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 using size 14 Century Schoolbook font.

/s/ RYAN C. MORRIS
RYAN C. MORRIS

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2018, I will cause the foregoing document to be electronically filed through this Court's CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ RYAN C. MORRIS

RYAN C. MORRIS