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|---|---|
| **From:** | Erik Swenson |
| **To:** | Dana Tulis; Craig Matthiessen; Barry Breen; Matt Straus; MaryAnn Petrole; Kim Jennings; Lynn Beasley; Sanda Howland; Bernadette Rappold; Robin Dunkins; Carol Holmes |
| **Cc:** | Mary-Kay Lynch; John Michaud; Earl Salo |
| **Subject:** | CERCLA EPCRA litigation update - GOOD NEWS! |
| **Date:** | 10/19/2010 06:19 PM |
| **Attachments:** | CERCLA_EPCRA_-_Order_granting_remand.PDF |

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Finally, the news you've been waiting for - attached below is the DC Circuit's order granting our motion for voluntary remand. You will see that it comes with NO deadlines or status report requirements. I spoke with our DOJ attorney, CJ Morris, about what this means. She says the rule is back in our hands and (technically) we are not obligated to go forward with a new rule. Realistically, however, if we don't move forward with our reconsideration, the environmental groups may have an undue delay argument some time in the future. She also pointed out that the last paragraph in the order gives the petitioners 7 days to file a petition for rehearing - she expects them to file something, and may ask the court to impose some kind of schedule.

In the meantime, OEM has restarted the CERCLA EPCRA workgroup and our next meeting is on Thursday Oct. 28. But for now, the order at least gives us some breathing room and it looks like we will have the time to wait for results from the National Air Emissions Monitoring Study to help with our reconsideration of the rule. Lynn can correct me if I'm wrong but I believe the Air Monitoring results are still on track for Fall/Winter 2011, but we will likely get data before that on a rolling basis.

I'll keep you updated as to whether the environmental groups file something with the court or otherwise contact DOJ.

Order is pasted in below as well:

O R D E R

Upon consideration of the motions to govern future proceedings, the oppositions thereto, and the reply; and the motion for voluntary remand, the opposition thereto, and
the reply, it is

ORDERED that the motion for voluntary remand be granted. The court remands to the Environmental Protection Agency for further consideration the rule entitled "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms," 73 Fed. Reg. 76,948 (Dec. 18, 2008).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution
of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

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