OGC Upcoming Deadlines/Hot Issues List – US EPA Region III - January 2019

Responses received from: RLS, SF/CD, CJ, BN, MR, AG

Case/Matter	OGC/ORC Attorneys	Original Deadline	New Deadline
Hazelton Creek PCB Petition for Review of NON in 3rd Circuit (TSCA): a. Respond to Clerk's Order requesting basis for court's jurisdiction. b. File US's Motion to Dismiss in Response to Petition for Review.	Bethany Fisher, OGC Cheryl Jamieson, ORC	a. 1/8/19 for response to Clerk's Order requesting basis for jurisdiction. b. 1/15/19 for filing of US Motion to Dismiss.	Awaiting announcement of reset deadlines by 3rd Circuit, but likely after 2/19/19. See "Details & Comments" below.

Attorney Work Product / Ex. 5

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Details & Comments:

Hazelton Creek Properties (HCP) PCB Petition for Review. Hazelton Creek Properties (HCP) PCB Petition for Review: HCP received a TSCA Notice of Noncompliance (NON) from EPA Region III for the prohibited use of PCB materials at its property in Hazelton, PA and is seeking review of such NON in the 3d Circuit. HCP is challenging EPA's determination that placement of materials containing PCBs at or greater than 2ppm is a prohibited use of PCB. A Clerk's Order dated December 6, 2018 requested that the parties address the court's authority over HCP's Petition for Review. The original deadline for the government's response to the Clerk's Order was 12/20/18. DOJ requested an extension for such response until 1/8/2019. This deadline has been extended but a filing date for DOJ's response has not yet been provided by the court. HCP filed its response to the Clerk's Order on 12/20/18. HCP is claiming that the NON sent to it (and other similarly situated entities) "establish[es] new PCB requirements that contradict U.S. EPA's long-standing approach," and is arguing that the NON is both an order and a rule.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Third Circuit has a notice on its website which says, in relevant part: "The Court is aware that affected federal agencies will need time to recall furloughed employees and assess the current status of their cases. Accordingly, any federal government deadlines in non-criminal cases dated December 24, 2018 through and including February 1, 2019 will be reset. On February 19, 2019, the Clerk will post on the Court's website a schedule of reset deadlines. Any reset deadlines will be staggered to ensure an orderly resumption of work." DOJ would like to continue working on the filing to have it ready before our reset deadline.

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