Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 8/10/2018 8:38:49 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]; Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]
Subject: Steam Postponement Rule first draft brief
Attachments: ENV_DEFENSE-#848583-v1-Steam_Postponement_Rule_Draft_Brief.DOC

Hi Jessica and Mary Ellen,

Please find attached a first draft of the Postponement Rule brief. It has not been reviewed by anyone else at DOJ, but I wanted to circulate this to you so that Mary Ellen can provide comments before she goes on vacation. I'm also hoping

Deliberative Process / Ex. 5

I'll leave it in your hands what the next step should be. Once you review this draft, you can decide whether you think it would be more productive to provide comments in written form or to schedule a call to discuss. If you decide the latter, I'm generally available next week.

Thanks,
Tsuki

Tsuki Hoshijima
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
202-514-3468
tsuki.hoshijima@usdoj.gov

From: Lundman, Robert (ENRD)
To: Zomer, Jessica
CC: Levine, MaryEllen
Sent: 1/28/2019 1:31:57 PM
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)
Attachments: APPELLATE-#372064-v1-Clean_Water_Action_--_status_report_1-22-19_as_filed.PDF

Hi Jessica--here's the filed one. The next one is due March 25 but I may be out of the office that day so I might have to file it on March 22. I have it on my calendar to check in on this on March 18. Thanks!

Bob

From: Zomer, Jessica
Sent: Monday, January 28, 2019 7:48 AM
To: Lundman, Robert (ENRD)
Cc: Levine, MaryEllen
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Bob,

Thanks for taking care of this while I couldn't work. Can you send me a copy of the status report as filed and let me know when the next one is due? Thanks!

Jessica

On Jan 22, 2019, at 10:00 AM, Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov> wrote:

Hi Steve and David: here's the draft very short status report that is due today. Thanks!

Bob

From: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Sent: Thursday, January 17, 2019 10:03 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Bob – **Deliberative Process / Ex. 5** Please send the draft to me and David Fotouhi, as we are excepted for litigation. Thanks.

Steve Neugeboren
Associate General Counsel for Water
U.S. EPA
1200 Pennsylvania Ave., NW
Washington, DC 20460
202 (564-5488)

From: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>
Sent: Thursday, January 17, 2019 8:59 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Zomer, Jessica

<Zomer.Jessica@epa.gov>; Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Thanks Steven. You can actually direct your response to Bob, who is copied here and who will be the one filing the status report.

On Jan 17, 2019, at 8:42 PM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Tsuki - Mary Ellen forwarded your message. David and I are excepted and we will get back to you.

Sent from my iPhone

Steven Neugeboren
Associate General Counsel for Water
U.S. EPA
202-564-5488

On Jan 17, 2019, at 11:33 AM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Forwarding to those who are the excepted list. I am not.

Sent from my iPhone

Begin forwarded message:

From: "Hoshijima, Tsuki (ENRD)" <Tsuki.Hoshijima@usdoj.gov>
Date: January 17, 2019 at 9:41:21 AM EST
To: "Lundman, Robert (ENRD)" <Robert.Lundman@usdoj.gov>
Cc: "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Levine, MaryEllen" <levine.maryellen@epa.gov>, "O'Donnell, Jessica (ENRD)" <Jessica.O'Donnell@usdoj.gov>, "McDermott, Martin (ENRD)" <Martin.McDermott@usdoj.gov>, "Neumann, Jennifer Scheller (ENRD)" <Jennifer.Neumann@usdoj.gov>
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Deliberative Process / Ex. 5 Thanks Bob.

On Jan 17, 2019, at 9:08 AM, Lundman, Robert (ENRD) <RLundman@enrd.usdoj.gov> wrote:

Deliberative Process / Ex. 5

Bob

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Monday, November 26, 2018 2:57 PM
To: Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Thanks Bob!

On Nov 26, 2018, at 2:56 PM, Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov> wrote:

Hi all: hope you had a great Thanksgiving! The court granted the joint motion last week. This time we have to file status reports every 60 days, with the first one due January 22. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5 Thanks!

Bob

From: Lundman, Robert (ENRD)
Sent: Monday, November 19, 2018 12:16 PM
To: 'Levine, MaryEllen' <levine.maryellen@epa.gov>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Thanks! Here's the filed version. Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 I'll circulate the order when I get it.

Bob

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Sunday, November 18, 2018 7:59 AM
To: Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

I have just read it and I think we are ok to proceed.

Sent from my iPhone

On Nov 18, 2018, at 7:36 AM, Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov> wrote:

I agree. Deliberative Process / Ex. 5 good. Please let me know when we are ok to go ahead and file on Monday. Thanks!

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Saturday, November 17, 2018 10:50 AM
To: Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: Re: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

These edits look fine to me— Deliberative Process / Ex. 5 Any differing thoughts on DOJ's end?

On Nov 16, 2018, at 6:59 PM, Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov> wrote:

Hi all—just got this from plaintiffs. I haven't had a chance to review it yet. Thanks!

Sent from my iPhone

Begin forwarded message:

From: Thomas Cmar <tcmar@earthjustice.org>
Date: November 16, 2018 at 6:35:50 PM EST

To: "Lundman, Robert (ENRD)" <Robert.Lundman@usdoj.gov>, "Johnson, Harry M. Pete" <pjohnson[redacted]
Cc: "Bulleit, Kristy" <kbulle[redacted], "McHugh, Timothy L." <TMcHu[redacted]>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi Bob,

I'm sorry for the delay in responding – I had meant to get back to you earlier today but then got caught up in another filing we had due. Thanks again for drafting this motion. We had some edits just to clarify our position a bit. Please let me know if you have any questions or comments about them.

Best,

Thom

From: Thomas Cmar
Sent: Wednesday, November 14, 2018 12:29 PM
To: Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>; Johnson, Harry M. Pete <pjohnso[redacted]
Cc: Bulleit, Kristy <kbulleit[redacted] McHugh, Timothy L. <TMcHugh[redacted]>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Thanks, Bob – we will review and get back to you with edits as soon as we can.

From: Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>
Sent: Wednesday, November 14, 2018 11:56 AM
To: Thomas Cmar <tcma[redacted] Johnson, Harry M. Pete <pjohnson@[redacted]>
Cc: Bulleit, Kristy <kbullei[redacted]McHugh, Timothy L. <TMcHugh@[redacted]
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi all: here's the draft joint motion. If you can let me know if it's ok by Friday afternoon, then I can get final clearance here for filing on Monday. If there are any changes on my end on Monday, I will send it back to you for final signoff. Thanks!

Bob

From: Lundman, Robert (ENRD)
Sent: Wednesday, November 14, 2018 10:27 AM
To: 'Thomas Cmar' <tcmar@[redacted]>; 'Johnson, Harry M. Pete' <pjohnson@[redacted]
Cc: 'Bulleit, Kristy' <kbulleit@[redacted]cHugh, Timothy L.' <TMcHu[redacted]
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi all: Sorry that I'm behind schedule; hope to get the short draft out to you later today. Thanks!

Bob

From: Lundman, Robert (ENRD)
Sent: Wednesday, November 7, 2018 4:33 PM
To: 'Thomas Cmar' <tcm[redacted]; Johnson, Harry M. Pete <pjohnson[redacted]
Cc: Bulleit, Kristy <kbullei[redacted]Hugh, Timothy L. <TMcHugh[redacted]
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi Thom—I will circulate a draft early next week. Thanks!

Bob

From: Thomas Cmar <tcmar[redacted]
Sent: Wednesday, November 7, 2018 3:59 PM
To: Johnson, Harry M. Pete <pjohnson@[redacted]; Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Cc: Bulleit, Kristy <kbulle[redacted]; McHugh, Timothy L. <TMcHugh[redacted]>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi Bob,

I've now had a chance to close the loop with everyone on Appellants' end, and we are in agreement with your proposal as well. Thanks for offering to take the lead on drafting a joint filing.

Best,

Thom

From: Johnson, Harry M. Pete <pjohns[redacted]
Sent: Tuesday, November 6, 2018 6:36 PM
To: Lundman, Robert (ENRD) <Robert.Lundman@usdoj.gov>; Thomas C[redacted]
Cc: Bulleit, Kristy <kbull[redacted] McHugh, Timothy L. <TMcHugh[redacted]
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Bob,

UWAG agrees with your proposal.

Thanks,

Pete

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Harry M. Johnson, III
Partner
pjoh[redacted]
bio | vCard

Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

HuntonAK.com

From: Lundman, Robert (ENRD) [mailto:Robert.Lundman@usdoj.gov]
Sent: Thursday, November 01, 2018 3:06 PM
To: Thomas Cmar; Johnson, Harry M. Pete
Cc: Bulleit, Kristy; McHugh, Timothy L.
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi all: the Fifth Circuit's ruling granting EPA's motion to dismiss the petition as moot (5th Cir. No. 18-60619) means that the parties in the DC Circuit appeal have to file motions to govern future proceedings by November 19. I thought it made sense to at least explore whether we can agree on a joint motion. It's EPA's position that the Fifth Circuit's ruling

controls the mootness issue on appeal in the DC Circuit. As to the other issue, EPA thinks it makes sense to continue to hold the appeal in abeyance pending Fifth Circuit action in 18-60079. If we all agree on this, I'm happy to draft a short joint motion and circulate it. If it would be helpful to discuss this, that sounds good as well. Tomorrow is bad for me, but early next week is pretty open. Thanks!

Bob

From: Thomas Cmar <tcma[redacted]
Sent: Wednesday, June 20, 2018 11:41 AM
To: Johnson, Harry M. Pete <pjohn[redacted]
Cc: Bulleit, Kristy <kbulleit@[redacted]cHugh, Timothy L. <TMcHugh[redacted]Toth, Brian (ENRD) <BToth@ENRD.USDOJ.GOV>; Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Hi Pete,

Thanks for your email on this. We are still pulling together a final version of the motion, but we do not intend to say anything about the impact of the Fifth Circuit decision beyond what I said in my original email below. I.e., that if the Fifth Circuit issues a decision on the merits of our Delay Rule claims, that would likely obviate the need for any further proceedings in the D.C. Circuit concerning those claims.

I've now heard from Bob that EPA will likely be filing a response to the motion, so at this point I think it's probably best for us to file and UWAG can decide whether it also wants to weigh in with the court. Based on your email, I plan to represent UWAG's position as, "UWAG takes no position and reserves the right to file a response after reviewing the motion." But please let me know if that's not an accurate representation.

We don't plan to file until later this afternoon, and I would be happy to talk before then if that would be helpful.

Best,

Thom

From: Johnson, Harry M. Pete <pjohn[redacted]m>
Sent: Tuesday, June 19, 2018 11:10 AM
To: Thomas Cmar <tcma[redacted]
Cc: Bulleit, Kristy <kbulle[redacted]; McHugh, Timothy L. <TMcHugh@[redacted]; brian.toth@usdoj.gov; robert.lundman@usdoj.gov
Subject: RE: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Thom,

UWAG has no objection to the concept of severing and holding in abeyance the issue regarding the district's court's denial of leave to amend and supplement. Can you clarify what you intend to say to the Court, if anything, about the impact of a 5th Circuit decision on the merits? That is, if the 5th Circuit upholds the jurisdiction of courts of appeals to rule on the merits of your claims about the postponement rule, do you intend at that point to return to the DC Circuit and argue otherwise?

In any event, as I say, we have no objection to severing and holding the issue in abeyance. I would, however, like to see the motion in advance before consenting, if that is feasible and agreeable. If not, you can represent that UWAG takes no position until it sees the motion.

Thanks,

Pete

The content image001.jpg of type has been blocked.

Harry M. Johnson, III
Partner
[redacted]
bio | vCard

Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219

HuntonAK.com

From: Thomas Cmar [mailto:tcm[redacted]
Sent: Monday, June 18, 2018 7:49 AM
To: Johnson, Harry M. Pete; Bulleit, Kristy; McHugh, Timothy L.
Subject: Clean Water Action v. Pruitt, Case No. 18-5149 (D.C. Cir.)

Dear Counsel:

I am writing on behalf of Appellants in the above matter to confer concerning a procedural motion that we intend to make by this Wednesday, June 20.

We intend to request that the Court sever and hold in abeyance the issue in our appeal of the district court's denial of leave to amend and supplement our complaint to assert new claims challenging EPA's September 2017 rule delaying certain Effluent Limitation Guidelines compliance deadlines by two years (the "Delay Rule"). Our reason for seeking the abeyance is that, as you know, we are currently briefing the merits of the same claims in *Clean Water Action v. U.S. Environmental Protection Agency*, Case No. 18-60079 (5th Cir.).

We believe that holding our appeal of the jurisdiction issue in abeyance is appropriate pending the outcome of the Fifth Circuit proceeding is appropriate because, notwithstanding the district court's decision, the issue of whether district or appeals courts have original jurisdiction over the Delay Rule has not been finally resolved. For example, it is possible that the Fifth Circuit will, *sua sponte*, consider whether it has jurisdiction to review the Delay Rule and conclude that it does not, ruling instead that challenges to the Delay Rule must proceed in district courts. *See, e.g.*, *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986) ("every federal appellate court has a special obligation to satisfy itself . . . of its own jurisdiction") (internal quotation marks and citation omitted). In addition, at least one other party is challenging the Delay Rule in district court; in that case, pending in the District of Arizona, there are pending motions concerning this same jurisdictional issue. *See Center for Biological Diversity v. Pruitt*, Case No. 4:18-cv-00050-TUC-JAS. However, if the Fifth Circuit issues a decision on the merits of Appellants' Delay Rule claims, that would likely obviate the need for any further proceedings in the D.C. Circuit concerning those claims.

Please note that we are seeking an abeyance of their appeal of the district court's holding on their Delay Rule claims only. We are also appealing the district court's holding that our claims challenging EPA's April 2017 administrative stay of the ELG rule are moot. We will request that the Court set a briefing schedule on that issue.

Could you let me know if UWAG will take a position on our motion to sever and hold in abeyance our appeal on the Delay Rule claims? The favor of your reply by Wednesday at 12:00 Eastern would be much appreciated.

Please feel free to give me a call on my cell if you would like to discuss this matter by phone.

Thanks,

Thom Cmar

Thomas Cmar
Earthjustice
1101 Lake Street, Suite 405B
Oak Park, IL 60301
[redacted]

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*please consider the environment before printing

Message

From: Zomer, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5C30484C1704EC79ADDF362BF776ED6-HALL, JESSICA]
Sent: 6/12/2018 10:45:41 PM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]
CC: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]
Subject: Re: ELG Litigation - Duke Energy Indiana

Deliberative Process / Ex. 5

On Jun 12, 2018, at 5:02 PM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Jessica – did you let EAD know, if you are out, we will do so.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Zomer, Jessica
Sent: Tuesday, June 12, 2018 4:30 PM
To: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: Re: ELG Litigation - Duke Energy Indiana

Deliberative Process / Ex. 5

Martin - I need you to include Mary Ellen and Richard on all correspondence from now on as I could be unavailable suddenly and at any time. Thanks.

Jessica

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Tuesday, June 12, 2018 4:23 PM
To: Zomer, Jessica
Subject: FW: ELG Litigation - Duke Energy Indiana

Deliberative Process / Ex. 5

From: Sullivan, Sean M. <Sean.Sull[redacted]>
Sent: Tuesday, June 12, 2018 2:42 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: ELG Litigation - Duke Energy Indiana

SETTLEMENT CONFIDENTIAL

Martin,

It appears Duke Energy's FDF variance for the Edwardsport facility regarding the gasification wastewater limits is now final and cannot be appealed. As such, I think we are ready to file a stipulation of dismissal. Given that I have been on the fringes of this case (other than the briefing of GWW section), would it make sense for you to email the other parties and seek their consent to Duke's stipulation of dismissal?

Feel free to give me a call if you'd like to discuss.

Thanks.

Sean M. Sullivan
Direct: 919.835.4173 | M[redacted] | Internal: 14-4173
sean.sull[redacted]

troutman **sanders**
305 Church at North Hills Street, Suite 1200
Raleigh, NC 27609
troutman.com

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Message

From: Zomer, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5C30484C1704EC79ADDF362BF776ED6-HALL, JESSICA]
Sent: 3/19/2018 1:05:55 AM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]; Jessica.O'Donnell@usdoj.gov; Tsuki.Hoshijima@usdoj.gov
Subject: D.D.C. filing
Attachments: Clean_Water_Action_EPA_response_to_3_12_18_minute_order melJHZ.DOC; ATT00001.htm

Here are my very minor edits on top of Mary Ellen's.

Mary Ellen and Jessica, do you think I should send this to Steve now or wait until some of the missing gaps get filled? We have to send it to David by Tuesday, so we should probably get it to Steve with at least a day to review.

Jessica Z.

Message

From: Eitel, Michael (ENRD) [Michael.Eitel@usdoj.gov]
Sent: 6/11/2018 9:40:47 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
CC: O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]; Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]; McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]; Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]
Subject: RE: ELG (DAZ) - UWAG Intervention & MTD
Attachments: 28_UWAG withdrawal arguments MTD.PDF

Attached is UWAG's withdrawal of their alternative transfer argument they initially raised in the MTD. They filed this today.
Thanks,
Mike

-----Original Message-----
From: Eitel, Michael (ENRD)
Sent: Sunday, June 10, 2018 11:43 AM
To: 'Zomer, Jessica' <Zomer.Jessica@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: ELG (DAZ) - UWAG Intervention & MTD

Apologies, I misspoke -- the court re-filed the prior Motion to Dismiss UWAG filed with its intervention papers. So the attached was filed last week (no summary judgment has been filed).

-----Original Message-----
From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Sunday, June 10, 2018 8:42 AM
To: Eitel, Michael (ENRD) <MEitel@ENRD.USDOJ.GOV>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: Re: ELG (DAZ) - UWAG Intervention & MTD

Did UWAG file a motion to dismiss or motion for summary judgment? Can you recirculate it please? Thanks!

Jessica Z.

> On Jun 9, 2018, at 7:23 PM, Eitel, Michael (ENRD) <Michael.Eitel@usdoj.gov> wrote:
>
> Jessica,
>
> Thanks for the update, and sorry for the delay in getting back to you. Last week while I was on leave, the court granted UWAG's motion to intervene and set a schedule for resolution of its summary judgment motion. Plaintiffs' opposition is due July 9, and UWAG reply is due July 26. Note: UWAG has reached out to Plaintiffs and let them know that they will drop the transfer portion of the MTD, so that alteration should be filed soon. Let me know if you have questions or would like to discuss. Thanks,
>
> Mike
>
> -----Original Message-----
> From: Zomer, Jessica <Zomer.Jessica@epa.gov>
> Sent: Tuesday, June 5, 2018 7:36 AM
> To: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Eitel, Michael (ENRD) <MEitel@ENRD.USDOJ.GOV>
> Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
> Subject: Upcoming leave
>
> Hi all,
>
> I just wanted to check in with you all about the status of our pending litigation (anything I should know?)and remind you that I could be out suddenly any day now (due date is in 7 days), and to please be sure to include Richard Witt and Mary Ellen Levine on any steam electric-related correspondence now and

through my upcoming leave. My current plan is to do some limited telework from home starting after the first month of my leave, and then return full time to work after Labor Day.
>
> Jessica
> <27_UWAG MTD.PDF>
> <26_Order Motion Intervene.pdf>

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 7/23/2018 9:05:21 PM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]
Subject: RE: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Great, thanks all.

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Monday, July 23, 2018 5:04 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

I will look to Richard to schedule this and we are talking to Jessica tomorrow, so she may be able to help also. Let's talk to her tomorrow and see if based on that, we can schedule something with you later in the week, optimally when she could be a part of it.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Monday, July 23, 2018 2:05 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Hi Richard and Maryellen, I've now had some time to digest and start thinking through the brief. Do you have some time in the next several days for a call to talk through your initial thoughts on Petitioners' arguments? I am available tomorrow before 1pm and generally on Wednesday and Thursday.

Thanks,
Tsuki

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Monday, July 16, 2018 1:03 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; Witt, Richard <Witt.Richard@epa.gov>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Tsuki and Richard – I would like to make sure we're on the same page as to a few things related to the postponement rule brief, so hopefully can talk with Tsuki soon.

Deliberative Process / Ex. 5

Available to discuss (except for last two weeks of August).

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Thursday, July 12, 2018 3:02 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>; McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Subject: FW: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Richard and MaryEllen,

Petitioners filed their brief in the Steam Electric Delay Rule case today. Attached are the petitioners' brief, statutory and regulatory addendum, record excerpts, standing declarations, and letter on related cases.

I'll be in touch once I've had a chance to do my initial dive into the brief.

Thanks,
Tsuki

From: cmecf_caseprocessing@ca5.uscourts.gov <cmecf_caseprocessing@ca5.uscourts.gov>
Sent: Thursday, July 12, 2018 2:15 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.**

United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 07/12/2018 at 1:14:54 PM CDT and filed on 07/12/2018

Case Name:	Clean Water Action, et al v. EPA, et al
Case Number:	18-60079
Document(s):	Document(s)

Docket Text:
APPELLANT'S BRIEF FILED by Clean Water Action, Sierra Club and Waterkeeper Alliance, Incorporated. , *Environmental Integrity Project, PennEnvironment, Inc., Chesapeake Climate Action Network, Physicians for Social Responsibility, Chesapeake, Inc., and Prairie Rivers Network*
Date of service: 07/12/2018 via email - Attorney for Intervenors: Bulleit, Johnson, McHugh; Attorney for Petitioners: Clark-Leach, Cmar, Gerhart, Roberts, Smith; Attorney for Respondents: Hoshijima, McDermott; US mail - Attorney for Petitioner: Dycus; Attorney for Respondent: Garbow [18-60079] (Thomas Joseph Cmar)

Notice will be electronically mailed to:

Mr. Martin Francis McDermott: martin.mcdermott@usdoj.gov, EFILE_EDS.ENRD@USDOJ.GOV
Ms. Kristy A. N. Bulleit, Counsel: kbulleit@huntonak.com, bpotter@huntonak.com, smoore@huntonak.com
Mr. Gabriel Paul Clark-Leach: gclark-leach@environmentalintegrity.org
Mr. Joshua Smith: joshua.smith@sierraclub.org, lauren.hogrewe@sierraclub.org
Mr. Harry Margerum Johnson, III: pjohnson@huntonak.com, sterrell@huntonak.com
Mr. Thomas Joseph Cmar: tcmar@earthjustice.org, fchampenois@earthjustice.org, gwinick@earthjustice.org
Mr. Matthew Gerhart: megerhart@gmail.com
Ms. Casey Austin Roberts: casey.roberts@sierraclub.org, casey.roberts@sierraclub.org, lauren.hogrewe@sierraclub.org
Mr. Timothy Louis McHugh: tmchugh@huntonak.com
Mr. Tsuki Hoshijima: tsuki.hoshijima@usdoj.gov

NOTICE WILL BE DELIVERED BY OTHER MEANS TO:

Mr. Avi S. Garbow
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Washington, DC 20460

Mr. Patton Dycus
Environmental Integrity Project
1000 Vermont Avenue, N.W.
Washington, DC 20005

The following document(s) are associated with this transaction:
Document Description: Appellant/Petitioner Brief Filed
Original Filename: 1_3410 5Cir Opening Brief_7-12-18_FINAL.pdf
Electronic Document Stamp:

[STAMP acecfStamp_ID=1105048708 [Date=07/12/2018] [FileNumber=8823128-0] [3db179131b8fb060c631d9d31e85fcd01e2757fc34e0aaddbe90f00c2744ee7025e4a654bb9b87fdf2a83ae8efefb6caf779ca6647e6e992945d246f2cb08853]]

Message

From: Zomer, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5C30484C1704EC79ADDF362BF776ED6-HALL, JESSICA]
Sent: 12/21/2017 5:23:06 PM
To: Wood, Robert [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2676c137cf54db0a5d98df232901821-Wood, Robert]; Matuszko, Jan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=94eefc2788084d73a97caf80d30a0e24-JMatuszk]; Jordan, Ronald [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7b8e2766b3e4f29a86a3893d65023ff-RJordan]; Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]; McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
Subject: News on EPA Steam Brief from Inside EPA...

December 21, 2017

EPA Touts Discretion For Legal Defense Of Obama-Era Power Plant ELG

December 20, 2017

EPA is touting its statutory discretion for its legal defense of various provisions in an Obama-era Clean Water Act (CWA) rule for power plants against environmentalists' attacks, saying it had authority to set relatively loose standards for stored "legacy" wastewater and for leachates that make up a comparatively small amount of power plant waste.

The agency's Dec. 15 merits brief in *Southwestern Electric Power Company (SEPC), et al., v. EPA, et al.*, comes after the Trump administration has stayed major portions of the 2015 effluent limitation guideline (ELG) for reconsideration at the request of the power sector. EPA convinced the U.S. Court of Appeals for the 5th Circuit to indefinitely pause litigation over those elements of the ELG -- meaning only environmentalists' claims that the rule was not strict enough are going forward, because the agency is not reconsidering the provisions they are challenging. *The brief is available on InsideEPA.com. (Doc. ID: 207824)*

Defending those provisions of the Obama-era rule, the Trump administration argues that the water law "accords EPA substantial discretion to weigh and balance a wide array of factors to determine best available technology economically achievable, including the industrial process employed, the cost of achieving pollutant reductions, and most broadly, 'such other factors as the [EPA] Administrator deems appropriate.'"

It says that discretion supports the decision to set separate standards based on when the wastewater being discharged was first generated, which effectively creates looser limits on "legacy" waste stored in impoundments that also hold waste ash from burning coal compared to the more stringent standards the 2015 rule set on new wastewater.

The agency also cites its discretion as allowing it to maintain the previous ELG's limits on the relatively small portion of power plant waste that comes from "leachates," even though those limits date to 1982 -- which environmentalists say makes them in need of reevaluation based on the existence of new technology.

EPA's brief is the first merits filing in the case since the 5th Circuit severed industry's claims and stayed them pending reconsideration of the provisions that power companies said were unlawfully strict or unjustified.

The companies contest the ELG's "best available technology" (BAT) standards for power plants to cut wastewater effluent from their flue gas desulfurization equipment, which is used to remove sulfur dioxide from plants' air emissions; transport of bottom ash, which is a category of waste ash; and gasification processes that convert fossil fuels into gas that burns more efficiently than solid coal.

Enforcement deadlines for those provisions of the rule are also on hold thanks to the reconsideration, though environmentalists are separately challenging the delay.

EPA says in its brief that it was justified in only setting more-stringent discharge limits for new wastewater because legacy waste varies so much in its composition and concentration that it would be impossible to determine a BAT mandate for the entire category. The

waste is often stored for years in impoundments where it mixes with other types of waste, and the mixing can lead to it being either watered down or more concentrated, EPA says.-- *David LaRoss*

Inside EPA - 12/22/2017 , Vol. 38, No. 51

207920

Message

From: Zomer, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A5C30484C1704EC79ADDF362BF776ED6-HALL, JESSICA]
Sent: 8/3/2018 12:35:59 PM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]
CC: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]
Subject: Re: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Monday 1-2 works for me.

On Aug 2, 2018, at 6:00 PM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Monday from 1-2 (not before); Tues 11-12 and 1-2. Trying to keep to mid day schedule. Richard can skip these as he has a ton of work.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Thursday, August 02, 2018 4:07 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: RE: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Hi all,

Mary Ellen suggested a follow-up call early next week, and now that I've had a chance to discuss with others at DOJ I think that another call would be helpful. I am generally available next Monday and Tuesday, so please let me know if you have some availability then.

Thanks,
Tsuki

From: Hoshijima, Tsuki (ENRD)
Sent: Monday, July 30, 2018 10:49 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: Re: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

We can use the same conference line I put in the original calendar event. Thank you all for your flexibility.

866-410-9426 (conference code [redacted]

On Jul 30, 2018, at 9:15 AM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

I can. I am having computer problems so shutting down and calling EZ Tech soon.

- Mary Ellen

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

-----Original Message-----
From: Zomer, Jessica
Sent: Monday, July 30, 2018 9:07 AM
To: Levine, MaryEllen <levine.maryellen@epa.gov>
Cc: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: Re: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Can everyone do 2:30 today?

On Jul 30, 2018, at 7:26 AM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Given Jessica's limited availability, I am going to let her respond.

Sent from my iPhone

On Jul 30, 2018, at 1:17 AM, Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov> wrote:

Hi all, unfortunately I'm going to have to ask to reschedule. My flight back to DC tonight was canceled and I'll be in the air on my rebooked flight during our scheduled time. I'm available before 10:30am and after 2:30pm on Monday, anytime other than 10am to 11pm on Tuesday, and anytime on Wednesday.

Thanks,

Tsuki

On Jul 24, 2018, at 10:21 AM, Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV > wrote:

Monday at 1pm works great. We can use the above conference line. Thanks Jessica!

From: Zomer, Jessica

<Zomer.Jessica@epa.gov<mailto:Zomer.Jessica@epa.gov>>

Sent: Tuesday, July 24, 2018 12:05 PM

To: Levine, MaryEllen

<levine.maryellen@epa.gov<mailto:levine.maryellen@epa.gov>>;

Hoshijima, Tsuki (ENRD)

<THoshijima@ENRD.USDOJ.GOV <mailto:THoshijima@ENRD.USDOJ.GOV>>

Cc: Witt, Richard

<Witt.Richard@epa.gov<mailto:Witt.Richard@epa.gov>>

Subject: Re: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Hi Tsuki,

Do you have time to talk about this brief and our response with me and Mary Ellen either on Friday or Monday between 1-3pm? Mary Ellen is compressed on Friday so we would prefer Monday if possible. I am teleworking from home for 10 hrs per week for the next six weeks and plan to help out on this

matter. Do you have a conference line we could use for our call?

Thanks,

Jessica

On Jul 24, 2018, at 9:51 AM, Levine, MaryEllen <levine.maryellen@epa.gov<mailto:levine.maryellen@epa.gov>> wrote:

To discuss at 11 today;

whether you have time to dive into this while you are mainly on maternity leave.

- Mary Ellen

Mary Ellen Levine

Assistant General Counsel

Water Law Office, Office of General Counsel

7510 C WJC North

(202) 564-1345

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]

Sent: Thursday, July 12, 2018 3:02 PM

To: Levine, MaryEllen

<levine.maryellen@epa.gov<mailto:levine.maryellen@epa.gov>>; Witt,

Richard <Witt.Richard@epa.gov<mailto:Witt.Richard@epa.gov>>

Cc: Zomer, Jessica

<Zomer.Jessica@epa.gov<mailto:Zomer.Jessica@epa.gov>>; O'Donnell,

Jessica (ENRD)

<Jessica.O'Donnell@usdoj.gov<mailto:Jessica.O'Donnell@usdoj.gov>>;

McDermott, Martin (ENRD)

<Martin.McDermott@usdoj.gov<mailto:Martin.McDermott@usdoj.gov>>

Subject: FW: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

Richard and MaryEllen,

Petitioners filed their brief in the Steam Electric Delay Rule case today. Attached are the petitioners' brief, statutory and regulatory addendum, record excerpts, standing declarations, and letter on related cases.

I'll be in touch once I've had a chance to do my initial dive into the brief.

Thanks,

Tsuki

From:

cmecf_caseprocessing@ca5.uscourts.gov<mailto:cmecf_caseprocessing@ca

5.uscourts.gov>

<cmecf_caseprocessing@ca5.uscourts.gov<mailto:cmecf_caseprocessing@c

a5.uscourts.gov>>

Sent: Thursday, July 12, 2018 2:15 PM

To: Hoshijima, Tsuki (ENRD)

<THoshijima@ENRD.USDOJ.GOV<mailto:THoshijima@ENRD.USDOJ.GOV>>

Subject: 18-60079 Clean Water Action, et al v. EPA, et al "Appellant/Petitioner Brief Filed"

NOTE TO PUBLIC ACCESS USERS Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing.

United States Court of Appeals for the Fifth Circuit

Notice of Docket Activity

The following transaction was entered on 07/12/2018 at 1:14:54 PM CDT and filed on 07/12/2018 Case Name:

Clean Water Action, et al v. EPA, et al

Case Number:

18-60079<https://ecf.ca5.uscourts.gov/cmecf/servlet/TransportRoom?servlet=DocketReportFilter.jsp&caseId=179680>

Document(s):

Document(s)<https://ecf.ca5.uscourts.gov/docs1/00504552148?uid=9fbca156ec663f3d>

Docket Text:

APPELLANT'S BRIEF FILED by Clean Water Action, Sierra Club and

Waterkeeper Alliance, Incorporated. , Environmental Integrity

Project, PennEnvironment, Inc., Chesapeake Climate Action Network,

Physicians for Social Responsibility, Chesapeake, Inc., and Prairie

Rivers Network Date of service: 07/12/2018 via email - Attorney for

Intervenors: Bulleit, Johnson, McHugh; Attorney for Petitioners:

Clark-Leach, Cmar, Gerhart, Roberts, Smith; Attorney for

Respondents: Hoshijima, McDermott; US mail - Attorney for

Petitioner: Dycus; Attorney for Respondent: Garbow [18-60079]

(Thomas Joseph Cmar)

Notice will be electronically mailed to:

Mr. Martin Francis McDermott:

martin.mcdermott@usdoj.gov<mailto:martin.mcdermott@usdoj.gov>,

EFILE_EDS.ENRD@USDOJ.GOV <mailto:EFILE_EDS.ENRD@USDOJ.GOV>

Ms. Kristy A. N. Bulleit, Counsel:

kbulleit@huntonak.com<mailto:kbulleit@huntonak.com>,

bpotter@huntonak.com<mailto:bpotter@huntonak.com>,

smoore@huntonak.com<mailto:smoore@huntonak.com>

Mr. Gabriel Paul Clark-Leach:

gclark-leach@environmentalintegrity.org<mailto:gclark-leach@environmentalintegrity.org> Mr. Joshua Smith:

joshua.smith@sierraclub.org<mailto:joshua.smith@sierraclub.org>,

lauren.hogrewe@sierraclub.org<mailto:lauren.hogrewe@sierraclub.org>

Mr. Harry Margerum Johnson, III:

pjohnson@huntonak.com<mailto:pjohnson@huntonak.com>,

sterrell@huntonak.com<mailto:sterrell@huntonak.com>

Mr. Thomas Joseph Cmar:

tcmar@earthjustice.org<mailto:tcmar@earthjustice.org>,

fchampenois@earthjustice.org<mailto:fchampenois@earthjustice.org>,

gwinick@earthjustice.org<mailto:gwinick@earthjustice.org>

Mr. Matthew Gerhart: megerhart@gmail.com<mailto:megerhart@gmail.com>

Ms. Casey Austin Roberts:

casey.roberts@sierraclub.org<mailto:casey.roberts@sierraclub.org>,

casey.roberts@sierraclub.org<mailto:casey.roberts@sierraclub.org>,

lauren.hogrewe@sierraclub.org<mailto:lauren.hogrewe@sierraclub.org>

Mr. Timothy Louis McHugh:

tmchugh@huntonak.com<mailto:tmchugh@huntonak.com>

Mr. Tsuki Hoshijima:

tsuki.hoshijima@usdoj.gov<mailto:tsuki.hoshijima@usdoj.gov>

NOTICE WILL BE DELIVERED BY OTHER MEANS TO:

Mr. Avi S. Garbow

Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
William Jefferson Clinton Building
Washington, DC 20460

Mr. Patton Dycus
Environmental Integrity Project
1000 Vermont Avenue, N.W.
Washington, DC 20005

The following document(s) are associated with this transaction:

Document Description: Appellant/Petitioner Brief Filed Original

Filename: 1_3410 5Cir Opening Brief_7-12-18_FINAL.pdf Electronic

Document Stamp:

[STAMP acecfStamp_ID=1105048708 [Date=07/12/2018]

[FileNumber=8823128-0]

[3db179131b8fb060c631d9d31e85fcd01e2757fc34e0aaddbe90f00c2744ee7025e

4a654bb9b87fdf2a83ae8efefb6caf779ca6647e6e992945d246f2cb08853]]

<Steam record excerpts.pdf>

<Steam statutory and regulatory addendum.pdf> <Steam petitioners

brief.pdf> <Steam standing declarations.pdf> <Steam letter on

related cases.pdf> <meeting.ics>

Message

From: Lundman, Robert (ENRD) [Robert.Lundman@usdoj.gov]
Sent: 6/20/2018 5:56:00 PM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]
Subject: RE: Steam Electric Litigation

Thanks!

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Wednesday, June 20, 2018 1:45 PM
To: Lundman, Robert (ENRD) <RLundman@ENRD.USDOJ.GOV>; Witt, Richard <Witt.Richard@epa.gov>
Subject: FW: Steam Electric Litigation

We have an ok to file.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Fotouhi, David
Sent: Wednesday, June 20, 2018 1:45 PM
To: Witt, Richard <Witt.Richard@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
Subject: Re: Steam Electric Litigation

No comments from me. Thanks

Sent from my iPhone

On Jun 20, 2018, at 12:30 PM, Witt, Richard <Witt.Richard@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

In addition, the certificate advises the court that EPA intends to file a response to the motion Clean Water Action, et al. will be filing today addressing how to proceed in this case.

Richard Witt
OGC Water Law Office
564-5496

<APPELLATE-#365850-v1-Clean_Water_Action_--_cert_as_to_parties_etc.doc>

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 10/12/2018 9:47:19 PM
To: Levine, MaryEllen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f59ef87b9924425897c750435bad5522-MLEVINE]
Subject: Re: Steam 705 case -- reply in support of motion to dismiss as moot

Thanks for your help, as always. Have a great weekend!

On Oct 12, 2018, at 5:11 PM, Levine, MaryEllen <levine.maryellen@epa.gov> wrote:

Thank you for a beautiful brief to review.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Friday, October 12, 2018 4:11 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Subject: RE: Steam 705 case -- reply in support of motion to dismiss as moot

No need to have someone from EPA grab that cite – should be an easy one for me to find. Appreciate you taking a look, Mary Ellen.

From: Levine, MaryEllen <levine.maryellen@epa.gov>
Sent: Friday, October 12, 2018 2:01 PM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>
Subject: RE: Steam 705 case -- reply in support of motion to dismiss as moot

I have one additional comment on the draft in response to Tsuki's question about petitioner's request –

Deliberative Process / Ex. 5

Thant's it from me. If you need me to find such a case let me know. Jessica- we could ask Tasheka for help if we don't have a cite easily findable.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North

(202) 564-1345

From: Zomer, Jessica
Sent: Friday, October 12, 2018 9:20 AM
To: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Subject: Re: Steam 705 case -- reply in support of motion to dismiss as moot

I have three comments on this:

Deliberative Process / Ex. 5

3. I think it could use a sentence at the very end just wrapping everything up.

Jessica

On Oct 12, 2018, at 7:33 AM, Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov> wrote:

> Here is a draft of the reply. Petitioners' argument is largely the same as before, other than with respect to two points I'd like to draw to your attention.
>
> **Deliberative Process / Ex. 5**
>
> Our deadline is next Tuesday.
>
> Tsuki Hoshijima
> Trial Attorney
> U.S. Department of Justice
> Environment and Natural Resources Division
> Environmental Defense Section
> 202-514-3468
> tsuki.hoshijima@usdoj.gov
>
> <ENV_DEFENSE-#855181-v1-CWA_II_MTD_CA5_reply.DOCX>

Message

From: Levine, MaryEllen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F59EF87B9924425897C750435BAD5522-MLEVINE]
Sent: 8/17/2018 7:56:56 PM
To: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
CC: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: FW: Adverse decision on RMP delay rule
Attachments: ENV_DEFENSE-#850627-v1-admin_su_aah_opinion.pdf

Haven't read it but wanted you to have it.

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: Wehling, Carrie
Sent: Friday, August 17, 2018 2:49 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: FW: Adverse decision on RMP delay rule

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Simons, Andrew
Sent: Friday, August 17, 2018 12:56 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>
Subject: FW: Adverse decision on RMP delay rule

FYI – haven't read it, but this and Steam Electric were the other delay rules out there. Sounds like the DC Cir

Deliberative Process / Ex. 5

Andrew Simons
Assistant General Counsel
Regulatory Issues Practice Group
Office of General Counsel
U.S. Environmental Protection Agency
Tel. 202-564-3649

WJC-N 7522C

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Please consider the environment before printing this email.

From: McConkey, Diane
Sent: Friday, August 17, 2018 12:45 PM
To: Simons, Andrew <Simons.Andrew@epa.gov>; Talty, Mark <Talty.Mark@epa.gov>
Subject: FW: Adverse decision on RMP delay rule

Passing this decision along in case you haven't seen it.

From: Srinivasan, Gautam
Sent: Friday, August 17, 2018 11:54 AM
To: OGC ARLO <OGC_ARLO@epa.gov>
Subject: FW: Adverse decision on RMP delay rule

Deliberative Process / Ex. 5

++++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Srinivasan, Gautam
Sent: Friday, August 17, 2018 10:24 AM
To: OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>
Cc: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>
Subject: Adverse decision on RMP delay rule

All- The DC Cir has issued the attached opinion vacating EPA's rulemaking to delay the effectiveness of amendments to the Risk Management Program. I have not had a chance to read the opinion. The summary from the opinion states:

"We hold that where EPA has exercised its Section 7607(d)(7)(B) authority to delay the effectiveness of a final rule, it cannot avoid that statute's express limitations by invoking general rulemaking authority under a different statutory provision. EPA's action was arbitrary and capricious in any event. Accordingly, we vacate the Delay Rule of June 14, 2017."

++++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

Message

From: Levine, MaryEllen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F59EF87B9924425897C750435BAD5522-MLEVINE]
Sent: 6/29/2018 7:32:10 PM
To: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]; Witt, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbcc13f5878c4ef4b7b880de0221b9f9-RWITT]; O'Donnell, Jessica (ENRD) [Jessica.O'Donnell@usdoj.gov]
CC: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: ELG Litigation - Status report due July 9

Deliberative Process / Ex. 5

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]
Sent: Friday, June 29, 2018 3:28 PM
To: Witt, Richard <Witt.Richard@epa.gov>; O'Donnell, Jessica (ENRD) <Jessica.O'Donnell@usdoj.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: ELG Litigation - Status report due July 9

Richard -- **Deliberative Process / Ex. 5**
time. Martin

From: Witt, Richard <Witt.Richard@epa.gov>
Sent: Friday, June 29, 2018 9:16 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: ELG Litigation - Status report due July 9

Deliberative Process / Ex. 5

From: Zomer, Jessica
Sent: Wednesday, June 13, 2018 7:05 PM
To: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Witt, Richard <Witt.Richard@epa.gov>
Subject: Re: ELG Litigation - Duke Energy Indiana

Deliberative Process / Ex. 5 I am officially out on maternity leave now, so please keep Richard and Mary Ellen in the know. Thanks!

Jessica

On Jun 12, 2018, at 6:00 PM, McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov> wrote:

FYI. I think he mean "I have not"spoken.

From: Sullivan, Sean M. <Sean.Sullivan@troutmansanders.com>
Sent: Tuesday, June 12, 2018 5:31 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: Re: ELG Litigation - Duke Energy Indiana

I have spoken with Kristie or Pete about it. I'll do that tomorrow morning and circle up.

Sent from my iPhone

Sean M. Sullivan
troutman **sanders**
Direct: 919.835.4173 | Mobile: [redacted] Internal: 14-4173
sean.sulliva[redacted]

On Jun 12, 2018, at 4:41 PM, McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov> wrote:

Sean -- Do you know whether UWAG plans to continue to press the gasification w/w issue after Duke withdraws? Martin

From: Sullivan, Sean M. <Sean.Sulli[redacted]
Sent: Tuesday, June 12, 2018 2:42 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: ELG Litigation - Duke Energy Indiana

SETTLEMENT CONFIDENTIAL

Martin,

It appears Duke Energy's FDF variance for the Edwardsport facility regarding the gasification wastewater limits is now final and cannot be appealed. As such, I think we are ready to file a stipulation of dismissal. Given that I have been on the fringes of this case (other than the briefing of GWW section), would it make sense for you to email the other parties and seek their consent to Duke's stipulation of dismissal?

Feel free to give me a call if you'd like to discuss.

Thanks.

Sean M. Sullivan
Direct: 919.835.4173 | Mobile [redacted] Internal: 14-4173
sean.sul[redacted]

troutman **sanders**
305 Church at North Hills Street, Suite 1200
Raleigh, NC 27609
troutman.com

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Message

From: Matuszko, Jan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=94EEFC2788084D73A97CAF80D30A0E24-JMATUSZK]
Sent: 9/21/2018 3:16:41 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
CC: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]; Jordan, Ronald [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7b8e2766b3e4f29a86a3893d65023ff-RJordan]
Subject: Re: BPJ

Deliberative Process / Ex. 5

From: Zomer, Jessica
Sent: Friday, September 21, 2018 11:11 AM
To: Matuszko, Jan
Cc: McDermott, Martin (ENRD); Jordan, Ronald
Subject: Re: BPJ

Deliberative Process / Ex. 5

On Sep 21, 2018, at 11:08 AM, Matuszko, Jan <Matuszko.Jan@epa.gov> wrote:

Good question.

Deliberative Process / Ex. 5

Does this help? If not, I will ask Ron to call you and explain more fully on Monday.

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Friday, September 21, 2018 10:56 AM
To: Matuszko, Jan
Cc: Jordan, Ronald; Zomer, Jessica
Subject: RE: BPJ

Deliberative Process / Ex. 5

From: Matuszko, Jan <Matuszko.Jan@epa.gov>
Sent: Friday, September 21, 2018 10:50 AM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Jordan, Ronald <Jordan.Ronald@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: Re: BPJ

In terms of the statute, I personally agree with you.

Deliberative Process / Ex. 5

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Friday, September 21, 2018 10:38 AM
To: Matuszko, Jan
Subject: RE: BPJ

Deliberative Process / Ex. 5

From: Matuszko, Jan <Matuszko.Jan@epa.gov>
Sent: Friday, September 21, 2018 10:07 AM

To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; Zomer, Jessica <Zomer.Jessica@epa.gov>
Cc: Levine, MaryEllen <levine.maryellen@epa.gov>; Jordan, Ronald <Jordan.Ronald@epa.gov>; Wood, Robert <Wood.Robert@epa.gov>
Subject: Re: BPJ

Deliberative Process / Ex. 5

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Friday, September 21, 2018 9:57 AM
To: Zomer, Jessica
Cc: Levine, MaryEllen; Matuszko, Jan; Jordan, Ronald; Wood, Robert
Subject: Re: BPJ

Deliberative Process / Ex. 5

Sent from my iPhone

> On Sep 21, 2018, at 8:42 AM, Zomer, Jessica <Zomer.Jessica@epa.gov> wrote:
>
> From Part 4 of Comment Response Document (attached)
>
>
> page 4-25
>
> (This is EPA's Response to a Comment)
>
>
> EPA generally does not rely on BPJ permitting where it has sufficient data to set uniform, nationally applicable limitations at plants across the nation. Assuming sufficient data to develop appropriate numeric limitations, EPA would generally prefer numeric limitations because BPJ permitting places a burden on permitting authorities, many of whom are states, to conduct a complex technical analysis that they may not have the resources or expertise to complete. Some states commented to this effect in this rulemaking.
>
> BPJ permitting may also unnecessarily burden the regulated industry because of associated delays and uncertainty with respect to permits. See the response to DCN EPA-HQ-OW-2009-0819-4383-A1, Excerpt

Number 6 in Comment Code 6.j.i for more discussion on the use of BPJ.
>
>
>
> Also, see comment from Missouri DNR in the same document:
>
>
> Options 3a and 3b require BPJ for removal of Flue Gas Desulfurization (FGD) wastewater. Option 3a requires BPJ for all facilities and 3b for facilities less than 2,000 MW. For Missouri, only Ameren-Labadie and Associated Electric-Thomas Hill are facilities that are greater than 2,000 MW, leaving the majority of Missouri's power plant permits subject to a BPJ decision.
>
> Best professional judgment requires permit writers to make a decision based on financial and economic information available. This leaves the permits open to challenges from the facility and possible third parties, which leads to uncertainty and inconsistencies. A clearly defined technology basis makes the decision based on multiple, nationwide stakeholders and groups, which provides more information and holds the states and permittees to the same standard, thus removing individual and regional differences in permits.
>
> 2. Best Professional Judgment
>
> Some of the proposed options leave permit requirements subject to the permitting authority's BPJ, introducing risk that alternatives would be missed, the best decision would not be made, the decision would be open to comment, and possible appeal by the facility or third party organizations. EPA has already invested significant resources in evaluating facilities, technologies and economic impacts. BPJ avoids having the guideline set the technology based standard that is achievable across the country, creating uncertainty and inconsistency in the regulatory environment. Missouri is currently at an impasse on power plant permits, due in large part to this regulatory uncertainty. Competing interests have frequently prevented implementation of any new requirements for these facilities, even those improvements successfully negotiated with the industry.
>
> Options 3a and 3b require BPJ for removal ofFGD wastewater. 3a requires BPJ for all facilities and 3b for facilities less than 2,000 MW. For Missouri, only Ameren-Labadie, and Associated Electric-Thomas Hill are facilities that are greater than 2,000 MW, leaving the majority of Missouri permits to require a BPJ decision. BPJ requires a high level of specialized training and places a significant strain on already limited staff time and limited resources available for training. BPJ requires significant investigation into, and decisions based on, economic and financial factors. At this time, Missouri's most highly trained permit writers have limited background in economics. Missouri, like many other states, currently has little access to funding for advanced specialized training in engineering and economics.
>
> BPJ requires permit writers to make a decision based on the information available, leaving the permits open to challenges from the facilities and possible third parties. A clearly defined technology basis makes the decision based on multiple, nationwide stakeholders and groups, which provides more information and holds the states to the same standard, thus removing individual and regional differences in permits.
>
>
> And comment from Kansas DHE:
>
>
> In both Options 3a and 3b (for total plant-level wet scrubbed capacity less than 2,000 MW), EPA is proposing that states make a Best Professional Judgment (BPJ) determination as to what constitutes BAT for FGD Wastewater. As indicated in the preamble of the proposed rule, EPA began reviewing the Steam

Electric Power Generating Effluent Guideline Standards following publication of the detailed study of the industry in 2009 concentrating on the FGD wastestream. EPA also conducted an in-depth detailed survey of the steam electric industry in 2010 collecting and summarizing industry data, technology vendor data, information and data from other sources such as EPRI (Electric Power Research Institute) as well as economic data from the industry. States have neither the luxury nor the resources to collect and evaluate the data EPA has collected to address a handful of NPDES permits they administer. EPA should establish BAT in the effluent guideline standards. In the case of the proposed rule, if EPA requires states to use BPJ to establish BAT criteria for the designated wastestream, it would be likely that if an industry decides to contest the state's determination as to what constitutes BAT for the FGD wastewater, the state will end up not only having to defend it's technical, enviromnental, and economical determination, but will have to justify that decision in light of EPA having not made a similar determination when finalizing the proposed rule. Where EPA has identified a BAT technology in the proposed rule, they should make a BAT determination for the entire industry rather than establishing multiple options, (eight in this case) for consideration. Due to the ever dwindling staffing and resources available to states, EPA should be making the call regarding BAT for the FGD wastewater.
>
>
> And comment from Oklahoma at p. 4-559:
>
>
> DEQ supports EPA's establishment of Best Available Technology Economically Achievable (BAT) standards for the Flue Gas Desulfurization (FGD) rather than a Best Professional Judgment (BPJ) standard. The adoption of a BAT standard is consistent with the direction provided to EPA in the CWA, and EPA has collected sufficient inf01mation to warrant the establishment of a BAT standard for FGD. States rely on EPA to research and collect the necessary data to determine technology-based limits since most states lack the personnel and technical resources needed to undertake a BPJ analysis on a case-by-case basis. Additionally , for technology not evaluated in the proposed rule, or for which cost and performance analysis data is withheld as Confidential Business Information (CBI), states would not have corresponding reference information to use for drafting permits with a BPJ standard. A BPJ standard could lead to inconsistencies across states in a key industrial sector. While a BPJ standard does offer continuity with existing process and offers flexibility, it is difficult for states to make the required analysis.
>
> <Part_4_of_10_-_SE05958A3.pdf>

Message

From: Sullivan, Sean M. [Sean.Sulli[redacted]
Sent: 9/26/2018 3:21:41 PM
To: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
CC: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: Re: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana
Attachments: ATT00001.txt

Still trying to get the guy from Shook Hardy to respond. Everyone else has consented.

Sent from my iPhone

Sean M. Sullivan
troutman **sanders**
Direct: 919.835.4173 | Mobi[redacted] | Internal: 14-4173
Sean.Sulliv[redacted]

On Sep 26, 2018, at 10:59 AM, McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov> wrote:

> Sean –got closure on this yet? I need to file a status report this week. Martin
>
> **From:** McDermott, Martin (ENRD)
> **Sent:** Friday, September 14, 2018 12:55 PM
> **To:** 'Sullivan, Sean M.' <Sean.Sulliva[redacted]
> **Subject:** RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana
>
> I guess to be cautious it would make sense for you to track down City of Springfield's atty, Thomas J. Grever at Shook Hardy, and Water Work's John Sheehan at Clark Hill PLC.
>
> **From:** McDermott, Martin (ENRD)
> **Sent:** Thursday, September 6, 2018 11:01 AM
> **To:** 'Sullivan, Sean M.' <Sean.Sullivan[redacted]
> **Subject:** RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana
>
> I guess to be cautious it would make sense to track down City of Springfield's atty, Thomas J. Grever at Shook Hardy
>
> **From:** Sullivan, Sean M. <Sean.Sulliva[redacted]
> **Sent:** Thursday, September 6, 2018 8:12 AM
> **To:** McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
> **Cc:** Zomer, Jessica <Zomer.Jessica@epa.gov>
> **Subject:** RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana
>
> I think I was waiting to hear from you whether Thomas's consent checked the box on all of the players or not. I have not been involved in the day-to-day workings of the parties since Duke

Energy got its FDF variance early this year, so it would be helpful to hear – at least unofficially – if that's everyone.

We have consents from:

Kristy Bulleitt re UWAG, Ameren and SWEPco

You for EPA

Thomas Cmar for the Environmental Petitioners

Do any of these consents speak for: City of Springfield, American Water Works Association or National Association of Water Companies?

Sean M. Sullivan
troutman **sanders**
Direct: 919.835.4173 | Mobile [redacted] Internal: 14-4173
sean.sulliva[redacted]

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Wednesday, September 5, 2018 1:45 PM
To: Sullivan, Sean M. <Sean.Sullivan@[redacted]
Cc: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Sean – I might have missed it, but did dismissal get filed with the court? Did court enter it? Thanks!
Martin

From: Sullivan, Sean M. <Sean.Sulliva[redacted]
Sent: Wednesday, August 22, 2018 3:59 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Thanks! With Thomas's consent, does that check the box on everyone? Sorry, but I suspect you know the players in this thing far better than I ever will.

Sean M. Sullivan
troutman **sanders**
Direct: 919.835.4173 | Mobile [redacted] Internal: 14-4173
sean.sulliv[redacted]

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Wednesday, August 22, 2018 3:53 PM
To: Bu[redacted]
tcmar[redacted]
joshua[redacted]

Cc: Johnson, Harry M. Pete <pjohnson[redacted] McHugh, Timothy L. <TMcHugh[redacted]
Potter, Barbara <bpott[redacted]
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Sean: Respondents agree to the stipulation. Thank you. Martin

---

From: Bulleit, Kristy <kbulleit[redacted]
Sent: Monday, August 20, 2018 3:17 PM
To: Sullivan, Sean M. <Sean.Sullivan@[redacted] cmar[redacted]
megerhart[redacted] asey.robert[redacted] joshua.smith[redacted] grever[redacted]
jasheehan[redacted] cDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Johnson, Harry M. Pete <pjohnson@hunton.com>; McHugh, Timothy L. <TMcHug[redacted]
Potter, Barbara <bpotter[redacted]>; Bulleit, Kristy <kbulle[redacted]
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

UWAG, Ameren, and SWEPCo agree to so stipulate.

<image001.jpg>

Kristy Bulleit
Partner
kbulle[redacted]

Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

HuntonAK.com

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From: Sullivan, Sean M. [mailto:Sean.Sulliva[redacted]
Sent: Monday, August 20, 2018 2:34 PM
To: Bulleit, Kristy; Johnson, Harry M. Pete; McHugh, Timothy L.; to[redacted]
megerhar[redacted] casey.roberts@[redacted] joshua.sm[redacted] greve[redacted]
jasheeha[redacted] McDermott, Martin (ENRD)
Subject: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Good afternoon all…

Duke Energy Indiana has decided to dismiss its petition for review in this case, which was directed solely towards the gasification wastewater effluent limits. Attached is a proposed stipulation of dismissal for your review. Will everyone please respond by email regarding whether your client will stipulate to the dismissal of Duke's petition for review?

Thanks.

Sean M. Sullivan
Direct: 919.835.4173 | Mobile: 919.268.0703 | Internal: 14-4173
sean.sullivan@troutman.com

troutman **sanders**
305 Church at North Hills Street, Suite 1200
Raleigh, NC 27609
troutman.com

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Message

From: Office of General Counsel Work Sites [no-reply@sharepointonline.com]
Sent: 9/25/2018 3:04:20 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: OGC CTS Task, Case Name / Subject Clean Water Action v. EPA (petition for review of 705 stay of steam electric ELGs) is sent

The OGC CTS Task Clean Water Action v. EPA (petition for review of 705 stay of steam electric ELGs) has been sent to the first approver Fotouhi, David.

Message

From: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
Sent: 9/6/2018 7:58:45 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: steam electric ELG litigation

Deliberative Process / Ex. 5

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Thursday, September 6, 2018 3:53 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: steam electric ELG litigation

Deliberative Process / Ex. 5

From: McDermott, Martin (ENRD) [mailto:Martin.McDermott@usdoj.gov]
Sent: Thursday, September 06, 2018 3:51 PM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: steam electric ELG litigation

Deliberative Process / Ex. 5

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Thursday, September 6, 2018 3:41 PM
To: Levine, MaryEllen <levine.maryellen@epa.gov>; Jordan, Ronald <Jordan.Ronald@epa.gov>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Matuszko, Jan <Matuszko.Jan@epa.gov>
Subject: RE: steam electric ELG litigation

Also, **Deliberative Process / Ex. 5** this is from section 13 of the TDD:

13.7.1 Transfer of Arsenic and Mercury Limitations for Chemical Precipitation to Combustion Residual Leachate

The final rule establishes NSPS for combustion residual leachate based on the chemical precipitation technology option. EPA transferred the effluent limitations for combustion residual leachate based on the chemical precipitation technology option from the limitations calculated for FGD wastewater based on the chemical precipitation technology option because EPA does not have effluent data for combustion residual leachate treated by technology that represents the chemical precipitation technology option.

EPA determined that transfer of the limitations in this case was appropriate because the chemical precipitation treatment technology is available to the industry, it can be applied to combustion residual leachate in the industry, and it can achieve the pollutant removals necessary to meet the final limitations. Based on responses to the *Questionnaire for the Steam Electric Power Generating Effluent Guidelines*, steam electric power plants use some form of chemical precipitation as part of their FGD wastewater treatment system.[149] As described earlier,

four steam electric power plants use a form of chemical precipitation to treat FGD wastewater that represents the chemical precipitation technology option. In addition, a wide range of industrial plants nationwide, such as metal products and machinery plants, iron & steel manufacturers, metal finishers, and mining operations (including coal mines), have demonstrated the use of chemical precipitation technology to remove arsenic and mercury [U.S. EPA, 1983; U.S. EPA, 2002; U.S. EPA, 2003].

Transferring limitations derived using data representing treatment of FGD wastewater via chemical precipitation technology to combustion residual leachate is appropriate because FGD wastewater and combustion residual leachate are both associated with combustion wastes and contain similar pollutants. EPA identified both arsenic and mercury as pollutants of concern for each wastestream (see Section 6.6 of the TDD). As such, both mercury and arsenic are present in untreated FGD wastewater and untreated combustion residual leachate at treatable levels.

The data evaluated for this rulemaking and published literature demonstrate that chemical precipitation can effectively remove arsenic and mercury from wastewater, and the precipitation (hydroxide and sulfide) and iron co-precipitation processes that make up the chemical precipitation technology basis are particularly effective. EPA received no data from stakeholders showing otherwise. Although arsenic and mercury are, on average, present in untreated combustion residual leachate at a lower concentration than in FGD wastewater, they are still present at treatable concentrations and are within the range of concentrations observed in untreated FGD wastewater for the plant datasets that EPA used to calculate the limitations for the chemical precipitation technology option for FGD wastewater. Therefore, EPA concludes that chemical precipitation is capable of removing arsenic and mercury from combustion residual leachate to the level necessary to achieve the final effluent limitations.

From: Levine, MaryEllen
Sent: Thursday, September 06, 2018 2:23 PM
To: Jordan, Ronald <Jordan.Ronald@epa.gov>; Zomer, Jessica <Zomer.Jessica@epa.gov>; McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Cc: Matuszko, Jan <Matuszko.Jan@epa.gov>
Subject: RE: steam electric ELG litigation

[redacted]

- *Mary Ellen*

Mary Ellen Levine
Assistant General Counsel
Water Law Office, Office of General Counsel
7510 C WJC North
(202) 564-1345

-----Original Appointment-----
From: Jordan, Ronald
Sent: Tuesday, September 04, 2018 2:55 PM
To: Jordan, Ronald; Zomer, Jessica; McDermott, Martin (ENRD)

Cc: Matuszko, Jan; Levine, MaryEllen
Subject: steam electric ELG litigation
When: Thursday, September 06, 2018 12:00 PM-3:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DCRoomWest6231V/DC-CCW-OST

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 9/6/2018 12:03:04 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Comments on brief?
Attachments: ENV_DEFENSE-#848583-v3-Steam_Postponement_Rule_Draft_Brief.DOC

Jessica, here is the latest version that incorporates Jessica's comments. I'm giving this draft to Chris Vaden for his review. Thanks!

Let me know what you expect your front office review to look like. Does it go to Steve again, or is this now going to David?

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Wednesday, September 5, 2018 4:23 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

I can wait until tomorrow, thanks so much.

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Wednesday, September 05, 2018 4:15 PM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

Thanks. Jessica O'Donnell is going through the draft now, and she's hoping to have comments back to me tomorrow morning. Once I incorporate those comments, we will hope to send to Chris mid-day. I can send you an updated draft for

Deliberative Process / Ex. 5

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Wednesday, September 5, 2018 3:32 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

Tsuki,

Mary Ellen and I reviewed this and made some edits/suggestions. **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5

Did you send a draft to Chris yet? If you're going to incorporate these edits first and then send it to Chris, please also send me the revised draft so I can send that one to my Front Office.

Thanks so much,

Jessica

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Wednesday, September 05, 2018 8:04 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

Jessica, here is the latest revision. Apologies for not getting it to you until this morning.

Deliberative Process / Ex. 5

Given those changes, I think this draft will require another close look by you and/or Mary Ellen as well as your front office. DOJ management will also review this draft in parallel — Chris Vaden is next up, unless Jessica O'Donnell wants to do another round first.

Deliberative Process / Ex. 5

Thanks,
Tsuki

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Tuesday, September 4, 2018 10:51 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

That would be terrific, thanks.

Wednesday morning between 9:30-12 would be best on our end. Thursday is a bit more difficult.

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Tuesday, September 04, 2018 10:32 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

Deliberative Process / Ex. 5

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Tuesday, September 4, 2018 10:14 AM

To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

Hi Tsuki,

When do you think I can expect to see another draft of the brief to circulate to my Front Office?

Thanks,
Jessica

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Monday, August 27, 2018 11:07 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

I'm hoping to have Jessica O'Donnell take a first look this week, but I will check with her on her availability and get back to you. Thanks Jessica.

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Monday, August 27, 2018 10:54 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Fwd: Comments on brief?

Tsuki,

Attached are Steve's minor comments on the brief. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

I know you want to run this through Jessica O. next. Can you let me know what your timing is for that and when you might have a next draft for me to circulate to our front office?

Thanks!
Jessica

Begin forwarded message:

> **From:** "Hooks, Samantha" <hooks.samantha@epa.gov>
> **To:** "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
> **Subject: RE: Comments on brief?**
>
> Here goes. . .
>
> Samantha S. Hooks
> Program Assistant
> Office of General Counsel
> Air and Radiation Law Office (ARLO)
> Room 7340G
> (202) 564-5569 (office)
> (202) 564-5603 (fax)

Message

From: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
Sent: 9/5/2018 5:44:40 PM
To: Sullivan, Sean M. [Sean.Sulliva[redacted]
CC: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana
Attachments: ATT00001.txt

Sean -- I might have missed it, but did dismissal get filed with the court? Did court enter it? Thanks! Martin

---

From: Sullivan, Sean M. <Sean.Sulliva[redacted]
Sent: Wednesday, August 22, 2018 3:59 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Thanks! With Thomas's consent, does that check the box on everyone? Sorry, but I suspect you know the players in this thing far better than I ever will.

Sean M. Sullivan
troutman **sanders**
Direct: 919.835.4173 | Mobile: [redacted] | Internal: 14-4173
sean.sulliva[redacted]

From: McDermott, Martin (ENRD) <Martin.McDermott@usdoj.gov>
Sent: Wednesday, August 22, 2018 3:53 PM
To: Bulleit, Kristy <kbulleit[redacted] Sullivan, Sean M. <Sean.Sullivan[redacted]
tcmar[redacted] megerhar[redacted]casey.roberts@sierraclub.org; joshua.smi[redacted]
tgreve[redacted]sheehar[redacted]
Cc: Johnson, Harry M. Pete <pjohnsor[redacted] McHugh, Timothy L. <TMcHu[redacted]; Potter, Barbara <bpotter[redacted]
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Sean: Respondents agree to the stipulation. Thank you. Martin

---

From: Bulleit, Kristy <kbulleit[redacted]
Sent: Monday, August 20, 2018 3:17 PM
To: Sullivan, Sean M. <Sean.Sullivan@[redacted]n;
casey.robe[redacted]oshua[redacted]
McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Cc: Johnson, Harry M. Pete <pjoh[redacted]cHugh, Timothy L. <TMcHu[redacted]tter, Barbara <bpott[redacted]ulleit, Kristy <kbulleit[redacted]
Subject: RE: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

UWAG, Ameren, and SWEPCo agree to so stipulate.

Kristy Bulleit
Part[redacted]
kbu[redacted]
p 20[redacted]
bio | vCard

Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

HuntonAK.com

This communication is confidential and is intended to be privileged pursuant to applicable law. If the reader of this message is not the intended recipient, please advise by return email immediately and then delete this message and all copies and backups thereof.

From: Sullivan, Sean M. [mailto:Sean.Sulli[redacted]]
Sent: Monday, August 20, 2018 2:34 PM
To: Bulleit, Kristy; Johnson, Harry M. Pete; McHugh, Timothy L.; tcr[redacted] casey.roberts[redacted]shua.smi[redacted]g; tgrever[redacted]ermott, Martin (ENRD)
Subject: Steam Electric ELGs - Proposed Stipulation of Dismissal by Duke Energy Indiana

Good afternoon all…

Duke Energy Indiana has decided to dismiss its petition for review in this case, which was directed solely towards the gasification wastewater effluent limits. Attached is a proposed stipulation of dismissal for your review. Will everyone please respond by email regarding whether your client will stipulate to the dismissal of Duke's petition for review?

Thanks.

Sean M. Sullivan
Direct: 919.835.4173 | Mobile [redacted] Internal: 14-4173
sean.sullivan[redacted]

troutman **sanders**
305 Church at North Hills Street, Suite 1200
Raleigh, NC 27609
troutman.com

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This e-mail message (and any attachments) from Troutman Sanders LLP may contain legally privileged and confidential information solely for the use of the intended recipient. If you received this message in error, please delete the message

and notify the sender. Any unauthorized reading, distribution, copying, or other use of this message (and attachments) is strictly prohibited.

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 9/5/2018 12:03:40 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Comments on brief?
Attachments: ENV_DEFENSE-#848583-v3-Steam_Postponement_Rule_Draft_Brief.DOC

Jessica, here is the latest revision. Apologies for not getting it to you until this morning.

Deliberative Process / Ex. 5

Thanks,
Tsuki

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Tuesday, September 4, 2018 10:51 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

That would be terrific, thanks.

Wednesday morning between 9:30-12 would be best on our end. Thursday is a bit more difficult.

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Tuesday, September 04, 2018 10:32 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

I'm starting to work through Jessica O'Donnell's comments this morning and I hope to have a new draft to you at the end of the day. Would that work for you?

Deliberative Process / Ex. 5

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Tuesday, September 4, 2018 10:14 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: RE: Comments on brief?

Hi Tsuki,

When do you think I can expect to see another draft of the brief to circulate to my Front Office?

Thanks,
Jessica

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Monday, August 27, 2018 11:07 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

I'm hoping to have Jessica O'Donnell take a first look this week, but I will check with her on her availability and get back to you. Thanks Jessica.

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Monday, August 27, 2018 10:54 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Fwd: Comments on brief?

Tsuki,

Attached are Steve's minor comments on the brief. Deliberative Process / Ex. 5 have questions please let me know.

I know you want to run this through Jessica O. next. Can you let me know what your timing is for that and when you might have a next draft for me to circulate to our front office?

Thanks!
Jessica

Begin forwarded message:

> **From:** "Hooks, Samantha" <hooks.samantha@epa.gov>
> **To:** "Zomer, Jessica" <Zomer.Jessica@epa.gov>, "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
> **Subject: RE: Comments on brief?**
>
> Here goes. . .
>
> Samantha S. Hooks
> Program Assistant
> Office of General Counsel
> Air and Radiation Law Office (ARLO)

Room 7340G
(202) 564-5569 (office)
(202) 564-5603 (fax)

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 9/14/2018 7:42:23 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Follow-up on steam electric postponement rule brief

Yes, I can make that edit.

I just received approval from Jeff Wood, with no comments. Other than some final formatting (like table of authorities) and a round of proofing by me, we're close to final form. But if you have any further thoughts or suggestions, feel free to let me know. Thanks.

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Friday, September 14, 2018 3:38 PM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Re: Follow-up on steam electric postponement rule brief

Thanks, Tuski. [redacted]

[redacted]

Otherwise, these edits look good and responsive to David's feedback.

Thanks so much,
Jessica

From: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>
Sent: Friday, September 14, 2018 3:12 PM
To: Zomer, Jessica
Subject: RE: Follow-up on steam electric postponement rule brief

Jessica, here is a redline reflecting some changes in response to David's comments. As I mentioned on our call earlier, the baseline on which the redline is based is not identical to what you saw last week, because since then I've incorporated comments from Chris Vaden and Jon Brightbill.

[redacted]

I'm still waiting for Jeff Wood's comments, and I'll let you know if anything substantive comes up.

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Friday, September 14, 2018 11:11 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Re: Follow-up on steam electric postponement rule brief

Yes, I saw you tried to call. I am on a call to prepare for an upcoming briefing on the steam rulemaking. I can call you when I'm done...hopefully 11:45?

From: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>
Sent: Friday, September 14, 2018 11:09 AM
To: Zomer, Jessica
Subject: RE: Follow-up on steam electric postponement rule brief

Jessica, I just tried to call you to discuss but got your voicemail. Want to give me a call when you get a chance?

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Friday, September 14, 2018 11:00 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Re: Follow-up on steam electric postponement rule brief

Yes, these are the only comments from David. No attachment with additional edits.

Have you had a chance to think about some of these suggestions? Any thoughts?

From: Hoshijima, Tsuki (ENRD) <Tsuki.Hoshijima@usdoj.gov>
Sent: Thursday, September 13, 2018 11:38 PM
To: Zomer, Jessica
Subject: RE: Follow-up on steam electric postponement rule brief

Jessica, can you confirm that the only comments from David are those that he included in the text of the email? I didn't see a Word attachment with further comments (the only attachment I got was the AG memo). Just want to make sure there isn't anything I'm missing.

From: Hoshijima, Tsuki (ENRD)
Sent: Thursday, September 13, 2018 10:35 PM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: Re: Follow-up on steam electric postponement rule brief

Thanks Jessica! I'll also think through them tomorrow morning and we can discuss if necessary.

On Sep 13, 2018, at 9:40 PM, Zomer, Jessica <Zomer.Jessica@epa.gov> wrote:

> Tsuki, Jessica - FYI, comments from David just came in. I need to take a closer look tomorrow but wanted to pass them along ASAP.

Begin forwarded message:

From: "Fotouhi, David" <Fotouhi.David@epa.gov>
To: "Zomer, Jessica" <Zomer.Jessica@epa.gov>
Cc: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Levine, MaryEllen" <levine.maryellen@epa.gov>, "Mills, Derek" <Mills.Derek@epa.gov>
Subject: RE: Follow-up on steam electric postponement rule brief

This looks good. A few comments:

- [redacted]
- [redacted]
- [redacted]
- [redacted]

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Zomer, Jessica
Sent: Thursday, September 6, 2018 3:28 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>
Subject: Follow-up on steam electric postponement rule brief

David,

[redacted]

Thanks,

Jessica Hall Zomer

Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 2355A, Washington, DC 20460
Tel. (202) 564-3376 | zomer.jessica@epa.gov

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Thursday, September 06, 2018 11:21 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

[redacted]

<APPELLATE-#368494-v1-Guidance_Regarding_Nationwide_Injunctions.pdf>

Message

From: Hoshijima, Tsuki (ENRD) [Tsuki.Hoshijima@usdoj.gov]
Sent: 9/14/2018 3:12:45 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Follow-up on steam electric postponement rule brief

Sure, that will work. Thanks, Personal Phone / Ex. 6

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Friday, September 14, 2018 11:11 AM
To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Re: Follow-up on steam electric postponement rule brief

Yes, I saw you tried to call. I am on a call to prepare for an upcoming briefing on the steam rulemaking. I can call you when I'm done...hopefully 11:45?

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To: Zomer, Jessica
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To: Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>
Subject: Re: Follow-up on steam electric postponement rule brief

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Sent: Thursday, September 13, 2018 11:38 PM
To: Zomer, Jessica
Subject: RE: Follow-up on steam electric postponement rule brief

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From: Hoshijima, Tsuki (ENRD)
Sent: Thursday, September 13, 2018 10:35 PM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>

Cc: O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>
Subject: Re: Follow-up on steam electric postponement rule brief

Thanks Jessica! I'll also think through them tomorrow morning and we can discuss if necessary.

On Sep 13, 2018, at 9:40 PM, Zomer, Jessica <Zomer.Jessica@epa.gov> wrote:

> Tsuki, Jessica - FYI, comments from David just came in. I need to take a closer look tomorrow but wanted to pass them along ASAP.
>
> Begin forwarded message:
>
> > **From:** "Fotouhi, David" <Fotouhi.David@epa.gov>
> > **To:** "Zomer, Jessica" <Zomer.Jessica@epa.gov>
> > **Cc:** "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>, "Levine, MaryEllen" <levine.maryellen@epa.gov>, "Mills, Derek" <Mills.Derek@epa.gov>
> > **Subject: RE: Follow-up on steam electric postponement rule brief**
> >
> > This looks good. A few comments:
> >
> > - Deliberative Process / Ex. 5
> > - Deliberative Process / Ex. 5
> > - Deliberative Process / Ex. 5
> > - Deliberative Process / Ex. 5

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov

From: Zomer, Jessica
Sent: Thursday, September 6, 2018 3:28 PM
To: Fotouhi, David <Fotouhi.David@epa.gov>
Cc: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Levine, MaryEllen <levine.maryellen@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>
Subject: Follow-up on steam electric postponement rule brief

David,

Deliberative Process / Ex. 5

Thanks,

Jessica Hall Zomer

Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 2355A, Washington, DC 20460
Tel. (202) 564-3376 | **zomer.jessica@epa.gov**

From: Hoshijima, Tsuki (ENRD) [mailto:Tsuki.Hoshijima@usdoj.gov]
Sent: Thursday, September 06, 2018 11:21 AM
To: Zomer, Jessica <Zomer.Jessica@epa.gov>
Subject: RE: Comments on brief?

Deliberative Process / Ex. 5

<APPELLATE-#368494-v1-Guidance_Regarding_Nationwide_Injunctions.pdf>

Message

From: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
Sent: 12/12/2017 8:32:52 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: FW: ENV_DEFENSE-#828649-v1-SWEPCO_DEC__12_PM_DRAFT_MERITS_BRIEF.docx
Attachments: SWEPCO_REDLINE.docx

JZ—does this work for your review?mcD

From: White, Jessica C. (ENRD)
Sent: Tuesday, December 12, 2017 3:24 PM
To: McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>
Subject: RE: ENV_DEFENSE-#828649-v1-SWEPCO_DEC__12_PM_DRAFT_MERITS_BRIEF.docx

Attached. To view the two side by side it needs to be done directly from the user's PC. Let me know if you have any questions.

From: McDermott, Martin (ENRD)
Sent: Tuesday, December 12, 2017 3:19 PM
To: White, Jessica C. (ENRD) <JWhite3@ENRD.USDOJ.GOV>
Subject: ENV_DEFENSE-#828649-v1-SWEPCO_DEC__12_PM_DRAFT_MERITS_BRIEF.docx

Can you redline against the one we sent to front office his a.m.?

Message

From: McDermott, Martin (ENRD) [Martin.McDermott@usdoj.gov]
Sent: 12/12/2017 8:17:56 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: ENV_DEFENSE-#828649-v1-SWEPCO_DEC__12_PM_DRAFT_MERITS_BRIEF.docx
Attachments: ENV_DEFENSE-#828649-v1-SWEPCO_DEC__12_PM_DRAFT_MERITS_BRIEF.docx

Clean current draft, with DOJ front office comments

Message

From: Eitel, Michael (ENRD) [Michael.Eitel@usdoj.gov]
Sent: 5/16/2018 2:51:10 AM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: ELG Reply for review
Attachments: WILDLIFE-#307368-v1-ELG_-_Reply_MTD_Jurisdiction_(MLF_comments).DOCX; ATT00001.htm

Here's my managers comments, didn't incorporate all of them, but will help you focus where I made some small changes.

Message

From: Eitel, Michael (ENRD) [Michael.Eitel@usdoj.gov]
Sent: 3/28/2018 1:51:46 PM
To: Zomer, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a5c30484c1704ec79addf362bf776ed6-Hall, Jessica]
Subject: RE: Draft ESA/Steam Brief
Attachments: DENVER-#607287-v1-ELG_-_Review_Draft_MTD_JHZ.DOCX

Thanks Jessica, will wait for others to weigh in. In the interim, here's some off-the-cuff responses for consideration, with the caveat I'm new to these EPA/CWA issues so might need some more education here. -- Mike

From: Zomer, Jessica <Zomer.Jessica@epa.gov>
Sent: Wednesday, March 28, 2018 5:37 AM
To: Eitel, Michael (ENRD) <MEitel@ENRD.USDOJ.GOV>; Levine, MaryEllen <levine.maryellen@epa.gov>; Hoshijima, Tsuki (ENRD) <THoshijima@ENRD.USDOJ.GOV>; McDermott, Martin (ENRD) <MMcDermott@ENRD.USDOJ.GOV>; O'Donnell, Jessica (ENRD) <JODonnell@enrd.usdoj.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: Draft ESA/Steam Brief

Thanks, Mike. Here is the draft with my edits and comments. There are still a couple of people in my office who plan to review this today (Mary Ellen and Alexis), including my manager (Mary Ellen) who may have some edits to make to my own edits, so Mike please hold off on accepting any changes until I send you another draft with all of our comments later today. But, I wanted you to see some of the edits I have made so far.

Deliberative Process / Ex. 5

Jessica Z.