

ORAL ARGUMENT NOT SCHEDULED
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE
FUND,

Petitioner,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

Case No. 19-1222
Consolidated with 19-1227

RESPONSE CONCURRING WITH
RESPONDENT'S CONSENT MOTION FOR
VOLUNTARY VACATUR AND REMAND

On February 5, 2021, this Court ordered the parties in these consolidated cases to file motions to govern future proceedings by March 4, 2021. ECF #1884027 (Order dated Feb. 5, 2021). Respondent has filed a consent motion for voluntary vacatur and remand of the Delay Rule. To fully comply with this Court's order, Petitioners submit this response concurring with Respondent's consent motion for voluntary vacatur and remand. As Petitioners explained in their Rule 28(j) letter filed on January 26, 2021, the opinion issued in *American Lung Association v. U.S. Environmental Protection Agency*, 985 F.3d 914 (D.C. Cir. 2021), vacated the timing requirements that are the predicate for the Delay Rule at issue here. Without that

predicate, the Delay Rule is unjustified and must be vacated as well. Petitioners therefore request that this Court grant the relief Respondent seeks in its motion for voluntary vacatur and remand.

Dated: March 4, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Response Concurring with Respondent's Consent Motion for Voluntary Vacatur and Remand is printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word, it contains 146 words.

/s/ *Julia K. Forgie*
JULIA K. FORGIE

CERTIFICATE OF SERVICE

I hereby certify that, on March 4, 2021, I caused a copy of the foregoing Response Concurring with Respondent's Consent Motion for Voluntary Vacatur and Remand to be filed with the Clerk of the Court using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ *Julia K. Forgie*
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