

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1289**September Term, 2018****EPA-83FR36435****Filed On: March 13, 2019**

Waterkeeper Alliance, Inc., et al.,

Petitioners

v.

Environmental Protection Agency and
Andrew Wheeler, Administrator, U.S.
Environmental Protection Agency,

Respondents

Big Brown Power Company, LLC, et al.,
Intervenors**BEFORE:** Henderson, Srinivasan, and Millett, Circuit Judges**ORDER**

Upon consideration of the motion for voluntary remand without vacatur, the responses thereto, and the reply; and the motion for partial stay and expedited consideration or partial summary vacatur, the responses thereto, and the reply, it is

ORDERED that the motion for voluntary remand without vacatur be granted and the motion for partial stay and expedited consideration or partial summary vacatur be denied. See Ethyl Corp. v. Browner, 989 F.2d 522, 524 (D.C. Cir. 1993); Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n, 988 F.2d 146, 150-51 (D.C. Cir. 1993). Remand of the challenged rule to the Environmental Protection Agency is appropriate to allow the agency to reconsider that rule in light of this court's decision in Utility Solid Waste Activities Group v. EPA (USWAG), 901 F.3d 414 (D.C. Cir. 2018). See id. at 436; Ethyl Corp., 989 F.2d at 524. The court declines to vacate the challenged rule because petitioners have not demonstrated that EPA would be "[un]able to explain," on remand, its rationale supporting the rule or the portions of the rule that petitioners seek to vacate. Allied-Signal, 988 F.2d at 150-51. In addition, EPA and the intervenors have shown that the consequences of vacatur would be disruptive. Id. at 151.

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In its motion for remand without vacatur, EPA acknowledges the need to proceed “expeditiously” on remand and advises that it could be possible to conclude the rulemaking within as little as nine months. EPA Mot. for Voluntary Remand at 15. We are confident that EPA will, as represented, expedite its rulemaking proceedings on remand to the fullest extent possible.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Laura Chipley
Deputy Clerk