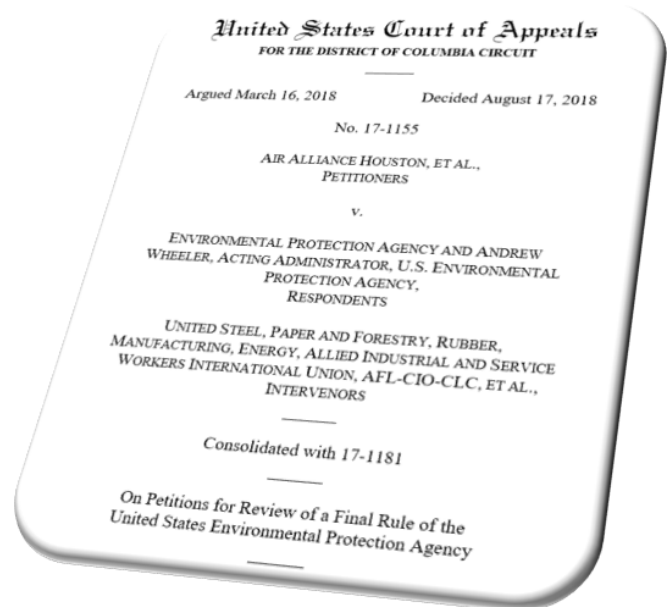


SEPTEMBER 6, 2018 | OSHA RULEMAKINGS & STANDARDS

D.C. Circuit's "Inadvertently Issued" Mandate puts RMP Amendments into Effect for a Weekend

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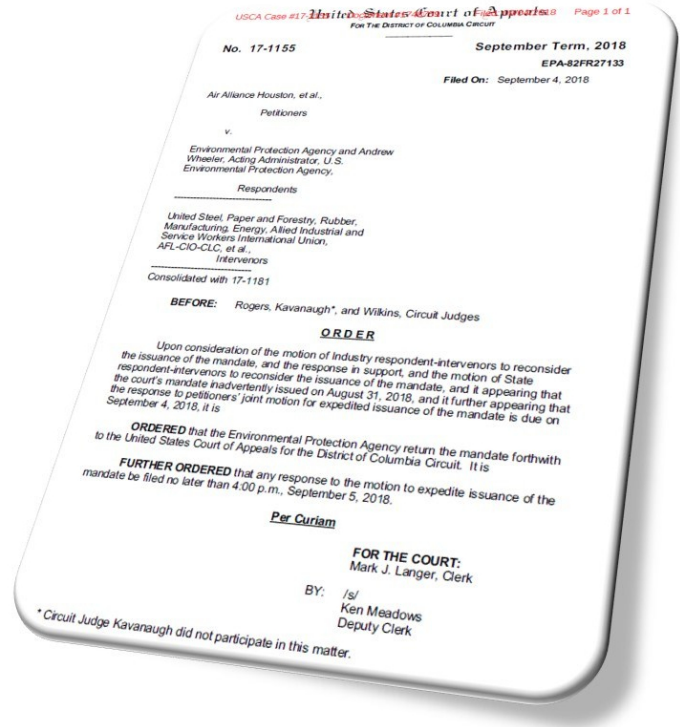
Late last Friday, August 31, 2018, the D.C. Circuit unexpectedly granted Petitioners' request to expedite the issuance of the Court's mandate to strike down the delay of EPA's 2017 RMP Amendments. As we [previously reported](#), the D.C. Circuit held on August 17, 2018, that EPA acted improperly when it issued a final rule delaying the effective date of a certain set of amendments made to EPA's RMP Rule (the "Delay Rule"). Providing for a full rehearing petition period, and absent any action from the Court, the mandate for this decision would have issued at the earliest on October 8, 2017. On August 24, 2018, however, Petitioners filed a [motion to expedite](#), asking that it issue no later than September 7, 2018.



Petitioners' arguments focus on the public's "strong interest" in the prompt issuance of the mandate due to "the serious and irreparable harm and imminent threats to public health and safety that EPA's Delay Rule is causing," and they point to the 14 months of delay that has already occurred as evidence of the need for expedited relief.

And in a nod to current events, Petitioners claim that time is now of the essence because of the impending hurricane season, specifically mentioning the OIG's investigation of EPA's preparedness and response efforts to Hurricane Harvey in 2017.

Under the Federal Rules of Appellate Procedure, EPA and the Intervenor are afforded 10 days to file oppositions to Petitioners' Motion, so those oppositions had not yet been filed on August 31.



After the Court issued the [mandate](#) late on Friday, August 31, several motions for reconsideration were filed by EPA and Intervenor, but the Court's closure over the 3-day weekend left all the parties in suspense, anxiously trying to determine the implications of the decision.

After a long weekend of suspense, the Court [ordered EPA to return the mandate](#) on September 4, noting that the responses to Petitioners' Motion were not yet due. The Court also briefly noted that it appeared "that the court's mandate inadvertently issued" the previous Friday. EPA [returned the mandate](#) on the same day.

But now that EPA and the Intervenor have filed oppositions to Petitioners' Motion to expedite the issuance of the mandate, what comes next? At a minimum, the Court's August 31 order should serve to remind regulated industry that until EPA completes its rulemaking to roll back parts of the RMP Amendments, it would take only one order from the D.C. Circuit to immediately implement the RMP Amendments. If the D.C. Circuit grants a rehearing *en banc*, EPA may yet prevail in upholding the Delay Rule, but until or unless that occurs, industry is left to anxiously await the outcome of the case.

Accordingly, we have listed below the effective dates of the RMP Amendments, including those provisions that would take immediate effect if the Court again issues the mandate to enforce its August 17 decision:

- Immediately effective – Requirement for 3-year Compliance Audits to cover all elements of the Rule in each covered process at the facility.
- Immediately effective – Duty to Coordinate Emergency Response Activities with local emergency responders.

- March 14, 2020 – Emergency Response Program Revisions.
- March 15, 2021 – Third-party Auditor Requirements; Incident Investigation and Root Cause Analyses; Safer Technology and Alternatives Analyses/IST Provisions; Emergency Response Exercise; and Public Availability of Information.
- March 14, 2022 – Revised Elements of the RMP provisions in Subpart G.

We will monitor developments closely and provide updates accordingly, so be sure to follow us if you would like to be notified of future posts by email.