

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

TRUCK TRAILER MANUFACTURERS  
ASSOCIATION, INC., *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*

Respondents,

and

CALIFORNIA AIR RESOURCES BOARD,  
*et al.*,

Intervenors.

No. 16-1430 (consolidated with  
No. 16-1447)

**Reply In Support of Motion to Compel Agencies to Submit Detailed Status  
Report and Timeline for Completion of Administrative Review**

Respondents object that TTMA's motion is an "extraordinary request" to force them publicly to report confidential internal deliberations and "to pressure them to speed up their discretionary proceedings," "with the goal of rearranging their regulatory priorities to suit Petitioner's own interests." Opp. at 2, 5. That is not so. TTMA is not asking the Court to compel the Agencies to reveal deliberative secrets or to reorder their internal priorities. TTMA is merely asking this Court to compel Respondents to comply meaningfully with the Court's order

to file status reports, by substantively addressing the status of their progress and providing a timeline for completion of their administrative reconsideration processes.

In granting the Agencies' motion to extend the abeyance of this litigation pending completion of administrative rulemaking, the Court directed on October 27, 2017 that the Agencies "file status reports at 90-day intervals beginning 90 days from the date of this order." As Respondents summarize, all three of their reports state as the status that "EPA is working to develop a proposed rule" and "NHTSA continues to assess next steps." Opp. at 3-4. These repeated statements over the course of nearly a year provide no information and serve no useful purpose. Indeed, the Agencies' contentions that they have been working on this for almost a year is puzzling. At issue here are straightforward questions concerning the interpretation of statutory definitions, which have been thoroughly presented to the Agencies in seeking reconsideration, *see* Letter from J. Sims to S. Pruitt and E. Chao (April 3, 2017) (attached as Ex. B to Motion for Stay), and briefed as to EPA in obtaining a stay from this Court, *see* Motion for Stay at 6-13 (Sept. 25, 2017).

Respondents' contention that their status reports suffice effectively renders this Court's order meaningless. Any final decisions on reconsideration or rulemaking proposals must be public anyway, and the parties would *sua sponte*

address the implications for this litigation to the Court, without the need for status reports. If EPA and NHTSA can simply file status reports that say “we’re working on it” until they are ready to publicly announce a decision, the Court’s order has no meaning or value. The agencies’ discretion to control their administrative processes does not free the agencies of their obligation to keep the Court apprised of that process as a condition of the Court’s decision granting them an abeyance in this litigation.

TTMA understands the purpose of the Court’s order requiring 90-day status reports to be providing the Court (and the parties) with sufficient information about the basis for the abeyance to enable the Court to manage its own docket, and to avoid an unduly lengthy delay period that could prejudice TTMA’s right to timely adjudication of its claims. This is more than a theoretical concern. Despite Respondents’ suggestion that NHTSA might extend the current compliance date of January 2021, TTMA has no assurance regarding the outcome of the Agencies’ reconsideration. TTMA thus faces a risk, increasing with the passage of months, that the Court will not have sufficient time to adjudicate this case before TTMA’s members must prepare to comply with the NHTSA provisions of the Final Rule, which have not been stayed. Those provisions go into effect in just over two years, where the statute requires that NHTSA provide four years’ lead-time to prepare to comply. 49 U.S.C. § 32902(k)(3)(A).

Contrary to Respondents' contentions, TTMA is not filing its motion to "interfere in ongoing proceedings" or even to assert "dissatisfaction with the pace of ongoing administrative proceedings." Opp. at 7-8. Rather, TTMA is only asking this Court to compel Respondents to explain what that pace actually is, including their expected date to reach a proposed decision. Submitting a status report that provides information about the current schedule in no way would alter how the Agencies marshal their resources, set their priorities, or carry out their delegated responsibilities. Indeed, it is Respondents who have obtained a departure from the normal schedule for litigation in this Court on the condition that they would keep the Court apprised of their progress in revisiting the regulations at issue in the litigation. They should not be excused from fulfilling that condition.

Accordingly, for the reasons stated herein and in TTMA's motion, this Court should order the Agencies to provide a more detailed status report that sets forth a timeline for the Agencies' decisions on these matters.

Dated: August 17, 2018

Respectfully submitted,

/s/ Elisabeth S. Theodore

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 749 words, excluding the parts of the filing exempted by Fed. R. App. P. 32(f). The filing complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6), respectively, because it was prepared in a proportionately spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: August 17, 2018

/s/ Elisabeth S. Theodore  
Elisabeth S. Theodore

**CERTIFICATE OF SERVICE**

I hereby certify that, on August 17, 2018, the foregoing was electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

Dated: August 17, 2018

/s/ Elisabeth S. Theodore  
Elisabeth S. Theodore