IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALLIANCE OF NURSES FOR HEALTHY ENVIRONMENTS, ET AL.,	)	
Petitioners,	)	
v.	)	No. 17-1926 (consol. with 17-2040)
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

EPA'S OPPOSITION TO MOTION TO TRANSFER

On the same day in July 2017, the Environmental Protection Agency issued two related rules establishing processes for reviewing potentially toxic substances under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2605(b): the "Prioritization Rule"[1] and the "Risk Evaluation Rule."[2] Within 24 hours of one another, three sets of petitioners challenged both rules in three separate Courts of Appeals, including this Court. As required by 28 U.S.C. § 2112, the six petitions were submitted to the Judicial Panel on Multidistrict Litigation, which randomly

[1] "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act," 82 Fed. Reg. 33,753 (July 20, 2017) ("Prioritization Rule").
[2] "Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act," 82 Fed. Reg. 33,726 (July 20, 2017) ("Risk Evaluation Rule").

selected this Court to review all challenges to the Risk Evaluation Rule and the Court of Appeals for the Ninth Circuit to review all challenges to the Prioritization Rule.

Now that the courts have been selected through the Panel process, 28 U.S.C. § 2112(a)(5) provides only one basis for transfer: "[f]or the convenience of the parties in the interest of justice." On September 14, 2017, therefore, Respondents Environmental Protection Agency and Administrator Scott Pruitt, (collectively "EPA") filed a motion in the Ninth Circuit seeking transfer of challenges to the Prioritization Rule to this Court so that it could be heard by the same court that is reviewing challenges to EPA's closely related Risk Evaluation Rule.

Before the Ninth Circuit has had a chance to rule on EPA's motion, however, Petitioners now move to transfer these cases challenging the Risk Evaluation Rule to the Ninth Circuit—in other words, in the opposite direction. Notwithstanding that three sets of petitioners chose to file their petitions for review in three different courts, creating the need for these cases to be submitted to a Panel lottery in the first place, Petitioners now argue that the cases should be heard in the Ninth Circuit because more parties joined the single petition filed in that court than joined the petition filed in this Court.

This Court should deny Petitioners' motion. The parties agree that the interest of justice will be served by challenges to the two EPA rules being heard in

the same court due to some overlapping issues. However, as explained in EPA's previously-filed motion to transfer in the Ninth Circuit, having the cases heard in the Fourth Circuit would be more convenient for the parties because all counsel of record are located in Washington, DC, or New York, within an easy and more economical travel distance of this Court. Moreover, the interest of justice and the convenience of the parties would be best served by quickly resolving the challenges to avoid disrupting EPA's review of potentially toxic chemicals. And this Court will likely be able to rule on the petitions more quickly than the Ninth Circuit. Finally, it would be in the interest of comity for this Court to deny the motion, as it will avoid potentially conflicting decisions and conserve judicial resources.

BACKGROUND

On August 11, 2017, the Alliance of Nurses filed petitions in this Court for review of the Risk Evaluation Rule, *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1926 (4th Cir.), and the Prioritization Rule, *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1927 (4th Cir.). In its petitions, the Alliance of Nurses stated that consolidation of the two petitions would be "appropriate to promote judicial economy" because "the legal issues raised by the challenges to the Risk Evaluation and Prioritization Rules substantially overlap." *E.g.*, No. 17-1926, Petition for Review, Doc. 3 at 2 (Aug. 11, 2017). On August 11, 2017, this

Court consolidated the two petitions, with No. 17-1926 designated as the lead case. *See* No. 17-1926, Order, Doc. 6 (Aug. 11, 2017).

Additional parties filed petitions for review of the Risk Evaluation and Prioritization Rules in the Second and Ninth Circuits. *See Environmental Defense Fund v. EPA*, No. 17-2464 (2d Cir.) (Risk Evaluation Rule); *Environmental Defense Fund v. EPA*, No. 17-2403 (2d Cir.) (Prioritization Rule); *Safer Chemicals Healthy Families v. EPA*, No. 17-72259 (9th Cir.) (Risk Evaluation Rule)[3]; *Safer Chemicals Healthy Families v. EPA*, No. 17-72260 (9th Cir.) (Prioritization Rule).

On September 1, 2017, the Judicial Panel on Multidistrict Litigation ordered the three petitions for review of the Risk Evaluation Rule to be consolidated in this Court. *See* No. 17-1926, Consolidation Order, Doc. 16 (Sept. 1, 2017). The Panel ordered the three petitions for review of the Prioritization Rule to be consolidated in the Ninth Circuit. *See* No. 17-1926, Consolidation Order, Doc. 17 (Sept. 1, 2017).

In accordance with the Panel's consolidation order, on September 11, 2017, this Court de-consolidated Cases No. 17-1926 and 17-1927 and transferred No. 17-1927 (regarding the Prioritization Rule) to the Ninth Circuit. *See* No. 17-1927, Order, Doc. 18 (Sept. 11, 2017).

[3] *Safer Chemicals Healthy Families v. EPA*, No. 17-72259 (9th Cir.) has not yet been transferred to this Court. Once it has been docketed, EPA requests the same relief with respect to that case.

On September 14, 2017, EPA filed a motion in the Ninth Circuit to transfer the petitions for review of the Prioritization Rule to this Court. *See Safer Chemicals Healthy Families v. EPA*, No. 17-72260, EPA Mot. Transfer & Hold Cases in Abeyance, Doc. 15 (9th Cir. Sept. 14, 2017), attached as Exhibit A.

ARGUMENT

A. Petitioners' Motion to Transfer Should Be Denied.

1. The Cases Should Be Heard in the Fourth Circuit for the Convenience of the Parties and in the Interest of Justice.

The parties do not dispute that the petitions for review of the Risk Evaluation Rule and the Prioritization Rule should be heard by the same panel. However, it would be more convenient for the parties and would conserve travel resources for these cases to be heard in this Court, because all counsel of record are located in Washington, DC, or New York, within easy and more economical travel distance of the Fourth Circuit. *See, e.g., Eschelon Telecom, Inc. v. FCC*, 345 F.3d 682, 683 n.1 (8th Cir. 2003) (finding that the fact that "most of the parties have D.C. counsel of record" supported transfer to the D.C. Circuit). Where a federal agency is involved and taxpayer dollars are at stake, it is reasonable to take travel costs into account. Moreover, it is reasonable to take Petitioners' travel costs into account because, in the event that Petitioners succeed in their challenge, Petitioners might seek reimbursement of their costs and attorneys' travel time from the United

States. *See* 15 U.S.C. § 2618(d) (TSCA provision authorizing certain attorney's fees and costs).

Additionally, this Court will likely be able to resolve these matters more quickly than the Ninth Circuit, which will in turn help minimize disruption to EPA's processes for reviewing potentially toxic chemicals. As the two Circuits' public filings show, the Fourth Circuit's median time to resolve cases is over 8 months faster than that of the Ninth Circuit. *See, e.g.*, Judicial Caseload Report: U.S. Court of Appeals Summary -- 12-Month Period Ending June 30, 2017, *available at* http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2017/06/30-2 (data table showing that this Court had a median time of 5.1 months to resolve appeals in the 12-month period ending June 30, 2017, while the Ninth Circuit had a median time of 13.3 months).

Petitioners make two arguments in their motion to transfer. Neither argument weighs in favor of transfer to the Ninth Circuit, particularly when balanced against the speed and convenience of having the petitions heard in this Court.

First, Petitioners argue that these cases should be transferred to the Ninth Circuit because they should be afforded their choice of forum. Ptrs.' Mot. Transfer at 9. That argument is both legally unsupported and unpersuasive in light of the procedural history of these cases. Three petitioners, who all now seek transfer to

the Ninth Circuit, filed petitions for review in the Fourth Circuit. It was only because Petitioners themselves chose three separate circuits that the Panel lottery process was invoked at all. Petitioners suggest that the Ninth Circuit was actually the collective forum of choice because more entities joined in the petitions for review in the Ninth Circuit, but they do not explain why this makes a difference. The lottery process prescribed under 28 U.S.C. § 2112(a)(3) does not give extra weight to a circuit that received joint (or even separate) petitions for review from multiple parties. This Court should likewise not give extra weight to a circuit on that basis when considering a transfer under 28 U.S.C. § 2112(a)(5) for cases that have gone through the lottery process. Moreover, the entities themselves did not treat the Ninth Circuit petitions for review as multiple cases; they filed a single joint petition for review of each EPA rule.

Petitioners' suggestion that the convenience of the parties should be determined based on the location of the parties, rather than of the counsel, also lacks merit in the context of these cases. These are administrative law cases that must be resolved based on the record before the agency. *See, e.g.*, *IMS, P.C. v. Alvarez*, 129 F.3d 618, 623 (D.C. Cir. 1997) ("It is a widely accepted principle of administrative law that the courts base their review of an agency's actions on the materials that were before the agency at the time its decision was made."). The record here is available digitally, briefing will be filed digitally, and counsel will

then have to travel for oral argument. There will be no collection of evidence and no need to depose the parties. Oral argument will not involve taking the testimony of any parties. Thus, the location of the parties themselves would have very little impact on the convenience associated with choosing one court over another. Indeed, each petitioner involved in these cases has already shown itself willing to work with out-of-state counsel.

Second, Petitioners argue that the petitions should be transferred to the Ninth Circuit because the petitions for review of the two EPA rules were filed in that court a day earlier than the petitions filed in this Court. Ptrs.' Mot. Transfer at 9-11. Under the old "first to file" rule, all challenges to a single rule would have been transferred to the court that received the first challenge. *See, e.g.*, *Va. Elec. & Power Co. v. EPA*, 610 F.2d 187, 188 (4th Cir. 1979). But Congress did away with the unseemly practice of racing to the courthouse in 1988 when it created a new process for choosing which court will hear multiple challenges to the same agency rule. Pub. L. No. 100-236, § 1, 101 Stat. 1731 (1988) (codified at 28 U.S.C. § 2112(a)); S. Rep. 100-263, at *1-6 (1987) (extensive discussion of how the new law was intended to end the elaborate and wasteful practice of racing to the courthouse). Now, the Judicial Panel for Multidistrict Litigation randomly selects a court from among all courts that received a petition for review within 10 days of issuance of the agency rule. 28 U.S.C. § 2112(a). The order of filings in the first

10 days has no bearing on the decision; as long as the court receives a petition for review within those 10 days, that court gets equal weight in the lottery process prescribed in 28 U.S.C. § 2112. In sum, the first-to-file rule has been completely and deliberately superseded for all courts receiving challenges to the same rule within 10 days of a rules' issuance. *See* S. Rep. 100-263, at *1-6 (random lottery for all courts receiving challenges within 10 days would replace the first-to-file rule). Petitioners do not deny that all three sets of challenges to both rules were filed within 10 days of the rules' issuance, and they point to no cases in which courts have applied the first-to-file principle following the creation of the lottery process. Thus, the Court should give no weight to the fact that the Ninth Circuit received a challenge to these EPA rules the day before this Court.

2. Granting the Motion Could Lead to Absurd Results.

If both this Court and the Ninth Circuit were to grant the motions to transfer, it would result in one set of petitions being transferred to this Court and the other petitions being transferred to the Ninth Circuit. This would be an absurd result and defeat the parties' mutual goal of having the two sets of petitions heard in the same court. This Court should reject Petitioners' attempt to goad this Court into ruling on their motion to transfer before the Ninth Circuit has an opportunity to rule on

EPA's previously-filed motion.[4] Instead, this Court should deny Petitioners' motion to transfer in the interest of comity.

As this Court has held, "[t]he doctrine of comity instructs federal judges to avoid 'stepping on each other's toes while parallel suits are pending in different courts.'" *In re Naranjo*, 768 F.3d 332, 348 (4th Cir. 2014) (citations omitted). Applying comity "achieve[s] at least two positive results: avoiding 'an unnecessary burden on the federal judiciary' and preventing 'the embarrassment of conflicting judgments.'" *Id*. (citations omitted). It would be in the interest of comity for this Court to permit the Ninth Circuit to rule on EPA's motion to transfer, which was filed before Petitioners filed the pending motion. Should both courts entertain the pending motions simultaneously, it would unnecessarily burden both courts. At the very minimum, this Court should wait to rule on this motion until after the Ninth Circuit makes a decision.

CONCLUSION

In sum, this Court should deny Petitioners' motion to transfer.

Dated: September 29, 2017

Respectfully submitted,

JEFFREY H. WOOD
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[4] EPA notes that it filed its motion in the Ninth Circuit only after giving Petitioners advance notice of nearly a week.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on September 29, 2017. I certify that all participants in the case registered as CM/ECF users will receive service via the appellate CM/ECF system.

s/ *Samara M. Spence*

Exhibit A

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAFER CHEMICALS HEALTHY FAMILIES, ET AL., Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents.	No. 17-72260
ENVIRONMENTAL DEFENSE FUND, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents.	No. 17-72501

MOTION TO TRANSFER AND
HOLD CASES IN ABEYANCE

Respondents United States Environmental Protection Agency and Scott Pruitt, Administrator, United States Environmental Protection Agency (collectively "EPA") move to transfer these two related cases to the United States Court of Appeals for the Fourth Circuit pursuant to 28 U.S.C. § 2112(a)(5). Three petitions for review of the same EPA rule (filed in the Second, Fourth, and Ninth Circuits)

were ordered to be consolidated in this Court by the Judicial Panel on Multidistrict Litigation. However, having the cases heard in the Fourth Circuit would be more convenient for the parties, because all counsel of record are located in Washington, DC, or New York. Moreover, it would be in the interest of justice that the cases be transferred to the Fourth Circuit, because they should be heard by the same panel deciding petitions for review of a second EPA rule with some overlapping issues. And the Fourth Circuit will likely be able to rule on the petitions more quickly.

EPA also moves to hold these cases in abeyance until the later of: (1) one week after this Court's resolution of EPA's motion to transfer, or (2) October 10, 2017, which is approximately one week[1] after the statutory deadline for interested persons to file petitions for review of the final rule challenged in these cases.

Safer Chemicals Healthy Families, *et al*. (collectively, "the Safer Chemicals Petitioners"), Petitioners in Case No. 17-72260, and Environmental Defense Fund, Petitioner in Case No. 17-72501, oppose the relief requested in this motion.

BACKGROUND

A. Petitions for Review of the Prioritization Rule

In these two related cases, the Safer Chemicals Petitioners and Environmental Defense Fund both seek judicial review of an EPA rule entitled "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic

[1] October 9, 2017 is a federal holiday.

Substances Control Act," 82 Fed. Reg. 33,753 (July 20, 2017) ("Prioritization Rule"). The Prioritization Rule establishes the process and criteria that EPA will use to identify chemicals as either high or low priority for purposes of risk evaluation, as required by section 6(b)(1) of the amended Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2605(b)(1).

The Safer Chemicals Petitioners filed their petition for review of the Prioritization Rule in this Court on August 10, 2017, and served the petition on EPA on August 11, 2017. *See Safer Chemicals Healthy Families v. EPA*, No. 17-72260 (9th Cir.). Under Federal Rule of Appellate Procedure 17(a), EPA's certified index of the administrative record for the Prioritization Rule is due September 20, 2017. Under the briefing schedule issued by this Court, Safer Chemicals Petitioners' opening brief is due October 30, and EPA's response brief is due November 28. No. 17-72260, Order, Dkt. 1 (9th Cir. Aug. 10, 2017).

On August 11, 2017, additional petitions for review of the Prioritization Rule were filed in the United States Courts of Appeals for the Second and Fourth Circuits. *See Environmental Defense Fund v. EPA*, No. 17-2403 (2d Cir.); *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1927 (4th Cir.).

B. Petitions for Review of the Risk Evaluation Rule

On July 20, 2017, the same day the Prioritization Rule was published in the Federal Register, a second EPA rule was published, entitled "Procedures for

Chemical Risk Evaluation Under the Amended Toxic Substances Control Act," 82 Fed. Reg. 33,726 (July 20, 2017) ("Risk Evaluation Rule"). The Risk Evaluation Rule establishes the process for EPA to conduct risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, as required by section 6(b)(4) of TSCA, 15 U.S.C. § 2605(b)(4).

In addition to seeking review of the Prioritization Rule at issue in these cases, the Safer Chemicals Petitioners filed a separate petition for review of the Risk Evaluation Rule on August 10 in this Court. *See Safer Chemicals Healthy Families v. EPA*, No. 17-72259 (9th Cir.).

Two additional petitions for review of the Risk Evaluation Rule were filed in the Second and Fourth Circuits on August 11. *See Environmental Defense Fund v. EPA*, No. 17-2464 (2d Cir.); *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1926 (4th Cir.).

In their petitions for review of the Prioritization Rule and Risk Evaluation Rule in the Fourth Circuit, the Alliance of Nurses petitioners stated that consolidation of the two petitions would be "appropriate to promote judicial economy" because "the legal issues raised by the challenges to the Risk Evaluation and Prioritization Rules substantially overlap." *E.g.*, *Alliance of Nurses for Healthy Environments v. EPA*, 17-1926, Petition for Review, Dkt. 3 at 2 (4th Cir. Aug. 11, 2017). On August 11, the Fourth Circuit consolidated the two petitions.

See, e.g., *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1926, Order, Dkt. 6 (4th Cir. Aug. 11, 2017).[2]

In their mediation questionnaires filed with this Court, the Safer Chemicals Petitioners stated that their challenge to each Rule "will involve issues that are substantially similar or related to some of the issues presented" in their petition for review of the other Rule. *See* No. 17-72259, Mediation Questionnaire, Dkt. 7 (9th Cir. Aug. 30, 2017); No. 17-72260, Mediation Questionnaire, Dkt. 7 (9th Cir. Aug. 30, 2017).

C. Multidistrict Litigation Proceedings

On August 31, 2017, EPA notified the Judicial Panel on Multidistrict Litigation that three petitions for review of the Prioritization Rule had been filed in more than one circuit and requested consolidation pursuant to 28 U.S.C. § 2112. *See* No. 17-72260, Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review, Dkt. 8-2 (9th Cir. Aug. 31, 2017). EPA filed a similar notice with respect to the three petitions for review of the Risk Evaluation Rule. *See* No. 17-72259, Notice to the Judicial Panel on Multidistrict Litigation of Multicircuit Petitions for Review, Dkt. 8-2 (9th Cir. Aug. 31, 2017). In these notices, EPA stated that the Agency "believes it would be in the interest of justice

[2] Following the proceedings of the Judicial Panel on Multidistrict Litigation, discussed *infra*, the Fourth Circuit deconsolidated the two cases.

and judicial efficiency for challenges to both rules to be litigated in the same court." *E.g.*, *id.* ¶ 4.

On September 1, 2017, the Panel ordered the three petitions for review of the Prioritization Rule to be consolidated in this Court. *See* Exhibit A. The Panel ordered the three petitions for review of the Risk Evaluation Rule to be consolidated in the Fourth Circuit. *See* Exhibit B.

D. Transferred Petitions for Review of the Prioritization Rule

On September 6, 2017, the Second Circuit transferred Environmental Defense Fund's petition for review of the Prioritization Rule to this Court, which has been docketed as *Environmental Defense Fund v. EPA*, No. 17-72501 (9th Cir.). Under Federal Rule of Appellate Procedure 17(a), EPA's certified index of the administrative record for the Prioritization Rule is due September 20, 2017. Under the briefing schedule issued by this Court, Environmental Defense Fund's opening brief is due November 27 and EPA's response brief is due December 26. No. 17-72501, Order, Dkt. 1 (9th Cir. Sept. 7, 2017).

On September 11, 2017, the Fourth Circuit transferred *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1927 (4th Cir.) to this Court. As of the time of this filing, this Court had not yet opened a new docket for this transferred case.[3]

[3] Once *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1927 (4th Cir.), is docketed in this Court, EPA requests that it be transferred to the Fourth Circuit and held in abeyance along with these two related cases.

ARGUMENT

Under 28 U.S.C. § 2112(a)(5), this Court may transfer cases consolidated by the Judicial Panel on Multidistrict Litigation to another Court of Appeals "[f]or the convenience of the parties in the interest of justice." This Court should transfer the petitions for review of the Prioritization Rule to the Fourth Circuit for three reasons.

First, it is in the interest of judicial economy for the same court to hear the challenges to both EPA Rules. *See ITT World Comm'cns, Inc. v. FCC*, 621 F.2d 1201, 1208 (2d Cir. 1980) ("[T]here is a policy of unifying related proceedings in a single court, and obtaining consistent results."). Although the two Rules are distinct and have separate administrative records, the parties anticipate that there will be some overlap of issues. As noted above, the Alliance of Nurses petitioners in the Fourth Circuit cases specifically sought consolidation of their two petitions for review for this reason. And the Petitioners in these cases have expressly stated that challenges to the two Rules will involve issues that are substantially similar or related. Moreover, the Fourth Circuit has already decided that the two petitions filed in that court should be consolidated, and deconsolidated them only following the Judicial Panel for Multidistrict Litigation's order. Second, it would be more convenient for the parties and conserve travel resources for these cases to be heard in the Fourth Circuit, because all counsel of record are located in Washington, DC,

or New York. Third, the Fourth Circuit may be able to resolve the petitions for review more quickly than this Court given the respective complexity of the courts' dockets. *See, e.g.*, Judicial Caseload Report: U.S. Court of Appeals Summary -- 12-Month Period Ending June 30, 2017, *available at* http://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2017/06/30-2 (data table showing that the Fourth Circuit had a median time of 5.1 months to resolve appeals in the 12-month period ending June 30, 2017, while the Ninth Circuit had a median time of 13.3 months).

EPA further requests that these cases, including the Agency's deadline to file the administrative record, be held in abeyance temporarily for two reasons. First, it will conserve party resources to wait until resolution of EPA's motion to transfer before completing any scheduled filings, particularly because the two cases have different schedules. Second, the deadline for interested persons to file petitions for review of the Prioritization and Risk Evaluation Rules has not yet expired. Under TSCA's judicial review provision, interested persons may file petitions for review up to 60 days after promulgation of those rules. 15 U.S.C. § 2618(a)(1)(A).[4] Thus, additional petitions for review of the Prioritization and Risk Evaluation Rules could be filed as late as October 2, 2017. It would conserve

[4] Under 40 C.F.R. § 23.5, the 60-day period began "two weeks after the date when the document [wa]s published in the Federal Register," or August 3, 2017.

the parties' resources to be able to focus on preparing any procedural motions needed to address any new petitions for review before completing the scheduled filings in these cases. Finally, EPA requests that this Court hold these cases in abeyance one additional week after the Court's ruling on the motion to transfer and the expiration of the deadline to file petitions for review (whichever occurs later). This additional time will allow the parties to confer on any outstanding procedural and scheduling issues regarding the cases.

CONCLUSION

In sum, EPA requests that this Court transfer these cases to the United States Court of Appeals for the Fourth Circuit. EPA also requests that these cases be held in abeyance until the later of (1) one week after this Court rules on the motion to transfer, or (2) October 10, 2017. Once *Alliance of Nurses for Healthy Environments v. EPA*, No. 17-1927 (4th Cir.), which the Fourth Circuit transferred to this Court, is docketed, EPA requests the same relief with respect to that case.

Dated: September 14, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 14, 2017. I certify that all participants in the case registered as CM/ECF users will receive service via the appellate CM/ECF system.

s/ *Erica Zilioli*

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
Effective 12/01/2016

No. 17-1926 **Caption:** Alliance of Nurses for Healthy Environments v. EPA

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

Type-Volume Limit for Briefs: Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 13,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 15,300 words or 1,500 lines. A Reply or Amicus Brief may not exceed 6,500 words or 650 lines. Amicus Brief in support of an Opening/Response Brief may not exceed 7,650 words. Amicus Brief filed during consideration of petition for rehearing may not exceed 2,600 words. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include headings, footnotes, and quotes in the count. Line count is used only with monospaced type. See Fed. R. App. P. 28.1(e), 29(a)(5), 32(a)(7)(B) & 32(f).

Type-Volume Limit for Other Documents if Produced Using a Computer: Petition for permission to appeal and a motion or response thereto may not exceed 5,200 words. Reply to a motion may not exceed 2,600 words. Petition for writ of mandamus or prohibition or other extraordinary writ may not exceed 7,800 words. Petition for rehearing or rehearing en banc may not exceed 3,900 words. Fed. R. App. P. 5(c)(1), 21(d), 27(d)(2), 35(b)(2) & 40(b)(1).

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(s) Samara Spence

Party Name Environmental Protection Agency

Dated: 09/29/2017