

ORAL ARGUMENT NOT YET SCHEDULED

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

_____)	
HEARTH, PATIO & BARBECUE)	
ASSOCIATION,)	
)	
<i>Petitioner,</i>)	
)	No. 10-1113
v.)	(and consolidated cases)
)	
UNITED STATES DEPARTMENT OF)	
ENERGY,)	
)	
<i>Respondent.</i>)	
_____)	

**INTERVENOR NATURAL RESOURCES DEFENSE COUNCIL’S
OPPOSITION TO PETITIONERS’ JOINT MOTION
FOR INCREASE IN WORD LIMITATIONS FOR BRIEFS**

Petitioners Hearth, Patio & Barbecue Association (“HPBA”) and National Propane Gas Association (“NPGA”) have requested an increase in the word limitations for the briefs in these consolidated cases. Petitioners have not met the high bar for such a motion. In addition, all the considerations that Petitioners raise in their motion were already before the Court when it issued the briefing format prescribed in its March 23, 2012 Order. Accordingly, the motion should be denied.

1. Pursuant to D.C. Cir. Rule 28(e)(1), motions to exceed the standard word limits for briefs are disfavored and only granted for “extraordinarily compelling reasons.”

2. In support of their request for increased word limitations, Petitioners point out that Petitioner HPBA filed an opening brief of over 13,000 words in No. 10-1113 et al. and argue that the subsequent consolidation of the instant cases has expanded the number of issues that Petitioners intend to raise. Joint Motion at 2-3. Petitioners also stress that the Court has ordered the parties to address in their briefs Respondents’ motion to dismiss No. 10-1113, et al. as moot. *Id.* at 3.

3. Petitioners have not justified their request for a 50 percent increase in length. Though it was promulgated in two stages, a single regulatory definition is at issue in these consolidated cases. In fact, the Court has in some cases held petitioners raising numerous challenges to more detailed regulatory schemes to less than 14,000 words. *See, e.g.,* Order of April 18, 2011, *Portland Cement Ass’n v. EPA*, No. 10-1359 (D.C. Cir.) (granting 12,000 words to industry petitioners who had requested 18,000 words for their opening brief challenging EPA’s hazardous air pollutant standards for cement kilns); Briefing Proposal of Industry Petitioners, Intervenors, and Amici at 11, *Portland Cement Ass’n v. EPA*, No. 10-1359 (D.C. Cir. Mar. 4, 2011) (discussing industry petitioners’ justification for their requested word limit).

4. Moreover, the considerations raised by Petitioners were before the Court when it issued the present briefing schedule and word limits. The Court's March 23, 2012 Order states that it was issued "[u]pon consideration of respondents' motion to dismiss No. 10-1113, et al. as moot or consolidate with pending cases, the responses thereto, and the reply; petitioners' joint motion to hold in abeyance No. 12-1010, et al., the response thereto, and the reply; and petitioners' opening brief in No. 10-1113, et al." Order of Mar. 23, 2012, at 2. Many of these filings discuss in detail the significant overlap between the two Department of Energy rules challenged in these cases. *See, e.g.*, Respondents' Motion to Dismiss as Moot or Consolidate with Pending Cases (Jan. 19, 2012) at 3 (explaining that the 2011 rule supersedes the 2010 rule). Accordingly, when it issued the current schedule and word limits, the Court was aware of the factors that Petitioners raised in support of their motion.

CONCLUSION

For the foregoing reasons, Intervenor Natural Resources Defense Council respectfully requests that the Court deny Petitioners' joint motion for increased word limits.

DATED: April 2, 2012

Respectfully submitted,

/s/ Timothy D. Ballo

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Intervenor Natural Resources Defense Council's Opposition To Petitioners' Joint Motion For Increase In Word Limitations For Briefs on all parties through the Court's electronic case filing (ECF) system.

DATED: April 2, 2012

/s/ Timothy D. Ballo
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