

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-1145

September Term, 2016

EPA-82FR25730

Filed On: July 13, 2017

Clean Air Council, et al.,

Petitioners

v.

E. Scott Pruitt, Administrator, Environmental Protection Agency and Environmental Protection Agency,

Respondents

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American Petroleum Institute, et al.,  
Intervenors

**BEFORE:** Tatel, Brown,\* and Wilkins, Circuit Judges

**ORDER**

Upon consideration of the motion to recall the mandate, the responses thereto, and the reply, it is

**ORDERED** that the motion be granted and that the mandate be recalled for a period of 14 days from the date of this order. This order recalls the mandate for a limited period in order to give EPA time to “determine whether to seek panel rehearing, rehearing *en banc*, or pursue other relief.” EPA Mot. at 2. To stay issuance of the mandate for longer would hand the agency, in all practical effect, the very delay in implementation this panel determined to be “arbitrary, capricious, [and] . . . in excess of [EPA’s] statutory . . . authority.” 42 U.S.C. § 7607(d)(9)(A), (C).

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk

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\* Judge Brown would vote to recall the mandate and thereafter apply the Court’s normal procedure and issue a mandate “7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate, whichever is later,” Fed. R. App. P. 41(b); see also D.C. Cir. Rule 41(a)(1) – rather than a truncated time-frame which shortchanges all sides.