
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OUR CHILDREN’S EARTH) Appeal
FOUNDATION and ECOLOGICAL)
RIGHTS FOUNDATION)
) Citation of Supplemental
Appellants,) Authority
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and MICHAEL)
LEAVITT, as Administrator of the United)
States Environmental Protection Agency, et)
al.)
Appellees.)
)
)
)

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In accord with Ninth Circuit Rule 28(j), I hereby alert the court to supplemental authority, *NRDC, et al., v. EPA, et al.*, CV 04-8307, 2006 WL 1834260 (June 27, 2006), recently decided by the U.S. District Court for the Central District of California (attached). Appellants referenced this pending case on page 22, footnote 34, of Appellants' Reply Brief. When Appellants filed their Reply Brief, the District Court had found it had jurisdiction to hear, but had not ruled on the merits of environmental groups' claims that the U.S. Environmental Protection Agency (EPA) had a mandatory duty under Clean Water Act (CWA) section 304(m)(1)(C), 33 U.S.C. § 1314(m)(1)(C), to promulgate effluent guidelines within three years for all new categories of industries identified pursuant to CWA section 304(m)(1)(B), 33 U.S.C. § 1314(m)(1)(C). The District Court has now ruled that EPA does have such a CWA mandatory duty. 2006 WL 1834260 at *15.

The District Court's decision supports Appellants' argument that EPA may not reserve in its CWA section 304(m) effluent guideline plans the discretion not to promulgate within three years new effluent guidelines for industries EPA identifies pursuant to CWA section 304(m)(1)(B). Instead, under CWA section 304(m)(1)(C), EPA's effluent guideline plans must specify schedules for promulgation of final effluent guidelines within three years for all industries EPA

identifies pursuant to CWA section 304(m)(1)(B).

The issues in the *NRDC* District Court case are before the Ninth Circuit in a currently pending original jurisdiction petition, *NRDC v. EPA, et al.*, Case No. 04-74479. The Ninth Circuit has not reached the merits of any of the issues in that petition, which has been in abeyance pending the *NRDC* District Court ruling.

_____ Respectfully submitted,

Dated: July 21, 2006

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