

ORAL ARGUMENT HELD DECEMBER 16, 2024
No. 24-1050 (and consolidated cases)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMMONWEALTH OF KENTUCKY, et al.,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, LEE ZELDIN,
Respondents.

On Petition for Review of Final Agency Action
of the United States Environmental Protection Agency

**INDUSTRY AND ARIZONA COALITION PETITIONERS’
RESPONSE TO HEALTH, ENVIRONMENTAL, AND COMMUNITY
GROUP RESPONDENT-INTERVENORS’ CROSS-MOTION TO LIFT
ABEYANCE AND PROCEED TO A MERITS RULING**

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Industry and Arizona Coalition Petitioners do not oppose Environmental Intervenor's cross-motion "to lift this case's abeyance and proceed to a merits ruling" because it is unnecessary. As the Environmental Intervenor admits, EPA's motion necessarily includes a request that this Court lift the abeyance and decide the case. Env't'l Intervenor's Mot. 6. The cross-motion serves only to give Environmental Intervenor an additional 2,600 words, of which they use only a few hundred to argue the cross-motion, *id.* at 6–8, and many more to introduce never-before-seen arguments about Section 109(b)(1) that are beyond the scope of the cross-motion, *id.* at 9–20. This just further confirms the applicability and importance of both the *Chenery* doctrine and the party presentation principle.

The Court should lift the abeyance, proceed to a merits ruling, and grant EPA's motion for vacatur.

Dated: December 19, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(g), I certify that this Response In Opposition to Health, Environmental, and Community Group Respondent-Intervenors' Cross-Motion To Lift Abeyance and Proceed to a Merits Ruling complies with the type-volume limitation in Fed. R. App. P. 27(d)(2)(A) because it contains 136 words excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f).

This response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in 14-point Times New Roman font using Microsoft Word.

/s/ Elbert Lin

CERTIFICATE OF SERVICE

I certify that on December 19, 2025, I electronically filed the foregoing Response In Opposition to Health, Environmental, and Community Group Respondent-Intervenors' Cross-Motion To Lift Abeyance and Proceed to a Merits Ruling with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Elbert Lin
