

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

ARKANSAS DEPARTMENT OF ENERGY  
AND ENVIRONMENT, DIVISION OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY; MICHAEL REGAN, IN HIS  
OFFICIAL CAPACITY AS  
ADMINISTRATOR OF THE UNITED  
STATES ENVIRONMENTAL PROTECTION  
AGENCY,

Defendants.

Civil Action No. 4:22-cv-359 (BSM)

**JOINT MOTION TO ESTABLISH BRIEFING SCHEDULE FOR SUMMARY  
JUDGMENT**

Plaintiff Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) and Defendants, the U.S. Environmental Protection Agency and Michael Regan, in his official capacity as Administrator of the U.S. Environmental Protection Agency (collectively, EPA), submit this joint motion to establish a briefing schedule for summary judgment, which, along with Defendants' agreement to stay further administrative activities pending an outcome on the merits of the case, would obviate the need for a hearing or decision on DEQ's motion for a preliminary injunction. Pursuant to the Court's July 1, 2022 Order, ECF No. 28, the parties have conferred regarding a date for a hearing on DEQ's motion for a preliminary injunction. During the course of conferring, the parties have reached a resolution that proceeds directly with summary judgment briefing. Therefore, in lieu of proposing a date

for a hearing on DEQ’s motion, the parties respectfully request that the Court enter an order that includes the proposed briefing schedule for summary judgment and state as follows:

1. The parties agree that this litigation may be resolved at the summary judgment stage because at issue are legal questions and matters that will turn on judicial review of the administrative record.<sup>1</sup> The parties further agree that expedited summary judgment briefing will result in the most efficient resolution of this action.

2. EPA agrees that it will stay further administrative activities concerning the discharge permits at issue in this case, including publishing or scheduling an administrative hearing pursuant to 33 U.S.C. § 1342(d) and 40 C.F.R. § 123.44(h), until thirty days after the Court rules on the parties’ summary judgment motions, provided that the Court’s ruling permits such actions.

3. DEQ agrees, in reliance on EPA’s representation in paragraph 2, it will withdraw its motion for a preliminary injunction.

4. The parties have conferred regarding a schedule for expedited summary judgment briefing and respectfully request that the Court enter the following briefing schedule:

<b>July 29, 2022</b>	EPA shall file the certified index of the administrative record and shall mail the entire administrative record to DEQ and the Court.
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<sup>1</sup> EPA notes that in the Court’s July 1, 2022 order, denying EPA’s motion to dismiss, ECF No. 28, the Court articulated two issues: “whether the DEQ failed to address any ‘significant’ comments by the Oklahoma organizations or the EPA during the public comment period. If the DEQ failed to address any such comments, the EPA may properly characterize the permits as ‘proposed’ instead of final,” and “whether the EPA timely objected to the permits.” Order at 5. EPA understands that, for the purposes of evaluating the motion to dismiss, the Court accepted the issues as presented by DEQ in the Complaint. EPA respectfully disagrees with this framing of the issues presented and reserves the right, at summary judgment, to present its own arguments, including that whether DEQ “address[ed]” significant comments has no relevance to whether DEQ was required to submit a proposed permit to EPA.

<b>August 12, 2022</b>	DEQ shall file any motions to correct or supplement the administrative record.
<b>August 26, 2022</b>	EPA shall correct or supplement the administrative record or file any response to motions to correct or supplement.
<b>September 16, 2022</b>	DEQ shall file its motion for summary judgment (not to exceed 35 pages).
<b>October 14, 2022</b>	EPA shall file its cross motion for summary judgment and response to DEQ's motion for summary judgment (as a combined brief not to exceed 35 pages).
<b>November 4, 2022</b>	DEQ shall file its response to EPA's cross motion and its reply brief to its motion for summary judgment (as a combined brief not to exceed 20 pages).
<b>November 25, 2022</b>	EPA shall file its reply brief to its cross motion for summary judgment (not to exceed 20 pages).

WHEREFORE the parties respectfully request that the Court enter the above briefing schedule.

Respectfully submitted,

/s/ David P. Ross

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Dated: July 8, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 8, 2022, I filed the foregoing using the Court's CM/ECF system, which will electronically serve all counsel of record registered to use the CM/ECF system.

*/s/ Sarah Izfar*