

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**WATERKEEPER ALLIANCE, INC., et al.,**

**Plaintiffs,**

**v.**

**ANDREW WHEELER, Acting Administrator,  
U.S. Environmental Protection Agency, et al.,**

**Defendants.**

**Civil Action No. 18-2230 (JDB)**

**ORDER**

Due to the lapse in appropriations the government has filed [25] a motion to stay the January 11, 2019, deadline to file a proposed briefing schedule and [28] a motion to stay the January 17, 2019, deadline to file a certified index of the administrative record in this action. Plaintiffs oppose, emphasizing the need for prompt resolution of this challenge to a program authorizing permits for coal ash disposal that, they allege, will present “an unreasonable risk” of adverse health and environmental effects. See Pls.’ Resp. in Opp. to Defs.’ Mot. for Stay [ECF No. 27] at 2.

All that need be decided now is when the proposed briefing schedule and certified index must be filed. The Court recognizes and is sympathetic to the impact of the lapse in appropriations on the government’s operations. But where, as here, there is a “reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property,” government functions may continue. 43 Op. Att’y Gen. 293 (Jan. 16, 1981). Moreover, defendants need not expend substantial government resources to confer with plaintiffs on a briefing schedule and to compile an index.

Accordingly, considering the exceptional significance of this litigation, its connection to the safety of human life, and the minimal resources required for defendants to meet pending deadlines, the Court concludes that one additional week to submit a joint proposed briefing schedule (or separate proposals if an agreement cannot be reached), and to file a certified index, will be sufficient.\*

It is therefore **ORDERED** that [25] and [28] defendants' motions to stay are **DENIED**; it is further

**ORDERED** that the parties shall file a joint proposed briefing schedule, or separate proposals if an agreement cannot be reached, by not later than January 18, 2019; and it is further

**ORDERED** that defendants shall file a certified list of the contents of the administrative record, pursuant to Local Civil Rule 7(n)(1), by not later than January 24, 2019.

**SO ORDERED.**

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/s/  
JOHN D. BATES  
United States District Judge

Dated: January 14, 2019

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\* Plaintiffs already have filed a proposed briefing schedule after attempting to confer with defendants but receiving no response. See Pls.' Proposed Briefing Schedule [ECF No. 29]. Pursuant to this Order, the parties are directed to confer and, if possible, to submit a joint proposed briefing schedule by the new deadline stated herein. Should the parties be unable to reach an agreement after conferring, plaintiffs will be permitted, but not required, to submit an amended proposal.