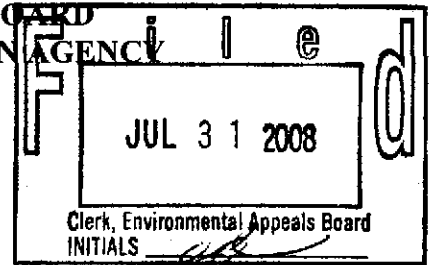


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Nelson Industrial Steam Company) CAA Appeal No. 07-02
)
_____)

REMAND ORDER

Before us is a petition for review, filed pursuant to 40 C.F.R. § 78.3 by the Nelson Industrial Steam Company (“NISCO”), of an October 22, 2007 applicability determination issued by the Office of Air and Radiation (“OAR”) of the Environmental Protection Agency (the “Agency”). *See* Petition for Administrative Review (Nov. 26, 2007). The applicability determination, issued pursuant to 40 C.F.R. §§ 97.104(c), .204(c), & .304(c), concluded that two units at NISCO’s power generation facility in Westlake, Louisiana, were not exempt from provisions of the cap and trading requirements of the Clean Air Interstate Rule (“CAIR”) and the associated CAIR Federal Implementation Plans (“FIP”)s under 40 C.F.R. parts 96 and 97. *See* Letter from Sam Napolitano, Director, Clean Air Markets Division, OAR, to James McCoy, Chairman, NISCO Management Committee, Re: “CAIR Applicability Determination for [NISCO]’s Roy S. Nelson Station at Westlake, Louisiana” (Oct. 22, 2007) (Petitioner’s Exhibit (“Pet. Exh.”) 1). The Agency filed a response to NISCO’s Petition on February 23, 2008. *See* Administrator’s Response to Petition for Review (Feb. 28, 2008).

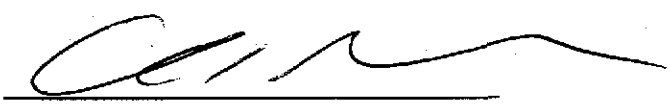
While the Board was deliberating this matter, the United State Court of Appeals for the District of Columbia Circuit vacated both the CAIR and its associated FIPs. *See North Carolina v. EPA*, No. 05-1244 (D.C. Cir. July 11, 2008). As of this date, the mandate of the court has not yet issued and further proceedings in this case are possible. However, in light of this decision, which has the possibility of mootng this appeal, the Board has decided to suspend its deliberations and remand this matter to OAR. This remand is without prejudice to the right of any party to request reinstatement of the appeal by written notice to the Board.

So ordered.

Dated: 7/31/08

ENVIRONMENTAL APPEALS BOARD

By: _____


Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Remand Order in the matter of Nelson Industrial Steam Company, CAA Appeal No. 07-02, were sent to the following persons in the manner indicated:

By Certified Mail
Return Receipt Requested:


Maureen N. Harbourt
Kyle B. Beall
Kean, Miller, Hawthorne, D'Armond,
McGowan & Jarman, L.L.P.
P.O. Box 3513
Baton Rouge, LA 70821

By Interoffice Mail:

Sara Schneeberg (MC-2344A)
Ragan S. Tate
Air and Radiation Law Office
Office of General Counsel

Dwight C. Alpern
Clean Air Markets Division
Air and Radiation Division, (6204J)

Dated: JUL 31 2008


Annette Duncan
Secretary