

No. 19-2450

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CAPE FEAR RIVER WATCH, et al.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

On Petition for Review of a Statement of the
United States Environmental Protection Agency

PAGE PROOF BRIEF FOR RESPONDENTS

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ARGUMENT16

I. The petition should be dismissed for want of a “final” EPA action.....17

 A. When EPA made the challenged statement, the administrative process had not concluded — and it remains pending.18

 B. The challenged statement did not determine any person’s rights or obligations, and it did not give rise to any legal consequences.22

 C. Petitioners’ remaining finality arguments fail.23

II. The petition should be dismissed for want of an EPA “promulgation” or “approval.”26

 A. EPA did not, through the challenged statement, “promulgate” a standard, prohibition, or limitation within the meaning of § 1369(b)(1)(C) or (E).26

 B. EPA did not, through the challenged statement, “approve” an effluent limitation or other limitation within the meaning of § 1369(b)(1)(E).28

III. Even if the Court concludes that it has jurisdiction, a remand to EPA to complete its explanation is the appropriate remedy.29

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