

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN CHEMISTRY COUNCIL,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 09-1325 (and consolidated
	)	cases 09-1326, 09-1328,
U.S. ENVIRONMENTAL PROTECTION	)	09-1329, 09-1331, 09-1332,
AGENCY,	)	09-1333, 09-1334)
	)	
Respondent.	)	
	)	

**Joint Motion To Deconsolidate, Docket, and  
Dismiss Certain Petitions For Review, and Continue To  
Hold Certain Petitions in Abeyance Pending Settlement Discussions**

This joint motion to deconsolidate, dismiss, docket and hold in abeyance certain petitions is submitted by all the parties in these cases. The grounds for this motion are as follows:

1) In this action, eight consolidated petitions for review challenge a final rule promulgated by EPA under the Clean Air Act, entitled “Mandatory Reporting of Greenhouse Gases,” 74 Fed. Reg. 56,260 (Oct. 20, 2009). These cases are currently being held in abeyance, with EPA directed to file status reports on 90-day intervals, pursuant to the Court’s order dated February 22, 2010.

2) EPA and the petitioners in six of the eight petitions for review – American Chemistry Council v. EPA in 09-1325; Energy Recovery Council v.

EPA in 09-1326; American Petroleum Institute, et al., v. EPA in 09-1328; The Fertilizer Institute v. EPA in 09-1329; American Public Gas Assn v. EPA in 09-1331; and the Utility Air Regulatory Group v. EPA in 09-1333 – have reached separate settlements of their petitions (or certain issues under those petitions), and these settlements have been fully implemented by EPA. See 75 Fed. Reg. 79,092 (Dec. 17, 2010). Accordingly, these parties request that these six petitions for review each be deconsolidated and (subject to the condition in paragraph 3 below) dismissed, with each party to pay its own costs and fees. In addition, in view of recent regulations promulgated by EPA that address sectors for which reporting requirements were not finalized in the October 2009 final rule, Environmental Defense Fund (09-1334) also requests that its petition for review be deconsolidated and dismissed, with each party to bear its own costs and fees.

3) Although, as explained above, EPA and the Utility Air Regulatory Group (“UARG”) have reached a settlement in No. 09-1333, one issue in that petition was not resolved by that settlement. That issue pertains to matters under ongoing administrative consideration and UARG and EPA expect to continue their settlement discussions in an effort to resolve that issue. Accordingly, as a condition to dismissal of 09-1333, EPA and UARG request that issue No. 3 in UARG’s Non-Binding Statement of Issues (filed February 8, 2010), be severed from petition No. 09-1333 and placed in a new docket created by the Court that is

also captioned Utility Air Regulatory Group v. EPA. These parties further request that the Court hold that new docket in abeyance, with EPA to file status reports every 120 days.

4) The remaining petition for review for which a settlement has not been reached at this time – Kinder Morgan CO2 Co. LLP v. EPA (09-1332) – should continue to be held in abeyance, with EPA to file status reports on 120-day intervals, as those parties intend to continue their discussions in an effort to resolve that petition without the need for adjudication by the Court.

WHEREFORE, the parties to this joint and unopposed motion request that the Court:

- a) Deconsolidate each of these consolidated petitions for review;
- b) Sever Issue No. 3 of UARG's Non-binding Statement of Issues (filed February 8, 2010) from petition No. 09-1333, place that, and only that, issue in a new docket also captioned Utility Air Regulatory Group v. EPA, apply all outstanding motions to intervene in petition No. 09-1333 to the newly created docket, and hold that newly created docket in abeyance with EPA to file status reports on 120 day intervals;
- c) Dismiss American Chemistry Council v. EPA (09-1325); Energy Recovery Council v. EPA in 09-1326; American Petroleum Institute, et al., v. EPA in 09-1328; The Fertilizer Institute v. EPA (09-1329); American Public Gas Assn

v. EPA (09-1331); Utility Air Regulatory Group v. EPA (09-1333); and  
Environmental Defense Fund v. EPA (09-1334), with each party to pay its own  
costs and fees; and

d) Continue to hold Kinder Morgan CO2 Co. LLP v. EPA (09-1332) in  
abeyance, with EPA to file status reports every 120 days.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on January 30, 2011, using the CM/ECF system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's CM/ECF system.

/S/ David Kaplan