

ORAL ARGUMENT NOT YET SCHEDULED

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

_____)	
AMERICAN PETROLEUM)	
INSTITUTE,)	
)	
<i>Petitioner,</i>)	Case No. 13-1108
)	
v.)	
)	
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondent.</i>)	
_____)	

**UNOPPOSED MOTION OF RESPONDENT EPA TO CONTINUE
STAY OF PROCEEDINGS TO ALLOW FURTHER
ADMINISTRATIVE RECONSIDERATION**

Respondent, the United States Environmental Protection Agency (“EPA” or “the Agency”), hereby moves to continue the existing stay of proceedings in this case until January 30, 2015, and to require the parties to submit a further motion or motions to govern further proceedings on or before that date. As explained in Paragraph 12, all Petitioners have confirmed through counsel that they do not oppose the extension of the abeyance period requested by this motion. In further support of this motion, EPA states as follows:

1. This case originated from consolidated petitions for judicial review of EPA's final rule under the Clean Air Act entitled "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews," published at 77 Fed. Reg. 49,490 (Aug. 16, 2012) ("Final Rule"). Several petitioners also filed petitions for administrative reconsideration of the Final Rule. The Final Rule contains final actions on two different national standards promulgated by EPA: (1) new source performance standards ("NSPS"), promulgated under section 111 of the Clean Air Act, 42 U.S.C. § 7411, and (2) national emission standards for hazardous air pollutants ("NESHAP"), promulgated under section 112 of the Clean Air Act, 42 U.S.C. § 7412. Because EPA exercised its discretion to combine these actions in the same rulemaking, the actions were finalized together.

2. After the petitions for judicial review were filed and consolidated by the Court, EPA conferred with all of the Petitioners to discuss how to proceed in the case, including whether the NSPS- and NESHAP-related portions of the litigation should be severed and proceed on separate tracks. Following these discussions, and without opposition by any party, EPA filed a motion on January 16, 2013, requesting that the Court sever the litigation into NSPS- and NESHAP-related cases due to the differences between these two types of national standards,

the potential for EPA to take action on the reconsideration petitions on a different schedule for each set of standards, and to serve the interest of efficiency by narrowing the parties and issues involved in each case in the event further litigation becomes necessary.

3. On April 3, 2013, the Court issued an order granting this motion. The NSPS-related portion of the litigation was assigned a new docket number, No. 13-1108.¹ As EPA's motion had requested, the Court also ordered that motions to govern further proceedings in Case No. 13-1108 be filed on or before August 30, 2013, and that the case be held in abeyance until that date.

4. Both prior and subsequent to the Court's Order of April 3, 2013, EPA has taken further steps in response to the NSPS-related portions of the petitions for administrative reconsideration that are pending before the Agency. On April 12, 2013, EPA signed a notice of proposed rulemaking addressing certain NSPS issues on an expedited basis. See 78 Fed. Reg. 22,126 (Apr. 12, 2013). Following the conclusion of the public comment period for this proposed rule, EPA then signed on August 2, 2013 a rule taking final action on this proposal, which was later published in the Federal Register at 78 Fed. Reg. 58,416 (Sept. 23, 2013).

¹ The attached Certificate of Service continues to refer to the original docket number for each originally-filed petition for review, solely for the purpose of identifying the parties. Two Petitioners have voluntarily dismissed their petitions since the inception of the case and thus are no longer listed.

5. Following EPA's signature of the August 2 final rule, the Court granted EPA's unopposed motion for a thirty-day extension until September 30, 2013, of the deadline for filing motions to govern further proceedings. Clerk's Order dated Aug. 30, 2013. EPA requested this extension so that it would have additional time to confer with the Petitioners and provide them an update on the status of EPA's evaluation of other issues raised by the administrative reconsideration petitions.

6. On September 10, 2013, EPA informed Petitioners that it has identified several additional issues that warrant reconsideration and continues to evaluate the remaining issues in the administrative reconsideration petitions. EPA also described the timeframe in which EPA then anticipated it would sign a notice of proposed rulemaking addressing such additional NSPS issues and subsequently take final action on the proposal. Following EPA's September discussions with the Petitioners, the Agency filed on September 30, 2013, an unopposed motion to continue the abeyance of the NSPS litigation until February 24, 2014, which the Court granted. See Clerk's Order of October 1, 2013 in Case No. 13-1108.

7. On February 24, 2014, EPA filed a second unopposed motion to continue the abeyance of the NSPS litigation until May 28, 2014, which the Court granted. See Clerk's Order of February 26, 2013, in Case No. 13-1108. EPA requested this extension because the Agency received significant additional technical information relative to certain complex reconsideration issues that it has

been evaluating. In the February extension motion, EPA explained that the Agency would soon issue a number of white papers on emerging technical information relative to these reconsideration issues for public posting and peer review and that, after completion of this peer review, the Agency intends to take additional actions as appropriate.

8. In March 2014, The President issued a climate action plan that sets forth a comprehensive strategy to reduce methane emissions,² including addressing emissions from the oil and gas sector through the issuance of the above mentioned white papers for peer review. Specifically, the strategy states:

In the spring of 2014, EPA will assess several potentially significant sources of methane and other emissions from the oil and gas sector. EPA will solicit input from independent experts through a series of technical white papers, and in the fall of 2014, EPA will determine how best to pursue further methane reductions from these sources.³

9. On April 15, 2014, EPA released the above mentioned white papers for peer review and asked for input by June 16, 2014. EPA subsequently filed a third unopposed extension motion with this Court on May 28, 2014, requesting to extend the abeyance period until the current deadline of December 17, 2014, so that EPA would have time: (a) to evaluate the input received on its white papers and to consider and ultimately identify what actions might be appropriate; and (2)

² Climate Action Plan: Strategy to Reduce Methane Emissions (the White House, March 2014).

³ Id. at 2.

separately from the white paper process, to initiate a rulemaking addressing a number of time-critical implementation issues raised in administrative reconsideration petitions. The Court granted this motion. See Clerk's Order of May 29, 2014, in Case No. 13-1308. EPA subsequently published in the Federal Register the proposed rule addressing time-critical implementation issues. See 79 Fed. Reg. 41,752 (July 17, 2014) ("Oil and Natural Gas Sector: Reconsideration of Additional Provisions of [NSPS]").

10. At present, EPA is working towards completing its evaluation of the input it received from peer reviewers and the public in response to the release of the white papers, and its consideration of what actions may be appropriate. In addition, the Agency is working towards taking final action with respect to the July 17, 2014 proposed rule.

11. In light of the current reconsideration status and EPA's plans for further proceedings, EPA respectfully requests that the Court continue to hold this case in abeyance until January 30, 2015, and order the parties to file a motion or motions to govern further proceedings on or prior to that date. The parties will work in good faith to reach agreement on a motion to govern further proceedings, but reserve the right to file separate motions if an agreement cannot be reached.

12. All Petitioners have confirmed through counsel that they do not oppose the extension of the abeyance period requested in this motion and otherwise take no position on the motion and do not intend to file a response to it.

CONCLUSION

For the foregoing reasons, EPA respectfully requests that the Court grant this unopposed motion and enter an order holding this case in abeyance until January 30, 2015, and requiring the parties file a motion or motions to govern further proceedings on or before that date.

Respectfully submitted,

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Dated: December 16, 2014 By: /s/ Brian H. Lynk
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Unopposed Motion of Respondent EPA to Continue Stay of Proceedings to Allow Further Administrative Reconsideration has been filed with the Clerk of the Court this 16th day of December 2014, using the CM/ECF System. True and correct copies were sent to each of the following through the appellate CM/ECF system:

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