

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

RENEWABLE FUELS ASSOCIATION,
AMERICAN COALITION FOR
ETHANOL,
GROWTH ENERGY,
NATIONAL BIODIESEL BOARD,
NATIONAL CORN GROWERS
ASSOCIATION, and
NATIONAL FARMERS UNION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No.: 19-1220

MOTION TO HOLD CASE IN ABEYANCE

Pursuant to Federal Rule of Appellate Procedure 27 and D.C. Circuit Rule 27, Petitioners Renewable Fuels Association, American Coalition for Ethanol, Growth Energy, National Biodiesel Board, National Corn Growers Association, and National Farmers Union (collectively, the “Coalition”) hereby move for an order holding this case in abeyance pending the outcome of related litigation in this Court and in the United States Court of Appeals for the Tenth Circuit. Respondent

U.S. Environmental Protection Agency (“EPA” or “Agency”) has indicated that it opposes the Motion and intends to file a response.

In support of its Motion, Petitioners state as follows:

1. The Coalition filed a Petition for Review in this Court on October 22, 2019, seeking review of the final agency action entitled *Decision on 2018 Small Refinery Exemption Petitions*, signed August 9, 2019, in which EPA granted small refinery exemptions from the Renewable Fuel Standard (“RFS”) for compliance year 2018 to 31 small refineries pursuant to 42 U.S.C. § 7545(o)(9)(B) (the “2018 Decision”). *See* Pet. for Review, *Renewable Fuels Ass’n v. EPA*, No. 19-1220 (D.C. Cir. Oct. 22, 2019).
2. The Coalition expects to challenge the final agency action on several grounds, including that the 2018 Decision exceeded EPA’s authority under the Clean Air Act and was arbitrary and capricious.
3. The issues concerning EPA’s statutory interpretation of 42 U.S.C. § 7545(o)(9)(B) in the 2018 Decision are expected to overlap with issues raised in pending litigation, particularly *Renewable Fuels Association v. EPA*, No. 18-9533 (10th Cir.), and *Advanced Biofuels Association v. EPA*, No. 18-1115 (D.C. Cir.). *Renewable Fuels Association v. EPA* is fully briefed and was argued before the Tenth Circuit on September 26, 2019. *Advanced Biofuels Association v. EPA* is fully briefed and was argued before the Court on October 25, 2019.

4. The Coalition believes that a temporary stay of proceedings in this action pending the resolution of *Advanced Biofuels Association* and *Renewable Fuels Association* would promote judicial economy by avoiding duplicative briefing on overlapping issues. *See Basardh v. Gates*, 545 F.3d 1068, 1069 (D.C. Cir. 2008) (per curiam) (noting a “longstanding policy of the law to avoid duplicative litigative activity” and acknowledging the Court “often” issues orders to hold in abeyance “in light of other pending proceedings that may affect the outcome of the case before” it).

5. Although the Coalition is challenging EPA’s 31 extensions of small refinery exemptions granted for year 2018, the Coalition is aware that separate petitions for review of *denials* of specific small refinery exemptions are pending in other circuits, and that EPA and the petitioners in those cases are currently litigating the proper venue for such cases. *See e.g., Sinclair Wyo. Ref. Co. v. EPA*, No. 19-9562 (10th Cir. filed Aug. 22, 2019); *Sinclair Wyo. Ref. Co. v. EPA*, No. 19-1196 (D.C. Cir. filed Sept. 20, 2019) (consolidated with No. 19-1197); *Big West Oil, LLC v. EPA*, No. 19-9576 (10th Cir. filed Sept. 23, 2019); *Ergon-West Virginia, Inc. v. EPA*, No. 19-2152 (4th Cir. filed October 21, 2019). EPA agrees with the Coalition, however, that this Court is the proper venue for the Coalition’s challenge to EPA’s *Decision on 2018 Small Refinery Exemption Petitions*. Because the various cases challenging *denials* of exemptions raise many distinct

legal issues and their venue remains uncertain, the Coalition believes that it would be inappropriate, or at least premature, to consolidate any of those cases with this case.

6. Petitioners propose that the parties file an appropriate motion or motions to govern the proceedings within 30 days following the disposition of both *Advanced Biofuels Association* and *Renewable Fuels Association*, at which time the parties may address whether to lift stay or to continue it pending other proceedings and whether to consolidate this case with any other cases.

CONCLUSION

For the above-stated reasons, the Coalition respectfully requests that this Court enter an order holding in abeyance all further judicial proceedings in this case and granting the procedural relief requested above in Paragraph 6.

Date: November 5, 2019

/s/ Matthew W. Morrison

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Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULES OF
APPELLATE PROCEDURE 27(d) AND 32(a)**

I hereby certify that this motion complies with the requirements of Fed. R. App. P. 32(a)(5)-(6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 661 words, excluding the parts exempted under Rule 32(a)(7)(B)(iii), according to the count of Microsoft Word.

Date: November 5, 2019

Respectfully submitted,

/s/ Matthew W. Morrison

Matthew W. Morrison

CERTIFICATE OF SERVICE

I certify that on November 5, 2019, I electronically filed the foregoing Motion with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Date: November 5, 2019

Respectfully submitted,

/s/ Matthew W. Morrison

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