

ORAL ARGUMENT NOT YET SCHEDULED

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

 NATURAL RESOURCES DEFENSE COUNCIL,

Petitioner,

v.

 UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, ET AL.,

 Respondents.

)
)
)
) No. 20-1150
) (consolidated with
) 20-1151)
)
)
)
)
)
)
UNOPPOSED MOTION FOR 90-DAY ABEYANCE

Respondents United States Environmental Protection Agency, et al.

(“EPA”)¹ respectfully move for a 90-day abeyance of the above-captioned cases, extending the existing deadlines by this period. EPA has conferred with counsel for Petitioners and Intervenors. Petitioners do not oppose the requested relief, but reserve their rights to oppose any future requests for further abeyances.

Intervenors do not oppose the requested relief.

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), EPA Administrator Michael S. Regan should be substituted in these cases for former Administrator Andrew Wheeler.

This proceeding involves two consolidated petitions for review of a rule EPA issued on March 11, 2020, entitled “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes.” 85 Fed. Reg. 14,150 (“2020 Rule”). In the 2020 Rule, EPA revisited certain aspects of Clean Air Act regulations it had promulgated in 2016. In particular, the 2016 regulations extended requirements related to the detection and repair of leaks in certain air conditioning and refrigeration equipment so that those requirements applied to equipment using refrigerants that are substitutes for ozone-depleting substances. The 2020 Rule revised those requirements so that they apply only to equipment using a refrigerant containing an ozone-depleting substance.

Petitioners filed their opening brief challenging the 2020 Rule on October 16, 2020, and EPA filed its answering brief on December 15, 2020. *See* Pet’rs’ Opening Br., Doc. 1866890; Resp’ts’ Ans. Br., Doc. 1875886.

On December 27, 2020, the American Innovation and Manufacturing Act of 2020 (“AIM Act”) was enacted as part of the Consolidated Appropriations Act, 2021. Pub. L. No. 116-260 § 103 (2020). Among other things, the AIM Act directs that EPA “shall promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment . . . that involves” certain regulated substances or their substitutes, or the reclaiming of such regulated substances used as refrigerants or their substitutes

used as refrigerants. *Id.* § 103(h)(1).² The regulated substances and substitutes at issue in the AIM Act have various uses, including as refrigerants.

On January 13, 2021, Petitioners filed an unopposed motion to adjust the schedule for the remaining briefs in this matter by sixty days, noting the new legislation and the need for additional time to assess the impact of this legislation on the dispute in this case. This resulted in the following schedule

Brief for Intervenors	March 29, 2021
Petitioners' Reply Brief(s)	April 19, 2021
Deferred Appendix	May 3, 2021
Final Briefs	May 17, 2021

On January 20, 2021, President Biden issued an “*Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*,” (“Executive Order”) which directed review of certain agency actions taken from January 20, 2017, until January 20, 2021.³ An accompanying fact sheet provides a non-exclusive list of agency

² The AIM Act also imposes certain other obligations on EPA, including to promulgate certain regulations regarding the production and consumption of regulated substances with 270 days of the enactment of the AIM Act. Pub. L. No. 116-260 § 103(e) (2020).

³ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>

actions that agency heads will review in accordance with that order, including the 2020 Rule.⁴ Consistent with this direction, EPA's Acting General Counsel has requested that stays or abeyances of proceedings be obtained in pending litigation seeking judicial review of any EPA regulation promulgated in the above time period. *See* Attachment 1. The 2020 Rule was promulgated in that time period. EPA has not yet had a sufficient opportunity to review the 2020 Rule or determine whether to take any additional action with respect to the 2020 Rule. It also has not had sufficient time to evaluate how the new legislation may potentially affect the dispute in this case.

A 90-day abeyance will conserve the parties' and the Court's resources while affording EPA additional time to consider these issues. An abeyance will further the Court's interests in avoiding unnecessary adjudication, support the integrity of the administrative process, and ensure due respect for the prerogative of the executive branch to review and potentially reconsider the policy decisions of a prior Administration. This request is without prejudice to the parties' ability to file further motions to govern these proceedings, including a further motion for an abeyance.

⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/factsheet-list-of-agency-actions-for-review/>

EPA therefore respectfully moves for a 90-day abeyance, which would result in the following extended briefing schedule:

Brief for Intervenors	June 28, 2021
Petitioners' Reply Brief(s)	July 19, 2021
Deferred Appendix	August 2, 2021
Final Briefs	August 16, 2021

Dated: March 18, 2021

By: /s/ Benjamin R. Carlisle
BENJAMIN CARLISLE
NY Bar #: 4734612
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
Phone: (202) 514-9771
Fax: (202) 514-8865
Email: Benjamin.Carlisle@usdoj.gov

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that the foregoing complies with the type-volume limitation because it contains 741 words, according to the count of Microsoft Word.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing 18th day of March, 2021, through the ECF filing system and will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

s/ Benjamin R. Carlisle

BENJAMIN R. CARLISLE