

**ORAL ARGUMENT NOT SCHEDULED****IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ENVIRONMENTAL DEFENSE  
FUND, et al.,

*Petitioners,*

v.

JANE NISHIDA, et al.,

*Respondents.*

**Case No. 20-1360 and  
consolidated cases**

**EPA'S STATUS REPORT**

The United States, on behalf of Respondents the United States Environmental Protection Agency (“EPA”), and Michael Regan, EPA Administrator (collectively “EPA”), hereby submits the following status report pursuant to the Court’s order dated February 19, 2021 (ECF Doc. No. 1886335). As explained below, EPA’s review of the challenged rulemaking is ongoing. Accordingly, EPA recommends that these consolidated cases continue to be held in abeyance pending completion of that review.

1. These consolidated cases involve challenges to a final EPA action entitled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration” 85 Fed. Reg. 57,398

(Sept. 15, 2020) (“Technical Rule”). In this rule promulgated pursuant to the Clean Air Act, 42 U.S.C. § 7411, EPA made a number of technical amendments to the oil and gas source category’s new source performance standards. Among other changes, EPA revised requirements for monitoring fugitive emissions from low production well sites and gathering and boosting compressor stations, respectively.<sup>1</sup>

2. Multiple petitions for review of the Technical Rule were filed in this Court and consolidated. A number of parties also intervened as Respondents. On January 15, 2021, the Court denied a request for a partial judicial stay of the Technical Rule pending review. Doc. No. 1880331 (*per curiam* order).

3. Not long thereafter, and prior to any merits briefing, President Joseph R. Biden Jr. signed Executive Order 13990 on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). That Executive Order and associated documents specifically directed EPA to review the Technical Rule for compliance with the terms of the Executive Order. Moreover, the Executive Order specifically identified the Technical Rule as potentially in conflict with new federal policy. *Id.* § 2. Under the Executive Order, EPA, “as appropriate and consistent with

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<sup>1</sup> Earlier filings in the case provide more detailed background regarding the Technical Rule and define technical terms. *See, e.g.*, Doc. No. 1875418.

applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding” the Technical Rule. Id. § 2(a)(i).

4. Accordingly, on February 5, 2021, EPA moved for an order holding these consolidated cases in abeyance until 30 days after EPA completes its review of the Technical Rule and any resulting rulemaking. Doc. No 1884071. On February 19, 2021, the Court issued an Order that granted EPA’s motion for abeyance, requiring that the agency file status reports at 120-day intervals and further requiring that the parties file a motion or motions to govern further proceedings within 30 days of the completion of agency proceedings. ECF No. 1886335.

5. Since that date, EPA has continued to review the Technical Rule as required under the Executive Order and in response to administrative reconsideration petitions it received in November 2020.<sup>2</sup> As a result of that review, EPA submitted a draft proposed rule to the Office of Management and

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<sup>2</sup>“In Re Petition for Reconsideration of Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review & Reconsideration Rules, 85 Fed. Reg. 57,018 (September 14, 2020) & 85 Fed. Reg. 57,398 (September 15, 2020)” (November 13, 2020), submitted by the State of California and 18 other states and 3 cities; “Petition for Reconsideration of EPA’s Final Rules: Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review; and Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration” (Nov. 13, 2020), submitted by Center for Biological Diversity and 9 other nongovernmental organizations.

Budget (OMB). OMB received EPA's submittal on September 13, 2021. *See* RIN 2060-AV16 (New Source Performance Standards for Crude Oil and Natural Gas Facilities: Review of Policy and Technical Rules) at <https://www.reginfo.gov/public/do/eoReviewSearch>. OMB's review of that submittal is currently ongoing.

6. In consideration of the above facts, EPA believes its ongoing review of the Technical Rule justifies continued abeyance in the above-captioned cases.

Respectfully submitted,

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Dated: October 19, 2021

By:

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been filed with the Clerk of the Court this 19th day of October, 2021, using the appellate CM/ECF System, causing true and correct copies thereof to be sent to all counsel of record through the appellate CM/ECF system.

/s/ Eric G. Hostetler  
Eric G. Hostetler