

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 Administrator¹ (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 Administrator Regan is automatically substituted for his predecessor in office pursuant to Fed. R. App. P. 43(c)(2).

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.²

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

² Earlier filings in the case provide more detailed background regarding the Technical Rule and define technical terms. *See, e.g.*, Doc. No. 1875418.

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 applicable law, shall consider publishing for notice and comment a proposed rule suspending, revising, or rescinding” the Technical Rule “by September 2021.” 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 2020.³ As a result of that

³ “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

review, EPA published a proposed rule in November 2021 entitled “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.” 86 Fed. Reg. 63,110 (Nov. 15, 2021). In accordance with EPA’s extension of the public comment period for that proposed rule, comments were due to EPA by January 31, 2021. *See* 86 Fed. Reg. 71603 (Dec. 17, 2021). EPA’s review of public comments received on the proposed rule is 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: February 16, 2022 By: /s/ Brian H. Lynk
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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.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing EPA's Status Report complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 703 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: February 16, 2022

/s/ Brian H. Lynk
Brian H. Lynk

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed with the Clerk of the Court this 16th day of February, 2022, 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/ Brian H. Lynk
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