

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**March 5, 2021**

**Christopher M. Wolpert  
Clerk of Court**

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RENEWABLE FUELS ASSOCIATION,

Petitioner,

v.

No. 21-9518

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

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**ORDER**

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Before **HARTZ** and **PHILLIPS**, Circuit Judges.

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Before the Court is Petitioner’s Emergency Motion to Stay Effectiveness of Agency Action Pending Appeal (filed Feb. 8, 2021). On February 10, 2021, we entered a temporary stay of agency action pending consideration of this motion.

In deciding whether to grant a stay of agency action pending appeal, we consider the traditional stay factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks omitted). “A stay is not a matter of right, . . . [but] is instead an exercise of judicial discretion, and the propriety of

its issue is dependent upon the circumstances of the particular case.” *Id.* at 433 (internal quotation marks and brackets omitted). “The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court’s] discretion.” *Id.* at 433–34.

We have considered Petitioner’s motion in light of these standards. Petitioner has failed to demonstrate its entitlement to a stay of agency action. We therefore deny the motion. We also vacate the temporary stay entered on February 10, 2021.

We grant Respondent EPA’s Motion to Hold Case in Abeyance (filed Feb. 12, 2021); deny as moot Intervenor-Respondent Sinclair’s Motion for Expedited Consideration (filed Feb. 23, 2021); and grant Intervenor-Respondent Sinclair’s Motion for Leave to File a Sur-Reply (filed Feb. 25, 2021).

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a stylized, elongated flourish extending to the right.

CHRISTOPHER M. WOLPERT, Clerk