

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

AMERICAN FUEL & PETROCHEMICAL)
MANUFACTURERS, *et al.*,)
)
)
Petitioners,)
) Case No. 16-1033 (and
v.) consolidated case No. 16-1035)
)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)
)

**UNOPPOSED MOTION TO
HOLD THESE CASES IN ABEYANCE**

Respondent United States Environmental Protection Agency (“EPA”) requests that the Court hold these consolidated cases in abeyance until July 8, 2016, at which time the Parties to these cases would file a motion (or motions) to govern further proceedings. Counsel for each of the respective petitioners and intervenor-movants have authorized the undersigned counsel for EPA to represent that these parties do not oppose this motion. The grounds for this unopposed motion are as follows:

1. Petitioners challenge in these consolidated cases a regulation promulgated by EPA under the Clean Air Act entitled “Petroleum Refinery Sector

Risk and Technology Review and New Source Performance Standards; Final

Rule,” 80 Fed. Reg. 75,178 (Dec. 1, 2015) (“Refinery Rule”).

2. On January 19, 2016, and February 1, 2016, Petitioners American Petroleum Institute and American Fuel & Petrochemical Manufacturers filed an initial and a supplemental administrative petition, respectively, that requested EPA to reconsider portions of the regulations challenged in this case. On February 1, 2016, Petitioners Air Alliance Houston, California Communities Against Toxics, Clean Air Council, Coalition for a Safe Environment, Community In-Power & Development Association, Del Amo Action Committee, Environmental Integrity Project, Louisiana Bucket Brigade, Sierra Club, Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment filed an administrative petition that requests EPA to reconsider portions of the regulations challenged in this case.

4. On February 9, 2016, EPA published a proposed rule in the Federal Register addressing issues raised in the initial petition for reconsideration filed by the American Petroleum Institute and American Fuel & Petrochemical Manufacturers. 81 Fed. Reg. 6814.

5. EPA is reviewing the three administrative petitions requesting that the Agency reconsider portions of the Refinery Rule, to determine whether or not to grant reconsideration on additional issues raised by the parties. EPA anticipates

that it will reach a decision on whether to grant reconsideration on any additional issues by June 3, 2016.

6. In view of the above, EPA requests that the Court hold these consolidated cases in abeyance until July 8, 2016, at which time the Parties will file a motion (or motions) to govern further proceedings in these cases. This timing will allow the Parties to consider the relevant administrative actions EPA may have taken and to confer before filing their motion (or motions) to govern.

7. Holding these cases in abeyance may preserve the resources of the parties and the Court as EPA completes the reconsideration process on the issues addressed in the February 9 proposal and if EPA elects to reconsider additional issues concerning the regulations challenged in these consolidated cases. Briefing and argument dates have not yet been scheduled, and thus this request will not disrupt the Court's calendar.

8. As noted above, all the Petitioners and Intervenor-Movants in these cases have authorized EPA to represent that they do not oppose the relief requested by this motion.

Wherefore, EPA respectfully requests that the Court hold these consolidated cases in abeyance until July 8, 2016, at which time the Parties will file a motion (or motions) to govern further proceedings in these cases.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on March 4, 2016, using the CM/ECF system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's CM/ECF system.

/S/ David Kaplan