

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES SUGAR)	
CORPORATION,)	
)	
Petitioner)	
)	
v.)	Docket No. 11-1108
)	(and consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
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**RESPONDENTS' MOTION TO HOLD CASE
IN ABEYANCE**

Respondents United States Environmental Protection Agency and Lisa P. Jackson, Administrator, (collectively "EPA") hereby move to hold this case in abeyance until EPA completes the pending process for reconsideration of the rule under review. The undersigned counsel has attempted to contact counsel for the parties to determine if they intend to oppose this motion. Counsel for Julander Energy has indicated that it intends to oppose the motion. Counsel for Sierra Club has indicated that it intends to file a response. Counsel for all other parties have either not provided their position, stated that they take no position, stated that they

do not oppose the motion while reserving their right to subsequently move the court to lift the abeyance to, inter alia, file procedural and dispositive motions such as a motion for a judicial stay.

The consolidated petitions in this case seek review of an EPA rule titled “National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters,” published at 76 Fed. Reg. 15,608 (March 21, 2011). Simultaneously with promulgation of the rule EPA announced that it would be proposing to reconsider aspects of the final rule. 76 Fed. Reg. 15,267 (March 21, 2011). EPA also received a number of administrative petitions for reconsideration of the final rule. On May 18, 2011, EPA extended the effective date of the rule until the earlier of the date on which the Agency’s reconsideration process is completed or the petitions for judicial review are concluded. 76 Fed. Reg. 28,662 (May 18, 2011).

Thus, EPA is currently conducting its own self-initiated process of reconsideration. In addition, EPA is reviewing the submitted administrative petitions to determine whether administrative action may be required for additional provisions of the rule pursuant to 42 U.S.C. § 7607(d)(7)(B). EPA intends to complete the reconsideration process expeditiously. Specifically, EPA intends to sign a proposed rule by October 31, 2011, and to sign a final rule by April 30, 2012. If EPA denies the reconsideration petitions, petitions for judicial review of

those denials may be filed with this Court, and consolidation of such petitions with the instant litigation may be warranted.

The issues raised in both EPA's review and the administrative petitions overlap with the issues EPA anticipates will be raised in this litigation. Given EPA's ongoing review, with the concomitant possibility that the rule might be altered once the review is complete, EPA believes it appropriate to hold this litigation in abeyance while EPA completes its reconsideration process and its review of the administrative petitions for reconsideration. This Court has long recognized that it is appropriate to hold judicial review proceedings in abeyance where the agency has undertaken to reconsider the action under review. See B.J. Alan Co., Inc. v. ICC, 897 F.2d 561, 562 n.1 (D.C. Cir. 1990) (“[a]dministrative reconsideration is a more expeditious and efficient means of achieving adjustment of agency policy than is resort to the federal courts,” quoting Commonwealth of Pennsylvania v. ICC, 590 F.2d 1187, 1194 (D.C. Cir. 1978)). To do otherwise risks wasting judicial resources in reviewing an agency decision that may be altered or reversed.

If the Court grants this motion, EPA will notify the Court of the result of its reconsideration process and of its determination to grant or deny the administrative petitions for reconsideration. If EPA denies the petitions and additional petitions for judicial review of those decisions are filed with this Court, EPA will

recommend to the Court whether consolidation of such petitions with the instant litigation is appropriate.

Respectfully submitted,

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July 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2011, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on all counsel of record in this matter.

/S/ Norman L. Rave, Jr.
Norman L. Rave, Jr.