

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-1249**September Term, 2012**

EPA-05/22/12 LTR
EPA-75FR76790

Filed On: December 17, 2012

American Fuel & Petrochemical Manufacturers
and Western States Petroleum Association,

Petitioners

v.

Environmental Protection Agency and Lisa
Perez Jackson,

Respondents

Advanced Biofuels Association, et al.,
Intervenors

Consolidated with 12-1330

BEFORE: Rogers, Garland, and Brown, Circuit Judges

ORDER

Upon consideration of the motion to dismiss in part filed in No. 12-1330, the response thereto, and the reply; and the motion to hold in abeyance, the response thereto, and the reply, it is

ORDERED that the motion to dismiss in part be granted. The petition for review in No. 12-1330 is hereby dismissed to the extent petitioner seeks review of the 2011 Renewable Fuel Standards, 75 Fed. Reg. 76,790 (Dec. 9, 2010). The petition for review is untimely as to those standards, because it was filed in this court on July 24, 2012, beyond the 60-day period provided by 42 U.S.C. § 7607(b)(1). Although petitioner argues its petition for agency reconsideration tolled the time limit for seeking

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judicial review, Section 7607(b)(1) states that the filing of a petition for agency reconsideration “shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed....” *Id.* By its terms, the statute reflects a departure from the ordinary tolling rule embodied in this court’s “incurably premature” doctrine. *Ass’n of Battery Recyclers, Inc. v. EPA*, 2012 WL 2373298, at *1 (D.C. Cir. June 25, 2012). It is

FURTHER ORDERED that the motion to hold in abeyance be denied.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until resolution of the remainder of the appeal.

Per Curiam