

ORAL ARGUMENT NOT YET SCHEDULED

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

_____)	
AMERICAN PETROLEUM)	
INSTITUTE,)	
)	
<i>Petitioner,</i>)	Case No. 12-1405
)	(Consolidated with Nos. 12-1406,
v.)	12-1407, 12-1408, 12-1409, 12-1410,
)	12-1411, 12-1412, and 12-1417)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondent.</i>)	
_____)	

**UNOPPOSED MOTION OF RESPONDENT EPA TO SEVER THE
CHALLENGES TO THE NSPS AND NESHAP RULES, TO HOLD
LITIGATION IN ABEYANCE, AND TO GOVERN
FURTHER PROCEEDINGS**

Respondent United States Environmental Protection Agency (“EPA”) and Petitioners in each of the above-captioned petitions for review have conferred and Respondent now moves that the Court sever this case into two separate cases, hold each case temporarily in abeyance pending EPA’s evaluation of and anticipated action on administrative petitions for reconsideration, and order the schedule described in Paragraphs 4, 5 and 7 below for further proceedings in each case. Counsel for EPA has consulted with counsel for all other Parties, and is authorized

to state that all Parties either have consented to this motion or do not oppose it. In further support of this motion, the EPA states as follows:

1. In these consolidated cases, Petitioners seek review of EPA's final rule entitled "Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews," published at 77 Fed. Reg. 49,490 (Aug. 16, 2012) (Final Rule). Several petitioners have also filed petitions for administrative reconsideration of the Final Rule. The Final Rule contains final actions on two different national standards promulgated by EPA: (1) new source performance standards ("NSPS"), promulgated under section 111 of the Clean Air Act, 42 U.S.C. § 7411, and (2) national emission standards for hazardous air pollutants ("NESHAP"), promulgated under section 112 of the Clean Air Act, 42 U.S.C. § 7412. Because EPA exercised its discretion to combine these actions in the same rulemaking, the actions were finalized together.

2. Due to the differences between these two types of national standards, the potential for EPA to take action on the reconsideration petitions on a different schedule for each set of standards, and to serve the interest of efficiency by narrowing the parties and issues involved in each case in the event further litigation becomes necessary, EPA moves to sever the litigation on EPA's two actions (the NSPS and the NESHAP) into two separate cases.

3. On November 14, 2012, various parties filed motions to intervene in the consolidated cases resulting from other parties' petitions. No party filed an opposition to any such motion. The Court has not yet acted on those motions. In conjunction with its request to sever this action into two cases, EPA also requests that, to the extent the Court grants any party's motion to intervene, such movant be made a party to the NSPS case, the NESHAP case, or both cases depending on the nature of the underlying issues on which the movant sought intervention.

4. On December 13, 2012, EPA informed Petitioners that EPA anticipates granting reconsideration on certain issues raised in the administrative petitions on the NSPS and the NESHAP. On January 11, 2013, EPA further informed Petitioners that it intends to conduct the administrative reconsideration process for NSPS issues pursuant to the following schedule: (a) EPA presently anticipates that it will sign by March 29, 2013, a notice of proposed rulemaking addressing certain NSPS issues on an expedited basis; (b) EPA presently anticipates that it will take final action with respect to those issues by July 31, 2013; (c) EPA presently anticipates that, in the event it may determine that other NSPS issues require reconsideration, the Agency will sign by December 17, 2013, a notice of proposed rulemaking addressing such additional NSPS issues; and (d) EPA presently anticipates it will take final action as to any such additional NSPS issues by November 25, 2014. EPA further informed Petitioners that it intends to

disclose additional information on or before July 31, 2013, regarding EPA's progress by that date in identifying other NSPS issues as to which the Agency may conclude that reconsideration is warranted. In light of EPA's anticipated grant of reconsideration on certain issues, and to provide it with time to evaluate others, EPA respectfully requests that the Court, upon severing the NSPS and NESHAP cases, hold the NSPS case in abeyance until August 30, 2013, and order the parties in that case to file a motion or motions to govern further proceedings on or prior to that date.

5. On December 18, 2012, EPA also informed Petitioners that it intends to sign a proposed rule on at least one NESHAP issue on which it will grant reconsideration. On January 11, 2013, EPA further informed Petitioners that it intends to conduct the administrative process for NESHAP reconsideration pursuant to the following schedule: (a) EPA presently anticipates that it will sign a notice of proposed rulemaking by April 30, 2014; and (b) EPA presently anticipates that it will take final action by March 31, 2015. In light of EPA's anticipated grant of reconsideration on at least one issue and to provide it with time to evaluate others, EPA respectfully requests that the Court hold the NESHAP case in abeyance until May 30, 2014, and order the parties in that case to file a motion or motions to govern further proceedings on or prior to that date.

6. The parties in each case will work in good faith to reach agreement, by or before the applicable filing deadlines, on a motion to govern further proceedings concerning matters held in abeyance, but reserve the right to file separate motions at the end of each applicable abeyance period if agreement cannot be reached.

7. EPA further requests that the Court order EPA to submit a status report in the NESHAP case every six months (beginning six months from the date of the Court's order on this motion) and reserve the right of all parties in that case to move to lift the abeyance before the period of time agreed upon based on a showing that the abeyance is no longer appropriate due to new or changed circumstances.

8. In its December 21, 2012 Order, the Court set deadlines of January 18, 2013, for filing initial submissions not yet filed and procedural motions for all parties and February 14, 2013, for filing dispositive motions and the certified index to the record. EPA further requests that the Court stay these filing deadlines while the cases are in abeyance and issue a subsequent order setting new deadlines for such filings following the completion of the reconsideration process.

9. Petitioner American Petroleum Institute has confirmed through counsel that it does not object to this motion. All other Petitioners have confirmed their consent to this motion.

CONCLUSION

10. For the foregoing reasons, and with the express consent or non-opposition of all Parties, EPA respectfully requests that the Court enter an order or orders:

(a) severing the Petitioners' challenges to EPA's NSPS and NESHAP Final Rules into two separate judicial cases (i.e., an NSPS case and a NESHAP case);

(b) providing that any party that is granted intervenor status shall become a party to the NSPS case, the NESHAP case, or both depending on the nature of the underlying issues on which that party moved for intervention;;

(c) holding the NSPS case in abeyance until August 30, 2013, and requiring the parties in that case to file a motion or motions to govern further proceedings on or before that date;

(d) holding the NESHAP case in abeyance until May 30, 2014, and requiring the parties in that case to file a motion or motions to govern further proceedings on or before that date;

(e) providing that EPA shall file a status report in the NESHAP case every six months following the Court's order on this motion, and reserving the rights of all parties in the NESHAP case to seek to lift the abeyance in that case prior to May 30, 2014, based on a showing that continued abeyance is no longer appropriate due to new or changed circumstances; and

(f) staying the filing deadlines for initial submissions, procedural motions, dispositive motions and the certified index while the cases are in abeyance, and providing that an order setting new deadlines for such filings shall be issued following the completion of the reconsideration process.

Respectfully submitted,

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Dated: January 16, 2013

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Respondent EPA's Unopposed Motion for a Second Extension of the Initial Filing Deadlines has been filed with the Clerk of the Court this 16th day of January 2013, using the CM/ECF System. True and correct copies were sent to each of the following counsel by electronic mail, in addition to service through the appellate CM/ECF system:

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Dated: January 16, 2013

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