

ORAL ARGUMENT NOT YET SCHEDULED

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

DELTA CONSTRUCTION COMPANY,)	
et al.,)	
)	
Petitioners,)	
)	
v.)	No. 11-1428 (and
)	consolidated
)	cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
_____)	

**RESPONDENTS' MOTION TO CONTINUE TO HOLD CASE IN
ABEYANCE FOR A PERIOD OF 30 DAYS**

Pursuant to this Court's Order dated March 28, 2012, Respondents United States Environmental Protection Agency ("EPA") and National Highway Traffic Safety Administration hereby move for an order continuing to hold this case in abeyance for a period of 30 days, with the parties directed to file motions to govern further proceedings at the conclusion of the abeyance period. Undersigned counsel for Respondents has contacted counsel for all Petitioners in these consolidated cases and has been authorized to represent that Petitioners Delta Construction Company Inc. et al. (Case No. 11-1428), Utility Air Regulatory Group (Case No. 11-1438), Clean Energy Fuels Corp. et al. (Case No. 11-1439), and American

Petroleum Institute et al. (Case No. 11-1440) do not oppose this motion. Petitioner Plant Oil Powered Diesel Fuel Systems, Inc. (Case No. 11-1441) has advised Respondents that it opposes this motion.

In support of this request, Respondents state as follows:

1. These consolidated petitions for review challenge EPA and National Highway Traffic and Safety Administration rules establishing greenhouse gas emission standards and fuel consumption standards for medium- and heavy-duty vehicles. 76 Fed. Reg. 57,106 (Sept. 15, 2011).
2. In November 2011 Petitioners in Case No. 11-1438 and Case No. 11-1440 (collectively “the Stationary Source Petitioners”) filed a motion requesting that the Court hold in abeyance these consolidated cases until after the Court ruled on petitions for review challenging several recent EPA greenhouse gas regulations (“the GHG cases”). By order dated March 28, 2012, this Court granted the Stationary Source Petitioners’ abeyance motion and directed the parties to file motions to govern further proceedings within 14 days of the Court’s resolution of the GHG cases.
3. By order dated June 26, 2012, the Court issued a decision denying all of the petitions for review of the GHG cases. *See Coalition for Responsible Regulation v. EPA*, Case No. 09-1322 and consolidated cases (June 26, 2012). A mandate in the GHG cases has not yet been issued.

4. Following the decision in the GHG cases, undersigned counsel for Respondents has preliminarily consulted with counsel for petitioners regarding further proceedings in these consolidated cases. Based on these preliminary consultations with petitioners' counsel, undersigned counsel believes that some or all of the parties may be able to reach agreement on a joint proposal for further proceedings, which might include proposing to sever and hold certain petitions in abeyance pending resolution of appeals in the GHG cases, and might include agreement on a proposed briefing format for remaining petitions (with briefing potentially proposed to be scheduled after Respondents' forthcoming resolution of a pending petition for administrative reconsideration and a petition for rulemaking filed by Petitioner Plant Oil Powered Diesel Fuel Systems, Inc.). Additional time, however, is required for the parties to conclude their efforts to reach agreement on such a joint case management proposal. A 30-day extension of the abeyance period would provide the parties with ample time to try to conclude their efforts to reach agreement on how these consolidated cases should proceed.

5. On July 9, 2012, Petitioner Plant Oil Powered Diesel Fuel Systems, Inc. filed a motion to "remand and for an order to agencies to receive additional submissions on reconsideration." *See* ECF No. 21382740. Respondents intend to oppose the remand motion. The 30-day additional abeyance period proposed herein would not prejudice Plant Oil Powered Diesel Fuel Systems, Inc. Indeed,

the additional abeyance period sought is fully consistent with this Petitioner's position, set forth in its motion to remand, that merits briefing should be postponed pending Respondents' resolution of this Petitioner's administrative petition for reconsideration. *See* Petitioner's Remand Motion at 4 (contending that the Court should ensure that it considers any challenges to Respondents' forthcoming ruling on reconsideration petition as part of the instant proceeding in order to avoid piecemeal litigation).

For the foregoing reasons, the Court should grant Respondents' request for an order continuing to hold this case in abeyance for a period of 30 days, with the parties directed to file motions to govern further proceedings at the conclusion of the abeyance period.

Respectfully submitted,

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July 10, 2012

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion to Continue to Hold Case in Abeyance was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of said filing to the attorneys of record for Petitioners who have registered with the Court's CM/ECF system.

Date: July 10, 2012

/s/ Eric G. Hostetler
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