

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN LUNG ASSOCIATION and)	
NATIONAL PARKS CONSERVATION)	
ASSOCIATION,)	
)	
Plaintiffs,)	Civil Action No. 1:12-cv-00243 (RLW)
v.)	(Judge Robert L. Wilkins)
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, and LISA)	
JACKSON, Administrator, United States)	
Environmental Protection Agency,)	
)	
Defendants.)	
_____)	
)	
STATE OF NEW YORK, et al.,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 1:12-cv-00531
)	(consolidated)
LISA P. JACKSON, as Administrator of the)	
Environmental Protection Agency, and the)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendants.)	
_____)	

**JOINT MOTION FOR A TEMPORARY STAY OF FURTHER HEARING
PROCEEDINGS PENDING COMPLETION OF SETTLEMENT NEGOTIATIONS**

Plaintiffs American Lung Association, et al. (“ALA”) and the State of New York, et al. (“States”) and Defendants the United States Environmental Protection Agency and Lisa Jackson, Administrator (collectively “EPA”) hereby provide notice to the Court that, consistent with the Court’s encouragement at the May 31, 2012 motions hearing, the parties have reached a tentative settlement in this matter. The parties have begun drafting a proposed consent decree that will

embody the terms of the tentative settlement. In furtherance of the parties' tentative agreement, the parties jointly move the Court for a temporary stay of the testimonial hearing currently scheduled for June 11, 2012. If by 1:00 p.m. Eastern Time on Friday, June 15, 2012, the parties have not lodged with the Court a proposed consent decree resolving this matter, the parties further request that the testimonial hearing ordered by the Court be rescheduled for the afternoon of Monday, June 18, 2012, or the earliest available date thereafter that is convenient to the Court and the parties.

Plaintiffs ALA and the States have authorized counsel for EPA to file this joint motion on Plaintiffs' behalf. In further support of this motion, the parties state as follows:

1. On June 2, 2012, following the May 31 motions hearing, the Court entered a preliminary injunctive order requiring that EPA:

(a) sign no later than June 7, 2012, a notice of proposed rulemaking pursuant to 42 U.S.C. § 7409(d)(1) concerning its review of the national ambient air quality standards ("NAAQS") for particulate matter ("PM") and proposing such revisions to the NAAQS and/or proposing new NAAQS for particulate matter as may be appropriate in accordance with 42 U.S.C. §§ 7408 and 7409(b);

(b) seek expedited publication of the notice of proposed rulemaking in Federal Register; and

(c) schedule and hold any public hearing(s) and hold a public comment period such that the comment period closes no later than nine (9) weeks from the date of publication of the notice of proposed rulemaking in the Federal Register. Order of June 2, 2012 at 2 (Dkt. No. 37).

2. The Court reserved judgment on all other relief sought by the parties, including the proposed deadlines each party seeks by which EPA would be required to take final action with respect to the PM NAAQS. Id. The Court also scheduled a further hearing on the pending motions beginning at 11:00 a.m. on June 11, 2012, at which EPA Assistant Administrator Gina McCarthy is ordered to appear for examination concerning statements in her May 4, 2012 declaration regarding EPA's proposed August 15, 2013 date to sign the notice of final rulemaking. Id.

3. At the May 31, 2012 motions hearing, the Court encouraged the parties to attempt to reach a settlement, stating: "And certainly if the parties are able to meet and confer and reach resolution on one or more of the remaining issues that would obviate the need for that [June 11th] hearing, or obviate the need for me to hear from the assistant administrator, the court would certainly welcome that." Transcript of May 31, 2012 hearing, at 57. The Court's June 2nd Order accordingly requires the parties to "submit a status report to the Court by 5:00 p.m. eastern on June 8, 2012 on the status of any discussions to resolve the matters before the Court, and the need for any further hearing on June 11 in light of such discussions." Order of June 2, 2012 at 2-3.

4. The parties have now reached a tentative settlement resolving their dispute over the date by which EPA should be required to sign a notice of final rulemaking. Specifically, the parties tentatively have agreed to a deadline of December 14, 2012, for EPA to sign the notice of final rulemaking, which is the same deadline for final action that ALA requested in its reply brief in support of its application for preliminary and permanent injunction,

and is approximately one week after the deadline sought in the States' Cross-Motion for Summary Judgment.

5. The parties are in the process of drafting a proposed consent decree embodying the terms of their tentative settlement, including the proposed deadline of December 14, 2012 for EPA to sign the notice of final rulemaking. Once the proposed consent decree has been drafted to the parties' mutual satisfaction and reviewed by the parties' respective decision-making officials, the parties would sign the proposed consent decree and lodge it with the Court. The parties plan to complete all of these tasks within the next 10 days – *i.e.*, by Friday, June 15, 2012. The proposed consent decree then must undergo a statutorily-required, 30-day public comment period before EPA may formally commit to the agreement.¹

6. To allow sufficient time for the parties to complete negotiation and drafting of a proposed consent decree embodying the settlement terms, review and sign the proposed decree, and lodge it with the Court, the parties jointly request that the Court enter a temporary stay of the hearing currently scheduled for June 11, 2012. As provided in the attached Proposed Order, this

¹ Section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g), provides in relevant part:

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions . . . or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter.

temporary stay would expire on June 15, 2012. The Proposed Order further states that, if the parties have not lodged a proposed consent decree with the Court by 1:00 p.m. Eastern Time on June 15, 2012, the testimonial hearing will be rescheduled for the afternoon of June 18, 2012, or the soonest available date thereafter that is convenient to the Court and parties.

7. Upon timely lodging of a proposed consent decree as described above, the parties intend to file a motion to stay all further proceedings in the case pending the completion of the public comment period that will be required under 42 U.S.C. § 7413(g) with respect to the proposed consent decree. See supra n.1.

CONCLUSION

For the foregoing reasons, the parties request that the Court grant this joint motion and enter a temporary stay of the testimonial hearing currently scheduled for June 11, 2012, as provided in the attached Proposed Order.

Respectfully submitted,

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DATED: June 5, 2012

By: /s/ Brian H. Lynk
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 5th day of June, 2012, I electronically filed the foregoing Joint Motion for a Temporary Stay of Further Hearing Proceedings Pending Completion of Settlement Negotiations and accompanying Proposed Order, and thereby caused them to be served by electronic transmission to the following counsel of record, all of whom are registered to use this Court's CM/ECF system:

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I further certify that on the same date, a true and correct copy of the above was sent by first-class mail, postage prepaid, to the following non-CM/ECF participants:

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