

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

STATE OF CALIFORNIA, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 21-1014
)	(lead)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
)	
AMERICAN LUNG ASSOCIATION, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 21-1027
)	(consolidated)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
)	
CENTER FOR BIOLOGICAL)	
DIVERSITY,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 21-1054
)	(consolidated)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
)	

CORRECTED MOTION TO EXTEND ABEYANCE¹

Petitioners in these consolidated cases seek judicial review of an action titled “Review of the National Ambient Air Quality Standards for Particulate Matter,” 85 Fed. Reg. 82,684 (Dec. 18, 2020) (“Particulate Matter NAAQS Decision”). In 2021, Respondents United States Environmental Protection Agency, et al. (“EPA”) indicated its intention to reconsider the Particulate Matter NAAQS Decision. EPA moved to hold these cases in abeyance pending that reconsideration, and the Court granted that motion and placed the cases in abeyance until March 1, 2023. EPA has sought extensions of that abeyance to allow it to finish its reconsideration, most recently to January 30, 2024. *See* Order dated January 18, 2024 (Doc. 2036077).

EPA continues to expect that the rule will complete the inter-agency review process through the Office of Management and Budget imminently and the Administrator will sign the rule shortly thereafter. Given that, EPA requests that the Court extend the abeyance by two weeks to February 13, 2024.

Counsel for EPA has conferred with counsel for Petitioners and movant-intervenors. Counsel for Petitioners American Lung Association *et al.* has authorized EPA to report that: “Consistent with their January 12 filing, Health and Environmental Petitioners in No. 21-1028 will oppose the motion unless final

¹ Undersigned counsel inadvertently filed a draft version of this status report. This corrected version corrects a typographical error in the second paragraph.

action on reconsideration is signed by January 30 and intend to file a timely response to the motion, including as appropriate a cross-motion to lift the abeyance.” Counsel for Petitioners State of California *et al.*, Case No. 21-1014, and the Center for Biological Diversity have authorized EPA to report that they reserve their right to file a response to EPA’s motion. Counsel for Respondent-Intervenors has authorized EPA to report that they do not oppose EPA’s requested extension.

There is good cause to extend the abeyance. Courts may defer judicial review of a final rule pending completion of reconsideration proceedings, *see Am. Petroleum Inst. v. EPA*, 683 F.3d 382 (D.C. Cir. 2012) (“API”), and have done so for Clean Air Act rules like the one at issue here, *see, e.g., Sierra club v. EPA*, 551 F.3d 1019, 1023 (D.C. Cir. 2008). Here, as reported above, EPA expects that the rule will imminently be finalized. Extending the abeyance would thus save both judicial and party resources by avoiding litigation that will soon be preempted. *See API*, 683 F.3d at 388. Furthermore, extending the abeyance also will not unduly prejudice any party.

Accordingly, for these reasons, and good cause shown, EPA respectfully requests that the Court order extend the abeyance by two weeks, until February 13, 2024. Once final action is taken or before expiration of the extended abeyance period, EPA expects that the parties will confer and submit proposals to govern any further proceedings to the Court.

Respectfully submitted,

Dated: January 30, 2024

/s/ Sarah A. Buckley
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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that the foregoing complies with the type-volume limitation because it contains 473 words, according to the count of Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c), that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

/s/ Sarah A. Buckley
SARAH A. BUCKLEY