

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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AMERICAN FOREST & PAPER)	
ASSOCIATION, et al.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 11-1125
)	(and consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
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**REPLY IN FURTHER SUPPORT
RESPONDENTS’ MOTION TO HOLD CASE
IN ABEYANCE**

Respondents United States Environmental Protection Agency and Lisa P. Jackson, Administrator, (collectively “EPA”) submit this Reply in further support of their motion to hold these consolidated cases in abeyance.

As described in EPA’s Motion, the petitions in this case seek review of an EPA rule titled “Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units,” published at 76 Fed. Reg. 15,704 (March 21, 2011). EPA seeks to hold this case in abeyance because it has initiated a process to reconsider

portions of the final rule, 76 Fed. Reg. 15,267 (March 21, 2011), and is considering a number of administrative petitions for reconsideration of the final rule that have been submitted to the Agency. Given that the issues raised in both EPA's review and the administrative petitions overlap with the issues EPA anticipates will be raised in this litigation and the possibility that the rule might be altered once the review is complete, EPA believes it appropriate to hold this litigation in abeyance while EPA completes its reconsideration process and its review of the administrative petitions for reconsideration.

Petitioners Sierra Club, et al., (collectively "Sierra Club") oppose holding the case in abeyance for any period longer than three months. Sierra Club does not address the appropriateness of the Court adjudicating challenges to a rule that may soon be modified as the result of the reconsideration process. Rather, Sierra Club's Opposition is based on its concern that the litigation, and the effective date of the rule, will be indefinitely delayed. Sierra Club's concern is misplaced.^{1/} EPA intends to complete its reconsideration process expeditiously. Specifically, EPA

^{1/} Sierra Club's allegation that EPA has not complied with the district court's order is similarly misplaced. The rule was promulgated by the date ordered by the district court. Extending the effective date of the rule until the earlier of the date on which the Agency's reconsideration process is completed or the petitions for judicial review are completed does not alter the fact that EPA complied with the district's court order to promulgate the rule by the specified date.

intends to sign a proposed rule by October 31, 2011, and to sign a final rule by April 30, 2012, less than one year from now.²

Given the potential waste of judicial resources in proceeding to review this rule when it may be modified in a short time the case should be held in abeyance pending completion of the reconsideration process.

Respectfully submitted,

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June 24, 2011

² EPA intends to conduct on the same schedule its reconsideration of two related rules establishing standards for boilers, *i.e.*, "National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters" (76 Fed. Reg. 15,608 (March 21, 2011)) and "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers" (76 Fed. Reg. 15,554 (March 21, 2011)). Those rules are the subject respectively of United States Sugar Corp. v. EPA, No. 11-1108 (and consolidated cases) and American Chemistry Council v. EPA, No. 11-1141 (and consolidated cases).

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of June, 2011, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on all counsel of record in this matter.

/S/ Norman L. Rave, Jr.
Norman L. Rave, Jr.