

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

Respondents

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No. 11-1131
(consolidated with
11-1167 and 11-1185)
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All of the parties in these consolidated cases hereby jointly request that the Court temporarily postpone briefing in these consolidated cases in order to allow additional time for EPA to finalize actions in two administrative proceedings involving the Clean Air Act rule challenged in these cases. As explained below, EPA has informed the parties that it will take final action in the immediate future on two pending administrative petitions for reconsideration addressing the same

Clean Air Act rule challenged in these consolidated cases. Because EPA's action on the petitions for reconsideration is reasonably likely to change the issues the petitioners would like to raise in briefs to the Court, the parties believe that an approximately four month delay in the briefing schedule would allow the parties to assess the impact of EPA's action on the issues they would like to raise in their briefs, and for any new petitions for review challenging EPA's action on the petitions for reconsideration to be consolidated into a single proceeding for judicial review. All of the parties believe that temporarily postponing briefing would allow more organized and efficient consolidated briefing on all issues affecting the underlying rule.

Because briefs by petitioners are currently due to be filed on February 24, 2012 – two weeks from the date this motion was filed – the parties also respectfully request expedited consideration of this motion so that the parties will have adequate advance notice to plan as necessary to respond to the Court's ruling on this motion.

In support of this motion, the parties hereby state as follows:

1. Respondent EPA promulgated the final rule challenged in these consolidated cases on March 21, 2011. That rule, entitled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge

Incineration Units,” 76 Fed. Reg. 15372 (Mar. 21, 2011) (the “SSI Rule”), establishes emission limitations and other requirements under section 129 of the Clean Air Act, 42 U.S.C. § 7429, applicable to sewage sludge incinerators at publicly-owned treatment works.

2. The National Association of Clean Water Agencies (“NACWA”), petitioner in case No. 11-1131, is the association of municipalities and local governments who own and operate publicly-owned treatment works. Many of NACWA’s members own and operate sewage sludge incinerators at publicly-owned treatment works that are subject to the SSI Rule. Hatfield Municipal Township, petitioner in No. 11-1167, owns an SSI that is subject to the SSI Rule.

3. NACWA filed a petition for review of the SSI Rule on May 6, 2011. NACWA also submitted a petition for administrative reconsideration of the SSI Rule to EPA on May 24, 2011. NACWA’s petition asked EPA to reconsider certain aspects of the SSI Rule and also asked EPA to stay the effectiveness of the SSI Rule pending completion of reconsideration proceedings. NACWA has met with EPA on several occasions to discuss EPA’s response to the petition for reconsideration; however, EPA has not yet taken final action on the petition.

4. Sierra Club, petitioner in No. 11-1185, filed its petition for review of the SSI Rule on May 20, 2011. Sierra Club also submitted a petition for administrative

reconsideration of the SSI Rule on May 20, 2011, seeking reconsideration of various aspects of the SSI Rule. Sierra Club has had multiple telephone conversations with EPA to discuss EPA's response to the petition for reconsideration, but EPA has not yet taken final action on Sierra Club's petition.

5. On February 1, 2012, the Court entered an Order setting the briefing format and schedule in these consolidated cases. Per that Order, petitioners' and the petitioner-intervenor's merits briefs are due on February 24, 2012, as was jointly proposed by the parties. However, the day after the Court entered the scheduling order, counsel for EPA informed NACWA and Sierra Club that the Agency will be issuing responses to both petitions for reconsideration in the next few weeks. EPA currently plans to issue letters responding to both petitions for reconsideration by March 23, 2012, and expects promptly thereafter to send notice of these responses to the *Federal Register* for publication.

6. EPA's action on the petitions for reconsideration is likely to affect the issues NACWA and Sierra Club would seek to raise in these consolidated cases. If, for example, EPA denies all or a portion of the petitions for reconsideration, NACWA and/or Sierra Club are likely to file petitions for review challenging the denial as final agency action under sections 307(b)(1) and 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. §§ 7607(b)(1) and 7607(d)(7)(B). Because such a petition for

review would raise factual and legal issues germane to this Court's current review and disposition of the SSI Rule, adjusting the briefing format and schedule would allow petitioners to raise all such issues in their initial merits briefs, and EPA to respond to all issues in a single response brief. Allowing for consolidated briefing on all issues would be more efficient and convenient for the Court, as opposed to raising challenges to EPA's action on the petitions for reconsideration in a separate case or through a round of supplemental briefing in these consolidated cases. In addition, permitting the parties to file a revised proposed format and schedule will allow the parties to provide detailed justification for the proposed word limits for the aligned petitioners' and respondents' briefs.

7. The parties believe that postponing the commencement of briefing approximately four months would permit any new petitions for review challenging EPA's action on the petitions for reconsideration to be consolidated and would allow the parties to propose a revised briefing format and schedule. The parties further request that the Court direct that a proposed format and schedule be filed no later than June 1, 2012, in order to minimize the potential for unreasonable delay in the overall briefing schedule.

THEREFORE, the parties respectfully request that the Court vacate the Order entered on February 1, 2012 and direct the parties to submit a revised

proposed briefing format and schedule by the earlier of (1) 14 days after the expiration of the 60-day period under CAA § 307(b)(1) for filing petitions for review of EPA's final actions on NACWA's and Sierra Club's petitions for administrative reconsideration of the SSI Rule, or (2) June 1, 2012. The parties also respectfully request expedited consideration of this motion given the short period of time until the current deadline for filing petitioners' briefs.

Dated: February 10, 2012

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on this 10th day of February, 2012, a copy of the foregoing Joint Motion for Expedited Consideration and for an Order Directing Parties to File a Revised Proposed Briefing Format and Schedule was served electronically through the CM/ECF system on all registered counsel.

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