

COPY

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

SOUTH COAST AIR QUALITY
MANAGEMENT DISTRICT, et al.

Petitioners,

v.

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

No. 04-1200 (and consolidated case
nos. 04-1201, 04-1206, 04-1208,
04-1210, 04-1212, 04-1215 & 04-1266)

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**NOTICE AND STIPULATION REGARDING
EPA'S MOTION TO HOLD IN ABEYANCE CERTAIN ISSUES**

On September 24, 2004, Respondent Environmental Protection Agency ("EPA") filed a motion that requested the Court to sever from these consolidated cases all issues that challenge three aspects of the "Implementation Rule" that EPA is reconsidering and to hold those issues in abeyance in a new docket, pending the completion of EPA's reconsideration process. See EPA's Motion To Hold In Abeyance Certain Issues EPA is Reconsidering ("Abeyance Motion"). EPA further proposed in that motion that the challenges in this Court to the other aspects of the Implementation Rule should proceed at this time. *Id.* at 1-2 & 5. EPA's grant of reconsideration on the three elements of the Implementation Rule was based upon an administrative petition for reconsideration that was submitted to EPA by several environmental groups that are also petitioners in these consolidated cases. *Id.* at 4 n.2. Each of those environmental petitioners (that is, the petitioners in American Lung Association, et al., v. EPA, 04-1210, and Conservation Law Foundation, et al., v. EPA, 04-1212), as well as the petitioners in Louisiana Environmental Action Network v. EPA, 04-1206, South Coast Air Quality Management District v. EPA, 04-1200, and in Commonwealth of Massachusetts, et al. v. EPA, 04-1207 (collectively referred to as the "Environmental Petitioners" for purposes of this motion), file this notice to inform the Court

that they do not oppose the relief requested by EPA in its Abeyance Motion, based upon EPA's representations herein regarding the time by which the Agency's administrative reconsideration will be completed and EPA's other representations herein.

Specifically, with regard to the three elements of the Implementation Rule on which EPA has granted reconsideration, EPA will complete its reconsideration process by May 20, 2005. EPA also represents that it will not take final action before June 15, 2005, on any State Implementation Plan submittals that it may receive that pertain to the three elements of the Implementation Rule on which EPA has granted reconsideration. Abeyance Motion at 4 & Attachment A (describing the three elements on which EPA has granted reconsideration). Further, once EPA completes its reconsideration of the three elements of the Implementation Rule on which it has granted reconsideration, EPA stipulates that any challenges in this Court to those three elements (as well as any challenges to EPA's final action on reconsideration regarding those elements) should proceed promptly (including the setting of oral argument for the earliest date practicable after the completion of briefing), consistent with this Court's scheduling requirements and a reasonable briefing format and schedule.

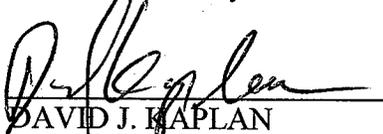
As EPA explained in its Abeyance Motion, EPA believes that challenges to the three aspects of the Implementation Rule that EPA is reconsidering are relatively discrete and can be logically and practicably severed from these consolidated cases and held in abeyance, thus permitting the parties and the Court to proceed with the adjudication of the other, substantial challenges to the Implementation Rule at this time. Abeyance Motion at 5. EPA and the Environmental Petitioners agree that adjudication of all other challenges to aspects of the Implementation Rule on which EPA has not granted reconsideration should proceed promptly at this time (including the setting of oral argument for the earliest date practicable after the completion of briefing), consistent with the Court's scheduling requirements and a reasonable briefing format and schedule. In accordance with the Court's previously entered scheduling order, EPA and the other parties will file their proposed briefing format and schedule for the

remaining issues within 20 days from the date that the Court resolves this and EPA's previously-filed procedural motion.^{1/}

Accordingly, based upon the foregoing, the Environmental Petitioners hereby notify the Court that they do not oppose the relief requested by EPA in its previously filed Abeyance Motion.^{2/}

Respectively submitted,

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^{1/} In addition, EPA will decide no later than January 10, 2005, whether or not it will grant reconsideration on the other aspects of the Implementation Rule on which some of the Environmental Petitioners sought administrative reconsideration. EPA does not believe, however, that these issues should be held in abeyance at this time. Rather, these issues, together with all the other issues that challenge the Implementation Rule, should proceed to adjudication at this time, as described above.

^{2/} Nothing herein shall be construed as impairing whatever rights Environmental Petitioners may have to seek a stay of the effect of the three elements of the Implementation Rule on which EPA has granted reconsideration. EPA reserves whatever rights it may have to oppose such a request for a stay.

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Dated: October 18, 2004

CERTIFICATE OF SERVICE

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