

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

NATURAL RESOURCES DEFENSE)	
COUNCIL, INC.,)	
)	
Petitioner,)	No. 09-1089
)	
v.)	Consolidated with Nos. 09-1131,
)	1135, 1162 & 1163
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**JOINT MOTION TO CONTINUE TO HOLD CONSOLIDATED CASES IN
ABEYANCE**

Respondents Lisa Jackson, Administrator of the United States Environmental Protection Agency (“EPA”), and EPA, and the four Petitioners in these consolidated cases – Natural Resources Defense Council, Inc. (“NRDC”), State of Michigan, National Wildlife Federation, *et al.* (“NWF”), and Northwest Environmental Advocates, *et al.* (“NWEA”) (collectively, the “Environmental/State Petitioners”) – jointly move this Court to continue to hold these proceedings in abeyance.

In support hereof, the parties state as follows:

1. This matter involves four consolidated and transferred petitions for review pursuant to section 509(b)(1) of the Federal Water Pollution Control Act,

33 U.S.C. § 1369(b)(1), which challenge EPA's final general permit titled "Final National Pollutant Discharge Elimination System ("NPDES") General Permit for Discharges Incidental to the Normal Operation of a Vessel," 73 Fed. Reg. 79,473 (Dec. 29, 2008) (the "Permit").

2. This Court has granted several joint motions to hold these proceedings in abeyance to allow settlement discussions to continue.^{1/}

3. EPA and the Environmental/State Petitioners previously reported to the Court that they had reached tentative settlements encompassing virtually all issues in the cases filed by the Environmental/State Petitioners. The parties advised, however, that additional time was necessary to finalize settlement discussions, and that any settlement would require approval not only from various organizational clients on behalf of the settling Environmental/State Petitioners but also formal approval from EPA and the Department of Justice. In their most recent motion, filed February 22, 2011, the parties requested that these cases continue to be held in abeyance through March 8, 2011.

4. EPA and the Environmental/State Petitioners now wish to report that settlements have been reached and approved by all parties. One settlement is

^{1/} At the parties' request, on October 6, 2010, Case Nos. 09-1001, 09-1010, 09-1076, and 09-1115 were severed and consolidated under lead Case No. 09-1001. Argument in those cases is scheduled for May 9, 2011.

between EPA and the Environmental Petitioners; the second settlement is between EPA and the State Petitioner. (A copy of the Settlement Agreement between EPA and the Environmental Petitioners is attached hereto as Ex. 1; a copy of the Settlement Agreement between EPA and the State Petitioner is attached as Ex. 2.)

5. Under the terms of the Settlement Agreement between EPA and the Environmental Petitioners (¶ 28), those parties agreed to file with the Court this joint motion requesting that this matter be held in further abeyance until such time as the Settlement Agreement between them is terminated. In the event that the Settlement Agreement between those parties is terminated because the Environmental Petitioners have chosen to reactivate this litigation in accordance with the requirements set forth in their Settlement Agreement with EPA, those parties will file motions to govern further proceedings. In the event the Settlement Agreement between those parties is terminated because EPA has discharged its obligations thereunder, the Environmental Petitioners agree to join in a motion to dismiss their cases with prejudice. The parties anticipate that any such motion to dismiss would be filed in December 2012.

6. Under the terms of the Settlement Agreement between EPA and the State Petitioner (also ¶ 28), those parties agreed to file with the Court this joint motion requesting that this matter be held in further abeyance until such time as

the Settlement Agreement between them is terminated. In the event the Settlement Agreement between those parties is terminated because the State Petitioner has chosen to reactivate this litigation in accordance with the requirements set forth in its Settlement Agreement with EPA, or the Settlement Agreement is terminated pursuant to ¶ 33 thereof, those parties will file motions to govern further proceedings. In the event the Settlement Agreement between EPA and the State Petitioner is terminated because EPA has discharged its obligations thereunder, those parties agree to join in a motion to dismiss the State Petitioner's case with prejudice. The parties anticipate that any such motion to dismiss would be filed in December 2012.

Respectfully submitted March 8, 2011:

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2011, a copy of the foregoing JOINT MOTION TO CONTINUE TO HOLD CONSOLIDATED CASES IN ABEYANCE was filed and served through the Court's CM/ECF system and a copy was served by regular mail upon the following:

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