

ORAL ARGUMENT NOT YET SCHEDULED

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

RENEWABLE FUELS ASSOCIATION,
AMERICAN COALITION FOR
ETHANOL,
BIOTECHNOLOGY INNOVATION
ORGANIZATION,
GROWTH ENERGY,
NATIONAL BIODIESEL BOARD,
NATIONAL CORN GROWERS
ASSOCIATION, and
NATIONAL FARMERS UNION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No.: _____

**MOTION TO HOLD CASE IN ABEYANCE PENDING FURTHER
ADMINISTRATIVE PROCEEDINGS**

Petitioners Renewable Fuels Association, American Coalition for Ethanol,
Biotechnology Innovation Organization, Growth Energy, National Biodiesel
Board, National Corn Growers Association, and National Farmers Union
(collectively “Renewable Fuels Ad Hoc Coalition,” “Petitioners,” or “Coalition”)

hereby move for an order holding this case in abeyance pending further administrative proceedings, with a requirement to file a status report or appropriate motion periodically as described below. Counsel for Petitioners attempted to contact the Department of Justice by telephone about this Motion; Respondent was unable to give a position on this Motion as of the time of filing.

In support of this motion, Petitioners state as follows:

1. Petitioners filed their Petition for Review on June 4, 2018, seeking review of 40 C.F.R. § 80.1405(c), a regulatory provision the Environmental Protection Agency (“EPA”) promulgated in 2010 as part of the rulemaking entitled “Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program,” 75 Fed. Reg. 14,670 (Mar. 26, 2010) (“RFS2 Final Rule”) (attached to the Petition for Review as Exhibit 1). The Petition for Review also sought review of a final agency action entitled *Periodic Reviews for the Renewable Fuel Standard Program*, 82 Fed. Reg. 58,364 (Dec. 12, 2017) (attached to the Petition for Review as Exhibit 2).
2. The Petition for Review asserts that new grounds for judicial review of these two final agency actions have arisen because the Coalition has learned, through credible news reports and testimony from Administrator Pruitt in April 2018, that EPA has granted a large number of retroactive small refinery hardship exemptions

for calendar years for which Renewable Volume Obligations (“RVOs”) had already been finalized. Petition for Review at 6.

3. Consistent with this Court’s precedent in *Oljato Chapter of the Navajo Tribe v. Train*, 515 F.2d 654, 666 (D.C. Cir. 1975), at the same time that Petitioners filed their Petition for Review in this Court, they also submitted an administrative petition to EPA requesting that EPA modify 40 C.F.R. § 80.1405(c) and the above-cited *Periodic Review*. See Petition for Review Exhibit 3. This administrative petition is still under review at EPA.

4. Petitioners request that judicial proceedings in this matter be held in abeyance pending further administrative proceedings at EPA. A judicial stay is warranted to allow both the Agency sufficient time to review the petition and to encourage discussions between the Agency, industry stakeholders, and Congress toward a comprehensive administrative solution that would address several other unresolved renewable fuels issues in addition to retroactive small refinery exemptions, including this Court’s remand in *Americans for Clean Energy, et al., v. EPA* (No. 16-1005 and consolidated cases). Petitioners would like to give a potential administrative resolution a good faith opportunity to succeed before pursuing their Petition in this Court.

5. Given the lack of transparency with which EPA has handled the small refinery issue to date, Petitioners propose: that (a) EPA file a status report

regarding the administrative proceedings every 60 days; and (b) that the parties file an appropriate motion or motions to govern the proceedings within 30 days following any material change of administrative status that either or both parties contend should change the procedural status of the Petition for Review.

CONCLUSION

For the above-stated reasons, Petitioners respectfully request that this Court enter an order holding in abeyance all further judicial proceedings in this case and granting the procedural relief requested above in Paragraph 5.

Date: June 4, 2018

Respectfully submitted,

//s/ Matthew W. Morrison

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CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2018, the foregoing Motion to Hold Case in Abeyance Pending Further Administrative Proceedings was filed with the Clerk of the Court together with the accompanying Petition for Review. I hereby certify that on June 4, 2018, I will cause copies of the foregoing Motion to Hold Case in Abeyance Pending Further Administrative Proceedings to be served by certified mail, return receipt requested upon the following:

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Dated: June 4, 2018

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