

ORAL ARGUMENT NOT YET SCHEDULED

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

IN RE CATE JENKINS, et al.)	
)	
Petitioners,)	
)	
v.)	No. 14-1173
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
_____)	

JOINT MOTION TO STAY

Petitioners Dr. Cate Jenkins and Public Employees for Environmental Responsibility (“Petitioners”) and Respondent United States Environmental Protection Agency (“EPA”) (collectively, “the Parties”) respectfully request that the Court stay the proceedings in this case, including EPA’s response to Petitioners’ petition for a writ of mandamus, until March 31, 2016. In support of this motion, the Parties state the following:

1. On September 9, 2014, Petitioners filed a petition for writ of mandamus in this Court, seeking an order requiring EPA to take action within 90

days on Petitioners' Petition for Rulemaking requesting that EPA amend the hazardous waste listing criteria for corrosivity under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq. ("Petitioners' Petition for Rulemaking") (the Petition for Rulemaking is attached to Petitioners' petition for writ of mandamus, Doc. No. 1511703). Specifically, Petitioners' Petition for Rulemaking sought action by EPA to revise the pH level associated with alkaline corrosivity that is specified in 40 C.F.R. § 261.22, the Corrosivity Characteristic, EPA Hazardous Waste Number D002, from a value of 12.5 to 11.5, as well as to delete the specification that only wastes that are "aqueous" are subject to regulation under 40 C.F.R. § 261.22. Id.

2. EPA intends to sign for publication in the Federal Register a response to Petitioners' Petition for Rulemaking on or before March 31, 2016.¹ In accordance with 40 C.F.R. § 260.20(c), EPA intends to respond to Petitioners' Petition for Rulemaking by making a "tentative decision to grant or deny" the Petition for Rulemaking "in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition."

3. Once EPA responds to Petitioners' Petition for Rulemaking, EPA

¹ EPA does not concede that the petition for writ of mandamus has merit, and reserves the right to oppose the petition for writ of mandamus.

intends to act within a reasonable time to complete any further administrative proceedings that might follow and to make a final decision on Petitioners' Petition for Rulemaking, in accordance with applicable law and regulation, including 40 C.F.R. § 260.20(e) ("After evaluating all public comments the Administrator will make a final decision by publishing in the Federal Register a regulatory amendment or a denial of the petition.").

4. EPA's intention to issue a tentative decision to grant or deny Petitioners' Petition for Rulemaking by March 31, 2016, is contingent upon EPA being continually funded for operation between now and March 31, 2016. If there is a lapse in EPA's appropriations during that time period making EPA unable to issue a response to Petitioners' Petition for Rulemaking by March 31, 2016, EPA intends to discuss the matter with counsel for Petitioners and propose a different date for EPA to issue a response to Petitioners' Petition for Rulemaking, and a further stay of this action until that different date, after EPA receives appropriations from Congress. If EPA and Petitioners are unable to agree upon a further stay, and EPA is unable to issue a tentative decision to grant or deny Petitioners' Petition for Rulemaking by March 31, 2016, due to a lapse in appropriations between now and March 31, 2016, EPA reserves the right to request a further stay from the Court and Petitioners reserve their right to oppose EPA's

request for such a stay.

5. If EPA does not sign for publication in the Federal Register a tentative decision to grant or deny Petitioners' Petition for Rulemaking on or before March 31, 2016, and has not been granted a further stay by this Court, the Parties request that EPA's deadline to respond to Petitioners' petition for writ of mandamus be extended to May 2, 2016, and that Petitioners' deadline to reply to EPA's response be extended to May 16, 2016.

6. If EPA has been granted a further stay by this Court, and EPA does not sign for publication in the Federal Register its tentative decision to grant or deny Petitioners' Petition for Rulemaking by the date the stay expires, the Parties request that EPA's deadline to respond to Petitioners' petition for writ of mandamus be extended to 30 days from the expiration of the stay ordered by the Court, and Petitioners' deadline to reply to EPA's response be extended to 14 days from the filing of EPA's response.

7. If EPA signs for publication in the Federal Register a tentative decision to grant or deny Petitioners' Petition for Rulemaking on or before March 31, 2016, or on or before the date any stay this Court has granted expires, the Parties will file a joint status report within 14 days of EPA's response proposing further proceedings in this matter.

8. The requested stay is in the interest of judicial economy because EPA's intended response to Petitioners' Petition for Rulemaking should resolve the claims in this matter. The requested stay further serves administrative economy because some of the resources EPA would spend responding to the petition for writ of mandamus can instead be spent responding to Petitioners' Petition for Rulemaking.

For all of these reasons, the Parties respectfully request that the Court stay this matter, including EPA's response to the petition for writ of mandamus, until March 31, 2016.

Respectfully submitted,

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Dated: February 24, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on February 24, 2015, a true and correct copy of the foregoing was served on counsel of record in this case by means of the Court's CM/ECF system.

/s/ Lisa M. Bell

LISA M. BELL