

ORAL ARGUMENT NOT YET SCHEDULED
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF OKLAHOMA, *et al.*,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY and Lee Zeldin, Administrator of the
U.S. Environmental Protection Agency,

Respondents.

Case No. 24-1125
(consolidated with No. 14-1127)

UNOPPOSED MOTION TO HOLD CASES IN ABEYANCE

Respondents United States Environmental Protection Agency and Administrator Lee Zeldin¹ (“EPA”) respectfully move the Court to hold these consolidated cases in abeyance (with status reports every 90 days) while EPA undertakes a new rulemaking to reassess elements of the underlying rule challenged here. Undersigned counsel has conferred with counsel for all parties. Petitioners do not oppose the motion. Intervenors take no position on the motion. Thus, the motion is unopposed.

1. Petitioners seek review of an EPA action titled, “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act;

¹ Administrator Zeldin is substituted for former Administrator Michael S. Regan pursuant to Federal Rule of Appellate Procedure 43(c)(2).

Safer Communities by Chemical Accident Prevention,” published at 89 Fed. Reg. 17,622 (March 11, 2024) (“Final Rule”). The Final Rule was issued under the Clean Air Act’s Risk Management Program provision, which is designed to prevent and reduce the risk of accidental releases of hazardous chemicals. *See* 42 U.S.C. § 7412(r)(7).

2. As detailed in the attached Declaration of Steven Cook, Deputy Assistant Administrator of EPA’s Office of Land and Emergency Management, EPA intends to undertake a new notice-and-comment rulemaking to reassess the requirements in the Final Rule in light of the new Administration’s policy priorities. Cook Decl. ¶ 9. EPA intends to complete this rulemaking as expeditiously as practicable and aims to publish a Final Rule in late 2026. Cook Decl. ¶ 11.

3. A further abeyance of these consolidated cases is warranted to allow time for EPA to undertake its rulemaking. To apprise the parties and the Court of EPA’s progress, EPA proposes filing status reports at 90-day intervals during the abeyance period.

4. This Court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *Cottrell v. Duke*, 737 F.3d 1238, 1248 (8th Cir. 2013). An abeyance is prudent “if the public welfare or convenience will thereby be promoted.” *Landis*, 299 U.S. at 256.

5. Abeyance is warranted here because courts have long recognized that agencies may generally review and, if appropriate, revise their past decisions. *See, e.g., Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“[R]egulatory agencies do not establish rules of conduct to last forever [and] an agency must be given able latitude to adapt their rules and policies to . . . changing circumstances.”); *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038, 1043 (D.C. Cir. 2012) (explaining that an agency’s “reevaluation of which policy would be better in light of the facts” is “well within” its discretion and that a change in administration is a “perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations” (internal quotation marks omitted)).

6. Courts routinely grant stays or abeyance in circumstances like those presented here where a new administration seeks to review prior actions. *See, e.g.,* Order, (Doc. Nos. 1883880, 1882301),² *Am. Fuel & Petrochem. v. EPA*, No. 19-1124 (D.C. Cir. Feb. 5, 2021) (rescheduling oral argument at EPA’s request to accommodate change of administration); Order (Doc. Nos. 1675813, 1670157), *Am. Petroleum Inst. v. EPA*, No. 13-1108 (D.C. Cir. May 18, 2017) (abating challenge to EPA’s authority to regulate methane from oil and gas operations following change

² In this and the following citations, the first ECF citation refers to the Court’s Order and the second ECF citation refers to EPA’s motion for a stay or abeyance.

of administration); Order (Doc. Nos. 1673071, 1668274), *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Apr. 28, 2017) (abating challenges to Clean Power Plan rule following change of administration).

7. Abeyance would also preserve resources of the parties and the Court. It is possible that EPA's new rulemaking could obviate the need for judicial resolution of some or all of the disputed issues in these cases. *See* Cook Decl. ¶ 10. Good cause thus exists for the requested abeyance. *See Anchor Line Ltd. v. Fed. Maritime Comm'n*, 299 F.2d 124, 125 (D.C. Cir. 1962) (“[W]hen an agency seeks to reconsider its action, it should move the court to remand or to hold the case in abeyance pending reconsideration by the agency.”); *cf. Ctr. for Biological Diversity v. EPA*, 56 F.4th 55, 71–71 (D.C. Cir. 2022) (courts “routinely stay [their] hand when parties identify developments that are likely to render judicial resolution unnecessary”); *Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 386–87 (D.C. Cir. 2012) (finding proposed rule that would eliminate disputed issue rendered pending case prudentially unripe).

8. For these reasons, the Court should place this matter in abeyance, with a requirement for EPA to file status reports at 90-day intervals during the abeyance period.

Respectfully submitted,

DATED: March 6, 2025

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Deputy Assistant Attorney General

s/ Andrew S. Coghlan

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CERTIFICATES OF COMPLIANCE AND SERVICE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this document contains 808 words.

This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

On March 6, 2025, I filed the foregoing with the Court's CMS/ECF system, which will notify each party.

Dated: March 6, 2025

Respectfully submitted,

s/Andrew S. Coghlan
ANDREW S. COGHLAN
Counsel for Respondents

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

_____)	
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<i>et al.</i> ,)	
)	
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)	and consolidated cases
ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
<i>Respondents.</i>)	
)	
_____)	

DECLARATION OF STEVEN COOK

I, Steven Cook, under penalty of perjury, affirm and declare that the following statements are true and correct to the best of my knowledge and belief, and are based on my own personal knowledge or on information contained in the records of the United States Environmental Protection Agency (EPA) or supplied to me by EPA employees under my supervision.

1. I am Deputy Assistant Administrator for the United States Environmental Protection Agency Office of Land and Emergency Management (OLEM), which is located at 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.
2. OLEM is the EPA headquarters-based unit with primary responsibility for administration of the Risk Management Program (RMP), which requires regulated entities to take steps to prevent the accidental release of regulated substances and minimize the consequences of any such release. *See* 40 C.F.R. Part 68. As the Deputy Assistant Administrator for OLEM, I serve as the principal advisor to the Administrator of EPA on matters pertaining to the RMP, and I am responsible for managing

this program, including program policy development and evaluation; program policy guidance and overview; and technical support and evaluation of regional RMP activities.

3. As part of my duties as Deputy Assistant Administrator of OLEM, I oversee the development and implementation of actions, regulations, policy, and guidance associated with the RMP under Section 112(r) of the Clean Air Act (CAA), 42 U.S.C. § 7412(r).

4. This declaration is filed in support of EPA's motion for an abeyance in *State of Oklahoma et al. v. EPA*, No. 24-1125 (D.C. Cir.) and consolidated cases.

RMP Background

5. CAA Section 112(r), 42 U.S.C. 7412(r), requires EPA to publish regulations and guidance for chemical accident prevention at facilities that have present specifically-identified "regulated substances" that pose the greatest risk of harm from accidental releases. As described in Section 112(r)(7)(A), "the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements." Regulations promulgated under Section 112(r)(7)(B) require owners or operators of stationary sources at which "a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases."

6. In March 2024, EPA revised the RMP regulations through a final rule entitled "Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act; Safer Communities by Chemical Accident Prevention." 87 Fed. Reg. 17,622 (March 11, 2024) (the "2024 rule").

7. The 2024 rule included several changes and amplifications to the accident prevention program requirements, the emergency preparedness requirements, and the public availability of chemical hazard information. *See id.* at 17,622.

New RMP Rulemaking

8. As the Court is aware, a new administration took office on January 20, 2025.

9. In light of the new administration's priorities, EPA intends to initiate a new rulemaking to reconsider the current RMP requirements, pursuant to the CAA, which would include a public notice and comment process with respect to the proposed action.

10. The new rulemaking may obviate the need for judicial resolution of some or all of the disputed issues in this case.

11. EPA intends to undertake this rulemaking as expeditiously as practicable. Based on currently available information, EPA's goal is to publish a Final Rule in late 2026.

12. A continued abeyance of the 2024 rule would allow EPA to expeditiously complete a new rulemaking without having to devote resources to litigation that may be rendered moot.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of March, 2025.

A handwritten signature in blue ink that reads "Stu Cook". The signature is written in a cursive style with a large initial "S" and "C".

Steven Cook
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency