

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CHESAPEAKE BAY FOUNDATION, INC., *et al.*,)

Plaintiffs,

v.

JANE NISHIDA,¹ in her official capacity as
Acting Administrator of the U.S. Environmental
Protection Agency, *et al.*,

Defendants.

Civil Action Nos. RDB-20-1063,
RDB-20-1064

JOINT MOTION TO HOLD CASES IN ABEYANCE

Plaintiffs and Defendants hereby move to hold these consolidated cases in abeyance while Defendants review the two rules at issue. The bases for this motion are set forth below.

1. In these consolidated cases, Plaintiffs challenge two rules promulgated by Defendants that define the phrase “waters of the United States” in Section 1362(7) of the Clean Water Act: the Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020), and the Definition of “Waters of the United States”-Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019).

2. On November 24, 2020, Plaintiffs filed their combined motion for summary judgment on both rules. Dkt. No. 35.

3. Defendants filed their combined response and cross-motion on January 15, 2021. Dkt. No. 45.

¹ EPA Acting Administrator Jane Nishida is automatically substituted for Andrew Wheeler pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

4. Pursuant to this Court's order of August 24, 2020, Plaintiffs' combined response and reply is currently due March 1, and Defendants' reply is currently due March 31, 2021. *See* Dkt. No. 19 at 4.

5. On January 20, 2021, President Biden issued an Executive Order entitled "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 Fed. Reg. 7037 (Jan. 25, 2021). In conformance with the Executive Order, Defendants are reviewing many rules promulgated in the last four years, including the two rules at issue in these consolidated cases.

6. Agencies have inherent authority to review past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) ("*State Farm*"); *Jimenez-Cedillo v. Sessions*, 885 F.3d 292, 298 (4th Cir. 2018). An agency's interpretation of a statute it administers is not "carved in stone" but must be evaluated "on a continuing basis," for example, "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted).

7. The Parties request an abeyance of these consolidated cases to give appropriate officials adequate time to review the rules and determine whether the rules should be maintained, modified, or otherwise reconsidered. Accordingly, the Parties respectfully request that the Court enter an order granting this motion and holding the consolidated cases in abeyance for six months. Defendants will provide a status report in 90 days. At the end of the abeyance period the Parties will provide a joint status report proposing further proceedings. The Parties retain the

right to move this Court to lift or extend the stay prior to the end of the abeyance period if circumstances warrant.

8. Granting this motion will not prejudice any party, will conserve the Parties' resources, and will promote the interest of judicial economy.

For the foregoing reasons, the Parties respectfully request that the Court hold these consolidated cases in abeyance for six months.

Dated: January 29, 2021.

Respectfully submitted,

/s/ Sonya J. Shea

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2021, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

/s/ Sonya J. Shea