

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

SOUTH CAROLINA COASTAL
CONSERVATION LEAGUE, *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and MICHAEL S.
REGAN, in his official capacity as the
Administrator of the United States
Environmental Protection Agency,

Defendants,

AMERICAN PETROLEUM INSTITUTE, *et
al.*,

Defendant-Intervenors,

NATIONAL HYDROPOWER
ASSOCIATION,

Defendant-Intervenors,

STATE OF LOUISIANA, *et al.*,

Defendant-Intervenors.

Civil Action No. 2:20-cv-03062-BHH

**DEFENDANTS' STATUS REPORT AND UNOPPOSED MOTION TO CONTINUE TO
HOLD PROCEEDINGS IN ABEYANCE**

Defendants United States Environmental Protection Agency and Michael S. Regan, in his official capacity as the Administrator of the United States Environmental Protection Agency (collectively, "EPA"), by and through their counsel, present the following status report and

unopposed motion to hold this case in abeyance for an additional 14 days, until June 18, 2021. In support of this request, EPA states as follows:

1. Plaintiffs in this action challenge an EPA final rule under the Clean Water Act, entitled the Clean Water Act Section 401 Certification Rule (the “Certification Rule”) (codified at 40 C.F.R. § 121). On January 20, 2021, President Biden signed Executive Order 13,990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, 86 Fed. Reg. 7037 (Jan. 25, 2021), directing federal agencies to review certain actions taken between January 20, 2017, and January 20, 2021. The Certification Rule was specifically listed in a subsequent White House Statement as one of the agency actions to be reviewed pursuant to the Executive Order for potential suspension, revision or rescission.¹

2. On February 11, 2021, the Parties jointly moved the Court to hold all proceedings in abeyance to allow EPA time to brief new administration officials with decision-making responsibility about the Certification Rule (Dkt. No. 55). This Court granted the Parties’ joint motion and ordered the case held in abeyance until April 12, 2021. The Court ordered EPA to provide a status report regarding EPA’s review of the Certification Rule by April 12, 2021 (Dkt. No. 56).

3. On April 12, 2021, EPA advised the Court that EPA had been reviewing the Certification Rule and conducting briefings with senior leadership in EPA’s Office of Water as well as with EPA Administrator Regan to determine a course of action with respect to the Certification Rule. EPA determined that it would need additional time to select and announce its intended course of action. Accordingly, EPA moved the Court to continue to hold this matter in abeyance until June 4, 2021 (Dkt. No. 59). The Court granted EPA’s motion and ordered the case held in abeyance until June 4, 2021. The Court also ordered EPA to provide a status report regarding EPA’s course of action by June 4, 2021 (Dkt. No. 61).

¹ White House, Statements and Releases, Fact Sheet: List of Agency Actions for Review (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (last visited April 5, 2021).

4. On May 26, 2021, EPA signed a notice announcing its intent to revise the Certification Rule. *Notice of Intention to Reconsider and Revise the Clean Water Act Section 401 Certification Rule*, 86 Fed. Reg. 29541 (June 2, 2021) (the “Notice”).

5. As stated in the Notice, EPA intends to reconsider and revise the Certification Rule to restore the balance of state, Tribal, and federal authorities. 86 Fed. Reg. at 29,542-44. The Agency’s process for reconsidering and revising the Certification Rule will provide opportunity for public and stakeholder input to inform the development of a proposed regulation, and will include dialogue with state and Tribal co-regulator partners and local governments around these issues. EPA will begin a stakeholder engagement process in June to hear perspectives on this topic and how to move forward. *Id.* at 29,544. While EPA engages with stakeholders and develops a revised rule, it is the Agency’s intent that the 2020 Certification Rule remain in place. The Agency will continue listening to states and Tribes about their concerns with implementation of the 2020 rule to evaluate potential administrative approaches to help address these near-term challenges. *Id.*

6. EPA has met and conferred with Plaintiffs regarding next steps for this litigation in light of EPA’s recent Notice. Plaintiffs have not yet determined their position on those next steps. EPA therefore requests that the abeyance be continued an additional 14 days so that the parties can continue to meet and confer regarding next steps in this litigation.

7. Plaintiffs and Intervening parties do not oppose that the abeyance be continued an additional 14 days.

WHEREFORE, EPA respectfully requests that the Court issue an order holding all proceedings in this case in abeyance for 14 days, until June 18, 2021. Defendant EPA shall meet and confer with the Parties regarding the status of this litigation, and EPA shall file a status report regarding the Parties’ positions regarding next steps in the litigation of the Certification Rule by June 18, 2021.

Respectfully submitted this 4th day of June, 2021.

JEAN E. WILLIAMS
Acting Assistant Attorney General

/s Elisabeth H. Carter

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a true and correct copy of the foregoing Motion for Summary Judgment to be filed with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all counsel of record.

Date: June 4, 2021

s/ Elisabeth Carter