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U.S. COURT OF APPEALS
FOR THE D.C. CIRCUIT

2009 FEB 27 PM 6:54

FILING DEPOSITORY

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

LAKE CARRIERS' ASSOCIATION,

Petitioner,

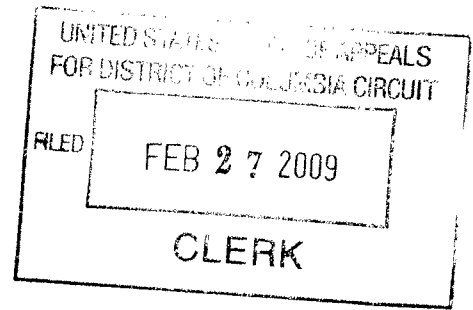
v.

LISA JACKSON, ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and UNITED
STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.¹

No. 09-1001

Consolidated with 09-1010



ORIGINAL

**JOINT STATUS REPORT AND MOTION TO MODIFY EXISTING STAY
OF PROCEEDINGS**

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27,

Respondent United States Environmental Protection Agency ("EPA") and
Petitioner Lake Carriers' Association ("Lake Carriers") file this status report and
jointly move for an order modifying the existing stay of proceedings in this case,
including, but not limited to, all deadlines for filing the initial submissions set
forth in the Clerk's January 6, 2009 Order, until June 12, 2009. In support of this
joint motion, the parties state as follows:

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1-LDF/E*

¹ Pursuant to Fed. R. App. P. 43(c)(2), EPA Administrator Lisa Jackson is substituted for former Administrator Stephen L. Johnson as a Respondent.

1. This action involves consolidated petitions for review pursuant to section 509(b)(1) of the Federal Water Pollution Control Act (hereinafter the “Clean Water Act” or “CWA”), 33 U.S.C. § 1369(b)(1), which challenge EPA's final general permit entitled “Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel,” 73 Fed. Reg. 79,473 (Dec. 29, 2008) (the “Permit”).

2. On February 5, 2009, the parties jointly moved this Court for a stay of all proceedings in this matter. The parties explained that a stay was warranted for several reasons. First, the statutory deadline for filing petitions for judicial review in response to EPA's general permit had not yet run. Under CWA section 509(b)(1), interested parties have 120 days from the date of EPA's “determination, approval, promulgation, issuance, or denial” to file such petitions. The parties jointly requested that the Court issue a stay to ensure that procedural deadlines in this matter are extended until after the conclusion of the 120-day statutory filing period. Additionally, EPA advised that it would shortly be filing a Notice with the Judicial Panel on Multidistrict Litigation (the “Panel”), informing the Panel that multiple petitions for review – including Lake Carriers’ – had been filed in different circuit courts of appeal that seek review of the same EPA general permit challenged here. Thus, an additional ground for staying these proceedings was

that the final venue has not been selected by the Panel. See generally Rules for Multicircuit Petitions for Review under 28 U.S.C. § 2112.²

3. On February 19, 2009, the Panel issued a Consolidation Order, ordering petitions for review of the Permit to be consolidated in this Court. However, certain Petitioners who filed petitions for review of the permit in the Ninth Circuit, are currently seeking reconsideration of the Panel's Consolidation Order .

4. On February 6, 2009, this Court issued an order holding these consolidated cases filed in this Court by Lake Carriers in abeyance. The Court's February 6 Order directed the parties to file motions to govern further proceedings within 30 days of the Panel's venue determination. Because the Panel's venue determination (which, as noted, is currently being contested through a motion for reconsideration) occurred of February 19, 2009, this Court's February 6 Order would require the filing of motions to govern further proceedings on March 23, 2009, well in advance of the date when additional petitions for review of the permit may still be timely filed pursuant to CWA section 509(b)(1) . The parties respectfully submit that no motions governing this proceeding should be required

² Lake Carriers agrees that the process described in this paragraph was followed, but took the position before the Panel that the selection process was unnecessary for reasons relating to the timing of when petitions were filed, and that the proper venue for all petitions is this Circuit.

before the time for seeking review has expired so there is one motions practice period for all petitioners.

For the foregoing reasons, the parties jointly request entry of an order modifying the existing stay of these proceedings to provide that by June 12, 2009, the parties will file motions to govern further proceedings, unless the Judicial Panel on Multidistrict Litigation has determined a different venue for these proceedings, in which case the parties will so advise the Court promptly.

Respectfully submitted this 27th day of February, 2009:

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th of February, 2009, a copy of the foregoing JOINT STATUS REPORT AND MOTION TO MODIFY EXISTING STAY OF PROCEEDINGS was served by regular mail, upon the following:

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