

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 09-0244

JOINT MOTION TO STAY PROCEEDINGS

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, Petitioner Natural Resources Defense Council, Inc. (“NRDC”) and Respondent United States Environmental Protection Agency (“EPA”) jointly move for an order temporarily staying all proceedings in this case. In support of this joint motion, the parties state as follows:

1. This action is a petition 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 challenges 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. A stay of all proceedings in this matter is warranted for several reasons. First, the statutory deadline for filing petitions for judicial review in response to the Permit has 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 request that the Court issue a stay to ensure that procedural and briefing deadlines

in this matter are extended until after the conclusion of the 120-day statutory filing period.¹

3. Additionally, on February 12, 2009, EPA filed a Notice with the Judicial Panel on Multidistrict Litigation, informing the Panel that multiple petitions for review – including this one by NRDC – have been filed in different circuit courts of appeal that seek review of EPA’s Permit. The petitions remain pending. Thus, an additional ground for staying these proceedings is that final venue has not yet been selected by the Judicial Panel on Multidistrict Litigation, and it is possible that this petition could be transferred to another Circuit. See generally Rules for Multicircuit Petitions for Review under 28 U.S.C. § 2112(a)(3).

For the foregoing reasons, the parties respectfully request entry of an order staying these proceedings (including all currently scheduled filing deadlines), and requiring the parties to file a joint motion to govern further proceedings by June 12, 2009 or within 30 days of service of the Panel’s consolidation order by the clerk of the Panel if such consolidation order has not been served by June 12, 2009, whichever is later.

Respectfully submitted,

JOHN C. CRUDEN
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Environment and Natural Resources
Division

Dated: February 18, 2009

By: /s/ Martin F. McDermott
MARTIN F. McDERMOTT
U.S. Department of Justice

¹ EPA’s regulations, found at 40 C.F.R. § 23.2 state: “Unless the Administrator otherwise explicitly provides in a particular promulgation or approval action. . . the time and date of the Administrator’s action in issuing . . . is two weeks after the date when the document is published in the Federal Register . . .”). See also 73 Fed. Reg. 79,473, 79,474. EPA calculates that for the Permit at issue here, the 120-day period to file petitions for review will run on May 12, 2009 (i.e., 120 days after January 12, 2009).

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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2009, a copy of the foregoing Joint Motion for Stay was served by mail on the following attorneys of record for Petitioner:

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I further certify that: (1) all required privacy redactions have been made and, with the exception of those redactions, every document submitted in Digital Form or scanned PDF format is an exact copy of the written document filed with the Clerk; and (2) the digital submissions have been scanned for viruses with Computer Associates eTrust Antivirus version 7.1.192, and according to the program they are free from viruses.

Dated: February 18, 2009

/s/ Martin F. McDermott