

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

WILD VIRGINIA, VIRGINIA WILDERNESS)
COMMITTEE, UPSTATE FOREVER, SOUTH)
CAROLINA WILDLIFE FEDERATION, NORTH)
CAROLINA WILDLIFE FEDERATION,)
NATIONAL TRUST FOR HISTORIC)
PRESERVATION, MOUNTAINTRUE, HAW)
RIVER ASSEMBLY, HIGHLANDERS FOR)
RESPONSIBLE DEVELOPMENT, DEFENDERS)
OF WILDLIFE, COWPASTURE RIVER)
PRESERVATION ASSOCIATION, CONGAREE)
RIVERKEEPER, THE CLINCH COALITION,)
CLEAN AIR CAROLINA, CAPE FEAR RIVER)
WATCH, ALLIANCE FOR THE SHENANDOAH)
VALLEY, and ALABAMA RIVERS ALLIANCE,)

Plaintiffs,)

v.)

COUNCIL ON ENVIRONMENTAL QUALITY and)
MARY NEUMAYR IN HER OFFICIAL)
CAPACITY AS CHAIR OF THE COUNCIL ON)
ENVIRONMENTAL QUALITY,)

Defendants,)

and)

AMERICAN FARM BUREAU FEDERATION,)
AMERICAN FOREST RESOURCE COUNCIL,)
AMERICAN FUEL & PETROCHEMICAL)
MANUFACTURERS, AMERICAN PETROLEUM)
INSTITUTE, AMERICAN ROAD &)
TRANSPORTATION BUILDERS ASSOCIATION,)
CHAMBER OF COMMERCE OF THE UNITED)
STATES OF AMERICA, FEDERAL FOREST)
RESOURCE COUNCIL, INTERSTATE NATURAL)
GAS ASSOCIATION OF AMERICA, and)
NATIONAL CATTLEMEN’S BEEF)
ASSOCIATION,)

Defendant-Intervenors.)

Case No. 3:20-cv-00045-JPJ-PMS

**FEDERAL DEFENDANTS’
MOTION FOR 60-DAY STAY
OF CASE OR, IN THE
ALTERNATIVE, AN
EXTENSION OF BRIEFING
DEADLINE**

Federal Defendants hereby move for a 60-day stay of this case to allow the new administration time to review the challenged agency action. Federal Defendants have sought and received 60-day stays in the four other cases challenging the same rulemaking. Federal Defendants seek expedited consideration of this motion due to the impending February 24, 2021 deadline for their reply in support of their cross-motion for summary judgment.

Plaintiffs challenge the Council on Environmental Quality's ("CEQ") July 16, 2020 rulemaking entitled Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) ("2020 Rule"). The 2020 Rule has been identified by the White House as an agency action that will be reviewed "in accordance with the Executive Order: 'Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.'"¹ 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 Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). 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).

CEQ is currently in the process of reviewing the 2020 Rule, but requires additional time to complete that review and determine how to proceed with regard to the rule and pending litigation challenging it. The agency's review will require CEQ to evaluate its legal and policy

¹ Fact Sheet: List of Agency Actions for Review, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>; see also Executive Order No. 13,990, 86 Fed. Reg. 7037 (Jan. 25, 2021).

positions concerning the proper interpretation and application of the National Environmental Policy Act (“NEPA”). CEQ also needs additional time because the agency is still in the process of onboarding new officials and is awaiting confirmation and appointment of a new Chair. These officials will be integral to the agency’s policy decisions.

There are currently five cases in four federal district courts challenging the 2020 Rule, including the case before this Court. *Wild Va. v. CEQ*, No. 3:20-cv-00045-JPJ-PMS (W.D. Va.); *Alaska Cmty. Action on Toxics v. CEQ*, No. 3:20-cv-05199-RS (N.D. Cal.); *California v. CEQ*, No. 3:20-cv-06057-RS (N.D. Cal.); *Env’t Just. Health All. v. CEQ*, No. 1:20-cv-06143-CM (S.D.N.Y.); *Iowa Citizens for Cmty. Improvement v. CEQ*, No. 1:20-cv-02715-TJK (D.D.C.). In order to allow CEQ the time it requires to review the 2020 Rule and determine next steps, Federal Defendants have sought 60-day stays in all five cases. In the four other cases, plaintiffs have not opposed 60-day stays, and the courts have granted the requested stays. Those cases are all stayed until mid-April, with status reports due at the end of the stays. *See* Order Staying Case for 60 Days, *Alaska Cmty. Action on Toxics v. CEQ*, No. 3:20-cv-05199-RS (N.D. Cal. Feb. 12, 2021), ECF No. 49; Order Staying Case for 60 Days, *California v. CEQ*, No. 3:20-cv-06057-RS (N.D. Cal. Feb. 12, 2021), ECF No. 82; Stipulation & Consent Order Staying the Proceeding, *Env’t Just. Health All. v. CEQ*, No. 1:20-cv-06143-CM (S.D.N.Y. Feb. 16, 2021), ECF No. 65; Minute Order, *Iowa Citizens for Cmty. Improvement v. CEQ*, No. 1:20-cv-02715-TJK (D.D.C. Feb. 9, 2021). To maintain a coordinated approach in all five cases, Federal Defendants seek an equivalent 60-day stay in this case. As in the other cases, Federal Defendants ask that the Court vacate the existing deadlines and require the parties to submit a joint status report on future proceedings at the end of the stay.

The requested stay is consistent with the Court’s broad discretion to stay proceedings and

defer judicial review. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”). A stay will preserve the resources of the Court and the parties, as it is possible that CEQ’s review may result in a change in the agency’s position on aspects of the 2020 Rule and the issues raised in the pending cases, and/or future agency action that could obviate the need for judicial resolution of some or all of the issues raised in these cases.

Nor will a stay prejudice the Court or the parties. The only upcoming deadline in this case is the February 24, 2021 deadline for Federal Defendants’ reply in support of their cross-motion for summary judgment. Federal Defendants will be in a far better position to discuss next steps in this case once CEQ is fully staffed and has had an opportunity to complete its review of the 2020 Rule. Equally important, to the extent Plaintiffs are concerned about forthcoming projects that may implement the 2020 Rule, they have the ability to challenge any final agency actions directly in a separate lawsuit. *See Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 894 (1990) (noting that while a “case-by-case approach” of challenging discrete agency actions “is understandably frustrating to an organization such as respondent, . . . [it] is the traditional, and remains the normal, mode of operation of the courts”).

Federal Defendants initially reached out to Plaintiffs and Intervenors to confer about a 60-day stay on February 3, 2021, and have attempted in conferrals since then to reach agreement on a 60-day stay. At this time, Plaintiffs advise that they take no position on the motion until they have seen it and request the opportunity to respond to the motion once they have seen it. Intervenors take no position on the requested stay.

If the Court denies Federal Defendants’ motion for a 60-day stay of the case, Federal

Defendants request, in the alternative, a three-week extension of the current February 24, 2021 deadline for their reply in support of their cross-motion for summary judgment. This extension would be necessary, in the alternative, to accommodate the undersigned counsel's competing work obligations and the need for supervisory review within CEQ and the Department of Justice.

A proposed order is submitted herewith.

Respectfully submitted this 18th day of February, 2021.

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

WILD VIRGINIA, VIRGINIA)
WILDERNESS COMMITTEE, UPSTATE)
FOREVER, SOUTH CAROLINA)
WILDLIFE FEDERATION, NORTH)
CAROLINA WILDLIFE FEDERATION,)
NATIONAL TRUST FOR HISTORIC)
PRESERVATION, MOUNTAINTRUE,)
HAW RIVER ASSEMBLY,)
HIGHLANDERS FOR RESPONSIBLE)
DEVELOPMENT, DEFENDERS OF)
WILDLIFE, COWPASTURE RIVER)
PRESERVATION ASSOCIATION,)
CONGAREE RIVERKEEPER, THE)
CLINCH COALITION, CLEAN AIR)
CAROLINA, CAPE FEAR RIVER)
WATCH, ALLIANCE FOR THE)
SHENANDOAH VALLEY, and)
ALABAMA RIVERS ALLIANCE,)

Plaintiffs,)

v.)

COUNCIL ON ENVIRONMENTAL)
QUALITY and MARY NEUMAYR IN HER)
OFFICIAL CAPACITY AS CHAIR OF THE)
COUNCIL ON ENVIRONMENTAL)
QUALITY,)

Defendants,)

and)

AMERICAN FARM BUREAU)
FEDERATION, AMERICAN FOREST)
RESOURCE COUNCIL, AMERICAN)

Case No. 3:20-cv-00045-JPJ-
PMS

**ORDER GRANTING
FEDERAL DEFENDANTS'
MOTION FOR 60-DAY
STAY OF CASE**

FUEL & PETROCHEMICAL)
 MANUFACTURERS, AMERICAN)
 PETROLEUM INSTITUTE, AMERICAN)
 ROAD & TRANSPORTATION BUILDERS)
 ASSOCIATION, CHAMBER OF)
 COMMERCE OF THE UNITED STATES)
 OF AMERICA, FEDERAL FOREST)
 RESOURCE COUNCIL, INTERSTATE)
 NATURAL GAS ASSOCIATION OF)
 AMERICA, and NATIONAL)
 CATTLEMEN’S BEEF ASSOCIATION,)
)
 Defendant-Intervenors.)
)
 _____)

Upon consideration of Defendants’ Motion for a 60-day stay of this case, and for good cause shown, that Motion is hereby GRANTED.

This case is hereby STAYED for 60 days from the date of this order, and all pending deadlines are VACATED. Within 14 days of the end of the stay, the parties shall submit a joint status report regarding future proceedings in this case.

IT IS SO ORDERED.

ENTERED: February ____, 2021.

 UNITED STATES MAGISTRATE JUDGE