Nos. 18-8027 and 18-8029

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF WYOMING, et al.,
Petitioners - Appellees,

and

WESTERN ENERGY ALLIANCE, et al.,
Consolidated Petitioners - Appellees,
and

STATE OF NORTH DAKOTA, et al.,
Intervenors - Petitioners - Appellees,

v.

UNITED STATES DEPARTMENT OF THE INTERIOR, et al.,
Respondents - Appellees.

and

WYOMING OUTDOOR COUNCIL, et al.,
Intervenors - Respondents - Appellants,

and

STATE OF CALIFORNIA, et al.,
Intervenors -Respondents - Appellants.

On Appeal from the U.S. District Court for the District of Wyoming
Nos. 2:16-cv-285-SWS, 2:16-cv-280-SWS (Hon. Scott W. Skavdahl)

FEDERAL RESPONDENTS-APPELLEES' OPPOSITION TO MOTIONS FOR STAY PENDING APPEAL

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INTRODUCTION

This appeal is a challenge to an order staying implementation of a Bureau of Land Management (BLM) regulation that is currently undergoing review by the agency. That stay was a proper exercise of the district court's discretion, and it is necessary both to preserve the status quo and to avoid imposing needless costs on the agency, the industry, and the courts. Appellants and moving parties the Citizen Groups and States of California and Montana (hereinafter "Movants") seek a preliminary order lifting that stay—and forcing compliance with the regulation—while the agency finalizes its review. As elaborated below, Movants are not entitled to such extraordinary relief.

BLM promulgated the 2016 Waste Prevention Rule (2016 Rule) under its discretionary authority to regulate the development of oil and natural gas resources on federal and Indian lands. Before all parts of the Rule went into effect, BLM exercised its discretionary authority once again, this time to reconsider and revise the Rule. A proposed "Revision Rule" is currently proceeding through the notice-and-comment process, and BLM expects to publish the final rule in August of 2018. As confirmed by this Court's recent decision in *Wyoming v. Zinke*, 871 F.3d 1133 (10th Cir. 2017), BLM should not be forced to implement and defend a discretionary rule that the agency had good reasons to reconsider and revise—and plans to finish revising within mere months.

Movants have not shown that they are entitled to a stay of the district court's order while their appeal proceeds. They have not shown that they will suffer irreparable harm during the four-month stay, nor have they shown that any harms they might suffer outweigh the harms that BLM and the regulated community will incur if the 2016 Rule is reinstated. They have also failed to show that a stay is in the public interest or that they are likely to succeed on the merits. The motions for stay pending appeal should be denied.

BACKGROUND

A. Revision of the 2016 Rule

A variety of federal statutes grant BLM broad authority to regulate the development of federal and Indian oil and gas resources, *see* 43 C.F.R. § 3160.0-3 (listing statutes), and the agency has discretion to decide how and in what manner to exercise that authority. The Mineral Leasing Act, for example, provides that BLM may "prescribe necessary and proper rules and regulations" and "do any and all things necessary to carry out and accomplish the purposes" of the Act. 30 U.S.C. § 189.

The agency exercised its discretionary authority when it issued the 2016 Rule. 81 Fed. Reg. 83,008 (Nov. 18, 2016). The 2016 Rule replaced existing BLM rules for managing gas waste that had been in effect for more than 30 years. *Id.* at 83,009. The Rule manages the venting and flaring of natural gas by oil and natural gas operators on federal and Indian lands and imposes a variety of reporting requirements. *Id.* It went into effect on January 17, 2017, but a number of its requirements were to be

phased in over time (one year) to give operators an opportunity to come into compliance. *Id.* at 83,023-25. Many of those phased-in requirements would require operators to install new equipment or to upgrade existing equipment that would not be necessary but for the 2016 Rule. *Id.*; *see* 43 C.F.R. §§ 3179.201-3179.203.

In November of 2016, the States of Wyoming and Montana and industry groups (hereinafter "Petitioners") petitioned for review of the 2016 Rule in the District of Wyoming, arguing that BLM lacked authority to issue the Rule and that the Rule conflicted with federal and state air quality regulations.[1] In March of 2017, while the petitions were pending, the President issued an Executive Order directing the Secretary of the Interior to review and revise existing regulations that "potentially burden the development or use of domestically produced energy resources." Exec. Order. No. 13,783, § 7(c), 82 Fed. Reg. 16,093 (Mar. 28, 2017). BLM reviewed and eventually decided to reconsider the 2016 Rule. The agency explained that (1) the 2016 Rule's economic analysis likely relied on unsupported assumptions; (2) its benefits might not justify its costs; (3) its issuance possibly exceeded BLM's statutory authority; and (4) the complexities of the 2016 Rule would likely render it infeasible. 83 Fed. Reg. 7,924 (Feb. 22, 2018).

[1] References to documents filed in the district court are cited as "ECF #" and refer to docket 2:16-cv-285-SWS. References to the Citizen Groups' and States' stay motions are cited as "CG Mot." and "Cal. Mot.," respectively.

B. Section 705 Postponement, Suspension Rule, and Revision Rule

In June of 2017, BLM published a notice stating that it was exercising its authority under 5 U.S.C. § 705 to postpone future compliance dates for certain provisions of the 2016 Rule while the agency reconsidered it. 82 Fed. Reg. 27,430 (June 15, 2017). The present Movants challenged that postponement in the Northern District of California. That court denied requests to transfer the challenges to the District of Wyoming, faulted BLM for failing to engage in notice-and-comment rulemaking before issuing the postponement, and reinstated the 2016 Rule's future compliance dates. *California v. U.S. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106 (N.D. Cal. 2017).

Shortly thereafter, BLM proposed a "Suspension Rule" with respect to the 2016 Rule. 82 Fed. Reg. 46,458 (Oct. 5, 2017). After taking comments for 30 days, and after considering those comments, BLM published the final Suspension Rule, including a Regulatory Impact Analysis, in December of 2017. 82 Fed. Reg. 58,050 (Dec. 8, 2017). The Suspension Rule delayed until January of 2019 particular compliance deadlines in the 2016 Rule—namely, those provisions with substantial compliance costs—to "avoid imposing temporary or permanent compliance costs on operators for requirements that might be rescinded or significantly revised in the near

future." *Id.* at 58,051.[2] The Suspension Rule took effect on January 8, 2018. *Id.* at 58,050.

Because the provisions of the 2016 Rule at issue in the Wyoming litigation were postponed by the Suspension Rule, the district court sensibly stayed that litigation. ECF 189. In December of 2017, however, Movants returned to the Northern District of California to challenge the Suspension Rule. *See California v. U.S. Bureau of Land Mgmt.,* No. 3:17-cv-07186-WHO; *Sierra Club v. Zinke*, No. 3:17-cv-07187-WHO. That court once again denied requests to transfer the cases to the District of Wyoming, and it preliminarily enjoined the Suspension Rule on February 22, 2018. 286 F. Supp. 3d 1054 (N.D. Cal. 2018). The federal defendants in the Northern District of California (who are Respondents-Appellees in this Court) have appealed that injunction; in the meantime, summary judgment briefing is proceeding.

On the same day that the California court issued its injunction—which arguably "reinstated" the 2016 Rule—BLM published a proposed "Revision Rule" with respect to the 2016 Rule. 83 Fed. Reg. 7,924 (Feb. 22, 2018). The Revision Rule would rescind some portions of the 2016 Rule and modify other portions to bring them in line with BLM's previous venting and flaring regulations. *Id.* BLM expects to

[2] BLM's decision to suspend implementation of portions of the 2016 Rule was not novel: federal agencies have for several decades issued rules extending effective dates or compliance dates to allow time for reconsideration (both with and without notice and comment). *See* EPA Response to Court Order, *Air Alliance Houston v. EPA*, No. 17-1155, ECF No. 1725595 (D.C. Cir. Apr. 6, 2018), attached.

publish the final Revision Rule in August of 2018. *See* ECF 227-1 at 2 (Tichenor Declaration).

C. Recent Proceedings

In light of the arguable reinstatement of the suspended portions of the 2016 Rule, Petitioners moved to lift the stay in the District of Wyoming and for various forms of equitable relief. BLM did not oppose relief that would "stay" the portions of the 2016 Rule that were suspended by the Suspension Rule and that might be eliminated by the Revision Rule. The agency noted that, in light of its ongoing reconsideration of the 2016 Rule, proceeding with merits briefing would waste judicial resources.

On April 4, 2018, the district court stayed both implementation of the 2016 Rule's phase-in provisions as well as the litigation pending in that court. It acknowledged that BLM "has the inherent authority to reconsider its own rule," Op. at 7, and that forcing "temporary compliance with [the 2016 Rule] makes little sense and provides minimal public benefit," because the Revision Rule will likely be published in less than four months, *id.* at 9.

On April 6, Movants filed a joint motion asking the district court to stay its own order pending appeal. The filing was barely three pages long and totaled fewer than 800 words. ECF 222. On April 20, just three days after briefing was complete, Movants (who had acted jointly below) filed separate motions for a stay pending appeal in this Court. The district court has not yet ruled on the joint stay motion.

ARGUMENT

Movants are not entitled to a stay. First, they have not satisfied Federal Rule of Appellate Procedure 8 or Tenth Circuit Rule 8.1 because they moved for relief in this Court before the district court was able to address their joint stay motion. The Court should dismiss the premature motions or at least hold them in abeyance until the district court has ruled on the motion already pending in that court.

Second, Movants have satisfied none of the four factors necessary for a stay pending appeal. They have not shown (1) that they will suffer harms in the next four months or (2) that their harms outweigh the harms that the regulated community will suffer during that same period if the 2016 Rule is reinstated. Nor have they shown (3) that a stay is in the public interest, or (4) that they are likely to succeed on the merits. Because all four factors are necessary for a stay pending appeal, Movants' motions should be denied.

I. Movants have not complied with Federal Rule of Appellate Procedure 8.

This Court should dismiss Movants' motions for a stay pending appeal because they have only perfunctorily complied with Federal Rule of Appellate Procedure 8. *See Chemical Weapons Working Group* (*CWWG*) *v. Dep't of the Army*, 101 F.3d 1360 (10th Cir. 1996) (dismissing stay motion for failure to comply with Rule 8). Rule 8(a)(1)(A) provides that a "party must ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal." After all, the district court "is best and most conveniently able to exercise the nice discretion" needed to

adjudicate a motion for a stay pending appeal, for it "has considered the case on its merits, and therefore is familiar with the record." *Cumberland Tel. & Tel. Co. v. La. Pub. Serv. Comm'n*, 260 U.S. 212, 219 (1922).

Here, the district court has not yet been able to reasonably respond to Movants' concerns because they did not present all of their arguments to that court. Instead, their joint filing was less than 800 words in length, and they submitted none of the 13 new declarations filed with their motions in this Court. And rather than wait for the district court to address the joint motion, Movants instead filed their stay motions in this Court merely three days after district court briefing was complete.

This course of action does not satisfy Rule 8, and Movants have not shown that they are entitled to file in this Court before the district court has ruled. Fed. R. App. P. 8(a)(2)(A) (permitting movants to file first in the court of appeals in limited circumstances). Although they speculate generally that they will suffer irreparable harm every day the stay order is in effect, their motions do not "show that moving first in the district court would be impracticable." *Id.*[3] And while the States assert that the district court "failed to afford the relief requested," Cal. Mot. at 8, the record

[3] That Movants did not find the need for a stay urgent enough to seek "emergency" relief in this Court, *see* 10th Cir. R. 8.2, further undercuts their argument that giving the district court an opportunity to consider their motions would have been impracticable.

reflects only that the court has not ruled on the motions within Movants' preferred timeline.

The precept that a district court should have the opportunity to evaluate a stay motion in the first place is particularly important here, where Movants argue that the district court has insufficiently explained its rationale for granting preliminary relief. Allowing the district court to rule on a stay pending appeal in the first instance would give that court an opportunity to more fully explain its reasoning and address the four equitable factors.[4] This Court should therefore deny their motions for a stay pending appeal, *see CWWG*, 101 F.3d at 1361, or delay deciding those motions until the district court has had an opportunity to rule, *Cumberland Tel. & Tel. Co.*, 260 U.S. at 219.

II. Movants have not established that they are entitled to a stay.

A stay pending appeal is an extraordinary remedy, and it is "not a matter of right, even if irreparable injury might otherwise result." *Nken v. Holder*, 556 U.S. 418, 433, 433 (2009) (internal quotation marks omitted). Instead, it is "an exercise of

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[4] Moreover, even if Movants eventually succeed on the merits of their appeal, the proper remedy will be to remand to the district court with instructions to apply the four-factor test. When an appellate court holds that a district court applied the improper standard, it should not "consider whether the result would be supportable on the facts . . . had the correct [standard] been applied." *Malat v. Riddell*, 383 U.S. 569, 572 (1966). Instead, the "decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and . . . such discretion must be exercised consistent with traditional principles of equity." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006). This further counsels in favor of allowing the district court to consider the stay motion in the first instance.

judicial discretion," and the "propriety of its issue is dependent upon the circumstances of the particular case." *Id.* (internal quotation marks omitted). The party seeking a stay bears the burden to show all four factors weigh in his favor. *Id.* at 433-34. Thus, Movants must establish that they will suffer irreparable harm, that the balance of equities and public interest both weigh in favor of staying the district court's order, and that they are likely to succeed on the merits. 10th Cir. R. 8.1; *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 19-20 (2008).

Although Movants assert that Petitioners had the burden of establishing those factors below, Petitioners' success or failure is not the question before this Court. Instead, it is the *present movants* who must establish that all four factors justify a stay pending appeal. Because they cannot do so, their motion must be denied.

A. Movants have not shown that they are likely to suffer irreparable harm pending a decision on the merits.

A "showing of probable irreparable harm is the single most important prerequisite" for the issuance of a stay pending appeal. *N.M. Dep't of Game & Fish v. U.S. Dep't of Interior*, 854 F.3d 1236, 1249 (10th Cir. 2017) (internal quotation marks omitted); *see also Northeast Fla. Chapter of Ass'n of Gen. Contractors v. City of Jacksonville, Fla.*, 896 F.2d 1283, 1285 (11th Cir. 1990) ("A showing of irreparable harm is the *sine qua non* of injunctive relief." (internal quotation marks omitted)). In other words, a stay may issue only if it is "needed to guard against any present or imminent risk of likely irreparable harm." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162 (2010).

The harm, moreover, must be "both certain and great," and not "merely serious or substantial." *Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001) (citations omitted).[5] Showing that the action the movant challenges might one day result in harm is not enough, either. Instead, a movant must show that it will suffer irreparable injury before the court can decide the merits of the appeal. *RoDa Drilling v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009).

Here, Movants have not shown that they will suffer irreparable harm either before this Court decides the merits of their appeal or before August, when BLM intends to issue the Revision Rule. Thus, they are categorically not entitled to a stay pending appeal. *N.M. Dep't of Game & Fish*, 854 F.3d at 1249.

First, Movants only speculate that they will suffer immediate, irreparable harm during the four-month stay. They assert, among other things, that the stay will increase "air pollution and related health impacts," generally "exacerbate[e] climate harms," and cause other injuries like noise and light pollution. Cal. Mot. at 18-20; *see also* CG Mot. at 23-25. But BLM estimates that the emissions likely to be released during the stay amount to 0.36% of total nationwide methane emissions during 2015. ECF 227-1 at 3. Although Movants submitted a variety of new declarations with their motions in this Court, not one explains how those emissions will make a noticeable

[5] Identifying environmental harms does not automatically entitle a party to injunctive relief. *See Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545-46 (1987) (noting that injunctions are not presumed in environmental cases and vacating injunction).

change that will cause them irreparable harm. Instead, Movants rely almost exclusively on the concept that greenhouse gases can cause harm. *See* CG Mot. at 22-25; Cal. Mot. at 17-21. But the notion that the release of *any* additional greenhouse gases (no matter how small in amount) necessarily warrants a stay lacks a limiting principle. Without some more concrete showing that the emissions released *during the stay* will irreparably harm Movants in the next four months, they are not entitled to the relief they seek.

Second, although Movants claim that the continued release of methane gas will harm them "every day," CG Mot. at 1, 3, 8-9; Cal. Mot. at 8, they do not explain how those emissions are a change from the status quo. Indeed, although the 2016 Rule's original effective date was in January of 2017, 81 Fed. Reg. at 83,023-24, the relevant portions of the 2016 Rule have been postponed and suspended several times, and so the Rule has never been fully implemented. Thus, the harms that Movants claim they will suffer stem from the *continued* release of greenhouse gases, which does not result from the district court's stay. *See Wyoming v. Zinke*, 871 F.3d at 1143 (holding that staying review of fracking regulation would not harm citizen groups where the "only 'harm' [they] will suffer is the continued operation of oil and gas development on federal lands, which represents no departure from the status quo"); *cf.* Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2016 (Apr. 12, 2018), https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2016 (reporting that total greenhouse gas emissions are in decline).

Third, Movants have not established that staying the district court's order would remedy their anticipated harms. The "purpose of an . . . injunction is not to remedy past harm but to protect plaintiffs from irreparable injury that will surely result without [its] issuance." *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005). For one thing, an order reinstating the 2016 Rule during this appeal will not necessarily give Movants the relief that they seek under those provisions of the Rule that are effective only through BLM's discretionary enforcement actions. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Moreover, operators may well delay their compliance with the 2016 Rule until the Revision Rule is finally published to see whether their obligations change come August. Even those operators who attempt to comply may be unable to do so since compliance requires the installation of equipment and development and implementation of new policies (hence, the 2016 Rule's initial phase-in period). Thus, even if the 2016 Rule were to become effective tomorrow, it is unclear to what extent (if at all) its implementation will meaningfully limit methane emissions over the next four months.

Finally, the Northern District of California's holding that Movants would suffer irreparable harm without a stay of the Suspension Rule cannot rightly be used to bolster Movants' arguments in this Court. *Cf.* CG Mot. at 22-23; Cal. Mot. at 20-21. After all, the Northern District of California evaluated the now-Movants' potential harms along a longer timeline and under Ninth Circuit precedent, which does not

apply here. *California v. BLM*, 286 F. Supp. 3d at 1073-75.[6] The California court's decision was also flawed in several respects. Most notably, the court relied heavily on cursory declarations that conflicted with the data assessed in BLM's lengthy Regulatory Impact Analysis. The court ultimately discounted BLM's statement that emissions released during a one-year suspension would not cause significant harms, noting that "Plaintiffs submit affidavits from scientists who posit otherwise." *Id.* at 1073-74.

In short, Movants have not shown that they will suffer irreparable harm without a stay.

B. The balance of the equities and the public interest require denying the stay.

A party seeking injunctive relief pending appeal also "must establish . . . that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter*, 555 U.S. at 20. Because staying the district court's order will harm both BLM and the regulated public over the next four months—and Movants have not established that they will suffer irreparable harm during that same period—the balance of equities and the public interest both favor denying the stay.

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[6] Permitting Movants to leverage a nationwide injunction issued by the Northern District of California to obtain relief in this Court would reward forum shopping. *See* Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 Harv. L. Rev. 417, 457-61 (2017).

If the district court's order were stayed, BLM would be forced to implement a rule that the agency is in the process of reconsidering and revising. It would be forced to spend limited agency resources on internal training, operator outreach and education, answering industry questions, and developing clarifying guidance. *See* 82 Fed. Reg. at 58,051. Staying the order will also impose significant costs on oil and gas operators, who will be forced to spend unrecoverable funds implementing the major upgrades to infrastructure and technology required by the 2016 Rule. In particular, operators will be required to install emission-control and leak detection equipment on thousands of wells or otherwise shut in wells that are not profitable enough to warrant such expenditures. *Id.* at 58,052.

Indeed, the Suspension Rule's Regulatory Impact Analysis estimated that implementation of the 2016 Rule would impose compliance costs of at least $110 million within the first year. *See id.* at 58,056. Forcing operators to spend millions of dollars to come into immediate compliance with requirements that may disappear within months yields no significant benefits and creates significant unrecoverable costs. And expecting immediate compliance is particularly problematic here, because the relevant provisions have been postponed, suspended, or stayed for more than 200 days since the 2016 Rule was published in its final form. Operators have reasonably relied on BLM's attempts to delay implementation of the 2016 Rule and have not spent resources attempting to come into compliance during that time. If the district

court's stay order is lifted, the regulated public will be expected to comply immediately and without the benefit of the 2016 Rule's planned phase-in periods.

Movants claim that the regulated public's economic harms may not be considered, but that claim at odds with this Court's precedent, which makes clear that significant economic harms can outweigh environmental harms. *See, e.g.*, *Sierra Club, Inc. v. Bostick*, 539 F. App'x 885, 892 (10th Cir. 2013) (unpublished) (acknowledging that this Court has "recognized the appropriateness of weighing financial harm against environmental harm" and affirming district court's denial of preliminary injunction). For example, this Court has affirmed a district court order finding that one party's environmental harms did not weigh in favor of issuing an injunction because they were "equally balanced against the weight of the public interest in gas production, and [the development company's] demonstrated economic interests." *Wilderness Workshop v. BLM*, 531 F.3d 1220, 1231 (10th Cir. 2008) (internal quotation marks omitted). This Court has also held that the balance of equities weighed against enjoining a particular construction project, where "enjoining the Project until after trial would impose a considerable financial burden" on the non-movants. *Village of Logan v. U.S. Department of Interior*, 577 F. App'x 760, 768 (10th Cir. 2014) (unpublished); *see also Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002) (balancing environmental harms with financial costs resulting from injunction), *abrogated on other grounds by Winter*, 555 U.S. at 22.

Movants also claim that BLM "fail[s] to acknowledge the numerous exemptions from the Rule's requirements" in instances where compliance would be

too burdensome, and they suggest that those exemptions would alleviate harms to the industry. Cal. Mot. at 22, 26. But when BLM published the proposed Revision Rule, it explained that although operators could request an *alternative* leak detection and repair program, "there is no full exemption from the requirement." 83 Fed. Reg. at 7,926. Additionally, "[d]ue to the prevalence of marginal and low-producing wells," the agency explained that "the burden imposed by the exemption process [would be] excessive." *Id.* It further explained that it is "possible that some proportion of marginal wells would be prematurely shut-in by their operators due to the costs and uncertainties involved in obtaining an exemption from the BLM or the costs associated with an alternate . . . program." *Id.*

At the very least, reinstating the 2016 Rule by issuing a stay of the district court's stay would force the regulated community to face a "direct and immediate dilemma," because operators would either have to retrofit wells with expensive equipment (costs of which would not be recoverable) or face potential sanctions. *Morgan v. McCotter*, 365 F.3d 882, 891 (10th Cir. 2004) (internal quotation marks omitted). That is a harm in and of itself. *See Farrell-Cooper Min. Co. v. U.S. Dep't of Interior*, 728 F.3d 1229, 1237 (10th Cir. 2013) (acknowledging "hardship" resulting from being forced to choose between "complying with [challenged regulatory] requirements or facing sanctions"); *see also Wyoming v. Zinke*, 871 F.3d at 1143 (collecting cases).

Retaining the district court's stay likewise serves the public interest in promoting energy production, jobs, and economic growth. *Wilderness Workshop*, 531 F.3d at 1231 (acknowledging "public interest in gas production"); *Lands Council v. McNair*, 537 F.3d 981, 1005 (9th Cir. 2008) (acknowledging "the public's interest in aiding the struggling local economy and preventing job loss"). As BLM has explained, the agency's "onshore oil and gas management program is a major contributor to our nation's oil and gas production." 82 Fed. Reg. at 58,050. BLM suspended the 2016 Rule after determining that it was inconsistent with the national interest in "avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." *Id.*

Such encumbrances are also inconsistent with the purpose of the Mineral Leasing Act—"to promote the orderly development of the oil and gas deposits in the publicly owned lands of the United States through private enterprise." *Harvey v. Udall*, 384 F.2d 883, 885 (10th Cir. 1967) (internal quotation marks omitted). Courts sitting in equity "cannot ignore the judgment of Congress, deliberately expressed in legislation." *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001) (internal quotation marks omitted). Implementing a rule that imposes significant costs on an industry for four weeks would not "promote the orderly development" of publicly owned oil and gas deposits.

Finally, not only would immediate implementation of the full 2016 Rule force BLM to defend a regulation that it is actively reconsidering, it would also likely force

the district court to decide challenges to that same regulation. After all, if the stay of the 2016 Rule is no longer in effect, the justification for staying the present challenge to the 2016 Rule will disappear too. This needless litigation—arguing whether to preserve or invalidate a rule that may be rescinded or greatly modified before Labor Day—is manifestly not in the public interest. The district court rightly considered the public interest in efficient and sensible management of challenges to BLM's regulation of venting and flaring. As the court put it, the "waste, inefficiency, and futility associated with a ping-ponging regulatory regime is self-evident and in no party's interest." Op. at 11.

* * *

When BLM promulgates the final Revision Rule in August, Movants will be able to challenge that rule in a new action. For the next four months, though, the equities favor retaining the District of Wyoming's limited stay of the 2016 Rule. Accordingly, Movants have not established that they will suffer harm in the absence of a stay, and the public interest in regulatory certainty, maintenance of the status quo, and avoiding the imposition of unnecessary costs on the regulated public favor retaining the district court's order.

C. Movants have not shown likely success on the merits.

On the merits, this Court will review the district court's stay of the 2016 Rule for abuse of discretion. *Amphibious Partners, LLC v. Redman*, 534 F.3d 1357, 1361 (10th Cir. 2008) (explaining that "we will not reverse the court's decision in equity absent a

showing that the court abused its discretion" (internal quotation marks omitted)). A court abuses its discretion when its decision is "arbitrary, capricious, whimsical, or manifestly unreasonable." *Attorney General v. Tyson Foods, Inc.*, 565 F.3d 769, 776 (10th Cir. 2009). Thus, Movants can satisfy the "success on the merits" element of the standard for a stay pending appeal only by showing that, when this Court considers their appeal, it is likely to hold that the district court had no discretion to grant the stay. Movants have not carried that heavy burden.

As this Court recently held, a court's obligation to "hear and decide" cases may give way to pragmatic considerations in some circumstances, especially when an agency is the middle of reconsidering a rule. *Wyoming v. Zinke*, 871 F.3d at 1141-43. Here, the district court's stay of the 2016 Rule was a pragmatic, time-limited, and narrowly tailored response to the unique circumstances of this case. In particular, the court stayed implementation of the 2016 Rule after acknowledging that requiring implementation of a rule likely to substantively change in a matter of months would waste resources and create regulatory uncertainty. It acknowledged that BLM was in the process of exercising its "inherent authority to reconsider its own rule," Op. at 7 (citing *Trujillo v. Gen. Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980)), and it reasonably determined that requiring the agency to defend and implement the 2016 Rule while it revises it would be "in no party'sinterest," Op. at 11. Forcing regulated entities to spend millions of dollars to come into compliance with a rule that will change in a matter of months, it explained, "makes little sense." *Id.* at 9.

That rationale was eminently reasonable, and many of the prudential concerns animating the decision below mirror the concerns underlying this Court's decision in *Wyoming v. Zinke*, which held that review of a soon-to-be revised fracking regulation would likely "be a very wasteful use of limited judicial resources." 871 F.3d at 1142. That decision acknowledged that BLM had "clearly expressed" its intent to rescind the regulation and that a notice-and-comment process was underway. *Id.* As a result, the fracking regulation had "become a moving target." *Id.* Thus, relief was warranted to prevent BLM from facing additional uncertainty as it completed its revision. *Id.* at 1143. The Court declined to consider the merits of the fracking regulation while the agency's own review was underway.

The district court's decision to issue a time-limited stay was a similarly pragmatic and proper exercise of its equitable discretion given the unique circumstances of this case. *See also United States v. Criden*, 648 F.2d 814, 818 (3d Cir. 1981) ("[D]iscretion is sometimes committed to the trial judge because of pragmatic considerations."); *Harjo v. Andrus*, 581 F.2d 949, 952 (D.C. Cir. 1978) (A "district court's equitable discretion is characterized by flexibility, the need for practicality, and the duty to reconcile the public interest with private needs."). In short, the court acknowledged that litigating and implementing the 2016 Rule would present few benefits and yield significant costs, and it crafted a remedy tailored to facilitate BLM's

orderly revision of the Rule. That decision was hardly "arbitrary, capricious, whimsical, or manifestly unreasonable." *Tyson Foods*, 565 F.3d at 776.[7]

It also bears noting that the time-limited nature of the district court's stay differentiates it from a classic preliminary injunction, which would last until a court issues a final decision. Here, by contrast, the court's order was closely tied to fact that the Revision Rule is scheduled to become final in a matter of months. The court explained that the operators would suffer irreparable harm if they are expected to comply with "significant provisions . . . that will be eliminated in as few as four months," Op. at 9-10; that there "is simply nothing to be gained by litigating the merits of a rule for which a substantive revision . . . is expected to be completed within a period of months," *id.* at 10; and that a stay would provide certainty "while BLM completes its rulemaking process," *id.* at 11. Because the district court's order was grounded in the assumption that the Revision Rule will be final by the end of August, nothing prevents Movants from seeking to lift the stay if the Revision Rule is not final by that time.

Thus, Movants have not shown a likelihood of success on the merits of their appeal of the district court's order, which was well within that court's discretion.

[7] The fact that the district court acknowledged that this case "implicate[s]" the "doctrine of prudential mootness," Op. at 8, does not necessarily mean it was unable to issue substantive relief. *Cf.* CG Mot. at 20-22. This Court has left open the possibility that even if a case is unreviewable for prudential reasons, a court "might . . . fashion some narrower form of injunctive relief based on equitable arguments." *Wyoming v. Zinke*, 871 F.3d at 1240.

CONCLUSION

For the foregoing reasons, Movants' motion for a stay pending appeal should be denied.

Respectfully submitted,

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April 30, 2018

CERTIFICATES OF COMPLIANCE, SERVICE, DIGITAL SUBMISSION AND PRIVACY REDACTIONS

I hereby certify that on this 30th day of April, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit via the appellate CM/ECF system. The parties in this case will be served electronically by that system.

I certify that this opposition contains 5,738 words in 14-point type. Undersigned counsel filed an unopposed motion to exceed the type-volume requirements of Fed. R. App. P. 27(d) and Circuit Rule 32 on April 30, 2018.

I also certify that I have scanned for viruses the PDF version of the attached document using our current version of Endpoint Protection (April 30, 2018) (v.1.261.39.0), and this document is free of viruses.

I further certify that I have not made any privacy redactions in the attached document.

s/ Sommer H. Engels

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EXHIBIT 1

ORAL ARGUMENT HELD MARCH 16, 2018

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

AIR ALLIANCE HOUSTON, et al., Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al., Respondents.	Case No. 17-1155 (and consolidated cases)

EPA RESPONSE TO COURT ORDER

On March 23, 2018, the Court issued an Order requiring EPA to "submit a comprehensive list of pre-2017 examples where any federal agencies have issued final notice-and-comment regulations (i) that change the effective or compliance dates for an earlier final regulation and (ii) that explicitly justify the change to the effective or compliance dates on the ground that the agency is reconsidering its earlier final regulation" by April 3, 2018. ECF No. 1723664. The Order further stated that "if a comprehensive list would be excessively burdensome to produce, EPA shall explain why that is so and shall produce as many examples as practicable." *Id.* The Court

later granted EPA an extension to April 6, 2018, to respond to the Order. ECF No. 1724303.

To respond to the Court's Order, using counsel's best judgment as to how to collect such information, EPA conducted electronic searches of Federal Register documents and also made inquiries within EPA's Office of General Counsel. EPA also contacted an informal group of regulatory lawyers and other practitioners representing more than 20 departments, subunits, and independent agencies; EPA received several responses by the deadline, which are included. Respondent-Intervenors also conducted their own research and provided their results to EPA. Thus, EPA believes that the attached list of 30 responsive actions represents as comprehensive a list as practicable within the timeframe provided. *See* Exhibit A. The actions listed in Exhibit A are presented in reverse chronological order. They include one 1996 extension action under Clean Air Act (CAA) section 112(r)(3)-(5), 42 U.S.C. § 7412(r)(3)-(5); 11 other CAA extension actions; 9 other extension actions by EPA under other statutes; and 9 extension actions by 7 other federal agencies.

EPA notes that its research also revealed numerous final rules that extended effective or compliance dates to allow time for reconsideration *without* notice and comment procedure.[1] Such actions are common during presidential transitions. *See*

[1] *See, e.g.*, National Highway Traffic Safety Administration, *Federal Motor Vehicle Safety Standards; School Bus Body Joint Strength; Final Rule*; 63 Fed. Reg. 59,732 (Nov. 5, 1998) (delaying effective date by one year); Food and Drug Administration, *Aluminum in*

Anne Joseph O'Connell, *Agency Rulemaking and Political Transitions*, 105 Nw. U. L. Rev. 471, 472-473, 530 (2011).

Large and Small Volume Parenterals Used in Total Parenteral Nutrition; Final Rule; Delay of Effective Date, 66 Fed. Reg. 7864 (Jan. 26, 2001) (delaying effective date by two years); Federal Aviation Administration, *Service Difficulty Reports; Final Rule; Delay of Effective Date*, 66 Fed. Reg. 21,626 (Apr. 30, 2001) (delaying effective date by one year); Federal Railroad Administration (FRA), *Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices; Final Rule; Delay of Compliance Date; Conforming Amendment*, 66 Fed. Reg. 29,501 (May 31, 2001) (delaying effective date from May 31, 2001, to a future date to be specified in FRA's response to petition for reconsideration if the petition is not granted); Federal Motor Carrier Safety Administration, *Transportation of Household Goods; Consumer Protection Regulations; Delay of Compliance Date*, 68 Fed. Reg. 56,208 (Sept. 30, 2003) (delaying compliance date indefinitely "to gain time to consider fully" concerns raised in petitions for reconsideration); FRA, *Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers; Final Rule; Delay of Effective Date and Request for Comments*, 77 Fed. Reg. 13,978 (March 8, 2012) (delaying effective date by two months); FRA, *Railroad Workplace Safety; Adjacent-Track On-Track Safety for Roadway Workers; Final Rule; Delay of Effective Date*, 78 Fed. Reg. 33,754 (Jun. 5, 2013) (further delaying effective date by one year).

DATED: April 6, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of EPA's **RESPONSE TO COURT ORDER** via Notice of Docket Activity by the Court's CM/ECF system, on April 6, 2018, on all counsel of record.

DATED: April 6, 2018

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Notice and Comment Rulemakings Delaying Effective Date or Compliance Date of a Rule for the Purpose of Reconsidering or Amending

Date	Agency	Title and Cite	Pertinent Summary (emphasis added)
Aug. 28, 2013	EPA	*Approval and Promulgation of Air Quality Implementation Plans; Nevada; Regional Haze Federal Implementation Plan; Extension of BART Compliance Date for Reid Gardner Generating Station,* 78 Fed. Reg. 53,033 (Aug. 28, 2013).	"**The Environmental Protection Agency (EPA) is taking final action to extend the compliance date for NO_X emission limits, under the Best Available Retrofit Technology (BART) requirements of the Regional Haze Rule, for Units 1, 2, and 3 at the Reid Gardner Generating Station (RGGS) by 18 months from January 1, 2015, to June 30, 2016**. EPA's BART determination was promulgated in a Federal Implementation Plan (FIP) on August 23, 2012. On March 26, 2013, EPA granted reconsideration of the compliance date and proposed to extend the compliance date for the NO_X emission limits applicable to Units 1, 2, and 3 at RGGS." 78 Fed. Reg. at 53,033.
May 31, 2013	Bureau of Consumer Financial Protection	*Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z); Prohibition on Financing Credit Insurance Premiums; Delay of Effective Date*, 78 Fed. Reg. 32,547 (May 31, 2013).	"The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule delaying the June 1, 2013, effective date of a prohibition on creditors financing credit insurance premiums in connection with certain consumer credit transactions secured by a dwelling. The prohibition was adopted in the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z) Final Rule, issued on January 20, 2013, and published in the Federal Register on February 15, 2013. **The Bureau is delaying the effective date until January 10, 2014, to permit the Bureau to clarify, before the provision takes effect, its applicability to transactions other than those in which a lump-sum premium is added to the loan amount at closing**." 78 Fed. Reg. at 32,547.

Jan. 29, 2013	Bureau of Consumer Financial Protection	*Electronic Fund Transfers (Regulation E) Temporary Delay of Effective Date; Final Rule,* 78 Fed. Reg. 6025 (Jan. 29, 2013).	"The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to delay the February 7, 2013, effective date of final rules published by the Bureau on February 7, 2012, and August 20, 2012 (collectively, 2012 Final Rule), that amend Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The 2012 Final Rule implements statutory requirements set forth in section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding remittance transfers. **The Bureau is delaying the effective date of the 2012 Final Rule pending the finalization of a proposal, published on December 31, 2012 (December 2012 Proposal), that would address three narrow issues in the 2012 Final Rule.** The Bureau will determine the new effective date when it finalizes the December 2012 Proposal." 78 Fed. Reg. at 6025.
July 21, 2011	U.S. Dep't of Agriculture	*Nectarines and Peaches Grown in California; Suspension of Handling Requirements*, 76 Fed. Reg. 43,533 (July 21, 2011).	"**The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the quality, inspection, reporting, and assessment requirements specified under the California nectarine and peach marketing orders (orders)**. The interim rule suspended the handling regulations for the 2011 and subsequent marketing seasons relieving handlers of all regulatory burdens under the orders while USDA processes the terminations of the orders." 76 Fed. Reg. at 43,533.

Mar. 31, 2010	EPA	*Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Inclusion of Fugitive Emissions; Final Rule; Stay*, 75 Fed. Reg. 16,012 (Mar. 31, 2010).	"In this final action, EPA is issuing a stay for 18 months of the inclusion of fugitive emissions requirements in the federal Prevention of Significant Deterioration (PSD) program published in the Federal Register on December 19, 2008 . . . . The existing stay is in effect for 3 months; that is, from December 31, 2009 until March 31, 2010. **This action puts in place an additional stay for 18 months, which we believe will allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the federal PSD program.**" 75 Fed. Reg. at 16,012. EPA subsequently issued a "good cause" final rule without prior notice and comment to correct an ambiguity in the prior action, and then extended the duration of the stay indefinitely until the Agency completed the reconsideration proceeding. 61 Fed. Reg. 17,548 (Mar. 30, 2011).

Nov. 30, 2009	U.S. Dep't of Health & Human Services (HHS)	*Medicaid Program: State Flexibility for Medicaid Benefit Packages and Premiums and Cost Sharing,* 74 Fed. Reg. 62,501 (Nov. 30, 2009).	"On October 30, 2009, we published a proposed rule in the Federal Register (73 FR 71828) to solicit public comments on further delaying the effective date of the November 25, 2008 and the December 3, 2008 final rules (collectively, 'the 2008 final rules') until July 1, 2010. **We proposed to further delay the effective date of the 2008 final rules from December 31, 2009 to July 1, 2010 to allow us sufficient time to revise a substantial portion of the final rules based on our review and consideration of the new provision of CHIPRA, the Recovery Act, and the public comments received during the reopened comment periods**. To allow time to make these revisions, the Department determined that we need several more months to fully consider the changes needed to the rules." 74 Fed. Reg. at 62,502.
Sept. 22, 2009	EPA	*Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Final Rule To Stay the Grandfathering Provision for $PM_{2.5}$,* 74 Fed. Reg. 48,153 (Sept. 22, 2009).	"In this final action, EPA is issuing a stay, for nine months, on the 'grandfathering' provision for particulate matter less than 2.5 micrometers ($PM_{2.5}$) requirements in the Federal Prevention of Significant Deterioration (PSD) program. The grandfathering provision was added to the Federal PSD regulations on May 16, 2008, as part of the final rule titled, 'Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$).' This stay follows an administrative stay, which was in effect from June 1, 2009, until September 1, 2009, on the same provision. **We believe this additional stay will provide sufficient time for EPA to propose, take public comment on, and issue a final action concerning the repeal of the grandfathering provision for $PM_{2.5}$ in the Federal PSD program**." 74 Fed. Reg. at 48,153.

May 14, 2009	EPA	*Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation*, 74 Fed. Reg. 22,693 (May 14, 2009).	"EPA announced on February 13, 2009, that it would convene a reconsideration proceeding for the NSR Aggregation Amendments and would delay the effective date of the rule from February 17, 2009 until May 18, 2009. On March 18, 2009, EPA proposed an additional delay of the effective date and solicited comment on the duration of the additional delay. . . . **By this rule, EPA is delaying the effective date of the NSR Aggregation Amendments for an additional 12 months, which will allow for sufficient time to conduct the reconsideration proceeding**. The new effective date of the rule is May 18, 2010." 74 Fed. Reg. at 22,693. EPA later issued an indefinite stay pending judicial review. 75 Fed. Reg. 27,643 (May 18, 2010). This stay remains in effect today because the litigation has remained in abeyance pending EPA completion of the reconsideration proceeding.

Apr. 21, 2009	U.S. Dep't of Labor	*Labor Organization Annual Financial Reports*, 74 Fed. Reg. 18,132 (April 21, 2009).	"This final rule delays the effective date and applicability date of regulations pertaining to the filing by labor organizations of annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) that were published in the Federal Register on January 21, 2009. . . . These regulations were to have gone into effect on February 20, 2009, but were delayed until April 21, 2009, by a final rule published on February 20, 2009 (74 FR 7814). **This final rule postpones the effective date of the regulations from April 21, 2009, until October 19, 2009, and the applicability date of the regulations from July 1, 2009, until January 1, 2010. This will allow additional time for the agency and the public to consider a proposal to withdraw the January 21 regulations and, meanwhile, to permit unions to delay costly development and implementation of any necessary new accounting and recordkeeping systems and procedures, pending this further consideration**." 74 Fed. Reg. at 18,132.

Apr. 1, 2009	EPA	*Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Spill Prevention, Control, and Countermeasure Rule--Final Amendments*, 74 Fed. Reg. 14736 (Apr. 1, 2009).	"Consistent with the January 21, 2009 OMB memorandum 'Implementation of Memorandum Concerning Regulatory Review,' the EPA Administrator has chosen this rule for additional assessment of policy and legal issues; therefore, EPA must carefully consider the issues raised in these comments. **Because EPA cannot adequately address the comments before an April 4, 2009 effective date, the Agency agrees with the comment in support of delaying the effective date. With this action, the Agency is extending the effective date of the December 5, 2008 SPCC amendments and is requesting public comment on whether a further extension of the effective date may be warranted**. The Agency will provide a complete discussion of the comments received specific to the amendments, and its response to those comments, in a Federal Register notice describing any changes to the 2008 amendments." 74 Fed. Reg. at 14,737.
Mar. 27, 2009	U.S. Dep't. of Housing and Urban Development	*Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Delay of Effective Date,* 74 Fed. Reg. 13,339 (Mar. 27, 2009).	"Through this final rule, HUD delays the effective date of the January 27, 2009, final rule until September 30, 2009. **A delay until September 30, 2009 will provide HUD with additional time to review the public comments received in response to the February 11, 2009, notice, respond to those comments in a subsequent publication, and consider whether additional regulations or changes to the regulations in the January 27, 2009, final rule are necessary or appropriate**." 74 Fed. Reg. at 13,340.

Mar. 20, 2009	HHS	*State Parent Locator Service; Safeguarding Child Support Information,* 74 Fed. Reg. 11,879 (Mar. 20, 2009).	"On September 26, 2008, we published a final rule following notice and comment period entitled 'State Parent Locator Service; Safeguarding Child Support Information' in the Federal Register to address requirements for State Parent Locator Service responses to authorized location requests, State IV-D program safeguarding of confidential information, authorized disclosures of this information, and restrictions on the use of confidential data and information for child support purposes with exceptions for certain disclosures permitted by statute. The effective date given for the final rule was March 23, 2009. . . . This action delays the effective date of the September 26, 2008 final rule. The effective date of the September 26, 2008 final rule, which would have been March 23, 2009, is now May 22, 2009. **The delay in the effective date is necessary to give Department officials the opportunity for further review of the issues of law and policy raised by the rule**." 74 Fed. Reg. at 11,880.
June 2, 2008	EPA	*Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries*, 73 Fed. Reg. 31,372 (June 2, 2008).	"EPA granted a 90-day stay of these provisions under CAA section 307(d)(7)(B) on March 4, 2008. That stay expires on June 1, 2008. **We are extending the stay until we have reached a final decision on all of the issues raised in the petition for reconsideration**." 73 Fed. Reg. at 31,373.

May 16, 2007	EPA	*Oil Pollution Prevention; Non-Transportation Related Onshore and Offshore Facilities,* 72 Fed. Reg. 27,443 (May 16, 2007).	"The Environmental Protection Agency is today extending the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. **This action allows the Agency time to promulgate further revisions to the SPCC rule before owners and operators are required to prepare or amend, and implement their SPCC Plans. EPA expects to propose further revisions to the SPCC rule later this year**." 72 Fed. Reg. at 27,443-44.
Dec. 26, 2006	EPA	*Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan Requirements—Amendments,* 71 Fed. Reg. 77,266 (Dec. 26, 2006).	"**This final rule provides an extension for all farms as defined in this notice until the Agency promulgates a rule specifically addressing how farms should be regulated under the SPCC rules**." 71 Fed. Reg. at 77,286.

Dec. 13, 2006	National Highway Traffic Safety Administration (NHTSA)	*Federal Motor Vehicle Safety Standards; Brake Hoses; Final Rule; Delay of Effective Date*, 71 Fed. Reg. 74,823 (Dec. 13, 2006).	"NHTSA published a final rule in December 2004 that amended the Federal motor vehicle safety standard on brake hoses, and announced an effective date of December 20, 2006. The agency has received several petitions for reconsideration of the rule and a petition to delay the effective date of the final rule. **To allow for more time to respond to petitions for reconsideration, and to give industry more time to meet new requirements, this document delays the effective date of the final rule for one year, to December 20, 2007**. This decision was made after NHTSA published a notice of proposed rulemaking on November 15, 2006, soliciting public comment on whether the effective date should be extended. All commenters wrote in support of extending the effective date." 71 Fed. Reg. at 74,823.
Feb. 17, 2006	EPA	*Oil Pollution Prevention; Non-Transportation Related Onshore Facilities*, 71 Fed. Reg. 8462 (Feb. 17, 2006).	"**The Agency's proposal to extend the compliance dates in § 112.3 (which is made final in today's notice) was designed to allow the Agency time to take final action on the proposed amendments to the SPCC requirements before owners and operators are required to prepare, amend, and implement their SPCC Plans**. The Agency believed that the extension was appropriate to allow owners and operators to take advantage of any modifications that would be provided by a final SPCC amendment rule." 71 Fed. Reg. at 8463.

Aug. 18, 2004	EPA	*National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines*, 69 Fed Reg. 51,184 (Aug. 18, 2004).	"**Pending the outcome of EPA's proposal to delete these subcategories from the source category list (68 FR 18338, April 7, 2004), EPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories**. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted." 69 Fed. Reg. at 51,184.
Oct. 18, 2001	EPA	*Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters; Final Rule,* 66 Fed. Reg. 53,044 (Oct. 18, 2001).	On July 13, 2000, EPA published a final rule revising the TMDL regulations previously promulgated in 1985 and revised in 1992. 65 Fed. Reg. 43,586 (July 13, 2000). Because of significant concerns raised by regulated entities, local governments, and other stakeholders, on August 9, 2001, EPA proposed a rule to delay the effective date of the Final Rule by 18 months until April 30, 2003 to allow time for reconsideration of specific aspects of the rule. 66 Fed. Reg. 41,817 (Aug. 9, 2001). **According to the Agency, the extension was the "minimum necessary for the Agency to be able to conduct a meaningful consultation with the public, analyze recommendations of various stakeholders, reconcile concerns about the scope, complexity, and cost of the TMDL program, and structure a flexible yet effective solution . . . .**" 66 Fed. Reg. at 53,045.

May 22, 2001	EPA	*National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring: Delay of Effective Date,* 66 Fed. Reg. 28,342 (May 22, 2001).	"On April 23, 2001, EPA published in the Federal Register (66 FR 20580) a proposal to delay the effective date of the arsenic rule for an additional nine months in order to conduct reviews of the science and costing analysis and make the results available for public review. **Today's action extends the effective date for the arsenic rule from May 22, 2001, to February 22, 2002, in order to conduct the reviews described in the April 23, 2001 Federal Register (66 FR 20580).**" 68 Fed. Reg. at 28,342.
Feb. 26, 2001	EPA	*National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins,* 66 Fed. Reg. 11,543 (Feb. 26, 2001).	EPA issued a direct final rule extending compliance dates. In the same Federal Register, EPA published a proposed rule inviting comment on this action. 66 Fed. Reg. 11,550 (Feb. 26, 2001). "Our reconsideration has created uncertainty with regard to compliance requirements for the [polyethylene terephthalate (PET)] equipment leaks provisions. Furthermore, our reconsideration has led the Agency to publish in the Federal Register on June 8, 1999, a proposal to deny the petitions (64 FR 30456). We are considering public comments on the proposed denial and will publish a final action on the petitions. Therefore, this period of uncertainty will continue until we publish a final decision. **For these reasons, we are providing an extension of the compliance dates associated with the provisions which regulate equipment leaks for PET affected sources for six months to allow time to take final action on the petitions for reconsideration.**" 66 Fed. Reg. at 11,544.

Feb. 23, 2001	EPA	*National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins,* 66 Fed. Reg. 11,233 (Feb. 23, 2001).	"**The EPA is issuing this final rule amendment to indefinitely stay the current compliance date of February 27, 2001, for the provisions pertaining to process contact cooling towers (PCCT) for existing affected sources producing poly (ethylene terephthalate) (PET) using the continuous terephthalic acid (TPA) high viscosity multiple end finisher process**. On August 29, 2000, the EPA issued a direct final rule (65 FR 52319) and a parallel proposal (65 FR 52392) to stay the compliance date indefinitely because the **EPA is in the process of responding to a request to reconsider relevant portions of the rule** which may result in changes to the emission limitation applying to PCCT in this subcategory." 66 Fed. Reg. at 11,233.
June 20, 1996	EPA	*List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule--Stay of Effectiveness,* 61 Fed. Reg. 31,730 (June 20, 1996).	"Three commenters suggested that EPA should promulgate a stay for so long as it takes the Agency to take final action on the List Rule Amendments rather than for a certain (18 month) time period. **The 18 month time period was selected to be consistent with the time period provided for final action on amendments discussed in the settlement of litigation concerning the List Rule. EPA believes this time will be sufficient to take any necessary action**." 61 Fed. Reg. at 31,731.

Jun. 11, 1996	EPA	*Protection of Stratospheric Ozone; Notice of Extension of Stay*, 61 Fed. Reg. 29,485 (Jun. 11, 1996).	"EPA proposed an extension of the stay beyond the three-month administrative stay, but only to the extent necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question (61 FR 3361). This action finalizes the proposed extension. Sufficient concerns have been raised regarding this provision that **EPA believes it is appropriate not only to reconsider the provision, but also to stay the requirement during the period of reconsideration, which will extend beyond the three-month period provided under the administrative stay**." 61 Fed. Reg. at 29,485.
May 9, 1995	EPA	*Protection of Stratospheric Ozone*, 60 Fed. Reg. 24,676 (May 9, 1995).	"EPA will not be able to complete the reconsideration (including any appropriate regulatory action) of the rules stayed by the Administrator within the three-month period expressly provided in section 307(d)(7)(B). While EPA is reconsidering the rules in question as expeditiously as practicable, EPA will not be able to issue a proposed action, seek public comment, and take final action before the temporary stay expires on April 27, 1995. Therefore, EPA believes it is appropriate to extend temporarily the stay of the effectiveness of the sales restriction as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits and the applicable compliance date. **EPA is extending the stay from April 27, 1995, only until EPA completes final rulemaking upon reconsideration and that rule becomes effective**." 60 Fed. Reg. at 24,677.

April 7, 1995	EPA	*Financial Assurance Effective Date for Owners and Operators of Municipal Solid Waste Landfill Facilities*, 60 Fed. Reg. 17,649 (April 7, 1995).	"**The Agency has delayed the effective date of the financial responsibility provisions until April 9, 1995 (see 58 FR 51536) in order to provide adequate time to promulgate a financial test for local governments and another for corporations before the effective date of the financial assurance provisions**. The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and to obtain a guarantor or an alternate instrument, if necessary. The Agency also recognized that local governments, in particular, require notice of the requirements in order to plan their budgets for the upcoming year." 60 Fed. Reg. at 17,649.
Nov. 9, 1993	EPA	*Burning of Hazardous Waste in Boilers and Industrial Furnaces*, 58 Fed. Reg. 59,598 (Nov. 9, 1993).	"**EPA is making this stay immediately effective. The Agency is taking this action after making a good-faith effort to provide advance notice and opportunity for comment on the conditioned stay**. The Agency provided notice and requested comment from the approximately 80 commenters on the Bevill provision of the BIF rule during the previous rulemaking process. EPA received comments from 16 respondents representing regulated BIFs and associated organizations, and from the incineration industry (e.g., the National Waste Management Association and the Hazardous Waste Treatment Council)." 58 Fed. Reg. at 59,598.

May 5, 1992	EPA	*National Emission Standards for Hazardous Air Pollutants; Benzene Waste Operations*, 57 Fed. Reg. 8012 (May 5, 1992).	"**To resolve the confusion concerning the current rule, the Agency has elected to stay the current rule while clarifying amendments are developed**." 57 Fed. Reg. at 8013.
Apr. 2, 1991	EPA	*Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Hydrocarbon Recovery Operations*, 56 Fed. Reg. 13,406 (Apr. 2, 1991).	"On November 7, 1990, the Agency proposed to extend the compliance date for the Toxicity Characteristic until January 25, 1993 for produced groundwater from free phase hydrocarbon recovery operations at certain petroleum industry sites—namely, refineries, marketing terminals, and bulk plants. **Made aware of likely disruptions to cleanup operations at these facilities after the Toxicity Characteristic rulemaking process, the Agency concluded that an extension of the compliance date would ensure that these operations would not be interrupted and thereby avoid setbacks in their remediation activities**. The Agency is today making final this proposed extension." 56 Fed. Reg. at 13,406.

Dec. 9, 1983	Federal Energy Regulatory Commission	*Incremental Pricing Program; Order Extending Stay of Effective Date of Order No. 80*, 48 Fed. Reg. 55,121 (Dec. 9, 1983).	"On May 6, 1980, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 80, 45 FR 31,622 (May 13, 1980)) to implement Phase II of the incremental pricing program. That rule, which expands the scope of incremental pricing in accordance with section 202 of the Natural Gas Policy Act of 1978, was due to become effective October 5, 1983. On October 5, 1983, the Commission issued an order to stay the effective date for sixty days and proposed to extend the stay for an additional 120 days or until the Commission completes its reconsideration of Order No. 80, whichever is earlier. (48 FR 45,758 and 45,787 (Oct. 7, 1983).) **After consideration of comments received, the Commission adopts its proposal and extends the stay of Order No. 80 until April 12, 1984, or until the Commission completes reconsideration of Order No. 80 whichever is earlier**." 48 Fed. Reg. at 55,121.