



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

MEMO ENDORSED

May 12, 2023

By ECF

The Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

On October 27, 2020, the Court stayed this matter pending the D.C. Circuit's decision resolving *NRDC v. Wheeler* (Doc. 81), which Defendant U.S. Environmental Protection Agency ("EPA") advised was decided May 9, 2023. EPA now seeks to extend the stay, and Plaintiff National Resources Defense Council consents to an extension of no more than 90 days. The Court extends the stay 90 days, until August 15, 2023. SO ORDERED.

Edgardo Ramos, U.S.D.J.
Dated: May 17, 2023
New York, New York

Re: *NRDC v. EPA*, No. 16 Civ. 1251 (ER)

Dear Judge Ramos:

This Office represents defendant U.S. Environmental Protection Agency ("EPA") in this action arising out of plaintiff Natural Resources Defense Council's ("NRDC") claim that EPA has failed to take certain perchlorate-related regulatory actions. By opinion and order dated October 27, 2020 [ECF No. 81], this Court stayed this matter pending decision of the NRDC's petition for review in the D.C. Circuit, which challenged EPA's withdrawal of its regulatory determination with respect to perchlorate. *See NRDC v. Regan*, No. 20-1335 (petition filed Sept. 3, 2020).

We are writing to advise the Court that on May 9, 2023, the D.C. Circuit granted NRDC's petition, vacated EPA's withdrawal of its regulatory determination, and remanded the matter to EPA for further proceedings. *NRDC v. Regan*, __ F.4th __, 2023 WL 3312344 (D.C. Cir. May 9, 2023). The United States now has 45 days in which to seek rehearing or rehearing en banc by the D.C. Circuit, Fed. R. App. P. 35, 40, and 90 days to petition the Supreme Court for a writ of certiorari, Sup. Ct. R. 13, subject to any extensions of time allowed by those courts.

In order to allow the United States time to consider whether to pursue such further review and, if such review is sought, for the appellate process to be completed, and in the interest of judicial efficiency and effective use of agency resources, we respectfully request that the stay of this matter be extended to the later of (i) the expiration of time to seek further review by the D.C. Circuit or the Supreme Court and (ii) the adjudication of any such review timely sought. NRDC is considering the requested stay and will file a letter with the Court setting forth its position on the request within three business days.

We thank the Court for its consideration of this request.

Respectfully,

DAMIAN WILLIAMS
United States Attorney

By: /s/ Tomoko Onozawa
TOMOKO ONOZAWA
Assistant United States Attorney
Tel.: (212) 637-2721
Fax: (212) 637-2717
tomoko.onozawa@usdoj.gov

cc: All Counsel of Record (via ECF)