

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, *et al.*,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et ano.*,

Defendants.

Case No. 21 Civ. 462 (JPO)

STIPULATION AND CONSENT
ORDER FURTHER STAYING
THE PROCEEDING

WHEREAS, on or about January 19, 2021, the State of New York, State of California, State of Connecticut, State of Delaware, State of Illinois, State of Maine, State of Maryland, Commonwealth of Massachusetts, People of the State of Michigan, State of Minnesota, State of New Jersey, State of New Mexico, State of North Carolina, State of Oregon, Commonwealth of Pennsylvania, State of Vermont, State of Washington, State of Wisconsin, King County Washington, City of Chicago, and City of New York (collectively, “Plaintiffs”) filed a complaint in the above-captioned matter (the “Complaint”) against the United States Environmental Protection Agency and Michael S. Regan, as Administrator of the United States Environmental Protection Agency¹ (collectively, “Defendants” or “EPA”);

WHEREAS, the Complaint seeks, *inter alia*, a declaration that the final rule entitled “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,” 86 Fed. Reg. 469 (Jan. 6, 2021) (“Final Rule”), is in excess of

¹ Administrator Michael S. Regan is automatically substituted in place of former Administrator Andrew R. Wheeler pursuant to Fed. R. Civ. P. 25(d).

EPA’s statutory jurisdiction, authority, or limitations; is not in accordance with law; and is arbitrary and capricious; and vacatur of the Final Rule;

WHEREAS, on February 1, 2021, the United States District Court for the District of Montana ordered that the “Final Rule is hereby vacated and remanded to the Environmental Protection Agency,” *Env’tl Def. Fund v. U.S. EPA*, No. 4:21-cv-00003-BMM, Docket No. 38 (D. Mont. Feb. 1, 2021), at 2 (the “Montana Order”);

WHEREAS, on February 25, 2021, this Court entered a Stipulation and Consent Order Staying the Proceeding for sixty days until April 26, 2021, Dkt. No. 29;

WHEREAS, on April 27, 2021, this Court entered a Stipulation and Consent Order Further Staying the Proceeding for thirty days until May 26, 2021, Dkt. No. 35;

WHEREAS, on May 24, 2021, EPA signed for publication in the Federal Register a final rule entitled “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information; Vacatur Rule” (the “Vacatur Rule”), which will become effective upon publication in the Federal Register;

WHEREAS, Plaintiffs intend to voluntarily dismiss this action following publication of the Vacatur Rule; and

WHEREAS, the parties agree that a further stay of this matter is appropriate to allow time for the Vacatur Rule to be published and to enable the parties to discuss any further action necessary in this proceeding, and it is within the Court’s broad discretion to stay proceedings and defer judicial review, *see Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936);

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between parties, and the Court hereby ORDERS that:

1. All proceedings in this case, including the deadline to answer or otherwise respond to the complaint, are hereby stayed until June 28, 2021.
2. The parties are directed to submit a status letter within 30 days of the entry of this order outlining a proposal for how this matter will proceed.
3. The terms of this Stipulation and Consent Order shall become effective upon its entry by the Court. If the Stipulation and Consent Order is not approved and entered by the Court, it shall be null and void, with no force or effect.
4. This Stipulation and Consent Order may be signed in counterparts, each of which constitutes an original and all of which constitute one and the same document. Facsimiles and/or PDFs of signatures shall have the same force and effect as original signatures and constitute acceptable, binding signatures for purposes of the Stipulation and Consent Order.

Dated: New York, New York
May 26, 2021

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² Counsel for Defendants represents that the other parties listed in signature blocks on this stipulation and proposed order consent to this filing in accordance with S.D.N.Y. ECF Rule 8.5(b).

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**Pro Hac Vice applications pending or to be submitted*

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SO ORDERED:



J. PAUL OETKEN
United States District Judge

Dated: New York, New York
May 27, 2021