Message

From: Zenick, Elliott [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1B2EAA2A560D415FB7C8CE9BB56C7CE5-EZENICK]
Sent: 3/28/2017 3:09:13 PM
To: Schmidt, Lorie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f471d4b316f74b0591322b5c63f1d01c-Schmidt, Lorie]
Subject: RE: Two upcoming minor deadlines in the CPP reconsideration cases

Thanks.

From: Schmidt, Lorie
Sent: Tuesday, March 28, 2017 11:08 AM
To: Jordan, Scott <Jordan.Scott@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: Fwd: Two upcoming minor deadlines in the CPP reconsideration cases

Sent from my iPhone

Begin forwarded message:

> **From:** "Middleton, Brandon (ENRD)" <Brandon.Middleton@usdoj.gov>
> **Date:** March 28, 2017 at 10:34:01 AM EDT
> **To:** "Minoli, Kevin" <Minoli.Kevin@epa.gov>
> **Cc:** "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>, "Gunasekara, Amanda" <gunasekara.amanda@epa.gov>, "Schmidt, Lorie" <Schmidt.Lorie@epa.gov>, "Mandy_Gunasekara@epw.senate.gov" <Mandy_Gunasekara@epw.senate.gov>
> **Subject: RE: Two upcoming minor deadlines in the CPP reconsideration cases**
>
> All,
>
> Just to be clear and make sure everyone is on the same page, we intend to file abeyance motions in the CPP merits litigation (WV v. EPA) and new source litigation (ND v. EPA) as early as today. Once those are take care of, we will turn to the CPP reconsideration denial litigation (also titled ND v. EPA)--procedural motions are due in that matter this Friday, and we intend to file an abeyance motion on or before that date (later this week).
>
> Additionally, in the CPP reconsideration denial litigation, our attorneys will be reaching out to inform the court today that we do not see utility in mediation.
>
> Thanks.
>
> Brandon
>
> -----Original Message-----
> From: Minoli, Kevin [mailto:Minoli.Kevin@epa.gov]
> Sent: Thursday, March 23, 2017 3:08 PM
> To: Middleton, Brandon (ENRD) <BMiddleton@ENRD.USDOJ.GOV>
> Cc: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Gunasekara, Amanda <gunasekara.amanda@epa.gov>; Schmidt, Lorie <Schmidt.Lorie@epa.gov>
> Subject: RE: Two upcoming minor deadlines in the CPP reconsideration cases

Thanks Brandon. I believe Lorie Schmidt and her team in my office are connected with Eric and others at the litigation team level in your office, but have cc'd her here to ensure she has the latest information as well. Should we be preparing to provide our thoughts on either or both of these, or should we hold while ENRD thinks through its thoughts first? Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040

-----Original Message-----
From: Middleton, Brandon (ENRD) [mailto:Brandon.Middleton@usdoj.gov]
Sent: Thursday, March 23, 2017 2:23 PM
To: Minoli, Kevin <Minoli.Kevin@epa.gov>
Cc: bruce.gelber@usdoj.gov; Gunasekara, Amanda <gunasekara.amanda@epa.gov>
Subject: FW: Two upcoming minor deadlines in the CPP reconsideration cases

Kevin,

We are considering and reviewing these suggested approaches, but wanted to bring to your attention. Thank you.

Brandon

-----Original Message-----
From: Hostetler, Eric (ENRD)
Sent: Thursday, March 23, 2017 2:14 PM
To: Middleton, Brandon (ENRD) <BMiddleton@ENRD.USDOJ.GOV>
Cc: Lipshultz, Jon (ENRD) <JLipshultz@ENRD.USDOJ.GOV>
Subject: Two upcoming minor deadlines in the CPP reconsideration cases

Brandon,

While I know we have our hands full getting ready for the EO and FR notice, this is to bring to your attention that there are two upcoming procedural deadlines next week in the CPP reconsideration denial litigation.

First, the initial case management deadline for filing "procedural motions" in the recon cases is next Friday, March 31. The expiration of that procedural motion deadline will not pose a problem for us, because the Court will consider an abeyance motion filed by us based on new factual developments at any point in time. And as we do not have any other procedural motions that we intend to file, there does not seem to be any point to us seeking an extension of the March 31 deadline. Note we're months and months away from any briefing deadlines in the reconsideration case. The Court needs to first resolve the already-filed procedural motion; and after that, it would request that the parties submit proposals for a briefing format. Only after considering those proposals would it actually enter a briefing schedule. So I don't see any realistic possibility that briefing would be required in these cases before the EO is issued and we are able to get our abeyance motion on file. In any event, let me know if you concur with the approach of not requesting an extension of the March 31 procedural motion deadline or would

like to discuss further.

Second, recall that we received a routine inquiry from the DC Circuit's mediation office asking whether we had any interest in mediation in the reconsideration cases. Our responses to such inquiries are non-public and confidential. Recall that we provided the mediation office with an initial response a few weeks ago in which we indicated that we would like to have until after the 60-day period for filing petitions (March 20) to advise whether we had any interest in mediation. Now that the 60-day period has expired, we need to get back to the mediation office with a further response, and the mediation office had previously indicated it intended to give us until next Tuesday, March 28. In view of our intent to move to hold these cases in abeyance pending CPP reconsideration, my recommendation here is that we simply advise the mediation office that we do not see any utility in mediation at this point in time (this is our usual response in petition cases). Let me know if you concur or would like to discuss.

Thanks,

Eric