IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TEXO ABC/AGC, INC.; ASSOCIATED BUILDERS AND CONTRACTORS, INC.; NATIONAL ASSOCIATION OF MANUFACTURERS; AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS; GREAT AMERICAN INSURANCE COMPANY; ATLANTIC PRECAST CONCRETE, INC.; OWEN STEEL COMPANY; and **OXFORD PROPERTY MANAGEMENT, LLC;**

Plaintiffs,

v.

EDWARD C. HUGLER, Acting Secretary of Labor, United States Department of Labor**;** **DOROTHY DOUGHERTY,** Deputy Assistant Secretary of Labor, Occupational Safety and Health Administration**;** and **OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,** United States Department of Labor**,**

Defendants.[1]

Civil Action No. **3:16-cv-1998**

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR 60-DAY STAY OF PROCEEDINGS

Defendants have moved to stay proceedings in this case for 60 days. [ECF #57]. Plaintiffs agree that a stay is advisable so that the new Secretary of Labor, once confirmed, can review the merits of the challenged rule, as the Department is now required to do in accordance with

[1] Edward C. Hugler, Acting Secretary of Labor, has been substituted for Thomas E. Perez as a defendant in this case, and Dorothy Dougherty, Deputy Assistant Secretary of Labor for Occupational Safety and Health, has been substituted for David Michaels as a defendant, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

recently issued Executive Orders and Memoranda of the President.[2] However, a stay that is not accompanied by an equivalent delay in enforcement of the approaching July 1 deadline for compliance with the challenged injury reporting requirements of the new Rule would prejudice Plaintiffs' rights to judicial review of the rule before enforcement begins.

It is fully within the power of the Department to delay enforcement of the July 1 deadline, pending completion of the regulatory review in which the Department is required to engage. Indeed, the Department delayed by 60 days on its own initiative the enforcement of the anti-retaliation provisions of the new Rule. [ECF #13]. Subsequently, at the Court's request, the Department delayed enforcement of the anti-retaliation provisions by an additional 30 days in order to allow the Court additional time to review the issues raised in the case. [ECF #32, 34]. Significantly, those delays occurred without any of the compelling grounds for delay presented by the recent change in Administrations and the Department's mandate to conduct a full regulatory review of the new Rule.

Plaintiffs therefore request that the Court condition the grant of Defendants' 60-day stay request on the Department's agreement to an equivalent stay of the July 1 enforcement date for the public injury reporting provisions of the new Rule. Such a stay should allow the incoming new governing officials at the Department and/or this Court to fully review the regulatory justifications and burdens imposed by the new Rule.

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[2] *See, e.g.*, EO 13777, "Enforcing the Regulatory Reform Agenda," 82 Fed. Reg. 12285 (Mar. 1, 2017) ; EO 13771, "Reducing Regulation and Controlling Regulatory Costs," 82 Fed. Reg. 9339 (Feb. 3, 2017); and Presidential Memorandum: Implementation of Regulatory Freeze, M-17-16 (Jan. 24, 2017).

Respectfully submitted,

Dated: March 31, 2017

/s/ Steven R. McCown

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2017, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Steven McCown
Steven McCown