

Nos. 15-1328, 15-1329

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

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MEXICHEM FLUOR, INC., *et al.*,

Petitioners

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent,

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THE CHEMOURS COMPANY FC, LLC, HONEYWELL INTERNATIONAL  
INC., and NATURAL RESOURCES DEFENSE COUNCIL,

Intervenor-Respondents.

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Petition for Review of Final Agency Action

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**JOINT REPLY TO RESPONSE OF PETITIONERS TO PETITION  
FOR PANEL REHEARING AND REHEARING EN BANC  
BY INTERVENOR-RESPONDENTS**

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## ARGUMENT

Intervenor-Respondents submit this reply to make two brief points. First, petitioners argue that the March 28, 2017, Executive Order, entitled “Promoting Energy Independence and Economic Growth,” Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (March 31, 2017), requires EPA to reconsider the Clean Air Act Section 612 “safe alternatives” rule at issue in this case. Br. at 1. The Executive Order does no such thing. The Order directs agencies to review certain energy-related environmental regulations for consistency with the energy policies it articulates, and instructs the agencies to determine which rules to reconsider “as appropriate” and “consistent with law.” Id. at § 3(d), 82 Fed. Reg. at 16,094. EPA has not identified the “safe alternatives” rule for reconsideration and filed no request for abeyance in this case. The rule is absent from the Office of Management and Budget’s Agenda of Regulatory and Deregulatory Actions,<sup>1</sup> and it does not appear on the Administration’s comprehensive list of regulations recommended for review published this month.<sup>2</sup>

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<sup>1</sup> Office of Mgmt & Budget, Current Unified Agenda of Regulatory & Deregulatory Actions (2017), <https://www.reginfo.gov/public/do/eAgendaMain>.

<sup>2</sup> See U.S. Dep’t Commerce, Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (Oct. 6, 2017), [https://www.commerce.gov/sites/commerce.gov/files/streamlining\\_permitting\\_and\\_reducing\\_regulatory\\_burdens\\_for\\_domestic\\_manufacturing.pdf](https://www.commerce.gov/sites/commerce.gov/files/streamlining_permitting_and_reducing_regulatory_burdens_for_domestic_manufacturing.pdf).

Second, petitioners argue that rehearing petitions should not be considered unless joined by EPA. Br. 8-9. But EPA's silence neither restricts the power of this Court nor detracts from the exceptional importance of this case to the intervenors and the public. As a *Chevron* step one ruling, the panel's decision permanently disables Section 612 as the instrument Congress designed to require manufacturers to transition to safer substitutes for ozone-depleting chemicals as they are developed over time. The ruling limits prohibitions against unsafe substitutes to affect only the remnant of manufacturers still using ozone-depleting chemicals. Absent intervention from the full D.C. Circuit, the panel holding will bind this and all future EPA administrators, depriving them of any future authority to regulate current users of HFCs under the safe alternatives program no matter how dangerous these chemicals are to human health or the environment. Using *Chevron* step one so aggressively in these circumstances is an exceptionally important issue deserving the full Court's attention.

### CONCLUSION

The Court should grant the petition for panel rehearing or, in the alternative, rehearing en banc.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this proposed Reply complies with the requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6) because it has been prepared in 14-point Times New Roman, a proportionally spaced typeface.

I further certify that this proposed Reply complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(ii) because it contains 373 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, excluding the parts exempted under Federal Rule of Appellate Procedure 32(f) and District of Columbia Circuit Rule 32(e)(1).

/s/ Thomas A. Lorenzen  
Thomas A. Lorenzen

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 19<sup>th</sup> day of October 2017, a copy of the foregoing proposed Joint Reply to Response of Petitioners to Petition for Panel Rehearing and Rehearing En Banc by Intervenor-Respondents were served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Thomas A. Lorenzen  
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