

ORAL ARGUMENT NOT YET SCHEDULED
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ENVIRONMENTAL DEVELOPMENT)
ASSOCIATION’S CLEAN AIR PROJECT, ET AL.)

Petitioners,)

) No. 17-1016
) (consolidated with 17-
) 1017)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, ET AL.)

Respondents.)

EPA’S 60-DAY STATUS REPORT

In accordance with this Court’s September 14, 2018 and January 8, 2019
Orders (Doc. ## 1750770; 1767527), Respondents the United States
Environmental Protection Agency and Andrew R. Wheeler, in his official capacity
as Administrator of the United States Environmental Protection Agency,
(collectively, “EPA”) submit this 60-day status report. Petitioners the National
Environmental Development Association’s Clean Air Project (“NEDA/CAP”) and
the Air Permitting Forum (“APF”) filed petitions for review of EPA’s action
entitled “Protection of Stratospheric Ozone: Update to the Refrigerant

Management Requirements Under the Clean Air Act,” 81 Fed. Reg. 82,272 (Nov. 18, 2016) (“2016 Amended Refrigerant Management Rule”) on January 17, 2017.¹

EPA filed, and this Court granted, a series of unopposed motions to hold this case in abeyance through September 14, 2018. *See* Doc. # 1750545 ¶ 4 (listing motions and orders). In its September 13, 2018 motion seeking further abeyance, EPA referenced its August 10, 2017 letter to Petitioners, which stated that EPA planned “to issue a proposed rule to revisit aspects of the 2016 [Amended Refrigerant Management] Rule’s extension of the 40 CFR part 82 subpart F refrigerant management requirements to non-exempt substitutes,”² and explained that, consistent with the August 10, 2017 letter, the Agency had been working diligently on a proposed rule. *Id.* ¶¶ 7–8. The Court granted EPA’s motion, ordered that the case remain in abeyance pending further order, and directed EPA to file 60-day status reports. Doc. # 1750770. EPA filed its most recent status report on December 6, 2019. Doc. # 1819185.

¹ Also on January 17, 2017, APF filed an administrative petition for reconsideration before EPA regarding the 2016 Amended Refrigerant Management Rule. As part of the September 14, 2018 Order, “[t]he parties are directed to file motions to govern further proceedings within 30 days of the completion of the agency proceedings on the petition for administrative reconsideration.” Doc. # 1750770.

² Letter from EPA to NEDA/CAP and APF (Aug. 10, 2017), https://www.epa.gov/sites/production/files/2017-08/documents/608_update_letter.pdf.

EPA published a proposed rule in the Federal Register on October 1, 2018. “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes,” 83 Fed. Reg. 49,332–44 (“Proposed Rule”).³ The public comment period on the Proposed Rule has closed, and, as part of the regulatory process, EPA submitted a final rule for interagency review under Executive Order 12866. The interagency review concluded on January 30, 2020,⁴ and EPA is preparing the final rule for signature.

Pursuant to the Court’s September 14, 2018 and January 8, 2019 Orders, EPA will submit a further status report no later than 60 days from the date of this report.

Dated: February 4, 2020

Respectfully Submitted,

/s/ Patrick R. Jacobi
PATRICK R. JACOBI
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
Denver Place Building
999 18th Street
Suite 370 - South Terrace
Denver, CO 80202
Tel: (303) 844-1348
patrick.r.jacobi@usdoj.gov

³ <https://www.gpo.gov/fdsys/pkg/FR-2018-10-01/pdf/2018-21084.pdf>.

⁴ See <https://www.reginfo.gov/public/do/eoDetails?rrid=129652> (last visited February 3, 2020).

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February 2020, I served the foregoing document on all registered counsel through the Court's electronic filing system (ECF).

Dated: February 4, 2020

/s/ Patrick R. Jacobi
PATRICK R. JACOBI
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
Tel: (303) 844-1348
patrick.r.jacobi@usdoj.gov