

Environmental Protection Agency, (collectively, “EPA”) hereby move the Court to consolidate the above-captioned cases (collectively, the “Four Petitions”). Counsel for the EPA has conferred with counsel for Petitioners the National Environmental Development Association’s Clean Air Project (“NEDA/CAP”) and the Air Permitting Forum (“APF”), as well as for Intervenor in consolidated Case Nos. 17-1016 and 17-1017,¹ and with counsel for Petitioners the Natural Resources Defense Council (“NRDC”), the State Petitioners,² and movant-Intervenors in consolidated Case Nos. 20-1150 and 20-1151.³ No party has indicated opposition to the relief requested in this motion or an intent to file an opposition.⁴

As discussed further below, consolidation will conserve judicial and party resources, ensure efficient resolution of similar legal questions, and maintain

¹ Intervenor are the Alliance for Responsible Atmospheric Policy; Natural Resources Defense Council; Chemours Company FC, LLC; and Honeywell International, Inc. Doc. ## 1670449, 1670535.

² The State Petitioners are the State of New York, State of Connecticut, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of New Jersey, State of Oregon, Commonwealth of Virginia, State of Washington, District of Columbia, and City of New York. Doc. # 1842445.

³ Movant-Intervenors are APF and the Auto Industry Forum. Doc. # 1846626.

⁴ Specifically, NRDC and the State Petitioners do not oppose the relief requested in the motion; the Alliance for Responsible Atmospheric Policy, NEDA/CAP, APF, and the Auto Industry Forum take no position on the motion at this time. Counsel for the EPA was unable to contact the listed counsel for Chemours Company FC, LLC and Honeywell International, Inc., Richard Ayres, who retired from the practice of law at some time in 2018 and whose listed telephone number is no longer in service.

consistency in the Court's decisions. The Four Petitions involve similar or related legal issues, and similar parties.

BACKGROUND

1. NEDA/CAP and 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. This rule revised and updated many aspects of the refrigerant management requirements at 40 CFR part 82 subpart F and also extended requirements that had previously applied only to refrigerants containing an ozone-depleting substance to non-exempt substitute refrigerants.

2. Also on January 17, 2017, APF filed an administrative petition for reconsideration before EPA regarding the 2016 Amended Refrigerant Management Rule.⁵

3. On January 18, 2017, the Court ordered consolidation of the two petitions for review of the 2016 Amended Refrigerant Management Rule under Case No. 17-1016 (Doc. # 1656395) and established deadlines for initial filings and motions (Doc. # 1656386).

⁵ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0453-0228>.

4. Thereafter, EPA filed, and this Court granted, a series of unopposed motions to hold the challenges to the 2016 Amended Refrigerant Management Rule 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 NEDA/CAP and APF, 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,”⁶ 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; *see also* Doc. # 1767527.

5. During this abeyance, 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. The Administrator signed the final “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes” on

⁶ 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.

February 26, 2020 (hereinafter, the “2020 Revision”). The final rule was published in the *Federal Register* on March 11, 2020, and became effective on April 10, 2020. 85 Fed. Reg. 14,150–71.⁷ In the 2020 Revision, EPA revisited certain aspects of the 2016 Amended Refrigerant Management Rule, focusing particularly on the extension of the 40 CFR part 82 subpart F refrigerant management requirements to non-exempt substitutes.

6. On March 27, 2020, EPA filed an unopposed motion to hold consolidated Case Nos. 17-1016 and 17-1017 in further abeyance for 90 days to “allow EPA, Petitioners, Intervenors, and other entities to assess potential procedures for resolving the existing petitions for review in this case within the broader context of any related petitions for review of the 2020 Revision.” Doc. # 1835718. The Court granted the motion and set the deadline for motions to govern further proceedings for June 30, 2020. Doc. # 1836295.

7. NRDC and the State Petitioners filed petitions for review of EPA’s 2020 Revision on May 11, 2020. Doc. ## 1842171, 1842445. On the same day, the Court set deadlines for procedural motions and other preliminary filings in Case No. 20-1150. Doc. # 1842178.

⁷ <https://www.govinfo.gov/content/pkg/FR-2020-03-11/pdf/2020-04773.pdf>.

8. Also on May 11, 2020, NEDA/CAP filed an administrative petition before EPA regarding the 2020 Revision, which is styled as a petition for reconsideration or in the alternative a petition for rulemaking.⁸

9. On May 12, 2020, the Court ordered consolidation of the petitions for review of the 2020 Revision under Case No. 20-1150 and established a June 11, 2020 deadline for the State Petitioners' Docketing Statement Form and Statement of Issues. Doc. # 1842454.

10. On June 4, 2020, EPA filed an unopposed motion to extend all deadlines in consolidated Case No. 20-1150 by thirty days to "allow EPA, Petitioners, and other entities to assess potential procedures for resolving the petitions for review [of the 2020 Revision] in this case within the broader context of the petitions for review of the 2016 Amended Refrigerant Management Rule." Doc. # 1845716. The Court granted the motion and set the following schedule:

Certificate as to Parties, Rulings, and Related Cases	July 10, 2020
Docketing Statement Form	July 10, 2020
Underlying Decision from Which Petition Arises	July 10, 2020
Statement of Intent to Utilize Deferred Joint Appendix	July 10, 2020

⁸ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0629-0345>. NEDA/CAP also alternatively requests that EPA issue an interpretation or guidance regarding certain requirements under 40 CFR part 82 subpart F.

Statement of Issues to be Raised	July 10, 2020
Procedural Motions, if any	July 10, 2020
Certified Index to the Record	July 27, 2020
Dispositive Motions, if any	July 27, 2020

Doc. # 1846095.

ARGUMENT

11. This Court’s Handbook of Practice and Internal Procedures provides, “[i]n order to achieve the most efficient use of the Court’s resources, as well as to maintain consistency in its decisions . . . cases involving essentially the same parties or the same, similar, or related issues, may be consolidated.” Handbook of Practice and Internal Procedures, D.C. Circuit, § V.A.

12. The Four Petitions should be consolidated to conserve judicial and party resources, ensure efficient resolution of similar legal questions, and maintain consistency in the Court’s decisions.

13. The Four Petitions involve similar or related facts and legal issues. In the 2020 Revision, EPA revisited certain aspects of the 2016 Amended Refrigerant Management Rule, focusing particularly on the extension of the 40 CFR part 82 subpart F refrigerant management requirements to non-exempt substitutes. Specifically, EPA set out a revised interpretation in 2020 of its authority under the relevant statutory provisions that supported the extension of refrigerant

management requirements to non-exempt substitutes in the 2016 Amended Refrigerant Management Rule and considered how that revised interpretation applies to each of the refrigerant management requirements that were so extended. Even where EPA did not change its decision to extend refrigerant management requirements to non-exempt substitutes, the 2020 Revision is based on a revised interpretation of EPA's authority on this issue, and there is additional discussion of the refrigerant management requirements in the administrative record for that action.

14. Substantially similar parties are involved in the Four Petitions. The EPA is the Respondent in each petition, and there is overlap between the Petitioners and Intervenors in the Four Petitions. Indeed, NRDC is an Intervenor in the challenge to the 2016 Amended Refrigerant Management Rule in Case Nos. 17-1016 and 17-1017 and a Petitioner in the challenge to the 2020 Revision in Case No. 20-1150. APF is a Petitioner in the challenge to the 2016 Amended Refrigerant Management Rule in Case No. 17-1017 and has moved to intervene in the challenge to the 2020 Revision in Case Nos. 20-1150 and 20-1151. The differences in the parties involved in each case do not weigh against consolidation, since any party- or case-specific issues can be addressed in a consolidated posture. As the Court's Handbook of Practice and Internal Procedures notes, "[e]ach [consolidated] case retains some of its individual identity," and, if necessary,

actions can be taken in only one of the consolidated cases. Handbook of Practice and Internal Procedures, D.C. Cir., § V.5.

15. Consolidation will also promote administrative efficiency through combined management of procedural decisions, including scheduling. This is especially important here, where the same agency resources will be taxed in each case.

16. If the cases are consolidated, EPA will confer with counsel for all other parties to determine whether certain issues that are separate and distinct from the issues considered by the Agency in the 2020 Revision may be held in abeyance, especially in light of NEDA/CAP's and APF's administrative petitions for reconsideration, while briefing on the issues related to those considered in the 2020 Revision proceeds. EPA will make best efforts to coordinate with all parties and submit a joint proposal to the Court within ten days of any decision to consolidate the cases. This will further promote administrative efficiency.

WHEREFORE, EPA respectfully requests that the Court issue an order consolidating Case Nos. 17-1016, 17-1017, 20-1150, and 20-1151.

Dated: June 30, 2020

Respectfully Submitted,

/s/ Patrick R. Jacobi

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(2)(A) because it contains 1,679 words according to the count of Microsoft Word, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), and therefore is within the word limit of 5,200 words.

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this motion was prepared in Microsoft Word with the proportionally-spaced typeface of Times New Roman 14-point.

/s/ Patrick R. Jacobi
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June 2020, I served the foregoing document on all registered counsel through the Court's electronic filing system (ECF).

Dated: June 30, 2020

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