

ORAL ARGUMENT NOT YET SCHEDULED

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

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RMS OF GEORGIA, LLC,)	
)	
Petitioner,)	
)	
v.)	No. 22-1025
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, ET AL.,)	
)	
Respondents.)	
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**PETITIONER’S CONSENT MOTION TO GOVERN FURTHER
PROCEEDINGS**

Pursuant to this Court’s order of February 22, 2022 (ECF#1936059), Petitioner RMS of Georgia, LLC d/b/a Choice Refrigerants (“*Choice Refrigerants*”) hereby files this motion to govern further proceedings in newly re-numbered docket No. 22-1025. Undersigned counsel is authorized by counsel for Respondents U.S. Environmental Protection Agency, et al. (“*EPA*”), to represent that Respondents consent to this proposal.

Petitioner respectfully requests that the Court hold this case, No. 22-1025, in abeyance until a jurisdictional question now pending in a related case in the United States Court of Appeals for the Eleventh Circuit, No. 21-14213, is decided.

Procedural Posture

On December 6, 2021, Petitioner filed a petition for review in the Eleventh Circuit (ECF#011112054197) of EPA's final agency action published October 7, 2021, titled *Phasedown of Hydrofluorocarbons: Notice of 2022 Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020* (“*Notice*”) in No. 21-14213. On the same day, Petitioner filed a petition for review (ECF# 1926118) in this Court (formerly numbered No. 21-1253) of the same agency action.¹ Petitioner noted in its petition in this Court that its filing was protective in nature because Petitioner believes that the federal Clean Air Act places venue in the Eleventh Circuit because the allocation of allowances to Petitioner at issue is a locally or regionally applicable agency action that must be heard by the applicable regional appeals court. On December 22, 2021, the Eleventh Circuit issued a jurisdictional question requesting that the parties brief the issue of proper venue (ECF# 011112080778; ECF#011112080775). The parties in No. 21-14213 have now responded to the jurisdictional question (ECF#011112112493; ECF#

¹ This Court consolidated No. 21-1253 with lead case No. 21-1251 and case No. 21-1252 by order dated December 9, 2021 (ECF#1926124), but subsequently on motion of the government, severed No. 21-1253 by order dated February 22, 2022 (ECF#1936059) and re-numbered the present docket as No. 22-1025.

011112114675), which remains pending for decision in the Eleventh Circuit currently.

Suggestion to Hold in Abeyance

Petitioner suggests, and Respondents concur, that the Court order the following: (a) that this case No. 22-1025 be held in abeyance until the Eleventh Circuit rules on the jurisdiction and venue question now pending before it in No. 21-14213, (b) that the parties notify this Court when the Eleventh Circuit rules with respect to jurisdiction and venue in No. 21-14213, and (c) that the parties file a further motion to govern proceedings in this proceeding within 14 days of such ruling.

Holding this case in abeyance will avoid duplicate briefing of the same challenge to agency action and will conserve the resources of both courts. If the Eleventh Circuit accepts jurisdiction and hears the case in No. 21-14213, Petitioner will likely voluntarily dismiss its petition in this case No. 22-1025. Conversely, if this Court were to order briefing before the Eleventh Circuit rules, then the parties would expend limited resources on duplicate briefing. As Choice Refrigerants is a small business that has been economically aggrieved by the challenged agency action, this double expenditure of time and money would work a particular hardship on Petitioner. Moreover, parallel proceedings would risk inconsistent or conflicting decisions with respect to jurisdiction and the merits.

For these reasons, Petitioner respectfully requests that the Court hold this case in abeyance.

Dated: March 8, 2022

Respectfully submitted,

/s/ David M. Williamson

David M. Williamson

WILLIAMSON LAW + POLICY, PLLC

1850 M Street NW, Suite 840

Washington, D.C. 20036

Tel: (202) 256-6155

Fax: (703) 519-0076

maxwilliamson@williamsonlawpolicy.com

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

1. Pursuant to Fed. R. App. P. 27(d)(2), I hereby certify that the foregoing filing complies with the type-volume limitations. According to the word processing system used in this office, this document, exclusive of the caption, signature block, proposed order, and any certificates of counsel, contains 552 words.

2. Pursuant to Fed. R. App. P. 32(a)(5)-(6), I hereby certify that the foregoing filing complies with the typeface requirements and the type-style requirements because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

Dated: March 8, 2022

/s/ David M. Williamson

David M. Williamson

Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Rule 25(c) of the Federal Rules of Appellate Procedure and Circuit Rule 25, that on March 8, 2022, I filed the foregoing document using the Court's CM/EFC system, which will electronically serve all counsel of record registered to use the CM/ECF system.

/s/ Maeve E. McDermott

Maeve E. McDermott

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[proposed] ORDER

Upon consideration of Petitioner’s Consent Motion to Govern Further Proceedings, filed March 8, 2022, this Court has determined that Petitioner’s motion should be GRANTED.

Accordingly, IT IS HEREBY ORDERED that:

1. this case No. 22-1025 be held in abeyance until the United States Court of Appeals for the Eleventh Circuit rules on the jurisdiction and venue question now pending before it in related case No. 21-14213.

2. the parties promptly notify this Court when the United States Court of Appeals for the Eleventh Circuit rules on the jurisdiction and venue question currently pending in case No. 21-14213.

3. the parties file a further motion to govern proceedings in this case No. 22-1025 within 14 days of the United States Court of Appeals for the Eleventh Circuit ruling on the jurisdiction and venue question currently pending in case No. 21-14213.

SO ORDERED.

CIRCUIT JUDGE

Dated:

Copies to:

David M. Williamson
Williamson Law + Policy, PLLC
1850 M Street NW, Suite 840
Washington, D.C. 20036

Tsuki Hoshijima
U.S. DOJ-Enrd
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044

Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Ave NW
Washington, D.C. 20460