

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. 20-1309

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent)

STATUS REPORT

Respondent the United States Environmental Protection Agency respectfully submits this status report, pursuant to the Court's order dated August 17, 2020.

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) (hereinafter the "2016 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. Also on January 17, 2017, APF filed an administrative petition for reconsideration before EPA regarding the 2016 Rule.¹

On January 18, 2017, the Court ordered consolidation of the two petitions for review of the 2016 Rule under Case No. 17-1016. After EPA filed and this Court granted a series of unopposed motions for abeyance, those cases were held in abeyance pending further order of the Court. During this abeyance, EPA published a rule entitled “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes” in the *Federal Register* on March 11, 2020, which became effective on April 10, 2020. 85 Fed. Reg. 14,150–71. (“2020 Rule”). In the 2020 Rule, EPA revisited certain aspects of the 2016 Rule.

NRDC and State Petitioners² filed petitions for review of EPA’s 2020 Rule on May 11, 2020. Also on May 11, 2020, NEDA/CAP filed an administrative petition before EPA regarding the 2020 Rule, which is styled as a petition for reconsideration or in the alternative a petition for rulemaking.³

¹ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0453-0228>.

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.

³ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0629-0345>. NEDA/CAP also alternatively requested in this document that EPA issue an

On May 12, 2020, the Court ordered consolidation of the petitions for review of the 2020 Rule under Case No. 20-1150. On July 21, 2020, the Court then consolidated Case Nos. 17-1016, 17-1017, 20-1150, and 20-1151 and ordered EPA to file a motion to govern further proceedings by August 3, 2020.

On August 3, 2020, EPA filed an unopposed motion to govern further proceedings in these cases, which proposed—among other things—to sever and hold in abeyance four issues raised in NEDA/CAP and APF’s administrative petitions for reconsideration. On August 17, 2020, the Court severed these issues⁴ and assigned them to Case No. 20-1309. The Court directed that EPA file status reports at 90-day intervals in Case No. 20-1309.

Administrative proceedings relating to the issues in NEDA/CAP and APF’s administrative petitions to EPA that are assigned to Case No. 20-1309 are ongoing.

interpretation or guidance regarding certain requirements under 40 CFR part 82 subpart F.

⁴ Specifically, the Court severed “the challenge in No. 17-1016 to the Environmental Protection Agency’s (EPA) interpretation of the relationship between 40 C.F.R. §§ 82.157(d)(2) and 82.157(h)(1)(iii), and the challenges in No. 17-1017 to EPA’s decisions to amend the definition of ‘appliance’ to include ‘motor vehicle air conditioner’; to amend 40 C.F.R. § 82.156(a)(3) by adding new recordkeeping requirements for persons evacuating refrigerant from appliances; and to finalize changes to 40 C.F.R. §§ 82.156(a)(3) and 82.157(j).” Order, *NEDA/CAP v. EPA*, No. 20-1309, Doc. 1856810 (D.C. Cir. August 17, 2020).

As a result, this case should remain in abeyance. EPA's next status report is due February 15, 2021.

Respectfully submitted,

Dated: November 16, 2020

By: /s/ Benjamin R. Carlisle
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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2020, I caused a copy of the foregoing document to be served by the Court's CM/ECF system on all counsel of record in this matter.

/s/ Benjamin R. Carlisle
Benjamin R. Carlisle