

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1025

September Term, 2022

EPA-86FR55841

Filed On: July 7, 2023

RMS of Georgia, LLC, d/b/a Choice Refrigerants,

Petitioner

v.

Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency,

Respondents

Consolidated with 23-1104

No. 22-1313

EPA-87FR19683

EPA-87FR61314

RMS of Georgia, LLC, d/b/a Choice Refrigerants,

Petitioner

v.

Environmental Protection Agency and Michael S. Reagan, Administrator, United States Environmental Protection Agency,

Respondents

Consolidated with 22-1314

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1025**No. 22-1313****September Term, 2022**

BEFORE: Henderson, Walker, and Garcia, Circuit Judges

ORDER

Upon consideration of the motion to dismiss No. 22-1314, the opposition thereto, and the reply; the motion for partial summary vacatur in No. 22-1314, the opposition thereto, and the reply; the motion to sever and hold No. 22-1313 in abeyance, the response in support of the motion, and the opposition to the motion; the motions for leave to intervene filed by FluoroFusion Specialty Chemicals, Inc. (“FluoroFusion”) in No. 22-1025, et al., and No. 22-1313, the oppositions to those motions, and the replies; the unopposed motion for entry of a protective order in No. 22-1313, et al.; and the motions to govern future proceedings in No. 22-1025, et al., each containing a motion to consolidate with No. 22-1313, and the response to petitioner’s motion, it is

ORDERED that the motion to dismiss No. 22-1314 be granted. Petitioner Peter Williams failed to petition for review of the EPA’s denial of his new-market-entrant application and 2022 allocation of set-aside hydrofluorocarbon (“HFC”) allowances within the requisite sixty days of respondents publishing notice of such action in the Federal Register. See 42 U.S.C. §§ 7607(b)(1), 7675(k)(1)(C); Growth Energy v. EPA, 5 F.4th 1, 12–13 (D.C. Cir. 2021) (per curiam). To the extent Williams claims that the EPA has unreasonably delayed in ruling on his reconsideration petition, jurisdiction over that claim lies in the district court. See 42 U.S.C. §§ 7604(a), 7675(k)(1)(C); Mexichem Specialty Resins, Inc. v. EPA, 787 F.3d 544, 553 n.6 (D.C. Cir. 2015). Lastly, Williams lacks standing to challenge the EPA’s 2023 allocation of allowances because he has failed to demonstrate any injury “fairly traceable” to that agency action, as opposed to the EPA’s earlier action finding him ineligible for allowances. Nat’l Ass’n of Home Builders v. U.S. Army Corps of Engineers, 663 F.3d 470, 474 (D.C. Cir. 2011). It is

FURTHER ORDERED that the motion for partial summary vacatur in No. 22-1314 be dismissed as moot. It is

FURTHER ORDERED that the motion to sever and hold No. 22-1313 in abeyance be dismissed as moot. The dismissal of No. 22-1314 moots the request for severance, and the Eleventh Circuit’s earlier decision transferring No. 23-1104 to this court moots the request to hold No. 22-1313 in abeyance pending that decision. It is

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1025
No. 22-1313

September Term, 2022

FURTHER ORDERED that No. 22-1025, et al., be returned to the court's active docket and that the motions to consolidate No. 22-1025, et al., with No. 22-1313 be granted. It is

FURTHER ORDERED that the motions for leave to intervene be granted. It is

FURTHER ORDERED that the motion for entry of a protective order be granted, and the protective order attached hereto be entered. It is

FURTHER ORDERED that the EPA file a certified index to the record in the now-consolidated cases within seven days of the date of this order. The Clerk is directed to enter a briefing schedule.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate in No. 22-1314 until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam