No. __-_____

In the Supreme Court of the United States

PETER WILLIAMS,
Petitioner,

v.

ENVIRONMENTAL PROTECTION AGENCY, *ET AL.*,
Respondents.

ON PETITION FOR WRIT OF *CERTIORARI*
TO THE U.S. COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF *CERTIORARI*

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QUESTIONS PRESENTED

Petitioner Williams applied to enter a new Clean Air Act (the "Act") program distributing allocations annually. Although his application applied expressly as an individual with the dba New Era Group, the logo to his letterhead shows "New Era Group, Inc." and his email address was at neweragroupinc.com. Notwithstanding express statements in his application's body that he applied as an individual, EPA denied his application as an ineligible corporation in a letter that EPA loosely summarized in a Federal Register notice on April 5, 2022, announcing approvals for the new program beginning October 1, 2022. Through counsel, by letter on April 20, 2022, he sought reconsideration, including new evidence of the individual nature of his application. Contrary to 5 U.S.C. § 555, EPA has yet to act on—or even formally respond to—Williams' administrative petition for reconsideration. Two more petitions were filed to correct EPA's error, without a response. Williams timely petitioned for review when EPA issued new annual allocations for the next year without resolving his pending administrative petition.

Petitions for review must be filed within 60 days of EPA's publishing actions in the Federal Register, 42 U.S.C. § 7607(b)(1). In § 7607(d), the Act exempts most major EPA action from 5 U.S.C. §§ 553-557 and 706 of the Administrative Procedure Act ("APA"), but not the program here, to which the APA still applies.

The questions presented are:

1. Whether Williams *could have* petitioned for review using non-record rebuttal evidence within 60 days of EPA's initial action.

2. Whether the Act *required* Williams to petition for review within 60 days of EPA's initial action.

PARTIES TO THE PROCEEDING

Petitioner here and in the court of appeals is Peter Williams, who used the trade name New Era Group in his application at issue here.

The respondents here and in the court of appeals are the federal Environmental Protection Agency and its Administrator—Michael S. Regan—in his official capacity.

RULE 29.6 STATEMENT

Petitioner is a natural persons with no parent companies and no outstanding stock.

STATEMENT OF RELATED CASES

For purposes of this Court's Rule 14.1(b)(iii), this case arises from and is related to the following proceedings in the U.S. Court of Appeals for the District of Columbia Circuit and this Court:

- *Williams v. Envtl. Prot. Agency,* No. 22-1314 (D.C. Cir.). Dismissed July 7, 2023.
- *In re Williams,* No. 23-1269 (D.C. Cir.). Dismissed December 21, 2023.
- *Williams v. Envtl. Prot. Agency,* No. 23-1340 (D.C. Cir.). Docketed December 21, 2023; pending.

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PETITION FOR WRIT OF *CERTIORARI*

Peter Williams respectfully petitions this Court for a writ of *certiorari* to the U.S. Court of Appeals for the District of Columbia Circuit to review that Court's dismissal of his Clean Air Act petition for review as untimely under 42 U.S.C. § 7607(b)(1) and—to the extent he seeks to compel respondent Environmental Protection Agency and its Administrator (collectively, "EPA") to respond to Williams' long-pending petition for administrative reconsideration of EPA's denying his application as a new-market entrant—as filed in the wrong court under 42 U.S.C. § 7604(a)(2).

OPINIONS BELOW

The District of Columbia Circuit's unreported order is reprinted in the Appendix ("App") at 1a.

JURISDICTION

On July 7, 2023, the District of Columbia Circuit issues its Order dismissing the petition for review. By orders dated October 26, 2023, App:10a-11a, the panel and *en banc* court denied petitioners' timely petition for rehearing. By order dated January 11, 2024, the Circuit Justice extended the time within which to petition for a writ of certiorari to March 24, 2024. *In re Williams*, No. 23A631 (U.S. 2024). The Court of Appeals has jurisdiction under 42 U.S.C. § 7607(b)(1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appendix sets out the relevant constitutional, statutory, and regulatory provisions. App:12a-34a.

STATEMENT OF THE CASE

This is a case of mistaken identity in which Williams applied as an individual, but EPA chose to interpret his application to be on behalf of a defunct

corporation. Through counsel, Williams quickly petitioned EPA administratively to reconsider EPA's error, EPA has not acted on the administrative petition for reconsideration in almost two years.

In 2009, Williams registered neweragroupinc.com as an internet domain and had the "The New Era Group, Inc." logo on his letterhead prepared. Williams Decl. ¶7 (App:40a), but he never incorporated his consultancy. He used his logo, neweragroupinc.com email, and "New Era Group" trade name in EPA comments and communications with EPA prior to the incorporation of New Era Group, Inc., of Georgia. *Id.* ¶¶9-10 (App:40a).

Although Williams applied for hydrofluorocarbon ("HFC") allocations as an individual (App:37a-38a), EPA interpreted his "dba" tradename ("New Era Group") as referring to a defunct Georgia corporation, New Era Group, Inc. and denied his application by letter dated March 31, 2022 (App:4a-6a) both as ineligible given New Era Group, Inc.'s relationship with an existing market participant (RMS of Georgia) and for lacking corporate information that EPA would require only for corporate applicants. EPA announced (but did not publish) its denial of Williams' application in the Federal Register notice for the 2022 allocations. *Phasedown of Hydrofluorocarbons: Notice of 2022 Set-Aside Pool Allowance Allocations for Production and Consumption of Regulated Substances under the American Innovation and Manufacturing Act of 2020*, 87 Fed. Reg. 19,683 (Apr. 5, 2022) (App:7a-8a).

Through counsel, on April 20, 2022, Williams petitioned EPA administratively to correct EPA's error, but EPA has never acted on his petition. Williams supplemented his administrative petition through counsel by letter dated December 12, 2022,

and RMS of Georgia—the company with which EPA believed Williams or New Era Group, Inc. had corporate relations—administratively petitioned EPA to correct its error by letter dated December 29, 2022. EPA did not act on the pending administrative petition in time to include Williams in the 2023 allocation. *Phasedown of Hydrofluorocarbons: Notice of 2023 Allowance Allocations for Production and Consumption of Regulated Substances under the American Innovation and Manufacturing Act of 2020*, 87 Fed. Reg. 61,314 (Oct. 11, 2022). EPA similarly excluded Williams from the 2024 allocation without action on his pending petition for administrative reconsideration.

On December 12, 2022, Williams petitioned this Court for review of EPA's 2023 allocation as constructively denying his administrative petition. He also argued, in the alternative, that the Appointments Clause required the EPA staff who make these billion-dollar disbursements to be confirmed by the Senate. A motions panel dismissed Williams's petition for review as an untimely challenge to EPA's action in the Federal Register on April 5, 2022 (App:2a) and denied as moot Williams' motion for summary *vacatur*.

REASONS TO GRANT THE WRIT

The Clean Air Act's control over so many facets of the national economy and even daily life make it critical that federal courts ensure the judicial review that Congress enacted, consistent with constitutional and prudential guidelines. Given that so much of the litigation in the Act funnels through the District of Columbia Circuit as "nationally applicable," *see* 42 U.S.C. § 7607(b)(1), this Court should not wait for circuit splits to arise when the District of Columbia

Circuit errs. The Court should grant the writ to review at least four issues in this action.

1. The court of appeals applied cases under the Clean Air Act generally, without distinguishing the bulk of major EPA actions that fall under the Act's abbreviated review procedures under § 307(d), *see* 42 U.S.C. § 7607(d)(1)(a)-(u) (listing the EPA actions subject to § 307(d)) *vis-à-vis* EPA actions like this matter that remain subject to the Administrative Procedure Act, 5 U.S.C. §§ 551-706 ("APA"), instead. *See* Section I.B.1, *infra.*

2. That "APA versus § 307(d)" distinction bears on the timing of judicial review of EPA action on petitions for administrative reconsideration. *See* Section I.B.2, *infra.*

3. This action requires reviewing when agency inaction can be reviewed as agency action, including a split in circuit authority on the degree of agency inaction required to review inaction as action under the APA. *See* Section II.B.1, *infra.*

4. This action also requires distinguishing between venue and jurisdiction on the issue of which courts may or must address APA claims for EPA action unlawfully withheld versus EPA action unlawfully delayed under 5 U.S.C. § 706(1) and 42 U.S.C. §§ 7604(a)(2), 7607(b)(1). *See* Sections II.B.2-II.B.3, *infra.*

These important reasons justify this Court's resolving these crucial issues expeditiously.

I. REVIEW OF EPA'S INITIAL DENIAL WAS NOT AVAILABLE WITH WILLIAMS' NEW INFORMATION BY JUNE 6, 2022.

Before finding a challenge to EPA's initial denial untimely for not being filed within 60 days of the

Federal Register notice on April 5, 2022, a court first must find that—when Williams filed his petition for administrative reconsideration—a challenge was *ripe*. A lack of constitutional or prudential ripeness would stall the 60-day clock until the claim ripened:

> We have held in other cases involving the confrontation between a statutory bar and a claim not yet prudentially ripe that a time limitation on petitions for judicial review can run only against challenges ripe for review. Our reading of 42 U.S.C. § 7607(b) does not contradict this precedent.

Louisiana Envtl. Action Network v. Browner, 87 F.3d 1379, 1385 (D.C. Cir. 1996) (internal quotations and alterations omitted). The factual elements of EPA's denial of Williams' application require not only the factual development that his administrative petition provided, but potentially also EPA's application of its unique new-entrant rule to those facts.

A. Even if not constitutionally required, prudential considerations warranted giving EPA an opportunity to apply its new-entrant rule to Williams' facts.

When EPA staff revisit the issue aided by counsel, they will abandon the legally impossible conflation of Williams with a corporation.[1] Until then, however, a court would have no factual background against

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[1] "An individual doing business under a trade name is clearly a sole proprietor distinct under Georgia law from a corporation in which that individual holds stock." *Miller v. Harco Nat'l Ins. Co.*, 274 Ga. 387, 390 (2001); *see also BellSouth Corp. v. FCC*, 162 F.3d 678, 684 (D.C. Cir. 1998) ("it is obvious that there are differences between a corporation and an individual under the law").

which to review EPA's implausible *sua sponte* analysis applying the corporate-affiliation test in 40 C.F.R. § 84.15(c)(2): "Where the record provides inadequate factual information to resolve novel legal claims, the court can dismiss those claims as unripe." *John Doe, Inc. v. DEA*, 484 F.3d 561, 567 (D.C. Cir. 2007). For that reason, EPA's initial action might remain unripe for review without EPA's response to Williams' administrative petition.

Ripeness has both a constitutional element and a prudential element, and prudential ripeness has two elements: "the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). For statutes like the Clean Air Act with expedited review provisions, courts can disregard the hardship prong. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 479-80 (2001); *Eagle-Picher Indus., Inc. v. United States Envtl. Prot. Agency*, 759 F.2d 905, 918 (D.C. Cir. 1985) ("no purpose is served by proceeding to the second prong"). The fitness prong involves at least three issues:

> We consider such factors as whether the issue presented is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final.

Her Majesty the Queen v. United States EPA, 912 F.2d 1525, 1532 (D.C. Cir. 1990); *Energy Future Coal. v. EPA*, 793 F.3d 141, 146 (D.C. Cir. 2015) (same). While the first and third criteria may be sufficiently met here, the second is not.

The missing aspect of the fitness prong denies both EPA and the Court the opportunity to fulfil their respective roles:

> The agency is denied full opportunity to apply its expertise and to correct errors or modify positions in the course of a proceeding, the integrity of the administrative process is threatened by piecemeal review of the substantive underpinnings of [agency action], and judicial economy is disserved because judicial review might prove unnecessary if persons seeking such review are able to convince the agency to alter a tentative position. Such considerations weigh strongly when the court is asked to rule on a factual question particularly within the agency's bailiwick as opposed to a purely legal question within the primary competence of the courts.

Pub. Citizen Health Research Grp. v. Comm'r, Food & Drug Admin., 740 F.2d 21, 31-32 (D.C. Cir. 1984). Prior to Williams' administrative petition, the factual record was incomplete regarding the relationship that EPA imagined to exist between Williams and RMS through New Era Group, Inc.

The Court could *reject* EPA's position based on the purely legal issue that natural persons cannot do business as corporations. By contrast, it would require facts not in the record without Williams' administrative petition for the Court to *uphold* EPA's rationale for *sua sponte* finding that three entities—Williams, New Era Group, Inc., and RMS of Georgia, LLC—are corporate affiliates within the meaning of 40 C.F.R. § 84.15(c)(2). Under *Public Citizen Health Research Group*, *supra*, EPA deserved the opportunity either to correct its error or to explain its unique view

of corporate affiliation. EPA has proved recalcitrant in refusing either to affirm or to correct its initial error after numerous requests from Williams and RMS.

B. The APA and § 307(d) apply different timing criteria to EPA's action—and inaction—on administrative petitions.

Perhaps because most Clean Air Act litigation has involved the major programs listed in § 307(d)(1), there is not much law on how the APA applies to EPA action outside § 307(d). While § 307(d)'s procedures are a form of "APA-lite," the two standards obviously differ in some ways, or Congress would not have taken the time to draft § 307(d)'s abbreviated procedures. As shown in this section, the APA continues to apply in matters outside § 307(d), and the two procedures—the APA and § 307(d)—impose different standards to this matter.

1. The APA applies outside § 307(d).

The APA requires a response to Williams' petition for administrative reconsideration and provides judicial review to "compel agency action unlawfully withheld." 5 U.S.C. §§ 555(b), 706(1).[2] That future action is the final agency action that the APA reviews when an agency denies an administrative petition, and that final agency action had not occurred by June 6, 2022.

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[2] By way of example, even the military—which is exempt from so much of the APA, 5 U.S.C. §§ 551(1)(F)-(G), 553(a)(1)-(2), 554(a)(4), 701(b)(1)(F)-(G)—is subject to judicial review under 5 U.S.C. § 706 for violating 5 U.S.C. § 555(b). *Roelofs v. Sec'y of Air Force*, 628 F.2d 594, 600 (D.C. Cir. 1980); *accord Nicholson v. Brown*, 599 F.2d 639, 648 n.9. (5th Cir.), *rehearing denied*, 605 F.2d 209 (5th Cir. 1979).

Specifically, under the APA, a "reviewing court shall … compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The action reviewed when EPA acts (or fails to act[3]) on a petition for administrative reconsideration under the APA is the latter act (or failure to act) of withholding or denying reconsideration, not the original action that a petitioner asks an agency to reconsider. *Interstate Commerce Comm'n v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 284-85 (1987); *Nat'l Labor Relations Bd. Union v. Fed. Labor Relations Auth.,* 834 F.2d 191, 195-196 (D.C. Cir. 1987); *cf. Sierra Club v. Thomas,* 783, 792-97 (D.C. Cir. 1987). Simply put, by June 6, 2022, § 307(b)(1)'s 60-day clock had not begun to run on EPA's failure to grant Williams' petition for administrative reconsideration.[4]

Prior to the 1977 enactment of § 307(d)'s abbreviated procedures and partial APA exemption,[5] the APA governed judicial review under § 307(b)(1):

> Being silent on the scope of judicial review, the Clean Air Act incorporates the APA's mandate that agency "action, findings, and conclusions" be struck down if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

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[3] Agency "action" includes inaction. 5 U.S.C. § 551(13).

[4] If § 307(d) applied, the 60-day window would have begun on April 5, 2022. *See* 42 U.S.C. § 7607(d)(7)(B). But since § 307(d) does not apply, *see* Section I.B, *supra*, § 307(d)(7)(B) does not apply either.

[5] "The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies." 42 U.S.C. § 7607(d)(1).

Amoco Oil Co. v. EPA, 501 F.2d 722, 731 (D.C. Cir. 1974) (quoting 5 U.S.C. § 706(2)(A)); *accord Ethyl Corp. v. EPA*, 541 F.2d 1, 33-35 (D.C. Cir. 1976); *Nat'l Asphalt Pavement Ass'n v. Train*, 539 F.2d 775, 786 (D.C. Cir. 1976). For Clean Air Act proceedings outside § 307(d), the Clean Air Act remains "silent on the scope of judicial review" and thus the APA *still governs* those Clean Air Act actions.[6]

For statutes—such as the Clean Air Act—that are or were enacted after the APA's enactment, the APA applies unless expressly exempted. *See* 5 U.S.C. § 559; *Dickinson v. Zurko*, 527 U.S. 150, 154-55 (1999). The Clean Air Act expressly exempts only those EPA actions subject to the provisions of § 307(d) from the indicated provisions of the APA (*i.e.*, 5 U.S.C. §§ 553-557, 706). *See id.*; *Envtl. Integrity Project v. EPA*, 864 F.3d 648, 649 (D.C. Cir. 2017) (Clean Water Act). Even if this were a close case (and it is not), repeals by implication are disfavored, *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662 (2007), and "this canon of construction applies with particular force when the asserted repealer would remove a remedy otherwise available." *Schlesinger v. Councilman,* 420 U.S. 738, 752 (1975). By negative implication of the Clean Air Act's express terms in § 307(d), as well as pursuant to 5 U.S.C. § 559, the APA generally and 5 U.S.C. 555, 706 specifically remain

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[6] The APA's venue provision explains why the Clean Air Act's APA review occurs in the Court of Appeals under § 307(b)(1), rather than the usual venue in district courts. *See* 5 U.S.C. § 703 (discussing "special statutory review proceeding relevant to the subject matter in a court specified by statute").

applicable to EPA action under the Clean Air Act that falls outside the provisions of § 307(d).[7]

2. The APA and § 307(d) apply different timing to administrative petitions for reconsideration.

As general matters of administrative law and statutory construction, seeking administrative reconsideration based on additional evidence or other added information renders the initial agency action nonfinal for purposes of judicial review, and review is applied instead to the agency action on reconsideration. *See Bhd. of Locomotive Eng'rs*, 482 U.S. at 284-85. That two-faceted statement of administrative law is only half true to the portions of the Clean Air Act where the APA applies.

In 1990, Congress amended § 307(b)(1) to provide that the pendency of administrative petitions for reconsideration does not render EPA action nonfinal or alter the date for judicial review of that EPA action:

> The filing of a petition for reconsideration … of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

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[7] Then-Judge Kavanaugh made a similar point in a partial dissent in *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544 (D.C. Cir. 2015), where he argued that 5 U.S.C. § 705—which § 307(d) does not displace—continues to apply to EPA actions covered by § 307(d). *Id.* at 562 (Kavanaugh, J., dissenting in part).

42 U.S.C. § 7607(b)(1). The amendment abrogated *West Penn Power Co. v. United States Envtl. Prot. Agency*, 860 F.2d 581, 588 (3d Cir. 1988), which held that the Court of Appeals jurisdictionally *could not review* the otherwise final EPA action while a petition for administrative reconsideration was pending.

The 1990 amendments thus stand—at a minimum, and Williams respectfully submits also at a maximum—for the proposition that EPA's action was sufficiently final for statutory subject-matter jurisdiction on June 6, 2022. *But see* Section I.A, *supra* (EPA action was unripe). While the 1990 amendment thus removed the non-finality half of the traditional administrative-law framework, it does not—and could not consistent with due process—eliminate the second half (namely, that the agency action on the petition for reconsideration is reviewable under 5 U.S.C. § 706.

Even under § 307(d)'s truncated administrative procedures, EPA must "keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information." *Id.* § 7607(d)(5)(iv). By petitioning for administrative reconsideration on April 20, 2022, with the corrective information that he applied as a natural person, not as a corporation, Williams complied with the spirit of § 307(d). If § 307(d) had applied, the 60-day window would have begun on April 5, 2022. *See* 42 U.S.C. § 7607(d)(7)(B). But since § 307(d) does not apply, *see* Section I.B.1, *supra*, § 307(d)(7)(B) does not apply either. As such, Williams has no 60-day problem with seeking review of APA action or inaction that EPA takes on his still-pending petition.

II. EVEN IF WILLIAMS *COULD* PETITION BY JUNE 6, 2022, § 307 DID NOT *REQUIRE* IT.

Assuming *arguendo* that ripeness presented no barrier to Williams' having petitioned for review by June 6, 2022, that would not necessarily make Williams' petition filed by December 12, 2022, untimely for two reasons. The first reason is mundane and hinges on what event triggers the 60-day clock. The second is a complex question of administrative law applied to the 1990 amendments to § 307(b)(1) for the types of EPA action that fall outside § 307(d). Both are important, given the Clean Air Act's impact on the national economy and day-to-day life.

A. EPA never published its denial, so the 60 days never began to run.

Under §307(b)(1), the 60-day deadline to petition for review runs from *publication* of the EPA action in the Federal Register. 42 U.S.C. §7607(b)(1); *Harrison v. PPG Indus.*, 446 U.S. 578, 605 & n.7 (1980) (Stevens, dissenting).[8] EPA has made this clear for applicability determinations:

> OAQPS tracking coordinator is also responsible for providing notice of such responses in the *Federal Register* on a periodic

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[8] *See also Growth Energy v. EPA*, 5 F.4th 1, 12 (D.C. Cir. 2021) ("Clean Air Act requires that challenges to a final EPA action be filed within sixty days of its *publication* in the Federal Register or the occurrence of valid *after-arising grounds*") (emphasis added); *Ass'n of Battery Recyclers v. EPA*, 716 F.3d 667, 671 (D.C. Cir. 2013); *API v. EPA*, 706 F.3d 474, 477 (D.C. Cir. 2013); *North Carolina v. EPA*, 531 F.3d 896, 905 (D.C. Cir. 2008); *Appalachian Power Co. v. EPA*, 251 F.3d 1026, 1032 (D.C. Cir. 2001); *Clean Air Implementation Project v. EPA*, 150 F.3d 1200, 1204 (D.C. Cir. 1998); *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 459 (D.C. Cir. 1998).

> basis. *Federal Register* publication of final actions like applicability determinations is particularly important, as such publication starts a 60-day period for judicial challenges to EPA's decision.

EPA Office of Air Quality Planning and Standards, *EPA Process Manual for Responding to Requests Concerning Applicability and Compliance Requirements of Certain Clean Air Act Stationary Source Programs*, at 47 (July 2020) (App:34a). For the applicability determinations that are an archetypal non-rule final EPA action under the Clean Air Act, EPA publishes an annual Federal Register notice that abstracts each EPA letter and links to the full letters. *See*, *e.g.*, 86 Fed. Reg. 10,567, 10,568-81 (2021). EPA neither published nor even abstracted the EPA action on Williams' application in the Federal Register, *see* App:7a-8a, so the 60-day clock has not even begun to run.

Even if a letter recipient like Williams is *on notice*, §307(b)(1) sets a single deadline for all interested parties, based on public notice in the Federal Register, not based on private notice to individual parties. *See* 42 U.S.C. §7607(b)(1). EPA's Federal Register notice does not specify the basis for denying Williams' application, as evidenced by the fact that RMS did not know about EPA's action—which regulatorily tied RMS to Williams—until Williams filed EPA's letter with his petition for review in this matter. And RMS noticed the letter only because RMS also challenged the same EPA action for different reasons. If the 60-day window has not started to run, Williams' petition for review was not untimely.

B. Williams can challenge EPA's inaction on his administrative petition here.

With exceptions not relevant here, the APA requires final agency action before a party can seek judicial review. 5 U.S.C. § 704. While EPA did not act on Williams' long-pending petition for administrative reconsideration, EPA did issue the 2023 allocations without deciding Williams' eligibility issue. Williams contends that the indisputably final EPA action on the 2023 allocation qualifies as a sufficiently final EPA action on his application and administrative petition for him to seek judicial review as a denial.

Courts interpret finality in a "pragmatic" and "flexible" way, *Abbott Labs.,* 387 U.S. at 149-50; *Nat'l Ass'n of Home Builders v. U.S. Army Corps of Engrs.,* 417 F.3d 1272, 1279 (D.C. Cir. 2005) (same), "rather than a technical construction." *Cohen v. Beneficial Indus. Loan Corp.,* 337 U.S. 541, 546 (1949) (construing 28 U.S.C. §1291); *Mathews v. Eldridge,* 424 U.S. 319, 331 n.11 (1976) (analogizing *Cohen* and §1291 to statutory finality). Courts must evaluate "competing considerations underlying all questions of finality—the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 171 (1974). Under the practical definition, EPA has acted with sufficient finality for Williams to seek judicial review.

Finality has two prongs: (1) a consummated decisionmaking process, and (2) the agency action is "one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear,* 520 U.S. 154, 177-78 (1997) (interior quotations omitted). Both conditions are met:

- First, although there has been no consummated decision on Williams' application, EPA did conclude a review of the program and proceeded to issue the new annual allocations.
- Second, EPA's decision produced the legal consequence that Williams did not receive allocations for 2023.

EPA thus acted with sufficient finality for a court to review EPA's action and related inaction.

1. EPA's issuance of the 2023 allocation without action on the administrative petition constructively denied the petition, triggering a new.

When inaction has the same effect as the denial of relief, the inaction is sufficiently final for merits review. *See*, *e.g.*, *Coal. for Sustainable Res., Inc. v. United States Forest Serv.*, 259 F.3d 1244, 1251 (10th Cir. 2001); *Sierra Club v. Peterson*, 228 F.3d 559, 568 (5th Cir. 2000); Daniel P. Selmi, *Jurisdiction To Review Agency Inaction Under Federal Environmental Law*, 72 IND. L.J. 65, 90-102 (1996) (describing five judicial tests for determining whether agency inaction is final); Peter H.A. Lehner, *Judicial Review of Administrative Inaction*, 83 COLUM. L. REV. 627, 652-55 (1983) (student note); *but see Home Builders Ass'n v. United States Army Corps of Eng'rs*, 335 F.3d 607, 616 (7th Cir. 2003) (requiring egregious delay for mere inaction to convert to denial).

Withholding "formal acknowledgement" of denial is immaterial if the "practical effect" constitutes a "constructive denial." *Friedman v. FAA*, 841 F.3d 537, 541-42 (D.C. Cir. 2016). By issuing 2023 allocations without resolving Williams' pending administrative petition, EPA constructively *denied* the petition.

Sierra Club v. Thomas, 828 F.2d 783, 793 (D.C. Cir. 1987); *Colorado v. Dep't of Interior,* 880 F.2d 481, 485-86 (D.C. Cir. 1989); *Hercules, Inc., v. EPA,* 938 F.2d 276, 282 (D.C. Cir. 1991). Under the circumstances, inaction can be action. *See* 5 U.S.C. §551(13).

2. § 706(1) authorizes granting Williams' application without further EPA action.

At least with respect to Clean Air Act issues to which the APA applies, the panel decision sets up a false jurisdictional dichotomy between appellate review of EPA action under § 307(b)(1) and district court review of EPA inaction under § 304(a)(2). By using both the phrase "unlawfully withheld" and the phrase "unreasonably delayed" in the same sentence, 5 U.S.C. § 706(1), the APA recognizes that the two are not the same. *Maracich v. Spears*, 570 U.S. 48, 68-70 (2013) (courts should read statutes to avoid surplusage). Importantly, the 1990 amendments transferred only the unreasonable-delay component to the citizen-suit provision, 42 U.S.C. § 7604(a), not the unlawfully-withheld component.

The APA's "unlawfully withheld" clause is synonymous with mandamus. *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 19 n.10 (2013). At some point, as this Court and the lower courts have recognized, a court faced with agency inaction must decide whether to grant the agency action unlawfully withheld. *Id.* (citing 5 U.S.C. § 706(1)); *Payne Enters., Inc. v. United States*, 837 F.2d 486, 494 (D.C. Cir. 1988) (citing *Long v. United States IRS*, 693 F.2d 907, 910 (9th Cir. 1982)) (requiring declaratory relief); *Am. Dairy of Evansville, Inc. v. Bergland*, 627 F.2d 1252, 1262 (D.C. Cir. 1980) (granting interim relief, citing 5

U.S.C. § 706(1)). That is a remedy question, not a jurisdictional question.

Specifically, it is a question of equity, although the APA codified equitable principles of judicial review. Under both equity and the APA, courts have broad powers to craft an equitable resolution:

> The essence of equity jurisdiction has been the power of the Chancellor to do equity and to [mold] each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.

Winter v. Natural Resources Def. Council, Inc., 555 U.S. 7, 51 (2008) (internal quotation marks omitted). Under all these strands of authority, a reviewing court plainly *can* issue the ultimate relief that Williams seeks, without waiting for EPA to act.

3. The district courts lack jurisdiction to issue merits relief.

Although the 1990 amendments transferred to the district courts actions to compel EPA to take certain nondiscretionary actions, 42 U.S.C. § 7604(a)(2), that transfer does not apply to compelling final EPA action that alters existing EPA final agency action reviewable under 42 U.S.C. § 7607(b)(1). *Env't Def. Fund v. Thomas*, 870 F.2d 892, 899 (2d Cir. 1989); *Sierra Club v. Browner*, 130 F. Supp. 2d 78, 90 (D.D.C. 2001). Nor could it. Transferring ultimate relief over granting a nondiscretionary change to an existing final EPA action would transfer the Court of Appeals' exclusive § 307(b)(1) jurisdiction to district courts. That does not follow from the 1990 amendments to § 304(a)(2) for two reasons.

First, the district courts' authority does not extend to review that would affect EPA action reviewable in

the courts of appeal. *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 553 n.6 (D.C. Cir. 2015) (citing S. REP. NO. 101-228, at 374 (1989) for proposition that the 1990 amendments to § 304 abrogated *Sierra Club v. Thomas* only "partly"). As the Senate Report makes clear, inaction that refuses to modify a prior final EPA action or that itself constitutes a final refusal to act is reviewable in the courts of appeals:

> [W]here adjudication of a challenge to EPA inaction would effectively require a court to overturn final action previously taken by the EPA, jurisdiction over the challenge would [lie] in the court of appeals under section 307(b)(l). See *Indiana & Michigan Electric Co. v US. EPA*, 733 F. 2d 489, 490 (7th Cir. 1984) (courts of appeals have jurisdiction over cases where a complaint about agency inaction is "embedded" in a challenge to agency action). In addition, where the EPA inaction culminates in a formal decision not to take action, such a situation would constitute a "denial" within the meaning of APA section 551(13) and would likewise be reviewable in the courts of appeal under section 307(b)(1).

S. REP. NO. 101-228, at 374. Granting Williams' application is not a simple binary yes-no decision that affects only Williams, as the Eleventh Circuit held in requiring RMS to sue in the District of Columbia Circuit because RMS's claim about *its allocation* necessarily affected *all other allocations*: "Rather, the Allocation Notice is better understood as one EPA action, and RMS's allocation an inseparable component of it." *RMS of Ga., LLC v. United States EPA*, 64 F.4th 1368, 1374 (11th Cir. 2023). Under the circumstances, Williams' petition here falls within the

exception to the 1990 amendment recognized in *Mexichem*.

Second, prodding EPA to act is not the "same genre" as the merits relief that Williams seeks. *El Rio Santa Cruz Neighborhood Health Ctr. v. United States HHS*, 396 F.3d 1265, 1271 (D.C. Cir. 2005) (quoting *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990) ("*WEAL*")). In *WEAL*, suing schools to stop discrimination was deemed the same genre as suing the Department of Education to enforce its anti-discrimination rules. *WEAL*, 906 F.2d at 751. Prodding EPA to act is not the same genre as merits relief (*i.e.*, the former is procedural, the latter substantive). As indicated, APA review includes both agency action "unlawfully withheld" and agency action "unreasonably delayed," 5 U.S.C. § 706(1), but the 1990 amendments transferred only the latter to the citizen-suit provision, 42 U.S.C. § 7604(a), not the former. As such, the courts of appeals retain their exclusive jurisdiction over claims of EPA action unlawfully withheld. That answers the *jurisdictional* question, even if a court of appeals elects—in its *discretion*—to order a timely agency response in lieu of reaching the merits.

III. THIE QUESTIONS PRESENTED ARE IMPORTANT, RECURRING, AND SQUARELY PRESENTED.

The Clean Air Act's wide scope covers not only key national industries—such as electrical power, fuel, and transportation—that indirectly affect everyone but also direct effects such land-use planning, consumer products, and appliances. As such, the Act's implementation is vitally important and worthy of this Court's review on the following recurring issues presented here.

- The APA's ongoing application to—and divergent standards for—reviewing EPA actions outside the Clean Air Act's abbreviated review procedures in § 307(d).
- The trigger—namely, notice or publication—for the 60-day window for review under § 307(b)(1).
- A court's authority under 5 U.S.C. § 706(1) to issue merits relief—as opposed to merely setting a time for the agency to act—when an agency fails to act.
- The division of jurisdiction—for EPA inaction—between the courts of appeals under § 307(b)(1) and the district courts under § 304(a)(2).

All these purely legal and recurring issues are important and squarely presented here.

CONCLUSION

The petition for a writ of *certiorari* should be granted.

March 25, 2024

Respectfully submitted,

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Counsel for Petitioner

APPENDIX

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

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

BEFORE: Henderson, Walker, and Garcia, Circuit Judges

O R D E R

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

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 31, 2022

OFFICE OF
AIR AND RADIATION

Mr. Peter Williams
New Era Group
709 Pickering Drive Unit B
Murrells Inlet, South Carolina 29567

Dear Mr. Peter Williams,

This letter communicates EPA's decision regarding Peter Williams DBA New Era Group (New Era Group)'s application for set-aside allowances under 40 CFR § 84.15(c). In accordance with the methodology finalized in the final Hydrofluorocarbon (HFC) Allowance Allocation and Trading Framework Rule (HFC Allocation Framework Rule), EPA issued allowances on October 1, 2021, to companies that had provided data on their historic import and production of HFCs, as well as entities that use HFCs in six applications specified by Congress. EPA also established the set-aside pool of allowances for a limited set of end users and importers (see 86 FR 55116). The set-aside pool of allowances was established for three groups: end users that qualify for application-specific allowances; existing importers that were not required to report under 40 CFR part 98 (i.e., the Greenhouse Gas Reporting Program); and new market entrants. New Era Group submitted an application for set-aside allowances as a new market entrant. The regulatory

language specifies that set-aside allowances are available for entities "who are newly importing regulated substances, do not share corporate or common ownership, corporate affiliation in the past five years, or familial relations with entities receiving allowances through this rule." 40 CFR § 84.15(c)(2). EPA also explained in the final rule that new market entrants may include companies that had previously imported HFCs in any prior year but exited the business by 2020 and who did not otherwise qualify to receive general pool allowances (see 86 FR 55157).

After reviewing New Era Group's set-aside application and supporting information available to the Agency, EPA has determined that New Era Group is not eligible for allowances under the set-aside pool as a new market entrant and is therefore denying New Era Group's application. Based on the information before the Agency, EPA has determined that New Era Group does "share corporate or common ownership, corporate affiliation in the past five years, or familial relations" with an entity receiving allowances through this rule, specifically RMS of Georgia.

Public data available to the Agency from the State of Georgia Secretary of State confirms that you and the owner of a company who received allowances under the final HFC Allocation Framework Rule are both listed as officers for "New Era Group Inc" as recently as 2019. This equates to corporate affiliation in the past five years with an entity receiving allowances through this rule, and therefore disqualifies New Era Group's application in accordance with EPA's regulations.

Further, the application submitted for new market entrant set-aside allowances was incomplete. EPA regulations at 40 CFR § 84.15(d)(2) require applicants "to be eligible for consideration" to provide "the complete ownership of the company (with percentages of ownership)" 40 CFR § 84.15(d)(2)(i). After Agency outreach explaining the relevant requirements, information submitted by the applicant failed to show the complete ownership of the company (with percentages of ownership). New Era Group also failed to provide as part of its application, "The date of incorporation and State in which the company is incorporated" 40 CFR § 84.15(d)(2)(iv), and the "State license identifier" 40 CFR § 84.15(d)(2)(v). For these reasons, EPA is denying New Era Group's application.

As of January 1, 2022, if New Era Group chooses to import any of the HFCs listed at 40 CFR Part 84 Appendix A, or blends containing any of those HFCs, the company will need to acquire allowances from another allowance holder by the time of import.

If you have questions about the content of this letter, please contact us at HFCAllocation@epa.gov. More information about the regulatory requirements, including fact sheets, frequently asked questions, and a list of existing allowance holders is available at https://www.epa.gov/climate-hfcs-reduction.

Sincerely,

/s/

Cynthia A. Newberg

Director, Stratospheric Protection Division

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0669; FRL–9116–02–OAR]

Phasedown of Hydrofluorocarbons: Notice of 2022 Set-Aside Pool Allowance Allocations for Production and Consumption of Regulated Substances Under the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that on March 31, 2022, the Agency issued hydrofluorocarbon allowances to applicants that met the applicable criteria from the set-aside pool established in EPA's 2021 final rule titled *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act*. In accordance with this final rule, the Agency redistributed allowances remaining in the set-aside pool to entities that received general pool production and consumption allowances on October 1, 2021. Both the set-aside allocation and the general pool reallocation were announced on the Agency's website on March 31, 2022, and entities were notified either by letter or electronic mail of the allocation decisions. The Agency also provided notice to certain companies on March 31, 2022, that the Agency intends to retire an identified set of those companies' allowances in accordance with the administrative consequences provisions established in the final rule.

* * *

Under the third set-aside category, for new market entrants, 45 entities submitted applications by the deadline of December 6, 2021. EPA is denying

applications from seven entities, CAILLECH LLC, ChemPenn, LLC, ComStar International Inc., ISOSTU LLC, J&J AC Supply Inc, Kim Stilwell, and Peter Williams DBA New Era Group, because they are ineligible under 40 CFR 84.15(c)(2). The applicants were ineligible for at least one of the following reasons: [*19685]

(1) Did not submit complete applications,

(2) were not newly importing regulated substances, or

(3) shared corporate or common ownership, corporate affiliation in the past five years, or familial relations with entities receiving allowances on October 1, 2021.

Consistent with the provisions in 40 CFR 84.15, EPA has allocated allowances for new market entrants to the entities listed in Table 2.

* * *

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such rule or action.

Hans Christopher Grundler,

Director, Office of Atmospheric Programs.

[FR Doc. 2022–07152 Filed 4–4–22; 8:45 am]

BILLING CODE 6560–50–P

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1269 **September Term, 2023**

In re: Peter Williams, Petitioner

Filed On: December 21, 2023

BEFORE: Henderson, Childs, and Pan, Circuit Judges

O R D E R

Upon consideration of the petition for writ of mandamus, the opposition thereto, and the reply, it is

ORDERED that the petition be dismissed for lack of jurisdiction. Because petitioner seeks to compel respondent to act on his pending reconsideration petition, jurisdiction over this case 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).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Selena R. Gancasz
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1314 **September Term, 2023**
EPA-87FR19683
EPA-87FR61314
Filed On: October 26, 2023

Peter Williams,

Petitioner

v.

Environmental Protection Agency and Michael S. Regan, Administrator, U.S. Environmental Protections Agency, in his official capacity,

Respondents

BEFORE: Henderson, Walker, and Garcia, Circuit Judges

O R D E R

Upon consideration of the petition for panel rehearing; and the motion to hold in abeyance, styled as a motion for stay, the opposition thereto, and the reply, it is

ORDERED that the motion to hold in abeyance be denied. It is

FURTHER ORDERED that the petition for panel rehearing be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1314 **September Term, 2023**
EPA-87FR19683
EPA-87FR61314
Filed On: October 26, 2023

Peter Williams,

Petitioner

v.

Environmental Protection Agency and Michael S. Regan, Administrator, U.S. Environmental Protections Agency, in his official capacity,

Respondents

BEFORE: Srinivasan, Chief Judge; Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

O R D E R

Upon consideration of the petition for rehearing en banc and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition for rehearing en banc be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

U.S. CONST. art. II, § 2

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

U.S. CONST. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition the government for a redress of grievances.

5 U.S.C. § 551(13)

For the purpose of this subchapter—

* * *

(13)"agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act[.]

5 U.S.C. § 553(e)

Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

5 U.S.C. § 555(b), (e)

(b) A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding. So far as the orderly conduct of public business permits, an interested person may appear before an agency or its responsible employees for the presentation, adjustment, or determination of an issue, request, or controversy in a proceeding, whether interlocutory, summary, or otherwise, or in connection with an agency function. With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it. This subsection does not grant or deny a person who is not a lawyer the right to appear for or represent others before an agency or in an agency proceeding.

* * *

(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.

5 U.S.C. § 559

This subchapter, chapter 7, and sections 1305, 3105, 3344, 4301(2)(E), 5372, and 7521 of this title, and the provisions of section 5335(a)(B) of this title that relate to administrative law judges, do not limit or repeal additional requirements imposed by statute or otherwise recognized by law. Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise. Subsequent statute may not be held to supersede or modify this subchapter, chapter 7, sections 1305, 3105, 3344, 4301(2)(E), 5372, or 7521 of this title, or the provisions of section 5335(a)(B) of this title that relate to administrative law judges, except to the extent that it does so expressly.

5 U.S.C. § 702

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an

official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

5 U.S.C. § 703

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

5 U.S.C. § 704

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

5 U.S.C. § 705

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

5 U.S.C. § 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or

applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

28 U.S.C. § 1651

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 2201(a)

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42 U.S.C. § 7604(a)

Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I (relating to significant deterioration of air quality) or part D of subchapter I (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) shall be provided 180 days before commencing such action.

42 U.S.C. § 7607(b)

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,,3 any

standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) 1 of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any

petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

42 U.S.C. § 7607(d)

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this

title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV–A (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating

to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV–A (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred

to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences,

and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)

(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)

(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)

(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)

(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The

effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months

after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

42 U.S.C. § 7675(e)(2)(D)

(i) Quantity

Not later than October 1 of each calendar year, the Administrator shall use the quantity calculated under subparagraph (B) to determine the quantity of allowances for the production and consumption of regulated substances that may be used for the following calendar year.

(ii) Nature of allowances

(I) In general

An allowance allocated under this section—

(aa) does not constitute a property right; and

(bb) is a limited authorization for the production or consumption of a regulated substance under this section.

(II) Savings provision

Nothing in this section or in any other provision of law limits the authority of the United States to terminate or limit an authorization described in subclause (I)(bb).

42 U.S.C. § 7675(k)(1)

(A) Rulemakings

The Administrator may promulgate such regulations as are necessary to carry out the functions of the Administrator under this section.

(B) Delegation

The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of the powers and duties of the Administrator under this section as the Administrator determines to be appropriate.

(C) Clean Air Act

Sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 et seq.).

40 C.F.R. § 84.3 (excerpt)

Person means any individual or legal entity, including an individual, corporation, partnership, association, state, municipality, political subdivision of a state, Indian tribe; any agency, department, or instrumentality of the United States; and any officer, agent, or employee thereof.

40 C.F.R. § 84.11

(a) The relevant agency official will issue, through a separate notification, calendar years 2022 and 2023 consumption allowances to entities that imported or produced a bulk regulated substance in 2020, unless an individual accommodation is permitted by a relevant Agency official. If multiple entities that imported are related through shared corporate or common ownership or control, the relevant agency official will calculate and issue allowances to a single

corporate or common owner. The number of consumption allowances allocated to each eligible entity for 2022-2023 is calculated as follows:

(1) Take the average of the three highest annual exchange value-weighted consumption amounts chosen at the corporate or common ownership level for eligible entities reporting to the agency for each calendar year 2011 through 2019;

(2) Sum the "average high year" values determined in step 1 of all eligible entities and determine each entity's percentage of that total;

(3) Determine the amount of general pool consumption allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 and the set-aside in § 84.15 from the consumption cap § 84.7(b)(3);

(4) Determine individual entity consumption allowance quantities by multiplying each entity's percentage determined in step 2 by the amount of general pool allowances determined in step 3.

(b) Starting with the allocation of 2024 calendar years allowances the relevant Agency official will issue, through a separate notification, calendar year consumption allowances. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 consumption allowances is calculated as follows for each entity:

(1) For new market entrants that were allocated allowances pursuant to § 84.15(e)(3), take the allowances allocated for calendar year 2023 and divide that value by the proportion of calendar year 2023 consumption allowances received by general pool allowance holders pursuant to paragraph (a) of this section relative to their high three average calculated pursuant to paragraph (a)(2) of this section;

(2) For entities that produced or imported a regulated substance in 2021 or 2022, or both 2021 and 2022, and have not been allocated allowances pursuant to § 84.15(e)(3), the relevant Agency official will calculate and issue allowances. This calculation and issuance will be to a single entity if multiple entities with historic consumption data are related through shared corporate or common ownership. The relevant Agency official will take the average of the three highest annual exchange value-weighted consumption amounts, which for entities related through shared corporate or common ownership or control would be aggregated and averaged at the corporate or common ownership level, that each eligible entity reported to the Agency for calendar years 2011 through 2019. If an entity, or commonly owned or controlled group of entities, does not have consumption amounts for three years between calendar years 2011 through 2019, the relevant Agency official will take the average of available year(s) of consumption for calendar years 2011 through 2019;

(3) If an entity has a value calculated under paragraphs (b)(1) and (b)(2) of this section, take the single higher value;

(4) If an entity allocated allowances pursuant to § 84.15(e)(3) was acquired by an entity that has a market share calculable under paragraph (b)(2) of this section, and EPA has approved this acquisition, sum the value calculated under paragraph (b)(1) of this section for the entity allocated allowances pursuant to § 84.15(e)(3) with the value calculated under paragraph (b)(2) of this section disregarding any historic consumption activity by the entity allocated allowances pursuant to § 84.15(e)(3), except this

paragraph (b)(4) shall not apply to an entity allocated allowances pursuant to § 84.15(e)(3) that has a higher value calculated under paragraph (b)(2) of this section than under paragraph (b)(1) of this section;

(5) Sum every entity's values as determined in paragraphs (b)(1), (2), (3), and (4) of this section and determine each entity's percentage of that total;

(6) Determine the amount of general pool consumption allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the consumption cap in § 84.7(b)(3); and

(7) Determine individual entities' consumption allowance quantities by multiplying each entity's percentage determined in paragraph (b)(5) of this section by the amount of general pool allowances determined in paragraph (b)(6) of this section.

(c)

(1) EPA will allocate calendar year consumption allowances to individual entities by October 1 of the calendar year prior to the year in which the allowances may be used based on the exchange value-weighted quantities calculated in paragraph (a)(4) of this section.

(2) EPA will provide public notice of the list of companies receiving consumption allowances as well as how they will be allocated by that date.

40 C.F.R. § 84.15(c)

(1) Persons who imported regulated substances in 2020 that were not required to report under 40 CFR part 98 and were not issued allowances as of October 1, 2021; or

(2) Persons who are newly importing regulated substances, do not share corporate or common ownership, corporate affiliation in the past five years, or familial relations with entities receiving allowances through this rule.

EPA Office of Air Quality Planning and Standards, *EPA Process Manual for Responding to Requests Concerning Applicability and Compliance Requirements of Certain Clean Air Act Stationary Source Programs* (July 2020) (excerpt)

OAQPS tracking coordinator is also responsible for providing notice of such responses in the Federal Register on a periodic basis. Federal Register publication of final actions like applicability determinations is particularly important, as such publication starts a 60-day period for judicial challenges to EPA's decision.

December 2, 2021

To Whom It May Concern,

Peter Williams/dba The New Era Group intends to import HFC refrigerants in calendar years 2022 and 2023. **The New Era Group**, nor myself share any corporate or common ownership, corporate affiliation within the last five years, or familial relations with entities receiving allowances through the rule entitles, "Phasedown of Hydrofluorocarbons; Establishing the Allowance Allocation and Trading Program under the American Innovation and Manufacturing Act". I have read the HFC Allocation Final Rule, and understand the sections as noted in this application for allocations as follows:

- 40 CFR 84.5 Prohibitions relating to regulated substances
- 40 CFR 84.15 Set-aside of application-specific allowances, production allowances, and consumption allowances
- 40 CFR 84.19 Transfers of allowances
- 40 CFR 84.23 Certification identification generation and tracking
- 40 CFR 84.31(a), (c), (h), and (k) Recordkeeping and reporting
- 40 CFR 84.33 Auditing of recordkeeping and reporting
- 40 CFR 84.35 Administrative consequences.

Peter Williams/dba The New Era Group agrees and certifies the following:

1. will follow all applicable DOT standards, and all cylinders and containers used by

2. will be compliant with the DOT standards found at CFR Title 49 part §178.

3. will pay any duties consistent with US Customs and Boarder Protection requirements per Title 19.

4. will comply with all EPA requirements, including those established under the AIM Act and annual Greenhouse Gas reporting requirements §84.15(d)(2)(viii).

The information submitted in this letter and the application form is complete, accurate, and truthful. §84.15(d)(2)(ix)

Thank you,

/s/

Peter Williams

OMB Control Number: 2060-0735
Expiration Date: 4/30/2022

American Innovation and Manufacturing Act - Application for Set-aside of HFC Allowances

* * *

Is the company a woman or minority owned businesss. §84.15(d)(2)(ii)	Date of Incorporation §84.15(d)(2)(iv)	State in which Company is Incorporated §84.15(d)(2)(iv)	State License Identifier §84.15(d)(2)(iv)
Minority-owned business	Un-Incorperated	South Carolina	Non

* * *

Memorandum of Minority Self Certifying

To:	HFC Allocation
From:	Peter Williams
Subject	The file of HFC Set-aside allowance
Date:	February 18, 2022

Please accept this communication as an inclusion to my application for HFC set aside allowances in the amount of 200,000 MTEVe. The process that is outlined in 40 CFR Chapter 1 Subchapter C part 84 Subpart A § 84.15 refers to a "Person/Persons".

My application for the aforementioned set-aside allowance was filed as an individual. Therefore, based on the clear use of the word person or person, I meet the qualification set-forth in the CFR.

This correspondence is offered to satisfy the application requirement for proof of corporate structure, of which there is none for myself as an individual.

With Best Regards

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RMS of Georgia, LLC, d/b/a Choice Refrigerants, *et al.*, Petitioner v. Environmental Protection Agency, *et al.*, Respondents	No. 22-1313 (consolidated with No. 22-1314)

DECLARATION OF PETER WILLIAM

I, Peter Williams, hereby declare and state as follows:

1. I am over 18 years of age, and I reside in Murrells Inlet, South Carolina.

2. I am the petitioner in No. 22-1314, which challenges the Environmental Protection Agency's ("EPA's") denial of my application for hydrofluorocarbon ("HFC") allocations as a new market entrant in the cap-and-trade program under the American Innovation and Manufacturing Act.

3. The HFC allocations at issue in this litigation are valuable because HFCs can be acquired from global producers under U.S. market prices.

4. If I prevail in reversing the denial of my new-entrant application, there is enough "fat" in the HFC allocations for EPA to make me whole for past allocations that EPA wrongfully withheld—such as the 2022 allocation—even if the allocation has "expired." There were enough improper allocations granted in 2022-2023 baseline that could be reallocated to me, including past or future allocations under the administrative-consequence process, without affecting the

legitimate allocations made to other entities for 2022-2023.

5. My connection with the refrigerant-gas industry began as a businessman running a reclamation facility, New Era Environmental, Inc., in Sterling, Virginia, circa 1993-2001. As part of that process, I became familiar with the regulatory and economic issues that affect the industry, including issues under the Montreal Protocol and its successive amendments and agreements.

6. Although I was no longer a direct industry participant—*e.g.*, as a reclaimer, importer, or manufacturer—I continued to work as a consultant for various industry participants on both the business side and the regulatory side.

7. In 2009, I registered the domain "neweragoupinc.com" and had a logo prepared for "The New Era Group, Inc."

8. I meant to incorporate The New Era Group, Inc. as a consultancy, but I never did so.

9. I nonetheless used an email at neweragoupinc.com and the logo on letterhead, including for comments to EPA rulemakings. A true and correct copy of one of the comments I submitted to EPA is attached hereto as Exhibit 1.

10. EPA contacted me using my New Era Group contact information, including a letter from the then-Administrator, a true and correct copy of which is attached hereto as Exhibit 2.

11. My background and involvement with the industry and with New Era Group, Inc., of Georgia is further summarized in the affidavit submitted with the letter that attorney J. Gordon Arbuckle sent to EPA on April 20, 2022, to seek reconsideration of the

denial of my application, which documents I understand are at pages 12a-16a of the addendum to my motion for summary *vacatur*.

12. While New Era Group, Inc. of Georgia was perhaps intended to draw on the goodwill of my ongoing work with EPA under the "New Era Group" name, the Georgia corporation was separate from the New Era Group consultancy under which I had been operating.

13. While I was active in New Era Group, Inc. of Georgia, it was a nonprofit representing the interests of hydrochlorofluorocarbon-22 reclaimers, importers and producers of alternative refrigerants as a trade association. Although industry members participated in New Era Group, Inc. of Georgia as members for advocacy purposes, the New Era Group, Inc. of Georgia was not itself a direct participant in the economic aspects of the industry (*e.g.*, as a reclaimer, importer, or manufacturer).

14. When EPA requested further documentation regarding corporate status through EPA's Andy Chang, the way that he conveyed the message in his voicemail implied that applicants needed to be incorporated, not that EPA has conflated me (with my New Era Group dba) as a corporation named New Era Group, Inc. I responded with a certification that I was applying as an individual with the attachment "StructureMemo.pdf," which I understand is at page 1a of the addendum to my motion for summary *vacatur*.

15. Mr. Chang replied "10-4. Thanks." A true and correct copy of his email is attached hereto as Exhibit 3. I also uploaded the "StructureMemo.pdf" to EPA's application portal.

16. Until I received EPA's letter dated March 31,

2022, denying my HFC application, I was not aware that EPA staff have equated me with New Era Group, Inc. of Georgia based on a legal analysis of the factors in the new-entrant program.

17. On April 1, 2022, I communicated with EPA's Luke Hall-Jordan and a colleague of his about the misunderstanding of my relationship with New Era Group, Inc., of Georgia. A true and correct copy of his email is attached hereto as Exhibit 4.

18. In response to the email from Mr. Hall-Jordan on April 26, 2022, I believe that I called him to indicate that he could discuss the HFC issues with my counsel, J. Gordon Arbuckle, who had submitted my letter to Cynthia Newberg dated April 20, 2022, which I understand is (along with my affidavit) at pages 12a-16a of the addendum to my motion for summary *vacatur*.

19. Later that week, on April 29, 2022, I emailed Cindy Bolinger, who is Gordon Arbuckle's legal assistant, about the process to follow, once EPA responded to the Arbuckle letter.

20. Since the email from Luke Hall-Jordan on April 26, 2022, I have not received a response to the letter that Mr. Arbuckle sent to EPA's Cynthia Newberg.

21. I have personal knowledge of the foregoing and am competent to testify thereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 24th day of April, 2023.

/s/
Peter Williams