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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1386 **September Term, 2024**
EPA-89FR84583
Filed On: June 25, 2025

Peter Williams,
Petitioner

v.

Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents

BEFORE: Pillard, Katsas, and Rao, Circuit Judges

O R D E R

Upon consideration of the emergency motion for reconsideration or clarification or to transfer or dismiss the case, the opposition thereto, and the reply; the emergency motion to supplement the record and to appoint a special master, the opposition thereto, and the reply; the emergency motion for stay, the notice of opposition thereto, the opposition to the motion, and the corrected reply; the motion for judicial notice and the opposition thereto; and the motion for leave to file a notice of supplemental authority, it is

ORDERED that the motion for leave to file a notice of supplemental authority be granted. It is

FURTHER ORDERED that the motion for reconsideration or clarification be denied. With respect to petitioner's challenge to the denial by the Environmental Protection Agency ("EPA") of his application for hydrofluorocarbon allowances, he failed to timely commence that challenge, regardless of the jurisdictional status of the time limit. See 42 U.S.C. § 7607(b)(1). And his challenge to that denial was ripe

from the moment that the EPA issued it. See Energy Future Coal. v. EPA, 793 F.3d 141, 146 (D.C. Cir. 2015). It is

FURTHER ORDERED that the motion to transfer be denied and the motion to dismiss be granted. In taking the position that this court lacks jurisdiction over the remainder of this case, petitioner has waived any argument for jurisdiction. See Shands v. Comm'r of Internal Revenue, 111 F.4th 1, 10 (D.C. Cir. 2024), cert. denied, 145 S. Ct. 1178 (2025). And it is not "in the interest of justice" to transfer this case to the district court. 28 U.S.C. § 1631. For one thing, it seems at best questionable that the district court would have jurisdiction to review petitioner's challenge to the EPA's denial of certain of his reconsideration petitions. See Edison Elec. Inst. v. OSHA, 411 F.3d 272, 282 n.4 (D.C. Cir. 2005). In any event, petitioner has already filed a case in the district court. See Am. Petroleum Inst. v. SEC, 714 F.3d 1329, 1337 (D.C. Cir. 2013). It is

FURTHER ORDERED that the remaining motions be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein 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

FOR THE COURT:
Clifton B. Cislak, Clerk
BY:/s/
Selena R. Gancasz
Deputy Clerk

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

MEMORANDUM

Date:	March 31, 2022
Subject:	Methodology for Allocating Certain Set-aside Allowances for 2022: Existing importers who were not required to report under 40 CFR part 98 and new market entrants
From:	Cynthia A. Newberg, Director Stratospheric Protection Division
To:	The file

Purpose

This memorandum documents the U.S. Environmental Protection Agency (EPA)'s decision-making regarding the allocation of hydrofluorocarbon (HFC) consumption allowances from the set-aside pool for two categories of set-aside allowances. The Agency established the set-aside pool for entities that meet specific criteria. The first category is for entities that imported regulated substances in 2020 that were not required to report under 40 CFR part 98, i.e., the Greenhouse Gas Reporting Program (GHGRP), and were not issued allowances on October 1, 2021 (40 CFR 84.15(c)(1)). The second category is for new market entrants, which include 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 the final rule establishing the HFC Allowance Allocation and Trading Program (40 CFR 84.15 (c)(2)). The decision-making process for a third category of set-aside allowances—for entities who requested

application-specific allowances pursuant to 40 CFR 84.15(b)(1)—is contained in a separate memorandum.

Decision-making process

EPA followed a consistent process in assessing the applications received for set-aside allowances pursuant to 40 CFR 84.15(c)(1) and 40 CFR 84.15(c)(2).

Step 1: Assess the timeliness of applications

- Under 40 CFR 84.15(b), the regulatory deadline to submit applications for the set-aside pool of allowances was November 30, 2021. On November 19, 2021, EPA extended this deadline to December 6, 2021. Instructions for how to apply were posted on this website: https://www.epa.gov/climate-hfcs-reduction/hfc-allocation-rule-reporting-and-recordkeeping (see attachment).
- Application forms that were received on or before December 6, 2021, were considered to be submitted on time. Applications received after December 6, 2021, were considered to be late and were not evaluated. EPA regulations state that entities needed to apply by the deadline in order "to be eligible for consideration." Entities who inquired about the set-aside pool of allowances after December 6, 2021, were informed that the application deadline had passed and that applications were no longer being accepted.

Step 2: Assess the completeness of applications

- Entities that applied pursuant to 40 CFR 84.15(c)(1) as those that 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, (referred to as "previously unidentified importers" in the preamble, *see* 86 FR 55156) were required to submit an application consistent with 40 CFR 84.15(d)(1).

- Entities that applied pursuant to 40 CFR 84.15(c)(2) as those 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 (referred to as "new market entrants") were required to submit an application consistent with 40 CFR 84.15(d)(2).
- If an application was missing required information or supporting documentation, the Agency reached out to the applicant via email and/or telephone to request the missing elements with specified deadlines for providing the missing information. If the applicant did not respond initially, EPA made multiple attempts to obtain the additional information. If an applicant failed to respond or did not submit the necessary information, EPA deemed those applications incomplete and the applications were denied.

Step 3: Assess each applicant's eligibility

* * *

- For new market entrants:
  - 40 CFR 84.15(c)(2) specifies that consumption allowances are available to "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 also explained in the preamble and on its website that new market entrants also 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).

- To determine whether an applicant was newly importing regulated substances (i.e., is seeking to import HFCs for the very first time or only began or restarted importing HFCs after January 1, 2020), EPA looked at the following sources of information to determine whether applicants had past import history: a) certified data submitted to EPA's GHGRP; b) data submitted to EPA as part of the set-aside application; c) data from U.S. Customs and Border Protection; and/or d) data from private import databases (i.e., ImportGenius and Datamyne) as a supplemental source. In particular, EPA reviewed 2019 and 2020 import records to confirm whether applicants were newly importing HFCs in 2020.
- To determine whether an applicant shares corporate or common ownership, corporate affiliation in the past five years, or familial relations with entities receiving allowances through this rule, the Agency looked at information contained in the new market entrant applications as well as publicly available data, for example from Open Corporates and individual state websites containing business information, to assess

each applicant's eligibility criteria. Data obtained from Dun & Bradstreet Hoovers were also used to assess each applicant's eligibility criteria.

- Applicants who did not meet one or more of the regulatory eligibility criteria were denied.
- All applicants who were denied set-aside allowances received a letter documenting EPA's reasoning for the denial.

Step 4: Allocate allowances consistent with the regulatory provisions

- EPA's final regulations found in 40 CFR 84.15(e)(2) provide the calculation by which previously unidentified importers would be allocated allowances.
- Eligible new market entrants could request to be allocated up to 0.2 million metric tons exchange value equivalent (MMTEVe), i.e., 200,000 MTEVe. 40 CFR 84.15(e)(3). As applicable, eligible new market entrants were allocated either the amount requested, or if they requested above the regulatory maximum, they were allocated the regulatory maximum of 200,000 MTEVe.

Outcomes for specific entities who applied as previously unidentified importers under 40 CFR 84.15(c)(1)

* * *

Peter Williams DBA New Era Group

This applicant requested 200,000.0 set-aside allowances, and EPA denied the application. Based on information available to the Agency, EPA determined that Peter Williams DBA New Era

Group shares "corporate affiliation in the past five years" 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 show that the applicant (Peter Williams DBA New Era Group) and the owner of a company who received consumption allowances on October 1, 2021 (Ken Ponder, owner of RMS of Georgia) are both listed as officers for "New Era Group Inc" as recently as 2019. The owner of an entity that received allowances on October 1, 2021, serving as an officer alongside Peter Williams for New Era Group Inc in 2019 equates to corporate affiliation. Therefore, the applicant shares corporate affiliation in the past five years with an entity receiving allowances through this rule. This disqualifies Peter Williams DBA New Era Group as an entity eligible for new market entrant set-aside allowances in accordance with EPA's regulations codified in 40 CFR 84.15(c)(2). Further, the application submitted by this applicant 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). Peter Williams DBA 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).

* * *

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

ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION
WASHINGTON, D.C. 20460

November 8, 2024

SENT VIA ELECTRONIC MAIL

Mr. J. Gordon Arbuckle, Esq.
2550 M Street NW
Washington, D.C. 20037
gordona123@earthlink.net

Mr. Lawrence J. Joseph, Esq.
1250 Connecticut Avenue, NW
Suite 700-1A
Washington, D.C. 20036
ljoseph@larryjoseph.com

Dear Mr. Arbuckle and Mr. Joseph:

The U.S. Environmental Protection Agency (EPA) is responding to the letter received from Mr. Gordon Arbuckle dated April 20, 2022, and the letter received from Mr. Lawrence J. Joseph dated December 12, 2022, both of which were sent on behalf of Peter Williams (dba The New Era Group). We are responding to these letters as petitions for reconsideration of an informal adjudication under section 555(e) of the Administrative Procedures Act. The letters requested that the EPA reconsider the Agency's March 31, 2022, denial of Peter Williams

(dba The New Era Group)'s application for hydrofluorocarbon (HFC) set-aside allowances under 40 CFR 84.15(c). The EPA is denying the requests to reconsider the above-cited action and is affirming its prior denial without reopening that decision.

The EPA's March 31, 2022, denial, which is enclosed, cited two reasons for denying the application from Peter Williams (dba The New Era Group). First, the EPA determined that Peter Williams (dba The New Era Group) "share[s] corporate or common ownership, corporate affiliation in the past five years, or familial relations" with an entity receiving allowances. Second, the application from Peter Williams (dba The New Era Group) was incomplete for failing to comply with EPA's regulations at 40 CFR 84.15(d)(2), which require applicants to provide among other requirements, "the complete ownership of the company (with percentages of ownership)," see 40 CFR 84.15(d)(2)(i), "[t]he date of incorporation and State in which the company is incorporated," see 40 CFR 84.15(d)(2)(iv), and the "State license identifier," see 40 CFR 84.15(d)(2)(v).

While the April 20, 2022, and December 12, 2022, requests seem to assert material error in the original denial, these requests fail to allege any new evidence or changed circumstance that warrants reconsideration of the EPA's March 31, 2022, decision to deny your client's new market entrant application. All of the information contained in the April 20, 2022, and December 12, 2022, letters was available to, and within the control of, Peter Williams (dba The New Era Group) before the EPA first acted. Such information is not new evidence or a demonstration of changed circumstance for

purposes of a petition for reconsideration. To the extent any information could be considered new evidence, your client could have provided, and did not provide, that information to the EPA before the Agency reached its decision on March 31, 2022. *See Sendra Corp. v. Magaw*, 111 F.3d 162, 166 (D.C. Cir. 1997). As a result, the EPA is denying the requests to reconsider the above-cited action; it is affirming its prior denial and has not reopened its original March 31, 2022, decision.

Thank you for your respective letters. I appreciate your interest in these issues.

Sincerely,

/s/

Joseph Goffman

Assistant Administrator

Enclosure

cc: Peter Williams
dba The New Era Group

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1386 **September Term, 2024**
EPA-89FR84583
Filed On: February 10, 2025 [2099795]

Peter Williams,
Petitioner
v.
Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents
Petitioner

O R D E R

Upon consideration of respondents' motion to stay deadline to file certified index to the record pending resolution of dispositive motions, it is

ORDERED that the motion be granted. The certified index to the record is now due 14 days after the court rules on respondents' pending motion to dismiss.

FOR THE COURT:
Clifton B. Cislak, Clerk
BY:/s/
Catherine J. Lavender
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23-1340 **September Term, 2024**
EPA-88FR72060
Filed On: April 2, 2025

Peter Williams,
Petitioner

v.

Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents

Petitioner

No. 24-1386 **EPA-89FR84583**

Peter Williams,
Petitioner

v.

Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents

Petitioner

BEFORE: Pillard, Katsas, and Rao, Circuit Judges

O R D E R

Upon consideration of the motion to consolidate No. 23-1340 and No. 24-1386, the opposition thereto, and the reply; the motions to dismiss those two cases, the opposition thereto, and the replies; the cross-motion to hold the cases in abeyance or expedite them, the oppositions thereto, and the reply; the motion for summary reversal in No. 24-1386, the oppo-

sition thereto, and the reply; the motion to vacate or extend the briefing schedule in No. 23-1340 and the opposition thereto; and the emergency motion in No. 24-1386, the opposition thereto, and the reply, it is

ORDERED that the motion to dismiss No. 24-1386 be granted in part and referred in part to the merits panel to which the petition for review is assigned. To the extent that petitioner challenges the denial by the Environmental Protection Agency ("EPA") of his application for hydrofluorocarbon allowances and the EPA's allocations of such allowances for 2022, 2023, and 2024, petitioner failed to commence No. 24-1386 within the requisite sixty days of the EPA publishing notice of those actions 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). Neither petitioner's request for the EPA's reconsideration of its initial denial nor the EPA's denial of that reconsideration petition extended petitioner's time to bring this action. To that end, the Clean Air Act specifies that a reconsideration petition does not "extend the time within which" to petition for review. 42 U.S.C. § 7607(b)(1). And the EPA's denial of that reconsideration petition created no challenge to the EPA's original decision that petitioner "'could not have raised' during the initial sixty-day window." Sinclair Wyo. Ref. Co. LLC v. EPA, 114 F.4th 693, 717 (D.C. Cir. 2024) (per curiam) (quoting Honeywell Int'l, Inc. v. EPA, 705 F.3d 470, 473 (D.C. Cir. 2013)).

Next, petitioner has failed to demonstrate that he has standing to challenge the EPA's allowance allocation for 2025. See Grocery Mfrs. Ass'n v. EPA, 693 F.3d 169, 174 (D.C. Cir. 2012). Although that allocation did not grant petitioner any allowances, any

injury asserted by petitioner results from the EPA's earlier denial of his application and from the EPA's unchallenged regulation tying a new market entrant's receipt of 2025 allowances to that entity's receipt of 2023 allowances. See 40 C.F.R. § 84.11(b)(1).

However, we refer the motion to dismiss to the merits panel with respect to petitioner's challenge to the EPA's denial of his reconsideration petition. The parties are directed to address in their briefs the issues presented in that part of the motion to dismiss rather than incorporate those arguments by reference. It is

FURTHER ORDERED that the motion for summary reversal in No. 24-1386 be denied. The merits of the parties' positions are not so clear as to warrant summary action. See Cascade Broad. Grp., Ltd. v. FCC, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam). It is

FURTHER ORDERED that the motion to dismiss No. 23-1340 be granted. Because calendar year 2024 has ended, petitioner's request for interim relief related to the EPA's allocation of 2024 allowances has become moot. See Daimler Trucks N. Am. LLC v. EPA, 745 F.3d 1212, 1217 (D.C. Cir. 2013). It is

FURTHER ORDERED that the motion to hold in abeyance or expedite be dismissed as moot with respect to No. 23-1340 and denied with respect to No. 24-1386. It is

FURTHER ORDERED that the motion to consolidate and the motion to vacate or extend the briefing schedule in No. 23-1340 be dismissed as moot. It is

FURTHER ORDERED that the emergency motion in No. 24-1386 be dismissed as moot in part and

denied in part. To the extent that petitioner seeks action on the other motions by April 22, 2025, his emergency motion is moot because the court has now acted on those other motions. In all other respects, petitioner's emergency motion is denied because he has not demonstrated an entitlement to his requested relief. Once the EPA has filed a certified index to the record, petitioner may move to supplement the record if he believes it inadequate.

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. 23-1340 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. The Clerk is directed to withhold issuance of the mandate in No. 24-1386 until resolution of the remainder of the petition for review.

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY:/s/

Selena R. Gancasz

Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1386 **September Term, 2025**
EPA-89FR84583

Peter Williams,
Petitioner

v.

Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents

Filed On: October 10, 2025

BEFORE: Pillard, Katsas, and Rao, Circuit Judges

O R D E R

Upon consideration of the motion to supplement the record, the opposition thereto, and the reply; the motion to extend time, the opposition thereto, and the reply; and the petition for rehearing, it is

ORDERED that the motion to supplement the record and the motion to extend time be denied. Petitioner has failed to demonstrate that his requested supplements would bear on whether the court should grant rehearing. It is

FURTHER ORDERED that the petition for rehearing be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk
BY:/s/
Daniel J. Reidy
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 24-1386 **September Term, 2025**
EPA-89FR84583

Peter Williams,
Petitioner

v.

Environmental Protection Agency and Lee M. Zeldin, Administrator, Environmental Protection Agency, in his official capacity,
Respondents

Filed On: October 10, 2025

BEFORE: Srinivasan, Chief Judge, and 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 be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cislak, Clerk
BY: /s/
Daniel J. Reidy
Deputy Clerk

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. § 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. § 1631

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

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. § 84.15(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.

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