

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

Ergon-West Virginia, Inc.,

Petitioner,

v.

U.S. Environmental Protection
Agency,

Respondent.

Case No.: _____

PETITION FOR REVIEW

Pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(2); Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1); 40 C.F.R. § 23.3; Rule 15(a) of the Federal Rules of Appellate Procedure; and Rule 15(b) of the Local Rules of the Fourth Circuit, Ergon-West Virginia, Inc., hereby petitions the United States Court of Appeals for the Fourth Circuit for review of the following final action of the Administrator of the United States Environmental Protection Agency: EPA's post-remand "Denial of a Request for a Small Refinery Exemption Under the Renewable Fuel Standard Program for Ergon-West Virginia, Inc.'s Newell, WV Refinery" for compliance year 2016 (attached as Exhibit A). The Fourth Circuit vacated and remanded the EPA's original denial in *Ergon-W. Virginia, Inc. v. EPA*, 896 F.3d 600, No. 17-1839 (4th Cir. 2018).

The agency action was signed on August 9, 2019, but was not published in the Federal Register, and therefore became a final agency action on August 23, 2019. *See* 40 C.F.R. § 23.3 (Timing of Administrator's Action under Clean Air Act); 50 Fed. Reg. 7268, 7269 (Feb. 21, 1985).

The Corporate Disclosure Statement required by Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Local Rules of the Fourth Circuit is attached as Exhibit B. The List of Respondents required by Local Rule 15(b) is attached as Exhibit C. The Certificate of Service required by Federal Rule of Appellate Procedure 25(d) and Local Rule 25(b) is attached as Exhibit D.

DATED: October 15, 2019

Respectfully Submitted,

/s/ Jonathan G. Hardin

Jonathan G. Hardin

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Attorney for Ergon-West Virginia, Inc.

Exhibit B

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. _____ Caption: Ergon-West Virginia, Inc. v. U.S. Environmental Protection Agency

Pursuant to FRAP 26.1 and Local Rule 26.1,

Ergon-West Virginia, Inc.
(name of party/amicus)

who is _____ petitioner _____, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? YES NO

2. Does party/amicus have any parent corporations? YES NO
If yes, identify all parent corporations, including all generations of parent corporations:
Ergon, Inc.

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? YES NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? YES NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) YES NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? YES NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: s/ Jonathan G. Hardin

Date: 10/15/2019

Counsel for: Ergon-West Virginia, Inc.

CERTIFICATE OF SERVICE

I certify that on October 15, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

Andrew Wheeler, Administrator, U.S. EPA
1200 Pennsylvania Avenue, N.W. Mail Code: 1101A
Washington, D.C. 20460

The Hon. William Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Matthew Z. Leopold, General Counsel, U.S. EPA
1200 Pennsylvania Avenue, N.W. Mail Code: 2310A
Washington, D.C. 20460

s/ Jonathan G. Hardin
(signature)

October 15, 2019
(date)

Exhibit C

LIST OF RESPONDENTS

Attn: Andrew Wheeler
Administrator
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Attn: Matthew Z. Leopold
Acting General Counsel
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue, N.W.
Mail Code: 2310A
Washington, D.C. 20460

The Honorable William Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Exhibit D

CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2019, a copy of the foregoing Petition for Review, Exhibit A (Filed Under Seal), Exhibit B (Corporate Disclosure Statement), Exhibit C (List of Respondents), and Exhibit D (Certificate of Service), were served via certified U.S. Mail, return receipt requested, on the following:

Attn: Andrew Wheeler
Administrator
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue, N.W.
Mail Code: 1101A
Washington, D.C. 20460

Attn: Matthew Z. Leopold
General Counsel
U.S. Environmental Protection Agency Headquarters
1200 Pennsylvania Avenue, N.W.
Mail Code: 2310A
Washington, D.C. 20460

The Honorable William Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Date: October 15, 2019

/s/ Jonathan G. Hardin
Jonathan G. Hardin