

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

ERGON-WEST VIRGINIA, INC.,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. _____

PETITION FOR REVIEW

Pursuant to Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), and Federal Rule of Appellate Procedure 15(a), Ergon-West Virginia, Inc. (“Petitioner”) petitions this Court for review of the action of the Administrator of the United States Environmental Protection Agency (“EPA”) issued on September 14, 2020 and titled “Denial of Small Refinery Gap-Filling Petitions.” This agency action purported to deny petitions submitted by Petitioner for small refinery exemptions under the Renewable Fuel Standard program for one or more of the compliance years from 2011 through 2016. A copy of the action is attached as Exhibit A.

The agency action states that, “pursuant to section 307(b) [of the Clean Air Act], any petitions for review of this final action must be filed . . . within 60 days

from the date this final action is published in the Federal Register.” Exhibit A at 5.

To Petitioner’s knowledge, however, the action has not yet been published in the Federal Register. EPA’s regulations provide:

Unless the Administrator otherwise explicitly provides in a particular promulgation, approval, or action, the time and date of such promulgation, approval or action for purposes of the second sentence of section 307(b)(1) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on (a) for a Federal Register document, the date when the document is published in the Federal Register, or (b) for any other document, two weeks after it is signed.

40 C.F.R. § 23.3. Therefore, out of an abundance of caution, Petitioner files this petition for review within the time period prescribed by 40 C.F.R. § 23.3(b) and 42 U.S.C. § 7607(b)(1).

Petitioner files this petition for review of agency action in this Court, the regional circuit in which Petitioner is located, because Petitioner believes that jurisdiction and venue are proper here pursuant to 42 U.S.C. § 7607(b)(1). As a protective measure, however, Petitioner is also filing a petition for review of the same agency action in United States Court of Appeals for the District of Columbia Circuit, because EPA stated in the agency action that “any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit.” Exhibit A at 5.

The Corporate Disclosure Statement required by Federal Rule of Appellate Procedure 26.1 and 4th Circuit Rule 26.1 is attached as Exhibit B.

Dated: November 30, 2020

Respectfully submitted,

s/ Jonathan G. Hardin

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