

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

CALUMET MONTANA REFINING,
LLC,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 23-1194

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), Petitioner Calumet Montana Refining, LLC, petitions this Court for review of the action of the Administrator of the United States Environmental Protection Agency (“EPA”) issued on July 14, 2023 denying Petitioner’s petition for small refinery hardship relief from the requirements of the Renewable Fuel Standard (“RFS”) for the 2021 and 2022 compliance years and titled “July 2023 Denial of Petitions for RFS Small Refinery Exemptions” (attached as Exhibit A). Notice of this action was published in the Federal Register on July 20, 2023. 88 Fed. Reg. 46795 (July 20, 2023) (attached as Exhibit B). This Petition is timely filed within 60 days of the notice published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1).

This is a “protective petition” for review filed out of an abundance of caution to preserve Petitioner’s rights. Petitioner believes the denial of its hardship petition is a “locally ... applicable” agency action that must be challenged in the regional circuit in which Petitioner’s refinery is located. 42 U.S.C. § 7607(b)(1). Thus, Petitioner will also file a petition for review of the same agency action in the United States Court of Appeals for the Ninth Circuit. However, EPA stated in its notice of the agency action that “petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia.” 88 Fed. Reg. at 46796. Accordingly, Petitioner is filing this “protective petition” for review in this Court. *See N.Y. Republican State Comm. v. S.E.C.*, 799 F.3d 1126, 1134–35 (D.C. Cir. 2015) (instructing petitioners to file “a protective petition” if “any doubt as to the proper forum exists”).

The Corporate Disclosure Statement required by Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1 is attached as Exhibit C.

Dated: July 26, 2023

Respectfully submitted,

s/ Jonathan G. Hardin

Jonathan G. Hardin
Alexandra Magill Bromer
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 800
Washington, D.C. 20005-3960
Telephone: 202.654.6297
Facsimile: 202.654.6211
JHardin@perkinscoie.com
ABromer@perkinscoie.com

Michael R. Huston*
Karl J. Worsham
PERKINS COIE LLP
2901 N. Central Avenue, Suite 2000
Phoenix, AZ 85102-2788
Telephone: 602.351.8000
Facsimile: 602.648.7000
MHuston@perkinscoie.com
KWorsham@perkinscoie.com
** Admitted only in Washington, D.C.*

Attorneys for Calumet Montana
Refining, LLC