

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



WYNNEWOOD REFINING CO., LLC,  
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), Petitioner Wynnewood Refining Company, LLC (“Wynnewood” or “Petitioner”) hereby petitions this Court for review of the final action of the Administrator of the United States Environmental Protection Agency (“EPA”) issued on July 14, 2023, entitled “July 2023 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-23-007 (July 14, 2023) (the “July 2023 Denial Action”) (attached as **Exhibit A**). Notice of this action was published in the Federal Register on July 20, 2023. 88 Fed. Reg. 46795 (Jul. 20, 2023) (attached as **Exhibit B**). The July 2023 Denial Action purported to deny the petition submitted by Wynnewood for a small refinery exemption under the Renewable Fuel Standard program for the 2022 compliance year. Ex. A, at 1.

This petition is timely filed within 60 days of the notice published in the Federal Register. *See* 42 U.S.C. § 7607(b)(1).

Petitioner files this petition for review of the agency action in this Court, the regional circuit in which Petitioner’s principal place of business is located, where jurisdiction and venue are both proper pursuant to 42 U.S.C. § 7607(b)(1). As a protective measure, however, Petitioner will also file a “protective petition” for review of the same agency action in the United States Court of Appeals for the District of Columbia Circuit, because EPA stated in the agency action under review that any “petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit . . . .” Ex. A, at 11; 88 Fed. Reg. at 46796. *See Dalton Trucking, Inc. v. EPA*, 808 F.3d 875, 880 (D.C. Cir. 2015) (“Petitioners preserved their objection to venue in this circuit (after protecting their right to review by filing in both our circuit and the [regional circuit court]) . . . .”).

The Certificate of Interested Persons required by Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 26.1.1 is attached hereto as **Exhibit C**.

Dated: August 4, 2023

Respectfully submitted,

/s/ Samuel P. Hershey

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Wynnewood Refining Company, LLC*

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**CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Fifth Circuit Rule 26.1.1, Petitioner Wynnewood Refining Company, LLC provides the following Certificate of Interested Persons:

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Wynnewood Refining Company, LLC—Petitioner—is incorporated under the laws of the State of Delaware and is a wholly owned subsidiary of CVR Refining, LLC.

CVR Refining, LLC is incorporated under the laws of the State of Delaware and is a wholly owned subsidiary of CVR Refining, L.P.

CVR Refining, L.P. is incorporated under the laws of the State of Delaware and is an indirect, wholly owned subsidiary of CVR Energy, Inc.

CVR Energy, Inc. is incorporated under the laws of the State of Delaware and is publicly traded on the New York Stock Exchange under the symbol “CVI.”

Icahn Enterprises, L.P. and its affiliates (“IEP”) hold a 10% or greater ownership interest in CVR Energy Inc. IEP is a publicly traded partnership.

Petitioner will file a revised Certificate of Interested Persons should it become aware of a change in corporate ownership interests that would affect the disclosures required by Rule 26.1.

Dated: August 4, 2023

Respectfully submitted,

/s/ Samuel P. Hershey

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*Counsel for Petitioner  
Wynnewood Refining Company, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rules of Appellate Procedure 3(d), 15(c) and 25, Fifth Circuit Rule 25, and 40 C.F.R. § 23.12(a), I hereby certify that on August 4, 2023, I will cause copies of the foregoing Petition for Review to be served by certified mail, return receipt requested upon the following:

HON. MICHAEL S. REGAN, Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

CORRESPONDENCE CONTROL UNIT  
Office of General Counsel (2311)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
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HON. MERRICK B. GARLAND  
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HON. TODD SUNHWAE KIM  
Assistant Attorney General  
Environmental and Natural Resources Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dated: August 4, 2023

Respectfully submitted,

/s/ Samuel P. Hershey  
Samuel P. Hershey