

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

CROSS OIL REFINING &
MARKETING INC.,

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 23-1266

PETITION FOR REVIEW

Pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure and Section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), Petitioner Cross Oil Refining & Marketing, Inc. hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of a final agency action of the United States Environmental Protection Agency, titled “*July 2023 Denial of Petitions for RFS Small Refinery Exemptions*” (EPA-420-R-23-007) and published in the Federal Register on July 20, 2023 at 88 Fed. Reg. 46795 (July 20, 2023). *See* Attachment A. This petition is timely because it has been filed within sixty days of publication of the agency action.

EPA contends that this Court is the proper venue for this action pursuant to 42 U.S.C. § 7607(b)(1). Petitioner contends that 42 U.S.C. §7607(b)(1) dictates that a challenge to a denial of its hardship petition must be filed in the regional circuit in which Petitioner is located. Accordingly, Petitioner has filed

its challenge to that denial in the United States Court of Appeals for the Eighth Circuit.

Petitioner recognizes, however, that in ongoing litigation related to the April and June 2022 denials that EPA has moved not merely to transfer challenges filed in regional circuits, but to dismiss them altogether. Accordingly, Petitioner files this “protective petition” for review filed out of an abundance of caution to preserve Petitioner’s rights. *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.”).

Dated: September 15, 2023

Respectfully submitted,

/s/ Mark W. DeLaquil

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Attorney for Petitioner

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Petitioner Cross Oil Refining & Marketing, Inc. (“Cross Refining”) hereby states that it is a corporation engaged in the business of refining and marketing petroleum products. Cross Refining is wholly owned by Martin Resource Management Corporation, which is privately held. There are no publicly traded entities that own 10% or more of Cross Refining’s stock. Cross Refining was formed in the State of Delaware and is qualified to do business where it operates.

Dated: September 15, 2023

Respectfully submitted,

/s/ Mark W. DeLaquil

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Attorney for Petitioner

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Appellate Procedure 3(d), 15(c), and 25, D.C. Circuit Rules 15(a) and 25, and 40 C.F.R §23.12(a), I hereby certify that the foregoing Petition for Review and Corporate Disclosure Statement will be served via certified mail, return receipt requested, upon the following:

Hon. Michael S. Regan, Administrator
U.S. Environmental Protection Agency
Office of the Administrator (1101A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

U.S. Environmental Protection Agency
Correspondence Control Unit
Office of General Counsel (2311)
1200 Pennsylvania Av., NW
Washington, D.C. 20460

Hon. Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Hon. Todd Kim
Assistant Attorney General
Environmental and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Dated: September 15, 2023

/s/ Mark W. DeLaquil

MARK W. DELAQUIL

Attorney for Petitioner