

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WYNNEWOOD REFINING COMPANY, LLC,

Plaintiff,

v.

MICHAEL S. REGAN, in his official capacity as
Administrator of the United States Environmental
Protection Agency,

Defendant.

Civil Action No.

4:24-CV-02554

COMPLAINT

Plaintiff Wynnewood Refining Company, LLC (“Wynnewood”), for its Complaint against Defendant Michael S. Regan in his official capacity as the Administrator of the United States Environmental Protection Agency (“EPA” or “Administrator”), alleges, on knowledge as to its own actions, and otherwise upon information and belief, as follows:

PRELIMINARY STATEMENT

1. The Administrator has failed to perform a non-discretionary duty to act on Wynnewood’s petition for small refinery hardship relief under the Clean Air Act’s Renewable Fuel Standard (“RFS”), 42 U.S.C. § 7545(o)(9)(B)(iii), for the 2023 compliance year.

2. Wynnewood is a small refinery that has received small refinery hardship relief from the RFS in prior years. Wynnewood would once again experience disproportionate economic hardship from the RFS for the 2023 compliance year, so Wynnewood filed a petition for small refinery hardship relief in December 2023.

3. By law, the Administrator was required to decide Wynnewood’s hardship petition

within 90 days of receipt. But almost seven months later, the Administrator has not acted on Wynnewood's pending 2023 hardship petition.

4. The Administrator's failure to act is unlawful and imposes significant hardship on Wynnewood.

5. Wynnewood seeks a declaration that the Administrator is in violation of the CAA, an order compelling the Administrator to decide Wynnewood's 2023 hardship petition by an expeditious date certain, and Wynnewood's fees and costs for this action.

PARTIES

6. Plaintiff Wynnewood Refining Company, LLC, is a small refinery with its headquarters in Sugar Land, Texas.

7. Wynnewood is a "person" within the meaning of 42 U.S.C. § 7602(e).

8. Michael S. Regan is the Administrator of the United States Environmental Protection Agency. The Administrator is responsible for implementing the CAA. The Administrator's responsibilities under the CAA include the statutory obligation to decide every petition for small refinery hardship relief under the RFS within 90 days after receipt of that petition. Administrator Regan is sued in his official capacity.

JURISDICTION

9. This action arises under the Administrative Procedure Act, 5 U.S.C. § 706, and the Clean Air Act, 42 U.S.C. § 7545(o). This Court has subject matter jurisdiction over Wynnewood's claims under 42 U.S.C. § 7604(a) and 28 U.S.C. §§ 1331 (federal question) and 1361 (mandamus). This Court has authority to order declaratory and injunctive relief under 5 U.S.C. §§ 705, 706; 28 U.S.C. §§ 1361, 2201, and 2202; and 42 U.S.C. § 7604, and to award reasonable attorneys' fees and costs under 42 U.S.C. § 7604(d).

10. By letter dated May 7, 2024, Wynnewood provided the Administrator written notice of Wynnewood's claim and its intent to bring suit to remedy this CAA violation pursuant to 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2–54.3. A true and correct copy of this notice is attached as Exhibit A.

11. The Administrator was provided with Wynnewood's notice of intent to sue on May 7, 2024, by certified mail and email. A true and correct copy of the email sent to the Administrator on May 7, 2024, is attached as Exhibit B. This action is brought more than 60 days after the Administrator's receipt of the notice of intent to sue. *See* 42 U.S.C. § 7604(b)(2).

VENUE

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1). The Administrator is an officer or employee of the United States or an agency thereof and is sued in his official capacity. Wynnewood resides in this judicial district—the refinery's principal place of business is located here. 28 U.S.C. § 1391(c)(2). No real property is involved in this action.

FACTS

13. The CAA requires that transportation fuel sold or introduced into commerce in the United States contain specified volumes of renewable fuel. EPA and the Administrator set the volumes and oversee this requirement through their administration of the RFS program. *See* 42 U.S.C. § 7545(o).

14. Because Wynnewood produces transportation fuel, Wynnewood is subject to the RFS requirements under the CAA. *See* 42 U.S.C. § 7545(o)(2)(A)(iii)(I), (3)(B)(ii)(I).

15. Wynnewood is a “small refinery” under the CAA, because its average daily aggregate crude oil throughput does not exceed 75,000 barrels. *See* 42 U.S.C. § 7545(o)(1)(K).

16. The CAA allows small refineries to petition “at any time” for relief from its RFS compliance obligations based on disproportionate economic hardship, and EPA must grant that relief if the small refinery demonstrates it will suffer disproportionate economic hardship. 42 U.S.C. § 7545(o)(9).

17. Wynnewood has filed multiple petitions for small refinery hardship relief because it faces structural challenges that cause it to experience disproportionate economic hardship in complying with the RFS. The Administrator has previously granted small-refinery hardship relief to Wynnewood.

18. The CAA imposes a mandatory deadline for the Administrator to decide each petition for small refinery hardship relief: “The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.” 42 U.S.C. § 7545(o)(9)(B)(iii).

19. Wynnewood submitted a petition for a small refinery hardship relief from compliance with its 2023 RFS obligation. In its petition, Wynnewood documented the reasons why RFS compliance for the 2023 compliance year would cause disproportionate economic hardship.

20. EPA received Wynnewood’s 2023 small refinery hardship petition on December 15, 2023. A true and correct copy of Wynnewood’s email submitting its petition to EPA is attached as Exhibit C.

21. The Administrator had a non-discretionary duty under the CAA to act on Wynnewood’s petition within 90 days after receipt. 42 U.S.C. § 7545(o)(9)(B)(iii). The Administrator failed to perform this non-discretionary duty when he did not act on Wynnewood’s petition by March 14, 2024.

22. EPA's March 14 deadline to act on Wynnewood's 2023 hardship petition fell just 17 days before the March 31 deadline for obligated parties to demonstrate RFS compliance for 2023. EPA had repeatedly violated the 90-day statutory deadline to act on hardship petitions in the past, and Wynnewood was not able to sue to compel the Administrator to act until 60 days after giving notice of its intent to sue. 42 U.S.C. § 7604(b)(2). Thus, Wynnewood originally gave notice 60 days before the 90-day statutory decision deadline had run so that Wynnewood would have the opportunity to seek judicial relief before the 2023 compliance deadline.

23. On January 18, 2024, Wynnewood gave EPA that written notice of its intent to sue the Administrator in accordance with 42 U.S.C. § 7604(b)(2) and 40 C.F.R. §§ 54.2–54.3. In the notice, Wynnewood “urge[d] the Administrator to issue the 2023 hardship decision as soon as possible, so it will be unnecessary to file suit.”

24. Despite receiving that notice, the Administrator still had not acted on Wynnewood's 2023 small refinery hardship petition within the 90-day statutory deadline or within 60 days after Wynnewood's original written notice of its intent to sue. *See* 42 U.S.C. § 7604(b)(2). So Wynnewood brought suit in this Court. *Wynnewood Refining Company, LLC v. Michael S. Regan*, 24-cv-1009, Dkt. 1 (Mar. 19, 2024).

25. As part of that action, Wynnewood moved for a temporary restraining order and preliminary injunction to prevent EPA from enforcing any RFS obligation against Wynnewood until EPA complied with the law and decided Wynnewood's hardship petition. *Wynnewood Refining*, Dkt. 10. In response to Wynnewood's motion, EPA committed in writing not to enforce any RFS obligation against Wynnewood until after deciding Wynnewood's petition. In light of that commitment Wynnewood no longer needed preliminary judicial relief and withdrew its motions. *See Wynnewood Refining*, Dkt. 22.

26. During that litigation, EPA communicated to Wynnewood that it believed Wynnewood's original notice of intent to sue was defective because it had been issued prior to the running of the 90-day statutory decision deadline. Wynnewood disagreed and still disagrees with EPA on that point. But out of an abundance of caution, and in light of EPA's written commitment not to seek enforcement, Wynnewood voluntarily dismissed its complaint, *Wynnewood Refining*, Dkt. 26, 27, and filed a new notice of intent to sue on May 7, 2024 (Exhibit A).

27. More than 60 days have passed since Wynnewood gave the Administrator new written notice of its intent to sue. *See* 42 U.S.C. § 7604(b)(2). Despite the statutory deadline passing more than 100 days ago, and more than 200 days after EPA's receipt of Wynnewood's petition, and after having received multiple notices of EPA's CAA violation, the Administrator still has not acted on Wynnewood's 2023 small refinery hardship petition.

28. The Administrator's disregard for the 90-day statutory deadline to act on small refinery hardship petitions is unfortunately not unique. In a recent report, the United States Government Accountability Office ("GAO") found that EPA resolved small refinery hardship petitions for the 2019 compliance year "on average, more than 700 days" after receiving them, or 610 days after the statutory deadline.¹

29. Wynnewood's interests have been, are being, and will continue to be damaged by the Administrator's failure to comply with the statutory deadline to act on Wynnewood's pending 2023 small refinery hardship petition. The CAA guarantees Wynnewood a prompt decision on its hardship petition. By nevertheless refusing to act on that petition, the Administrator is damaging

¹ GAO, Renewable Fuel Standard: Actions Needed to Improve Decision-Making in the Small Refinery Exemption Program, GAO-23-104273, at 48 (Nov. 3, 2022), <https://www.gao.gov/products/gao-23-104273>.

Wynnewood's ability to do business and plan for statutory compliance. The Administrator's failure to act further deprives Wynnewood of procedural rights and protections to which it is entitled.

30. The relief requested herein would redress these injuries.

FIRST CAUSE OF ACTION
42 U.S.C. § 7604(a)

31. Wynnewood realleges and incorporates by reference paragraphs 1 through 30 of this Complaint, as if fully set forth herein.

32. The Administrator has a non-discretionary duty to decide Wynnewood's 2023 petition for small refinery hardship relief within 90 days after receipt. *See* 42 U.S.C. § 7545(o)(9)(B)(iii).

33. The CAA allows any person to bring suit to compel the Administrator to perform a non-discretionary duty. *See* 42 U.S.C. § 7604(a).

34. It has been more than 90 days since the Administrator received Wynnewood's 2023 small refinery hardship petition. The Administrator has not acted on the petition.

35. It has been more than 60 days since Wynnewood gave written notice to the Administrator of its intent to initiate this lawsuit. Wynnewood therefore satisfied the CAA's notice requirement before commencing this action. *See* 42 U.S.C. § 7604(b)(2).

36. The Administrator's failure to act has violated, and continues to violate, the CAA and constitutes a "failure of the Administrator to perform any act or duty . . . which is not discretionary with the Administrator," 42 U.S.C. § 7604(a)(2).

37. Wynnewood is entitled by 42 U.S.C. § 7604(a)(2) to bring a civil action to address the Administrator's failure.

38. The Administrator’s violation is ongoing and will continue to harm Wynnewood unless remedied by the Court.

SECOND CAUSE OF ACTION
5 U.S.C. § 706(1)

39. Wynnewood realleges and incorporates by reference paragraphs 1 through 38 of this Complaint, as if fully set forth herein.

40. Section 706(1) empowers a court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). Section 706(1) authorizes courts to compel an agency “to take a discrete agency action that it is required to take.” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis omitted).

41. Deciding a hardship petition within 90 days of receipt is a discrete action that EPA was required by 42 U.S.C. § 7545(o)(9)(B)(iii) to take.

42. EPA failed to take that action on Wynnewood’s hardship petition. And it failed to take that action within the time period expressly prescribed by Congress. EPA has both “unlawfully withheld” and “unreasonably delayed” its decision on Wynnewood’s hardship petition. 5 U.S.C. § 706(1).

43. This Court is authorized to “compel” EPA to act. 5 U.S.C. § 706(1).

REQUEST FOR RELIEF

WHEREFORE, Wynnewood requests that this Court enter judgment against the Administrator providing the following relief:

A. A declaration that the Administrator has violated the CAA by failing to grant or deny Wynnewood’s 2023 petition for small refinery hardship relief within 90 days after receipt; and

- B. An order compelling the Administrator to perform his non-discretionary duty to decide Wynnewood's 2023 small refinery hardship petition by an expeditious date certain; and
- C. An order retaining jurisdiction over this matter until such time as the Administrator complies with his non-discretionary duty under the CAA; and
- D. An order awarding Wynnewood its costs of litigation, including reasonable attorneys' fees, under 42 U.S.C. § 7604(d); and
- E. All other and further relief as the Court deems just and equitable.

Dated: July 8, 2024

Respectfully submitted:

By: /s/ Katherine E. May
Katherine E. May (*attorney-in-charge*)
TX State Bar No. 24116732
S.D. TX Bar Id. 3669046
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*Attorneys for Plaintiff Wynnewood Refining
Company, LLC*

EXHIBIT A



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PerkinsCoie.com

May 7, 2024

LeAnn M. Johnson Koch
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**CONFIDENTIAL BUSINESS INFORMATION
DO NOT DISCLOSE**

**VIA CERTIFIED AND ELECTRONIC MAIL
RETURN RECEIPT REQUESTED**

Hon. Michael Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

**Re: Notice of Intent to Sue Pursuant to 42 U.S.C. § 7604(b)(2) for Failure to Issue
Decisions on 2023 Small Refinery Hardship Petition Pursuant to § 7545(o)(9)(B)(iii)**

Dear Administrator Regan:

On behalf of Wynnewood Refining Company, LLC (“Wynnewood”), we submit this notice of intent to sue the Administrator of the United States Environmental Protection Agency (“EPA” or the “Administrator”) for the Administrator’s failure to perform a non-discretionary duty under the Clean Air Act and to seek a court order requiring the Administrator to perform that non-discretionary duty. 42 U.S.C. § 7604(a)(2); *id.* § 7604(b)(2). Specifically, EPA has not acted on Wynnewood’s petition for small refinery hardship relief from the Renewable Fuel Standard (“RFS”) for the 2023 compliance year within the statutory deadline. EPA had a non-discretionary duty to act on any petition for small refinery hardship relief within ninety (90) days after receipt of the petition. 42 U.S.C. § 7545(o)(9)(B)(iii). EPA failed to perform that non-discretionary duty when it failed to act on Wynnewood’s 2023 hardship petition by March 14, 2024—90 days after Wynnewood submitted the petition on December 15, 2023. EPA’s failure to act by the statutory deadline also constitutes “agency action unlawfully withheld” and “unreasonably delayed.” 5 U.S.C. § 706(1). Wynnewood gives notice of its intent to sue to compel that action. *Id.*

Wynnewood urges the Administrator to decide Wynnewood’s 2023 hardship petition immediately, in order to avoid the need for litigation.

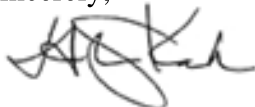
Hon. Michael Regan
May 7, 2024
Page 2

CONFIDENTIAL BUSINESS INFORMATION

Pursuant to 40 C.F.R. § 54.3(a), the full name and address of the person providing this notice on behalf of Wynnewood is:

LeAnn Johnson Koch
Perkins Coie LLP
700 13th Street N.W., Suite 800
Washington, DC, 20005

Sincerely,

A handwritten signature in black ink, appearing to read "LeAnn Koch", written over a faint, illegible background.

LeAnn M. Johnson Koch

EXHIBIT B

From: [Pais, Sheri \(WDC\)](#)
To: Regan.Michael@epa.gov
Cc: [Johnson Koch, LeAnn M. \(WDC\)](#); [Huston, Michael \(PHX\)](#)
Bcc: [Hardin, Jonathan G. \(WDC\)](#); [Ford, Aimee E. \(WDC\)](#)
Subject: CONTAINS CBI -Wynnewood Refining Company - Notice of Intent to Sue Pursuant to Clean Air Act
Date: Tuesday, May 7, 2024 10:02:25 AM
Attachments: [image001.png](#)
[2024.05.07 Wynnewood Notice of Intent to Sue EPA Administrator.pdf](#)

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Administrator Regan –

On behalf of Wynnewood Refining Company, LLC, we submit the attached notice of intent to sue for failure to perform a non-discretionary duty under the Clean Air Act. 42 U.S.C. § 7604(a)(2); *id.* § 7604(b)(2).

Pursuant to 40 C.F.R. § 54.2(a), we are also submitting the notice via certified mail today. Please let us know if you have any trouble accessing the attached.

Regards,
Sheri Pais

Sheri Pais | Perkins Coie LLP

SENIOR PARALEGAL
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F. +1.202.654.6211
E. SPais@perkinscoie.com



EXHIBIT C

From: [Buhrig, Melissa M.](#)
To: McKenna.Chris@epa.gov
Cc: [Lamp, David L.](#); [Neumann, Dane J.](#); [DeVelasco, Janice T.](#); [Kampfner, Roberto](#); [Pullins, Taylor](#); [Bromer, Alexandra Magill \(WDC\)](#); [Webber, Rhett M.](#)
Subject: Wynnewood Small Refinery Exemption Petition - URGENT
Date: Friday, December 15, 2023 5:01:11 PM
Attachments: [Wynnewood Refining Company LLC - 2023 SRE Petition - Privileged - Contains CBI.pdf](#)
[2023 SRE Application Exhibits - Tabs A-M \(Contains CBI\).zip](#)

Hi Chris – I hope this finds you and yours well. Please see the attached petition for Small Refinery Exemption under the RFS. We look forward to your prompt approval of this petition within the statutory deadline. Of course, please call anytime should you wish to discuss.

Thanks,

Melissa

Melissa M. Buhrig
Executive Vice President, General Counsel & Secretary
CVR Energy, Inc. (NYSE: CVI) | CVR Partners, LP (NYSE: UAN)
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
WYNNEWOOD REFINING COMPANY, LLC
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Perkins Coie, LLP
500 North Akard St., Ste 3300, Dallas, Texas 75201
214.965.7700

DEFENDANTS
MICHAEL S. REGAN, in his official capacity as the Administrator of the U.S.EPA
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise.
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice. PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability. PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability.
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other.
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act.
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions.
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157.
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016.
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g)).
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609.
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
5 U.S.C. §§ 705, 706; 28 U.S.C. §§ 1361, 2201, and 2202; and 42 U.S.C. § 7604
Brief description of cause:
Equitable relief for unlawful agency action under the Renewable Fuel Standard program with respect to its Shreveport refinery

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE: March 19, 2024
SIGNATURE OF ATTORNEY OF RECORD: s/ Katherine E. May

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE