

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: J. Steven Hart
Sent: Mon 8/21/2017 5:37:03 PM
Subject: FW: Court Decision on HFC Regulations

I am going to guess that EPA has not thought about this much yet. Nonetheless, some large US companies like Coca Cola have to make long term investment decisions relating to their refrigerated beverage machines. I think this might be a good topic for you guys to reach out on to the manufacturers . There are all sorts of technical issues that arise when you get rid of HFC's . One is consumer safety. I kept hearing that the replacement technology had some problems- exploding vending machines. Thoughts?

> The U.S. Court of Appeals for the DC Circuit issued an opinion<[https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/\\$file/11328-1687707.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/3EDC3D4817D618CF8525817600508EF4/$file/11328-1687707.pdf)> vacating the EPA's 2015 final rule<<https://www.gpo.gov/fdsys/pkg/FR-2015-07-20/pdf/2015-17066.pdf>> titled "Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes Under the Significant New Alternatives Policy Program", and remanding to the EPA the issue of whether to promulgate a new rule that retroactively prohibits the use of hydrofluorocarbons (HFCs) as a substitute for ozone-depleting chemicals.

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> In the 2015 rule, the EPA prohibited the use of HFCs as a replacement for ozone-depleting chemicals. The Court noted that the 2015 rule "prohibited the use of certain HFCs in aerosols, motor vehicle air conditioners, commercial refrigerators, and foams – even if manufacturers of those products had long since replaced ozone-depleting substances with HFCs." The Court found that the "EPA does not have statutory authority to require manufacturers to replace HFCs, which are non-ozone depleting substances, with alternative substances." In remanding the issue to the EPA to potentially develop a retroactive rule prohibiting the use of HFCs as a replacement for ozone-depleting chemicals, the Court set forth three conditions the agency would be required to meet in developing such regulations, including complying "with applicable due process constraints on retroactive decisionmaking." These conditions would be significant hurdles for the EPA to overcome in developing a new rule – assuming the Trump Administration decided to pursue a revised set of regulations to prohibit the use of HFCs.

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> <DC Circuit Court 08-08-2017.pdf>

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