

No. 25-9582

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

SUNCOR ENERGY (U.S.A.) INC.,

Petitioner,

v.

EPA,

Respondent.

On Petition for Review of Final Agency Action
of the Environmental Protection Agency

**MOTION OF GROWTH ENERGY FOR LEAVE
TO FILE BRIEF SUPPORTING DISMISSAL (OR TRANSFER)**

Suncor has petitioned this Court for review of EPA’s *August 2025 Decisions on Petitions for RFS Small Refinery Exemptions*, EPA-420-R-25-010 (“2025 SRE Decisions”), through which EPA adjudicated petitions filed by Suncor for a small-refinery exemption (“SRE”) from its obligations under the Renewable Fuel Standard (“RFS”) for 2018 and 2020-2024. *See* Petition for Review, ECF #1-1. Growth Energy moved to intervene in support of EPA given that the disposition of Hunt’s SRE petition will affect Growth Energy’s members’ competitive position in the transportation-fuels market and the demand for its members’ renewable fuel. *See* ECF #13. That motion remains pending.

Separately, EPA moved to dismiss or transfer. ECF #21. The Court directed Suncor to respond by December 24, 2025. ECF #23. Growth Energy has a strong interest in where this case is litigated, and accordingly now moves for leave to submit a brief in support of EPA's motion to dismiss, in which Growth Energy would present limited but important additional points showing that the D.C. Circuit is the only court that may review EPA's decision on Hunt's SRE petition. The proposed brief is attached to this motion.

Suncor states that it opposes this motion. EPA takes no position on this motion at this time.

ARGUMENT

I. Growth Energy has a strong interest in whether the D.C. Circuit is the exclusive forum for hearing Suncor's petition for review. In prior litigation over EPA's 2022 SRE decisions, the Fifth Circuit held that it was the proper forum for hearing various refineries' challenges to those decisions, *Calumet Shreveport Refining, L.L.C. v. EPA*, 86 F.4th 1121 (5th Cir. 2023), contrary to this Court's ruling that the D.C. Circuit was the exclusive forum for hearing similar challenges to EPA's 2022 decisions on SRE petitions, Order, *Wyoming Refining Co. v. EPA*, No. 22-9538, ECF #10935421 (10th Cir. Aug. 23, 2022); Order, *Wyoming Refining Co. v. EPA*, No. 22-9553, ECF #10939881 (10th Cir. Sept. 12, 2022). Growth Energy, which was an intervenor in the Fifth Circuit case, had argued that the D.C.

Circuit was the exclusive forum. Accordingly, after the Fifth Circuit’s contrary ruling, Growth Energy petitioned the Supreme Court for certiorari to resolve the question. *See Growth Energy v. Calumet Shreveport Refining LLC*, No. 23-1230 (U.S.). The Supreme Court agreed with Growth Energy and held that the D.C. Circuit was the exclusive forum because the challenged EPA decisions were “based on ... determination[s] of nationwide scope or effect.” 42 U.S.C. § 7607(b)(1); *see EPA v. Calumet Shreveport Refining LLC*, 605 U.S. 627, 145 S. Ct. 1735 (2025).

Growth Energy petitioned for certiorari in *Calumet* because of its strong interest in where SRE cases are litigated. As a regular participant in lawsuits involving SREs, *see* ECF #15 at 11, Growth Energy prefers centralized review of SRE actions in the D.C. Circuit to avoid expensive duplicative litigation and inconsistent substantive SRE standards. Uniformity engenders “the market certainty so critical to the long term success of the Renewable Fuel Program” by, among other things, enabling Growth Energy’s members to plan for future demand more reliably. *Americans for Clean Energy v. EPA*, 864 F.3d 691, 715 (D.C. Cir. 2017).

Now, in this case, it is important to Growth Energy to be able to explain why the favorable ruling it secured from the Supreme Court in *Calumet* compels

dismissal (or transfer) of this case in favor of the D.C. Circuit, to ensure that the efficiency and uniformity promoted by the Supreme Court's decision are achieved.

II. This motion and accompanying proposed brief are timely. EPA's motion to dismiss was filed only seven days ago and Suncor's response is not due for another seven days, giving Suncor ample time to account for Growth Energy's brief in preparing its response. (It is Growth Energy's understanding that the parties intend to request an extension of Suncor's deadline, affording Suncor even more time to account for Growth Energy's brief.)

CONCLUSION

For the foregoing reasons, the Court should grant Growth Energy's motion for leave to file the attached proposed brief supporting dismissal (or transfer).

Respectfully submitted,

/s/ David M. Lehn

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December 17, 2025

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CORPORATE DISCLOSURE STATEMENT

Growth Energy is a non-profit trade association. Its members are ethanol producers and supporters of the ethanol industry. It operates to promote the general commercial, legislative, and other common interests of its members. It does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Respectfully submitted,

/s/ David M. Lehn

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December 17, 2025

CERTIFICATE OF PARTIES AND AMICI CURIAE

Pursuant to Circuit Rule 27(a)(4), Growth Energy certifies that the parties in these consolidated cases are:

Petitioner: Suncor Energy (U.S.A.) Inc.

Respondent: U.S. Environmental Protection Agency.

Movant-Intervenors: Growth Energy.

Amici curiae: None.

Respectfully submitted,

/s/ David M. Lehn

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December 17, 2025

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies:

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 679 words, excluding the exempted portions, as provided in Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ David M. Lehn

DAVID M. LEHN

December 17, 2025

CERTIFICATE OF SERVICE

I certify that on this day, I caused the foregoing to be served on all parties through the Court's CM/ECF system.

/s/ David M. Lehn

DAVID M. LEHN

December 17, 2025