

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1147

September Term, 2004

Filed On: February 25, 2005^[880013]

National Alternative Fuels Association,
Petitioner

v.

Environmental Protection Agency and
Michael O. Leavitt, Administrator,
Environmental Protection Agency,
Respondents

Alliance of Automobile Manufacturers
and Association of International
Automobile Manufacturers, Inc.,
Intervenors

On Petition for Review of an Order of the
Environmental Protection Agency

Before: EDWARDS, SENTELLE, and ROBERTS, *Circuit Judges*

J U D G M E N T

This cause was considered on a petition for review of an order of the Environmental Protection Agency and was briefed by counsel. It is

ORDERED AND ADJUDGED that the petition for review is hereby dismissed for the reasons set forth in the accompanying memorandum.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing *en banc*. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Michael C. McGrail

Deputy Clerk

MEMORANDUM

National Alternative Fuels Association (“NAFA”) petitions for review of a final rule of the Environmental Protection Agency (“EPA”) establishing vehicle emissions standards and fuel controls. See *Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements*, 65 Fed. Reg. 6698 (Feb. 10, 2000). Because NAFA has failed to establish its standing to pursue the petition for review, we dismiss the petition for want of jurisdiction.

In *Sierra Club v. EPA*, 292 F.3d 895 (D.C. Cir. 2002), we held:

[A] petitioner whose standing is not self[-]evident should establish its standing by the submission of its arguments and any affidavits or other evidence appurtenant thereto at the first appropriate point in the review proceeding. In some cases that will be in response to a motion to dismiss for want of standing; in cases in which no such motion has been made, it will be with the petitioner’s opening brief – and not . . . in reply to the brief of the respondent agency.

Id. at 900. We reminded the parties of this requirement in our order establishing the briefing schedule for this case. See *Nat’l Alternative Fuels Ass’n v. EPA*, No. 00-1147 (D.C. Cir. July 9, 2004).

NAFA’s standing is far from self-evident. In its brief, NAFA describes itself as a group of scientists and concerned individuals “who are committed to clean and efficient combustion fuels,” and whose mission is, *inter alia*, “to focus intellectually honest scientific attention to the dynamics of our environment.” Final Petitioner’s Brief at 4. NAFA similarly identified itself in its comments to EPA during the rulemaking process. See Joint Appendix at 865.

Under *Sierra Club*, NAFA was therefore required to establish its standing in its opening brief, identifying evidence either in the record or in affidavits or other evidence appended to its brief. NAFA failed to carry this burden, proffering no argument or evidence whatsoever relating to its standing in its opening brief. NAFA loosely, vaguely, and

unimpressively attempted to cure this deficiency in its reply brief. We granted respondent's motion to strike that brief, however, because NAFA improperly attempted to raise standing arguments for the first time in its reply brief, impermissibly raised new arguments on the merits challenging the agency's rule, and inappropriately offered extra-record evidence in support of its petition. See *Nat'l Alternative Fuels Ass'n v. EPA*, No. 00-1147 (D.C. Cir. Jan. 28, 2005), *reconsideration denied*, *Nat'l Alternative Fuels Ass'n v. EPA*, No. 00-1147 (D.C. Cir. Feb. 10, 2005). Accordingly, NAFA now appears to acknowledge that it has failed to carry its burden on standing. See Petitioner's Motion To Reconsider Order To Strike Reply Brief at 2 ("If the Reply Brief is disallowed, EPA wins this case by default."); *id.* at 6 ("Striking the Reply Brief leaves Petitioner unable to address standing.")

Because "the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992), NAFA's failure to carry its burden of establishing standing deprives us of jurisdiction over this petition for review. We accordingly dismiss the petition.