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DELTA CONSTR. CO., INC. V. EPA: PUTTING THE BRAKES ON CHALLENGES TO UNFAIR AGENCY REGULATION OF GREENHOUSE GAS EMISSIONS AND FUEL ECONOMY IN LIGHT-DUTY AND HEAVY-DUTY VEHICLES

I. INTRODUCTION

As the United States has modernized, the country and the world at large have become increasingly dependent upon fossil fuels to transport people and goods from point A to point B.¹ Advances in modern transportation initiated the invention of the combustion engine, the heightened consumption of fossil fuels, and ultimately, the increased output of greenhouse gas emissions into the Earth's atmosphere.² Despite the world's best efforts at combatting increased emissions, global warming, and climate change, at the end of September 2016, the world surpassed the four hundred parts per million mark for carbon dioxide emitted into the atmosphere.³ Due to significant carbon dioxide emissions, scientists project carbon dioxide must be reduced to three hundred and fifty parts per million "if humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted."⁴

In an attempt to address the looming problems associated with global warming and increased greenhouse gas emissions, Congress passed the Clean Air Act (CAA) in 1973, which granted the Environmental Protection Agency (EPA) power to regulate emissions of pollutants found to "endanger public health and welfare."⁵ Since the CAA's passing, the related EPA regulations have reduced ground-level ozone by more than twenty-five percent, decreased "mercury emissions by [forty-five] percent," reduced "chemicals

1. *A blanket around the Earth*, NASA, <http://climate.nasa.gov/causes/> (last visited Apr. 13, 2017) (describing human impact on global warming).

2. *Id.* (explaining industrialization's role in increased greenhouse gases).

3. John Schwartz, *A Milestone for Carbon Dioxide in the Atmosphere*, THE N.Y. TIMES (Oct. 3, 2016), <http://nyti.ms/2drCgBx> (describing recent measurements of carbon dioxide in Earth's atmosphere).

4. *Id.* (explaining impact of surpassing four hundred parts per million threshold).

5. *The Clean Air Act*, UNION OF CONCERNED SCIENTISTS, http://www.ucsusa.org/global_warming/solutions/reduce-emissions/the-clean-air-act.html#.V_6fGeArK01 (last visited Apr. 13, 2017) (discussing Clean Air Act's impact on environmental regulation).

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that contribute to the hole in the ozone layer[,]” and diminished the content of lead in gasoline, thereby reducing “air pollution by [ninety-two] percent.”⁶ Despite these major accomplishments, in 2009, the EPA concluded emissions of greenhouse gases presented a risk to human health and safety, warranting further regulation.⁷

These increased greenhouse gas regulations, however, directly affect not only the manufacturers of fossil fuel powered vehicles, but also the consumers seeking to purchase those vehicles and the producers of alternative sources of fuel aiming to enter into a market dominated by large, powerful oil companies.⁸ In *Delta Constr. Co., Inc. v. EPA*,⁹ the Circuit Court of the District of Columbia faced the dilemma of upholding constitutional principles of Article III standing, as juxtaposed with the rights of potential plaintiffs to challenge regulations set forth by the EPA and National Highway Traffic Safety Administration (NHTSA) in carrying out their obligations under the CAA.¹⁰

In *Delta Constr. Co.*, the D.C. Circuit Court addressed whether two distinct groups of petitioners possessed standing to challenge the EPA’s and NHTSA’s joint rules regulating greenhouse gas emissions and fuel economy of light-duty and heavy-duty vehicles in the United States.¹¹ In determining that neither set of petitioners possessed the necessary Article III standing, the court found that, in order to properly challenge joint rules having an identical impact upon petitioners, it is necessary to (1) challenge both portions of the rule in order to be properly redressed by the court; (2) follow the necessary administrative procedure so that the court may properly enforce jurisdiction over the matter; and (3) ensure that the petitioner adequately falls within the zone of interests anticipated by the statute.¹²

This Casenote addresses the impact that the D.C. Circuit Court’s decision will ultimately have on petitioners attempting to challenge agency regulation of greenhouse gas emissions and fuel

6. *Id.* (emphasizing significant impact Clean Air Act has had on environment).

7. *Id.* (explaining EPA endangerment findings).

8. See generally *Sources of greenhouse gas emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Apr. 13, 2017) (describing impact of regulations on fuel producers).

9. 783 F.3d 1291 (D.C. Cir. 2015).

10. See generally *id.* at 1293-94 (explaining conflict faced by D.C. Circuit Court).

11. See *id.* (describing issues court addressed).

12. See *id.* at 1297, 1300-01 (expounding on holding of court).

efficiency in vehicles.¹³ First, this Note examines the court's assessment that a group of consumers do not have standing to challenge only the EPA's portion of the Car Rule, which regulates output of greenhouse gas emissions and fuel economy in passenger vehicles.¹⁴ This Note also assesses whether the court's interpretation of causation gives appropriate weight to both the causation and the redressability of the harm incurred by the petitioners.¹⁵ Next, this Note considers whether the court properly applied the statute requiring petitioners to exhaust administrative remedies prior to asserting challenges to agency regulation.¹⁶ Finally, this Note concludes that the Court counterintuitively ruled that an alternative fuel producer did not possess Article III standing because it did not fall within the zone of interests anticipated by the statute.¹⁷

II. FACTS

In *Delta Constr. Co., Inc. v. EPA*, the D.C. Circuit Court decided whether two separate groups of petitioners had standing to challenge the EPA's and NHTSA's "coordinated rules governing [] greenhouse gas emissions and fuel economy of cars and trucks."¹⁸

In 2010 and 2011, the EPA and the NHTSA issued Final Rules regulating greenhouse gas emissions and fuel efficiency requirements for light-duty and heavy-duty vehicles.¹⁹ The joint product released in 2010 was the agencies' Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards (Car Rule).²⁰ These standards applied to manufacturers of light-duty vehicles, medium-duty passenger vehicles, passenger automobiles, and light-duty trucks (non-passenger automobiles).²¹ The Car Rule's goals were to reduce greenhouse gas emissions and improve overall fuel economy in light-duty vehicles by fully imple-

13. *See id.* at 1297, 1300-01 (addressing effect of court's decision).

14. *See Delta Constr. Co.*, 783 F.3d at 1296-97 (describing court's analysis of California Petitioners' challenges to EPA regulation).

15. *See id.* at 1297 (weighing causation and redressability).

16. *See id.* at 1298-99 (describing analysis of whether POP Diesel met administrative requirements).

17. *See id.* at 1299-1300 (detailing court's zone of interests analysis).

18. *Id.* at 1293 (describing decision circuit court made).

19. *Delta Constr. Co.*, 783 F.3d at 1294-95 (explaining promulgation of Final Rules for light-duty and heavy-duty vehicles). While the EPA and NHTSA utilize "light-duty" and "heavy-duty" to describe various vehicles, they are more easily described respectively as cars and trucks for purposes of laymen's terms. *Id.*

20. *See id.* (setting forth joint rules EPA and NHTSA promulgated in 2010).

21. *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule*, 75 FED. REG. 25,324 (May 7, 2010) (explaining applicability of Car Rule).

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menting technology that is already commercially applied in most cases and is easily incorporated at a reasonable cost.²²

In 2011, the EPA and NHTSA issued joint rules for medium-duty and heavy-duty trucks, including combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles (Truck Rule).²³ Much like the purpose of the Car Rule, the Truck Rule was designed to reduce greenhouse gas emissions from heavy-duty vehicles, as well as implement “final hydrofluorocarbon standards to control leakage from air conditioning systems in combination tractors, and pickup trucks and vans.”²⁴ Additionally, the Truck Rule implemented acceptable levels for nitrous oxide and methane gases emitted from heavy-duty vehicles.²⁵

The EPA and NHTSA formulated the joint rules so that compliance with one meant automatic conformity with the other.²⁶ In *Delta Constr. Co.*, Petitioners brought multiple challenges against the Truck Rule, as well as a collateral attack on the Car Rule.²⁷ The court divided the challenges based upon their subject matter and the type of challenges each petitioner brought.²⁸

This case concerned two groups of petitioners bringing separate claims against the EPA’s and the NHTSA’s regulations for motor vehicle emissions and fuel economy.²⁹ The first group of petitioners (California Petitioners) constituted “businesses, associations, and individuals located in th[e] state [of California]” challenging specific portions of the EPA’s Car Rule and Truck Rule.³⁰ The California Petitioners premised their argument on purchasers of new vehicles, such as themselves, suffering from augmented up-front costs related to these new regulations.³¹ The second petitioner, Plant Oil Powered Diesel (POP Diesel), challenged both the EPA’s and the NHTSA’s portions of the Truck Rule.³² As a proponent of alternative fuels, POP Diesel promoted the use of vegetable

22. *Id.* at 25,326 (describing purposes of Car Rule).

23. *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, 76 FED. REG. 57,106 (Sept. 15, 2011) (explaining implementation of Truck Rule).

24. *See id.* (setting forth purpose of Truck Rule).

25. *Id.* (describing scope of Truck Rule).

26. *See Delta Constr. Co.*, 783 F.3d at 1295 (explaining compliance with one regulation ensures compliance with both regulations).

27. *Id.* at 1294-95 (describing challenges set forth in case).

28. *Id.* at 1295 (defining division within court opinion).

29. *See generally id.* at 1294 (describing two sets of petitioners).

30. *Id.* at 1295 (explaining identity of California Petitioners).

31. *Delta Constr. Co.*, 783 F.3d at 1295 (laying out California Petitioners’ argument).

32. *Id.* (explaining POP Diesel’s contentions).

oil, instead of traditional fuels, and altered traditional engines to allow them to run on vegetable oils.³³ Due to the nature of the Truck Rule, POP Diesel contended that the regulations made alternative fuels, such as those that they produced and used in their modified engines, economically infeasible.³⁴

A. California Petitioners vs. EPA

The California Petitioners asserted that the EPA did not comply with the statutory duties associated with promulgating new regulations.³⁵ More specifically, the California Petitioners asserted that the EPA failed to furnish the Science Advisory Board its greenhouse gas emission standard prior to the issuance of the standards, as the controlling statute mandates.³⁶ The EPA, however, countered this challenge by asserting that the California Petitioners do not possess Article III standing because (1) “[] [they] ha[ve] [not] suffered (or [are] [not] about to suffer) an injury-in-fact;” (2) the EPA did not cause the proposed injury in fact was; and (3) Petitioners are unable to be redressed by any relief sought from the court.³⁷

B. POP Diesel vs. EPA and NHTSA

POP Diesel asserted that “the Truck Rule ma[de] its products economically infeasible” and challenged the validity of both the EPA and NHTSA provisions on those grounds.³⁸ Ultimately, POP Diesel made three arguments as to why the Truck Rule was arbitrary and capricious.³⁹ First, POP Diesel argued that the greenhouse gas emissions are measured by “how much carbon dioxide is produced from vehicle tailpipes” with no assessment of greenhouse gasses emitted earlier in the fuel lifecycle.⁴⁰ Second, POP Diesel asserted that the EPA’s conclusion that the Truck Rule did not necessitate additional incentives for other biofuels was unreasonable.⁴¹ Third, POP Diesel argued that the EPA did not consider the implications

33. *Id.* (setting forth POP Diesel’s background).

34. *Id.* (describing bulk of POP Diesel’s argument).

35. *Id.* at 1295-96 (explaining California Petitioners’ view about EPA emissions regulation).

36. *Delta Constr. Co.*, 783 F.3d at 1296 (asserting EPA violated statutory duty).

37. *Id.* (explaining EPA’s position regarding Petitioners’ Article III standing).

38. *Id.* at 1297-98 (describing POP Diesel’s contentions).

39. *Id.* at 1298 (explaining POP Diesel’s argument).

40. *Id.* (setting forth first argument of Petitioners).

41. *Delta Constr. Co.*, 783 F.3d at 1298 (establishing second argument of Petitioners).

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of the Truck Rule on economic activity, and ultimately, on greenhouse emissions.⁴²

C. D.C. Circuit Court Findings

Ultimately, the D.C. Circuit Court determined that the California Petitioners did not have standing to challenge both the Car Rule and the Truck Rule.⁴³ The court explained that the California Petitioners were unable to attain the relief sought because rejection of one regulation, whether it was the emissions or fuel efficiency regulation, would not eliminate the regulation imposed by the other rule.⁴⁴ As for POP Diesel, the D.C. Circuit Court first held that POP Diesel was unable to maintain its petition against the NHTSA because it did not follow the proper procedures for challenging agency action; this resulted from POP Diesel's failure to first go directly to the agency itself before proceeding to the Circuit Court of Appeals.⁴⁵ POP Diesel's challenge to EPA's regulation, however, required further examination.⁴⁶ Ultimately, the court agreed that POP Diesel did meet the requirements of Article III standing; upon further examination, however, the court found that POP Diesel's assertions did not fall within the "zone of interests" that the statute required.⁴⁷ The Circuit Court, therefore, dismissed the petitions of both the California Petitioners and POP Diesel.⁴⁸

III. BACKGROUND

A. Culmination of Joint Rules Regulating Greenhouse Gases

In 1990, Congress granted the EPA the authority to regulate emissions, including greenhouse gases, from classes of new motor vehicles that jeopardized the public health.⁴⁹ In 2009, the EPA found that greenhouse gases "endanger the public health and public welfare of current and future generations."⁵⁰ The EPA's Endan-

42. *Id.* (explaining third argument of Petitioners).

43. *See id.* at 1297 (summarizing holding regarding California Petitioners).

44. *Id.* at 1296-97 (setting forth court's holding as to California Petitioners).

45. *Id.* at 1298 (describing district court's reasoning behind rejecting challenge of NHTSA's regulation).

46. *Delta Constr. Co.*, 783 F.3d at 1298-99 (explaining district court's analysis).

47. *Id.* at 1300-01 (setting forth holding of district court).

48. *Id.* (setting forth overall resolution of case).

49. *See* 42 U.S.C.A § 7521(a)(1) (West 1990) (discussing EPA's power to regulate vehicle emissions). Vehicle emissions are encompassed in the Clean Air Act's definition of "air pollutant." *Id.*

50. *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 FED. REG. 66,496 (Dec. 15, 2009) (describing findings of EPA regarding greenhouse gases).

germent Finding was met with challenges because there is no feasible way to reduce tailpipe greenhouse gas emissions without also reducing the amount of fuel combusted given that the two are causally linked.⁵¹ Any rule regulating tailpipe emissions, therefore, also limits fuel combustion, thereby curbing fuel consumption by consumers.⁵²

While the EPA maintains responsibility for regulating greenhouse gases, the NHTSA retains authority of promulgating average fuel economy standards that control all vehicle manufacturers.⁵³ Due to this substantive overlap in responsibility, the two agencies collaborated to create equivalent standards.⁵⁴ These standards applied to both greenhouse gas emissions and fuel efficiency standards.⁵⁵

This collaboration spawned two separate regulations governing greenhouse gas emissions and fuel efficiency for both light- and heavy-duty vehicles.⁵⁶ In 2010, the EPA and NHTSA passed the Final Rule for light duty vehicles, or the Car Rule.⁵⁷ The following year, the EPA and NHTSA also passed the Final Rule for heavy-duty vehicles, or the Truck Rule.⁵⁸ While both of these rules are functionally equivalent, there are slight differences between the EPA greenhouse gas emission standards and the NHTSA fuel economy

51. *Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles*, 76 FED. REG. 57,124-125 (Aug. 24, 2012) (linking tailpipe greenhouse gas emissions and fuel combustion and consumption in vehicles).

52. *See id.* (discussing limitation of greenhouse emissions' impact on fuel consumption).

53. 49 U.S.C. § 32902(a); 49 C.F.R. § 1.95(j) (explaining duties of NHTSA relating to regulation of fuel efficiency).

54. *Press Release, The White House, President Obama Announces Nat'l Fuel Efficiency Policy* (May 19, 2009), available at <https://www.whitehouse.gov/the-press-office/president-obama-announces-national-fuel-efficiency-policy> (disclosing collaboration of EPA and NHTSA for purposes of establishing equivalent standards); *see also Presidential Memorandum, Improving Energy Sec., Am. Competitiveness and Job Creation, and Environ. Protection Through a Transformation of our Nation's Fleet of Cars and Trucks* (May 21, 2010), available at <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards> (setting forth expectation that EPA and NHTSA work together to find solution).

55. *Delta Constr. Co., Inc. v. EPA*, 783 F.3d 1291, 1294-95 (D.C. Cir. 2015) (describing scope of functionally equivalent standards agencies set forth).

56. *Id.* at 1294 (setting forth impact of two separate standards).

57. *See Light-Duty Standards*, *supra* note 21 (explaining Car Rule and regulations).

58. *See Heavy-Duty Standards*, *supra* note 23 (discussing Truck Rule and regulations).

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standards due to the nature of the items that are regulated.⁵⁹ Despite these differences, both the Car Rule and the Truck Rule are structured so that compliance with either the emissions or fuel efficiency regulations guarantees compliance with both regulations.⁶⁰

B. Prerequisites to Challenging Agency Rule-Making

Some of the greatest challenges faced by petitioners seeking to invalidate the EPA's and NHTSA's joint rules include meeting the procedural requirements, or proving that they have standing to bring the claim and that the court reviewing the petitions has jurisdiction to hear the claim.⁶¹ To meet the requirements of standing, a petitioner must prove (1) an injury in fact; (2) that is caused by the defendant; and (3) is redressable by court action.⁶² Further, courts also must assess whether the petitioners bringing a claim have followed the proper channels in order for the court to assume jurisdiction.⁶³ This often becomes complicated with administrative agencies, such as the EPA or the NHTSA, as these administrative agencies have their own adjudicative processes that must be exhausted before seeking redress from the circuit court.⁶⁴

Over time, various groups of petitioners have challenged not only the enacted rules, but the endangerment findings; petitioners have also challenged the EPA's and NHTSA's allocated power to set forth these regulations.⁶⁵ Despite these challenges, the courts have remained reluctant to deny the constitutionality of these rules.⁶⁶

1. Injury in Fact

In order to sustain a claim of standing, petitioners are required to plead an injury in fact.⁶⁷ Generally speaking, courts assert that

59. See *Light-Duty Standards*, supra note 21 (explaining functional equivalence of EPA and NHTSA car standards); see also *Heavy-Duty Standards*, supra note 23 (explaining functional equivalence of EPA and NHTSA truck standards).

60. See *Delta Constr. Co.*, 783 F.3d at 1294 (discussing equivalence of standards and guaranteed compliance).

61. See *id.* at 1294-95 (discussing procedural history of case).

62. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (establishing elements of standing).

63. See *Pub. Citizen, Inc. v. NHTSA*, 489 F.3d 1279, 1287 (D.C. Cir. 2007) (explaining courts' lack of jurisdiction if petitioners have not followed channels delineated in statute).

64. See *id.* (explaining complicated processes challenging agencies' action often requires).

65. See *Delta Constr. Co.*, 783 F.3d at 1294-95 (discussing prior challenges to agencies' respective regulations, authority, and findings).

66. *Id.* (establishing court's repeated refusal to strike down regulations).

67. *Lujan*, 504 U.S. at 560-61 (setting forth elements of standing).

when a petitioner, himself, acts as the object of the action taken by the defendant, there is no question as to whether standing exists.⁶⁸ This issue, however, becomes more convoluted when someone or something else is the object of the defendant's action.⁶⁹

In *Sherley v. Sebelius*,⁷⁰ the D.C. Circuit Court determined whether two doctors possessed standing to challenge federal guidelines regulating research grants for adult stem cell research.⁷¹ In that case, the D.C. Circuit Court determined that the doctrine of competitor standing requires the government to take action that benefits the petitioner's competitor, thus simultaneously injuring the petitioner.⁷² Competitor standing occurs when the government takes steps to regulate two parties with stakes in the same market; the regulation, however, may help one of the two parties, while harming the other.⁷³ The D.C. Circuit Court confirmed in *Sherley* that it was not acceptable for government agencies to favor one party over another in such a way.⁷⁴

Next, in *White Stallion Energy Ctr., LLC v. EPA*,⁷⁵ the D.C. Circuit addressed whether Julander Energy Company, a company engaged in the development, exploration, and production of oil and natural gas, possessed standing to "challenge[] [the] EPA's decision not to adopt stricter emission standards by requiring 'fuel switching' . . . from coal to natural gas."⁷⁶ Ultimately, the court determined that Julander met all of the elements of standing, and more specifically, that it was enough to show the EPA's action incentivizing other fuels to prove an injury in fact.⁷⁷ Julander's assertion of standing ultimately failed, however, because it did not fall within the zone of interests anticipated by the statute, as Julander sought to profit from increasing the burden on other parties.⁷⁸ The scope of the

68. *See id.* at 561-62 (explaining extent of factual basis required to prove standing).

69. *See id.* (asserting when plaintiff is not object of defendant's action, more is required to prove standing).

70. 610 F.3d 69 (D.C. Cir. 2010).

71. *See id.* at 73 (discussing facts of case and impact of holding).

72. *See id.* at 72 (setting forth doctrine of competitor standing).

73. *Id.* (explaining concept of competitor standing).

74. *Id.* (reiterating overall impact of *Sebelius*).

75. 135 S. Ct. 702 (2014).

76. *Id.* at 1256 (explaining factual basis and court's analysis on Article III standing issues).

77. *See id.* (explaining court's reasoning regarding acceptance of petitioner's injury in fact).

78. *See id.* (asserting petitioner did not fall within zone of interests).

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zone of interests has since evolved due to intervention by the United States Supreme Court.⁷⁹

In *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*,⁸⁰ the United States Supreme Court assessed the scope of zone of interests as applied to an individual's challenge of an Indian tribe's usage of tribal land under a federal statute.⁸¹ In that case, the United States Supreme Court asserted that the zone of interests test, assessing "prudential standing," is not designed to be demanding, but instead, is meant to apply Congress's intent "to make agency action presumptively reviewable" without respect to the applicable plaintiff.⁸² In further assessing its application, the Court determined that the phrase, "arguably within the zone of interests," indicates that any doubt shall be resolved in favor of a plaintiff; standing, therefore, is only eliminated when "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit."⁸³

For example, in *Assoc. of Battery Recyclers v. EPA*,⁸⁴ the D.C. Circuit Court assessed whether industry and environmental groups possessed standing to request judicial review of EPA emissions standards for lead smelting operations.⁸⁵ In determining that the petitioners lacked standing, the D.C. Circuit Court rejected petitioners' prudential standing.⁸⁶ The court explained that when a petitioner objects to the regulatory burdens placed not on itself, but on its competitors, it does not satisfy the requisite zone of interests standard.⁸⁷

In the only favorable decision relating to competitor suits, *Ethyl Corp. v. EPA*,⁸⁸ the D.C. Circuit Court found that a fuel additive manufacturer possessed standing to challenge an "[]EPA[] compliance assurance program that established a framework for automobile makers to develop their own durability tests, subject to EPA

79. *See id.* (describing change of zone of interests due to evolution of United States Supreme Court precedent).

80. 132 S. Ct. 2199 (2012).

81. *See id.* at 2203 (describing factual basis of United States Supreme Court's opinion).

82. *Id.* at 2210 (assessing scope of zone of interests in determining prudential standing).

83. *Id.* (interpreting phrasing and word choice in zone of interests test).

84. 716 F.3d 667 (D.C. Cir. 2013).

85. *Id.* at 670 (discussing facts related to issue of standing).

86. *See id.* at 674 (setting forth court's determination).

87. *Id.* (explaining court's analysis of prudential standing).

88. 306 F.3d 1144 (D.C. Cir. 2002).

approval on a case-by-case basis. . . .”⁸⁹ The court distinguished between petitioners seeking increased transparency so they, and other manufacturers, could better meet EPA standards, as opposed to petitioners seeking financial gain from additional regulation.⁹⁰

2. *Caused by Defendant Action*

In *Crete Carrier Corp. v. EPA*,⁹¹ the D.C. Circuit Court addressed the causation prong of standing when assessing whether trucking companies were able to challenge the EPA’s 2004 standard for nitrous oxide and non-methane hydrocarbon emissions in the context of heavy-duty trucks.⁹² Ultimately, the court explained that the petitioners lacked standing because they failed to sufficiently prove that the EPA’s standards caused their increased costs.⁹³ To that end, the circuit court emphasized that it was necessary for the petitioners to prove that it was “‘substantially probable’” that the EPA standards were responsible for the increased prices.⁹⁴

3. *Redressable by Requested Court Action*

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,⁹⁵ non-profit real estate developers sought review of the local government’s refusal to change the zoning of a tract of land to allow for development of public housing.⁹⁶ In holding that the petitioners had standing, the United States Supreme Court explained that due to the nature of their claim, it was not necessary for these specific plaintiffs to set forth an explicit economic injury.⁹⁷

Further, in *Larson v. Valente*,⁹⁸ petitioners challenged a Minnesota statute requiring registration and disclosure for all charitable organizations, including religious organizations.⁹⁹ In establishing that the petitioners did have standing, the United States Supreme

89. *Id.* (explaining factual basis of petitioners’ claim).

90. *Id.* at 1149-50 (describing court’s analysis and ultimate holding).

91. 363 F.3d 490 (D.C. Cir. 2004).

92. *Id.* at 491 (discussing factual background of case and impact on issue of standing).

93. *Id.* at 493 (explaining petitioners were unable to assert substantial probability due to consent decrees).

94. *Id.* (setting forth “‘substantially probable’” standard necessary to prove causation).

95. 429 U.S. 252 (1977).

96. *Id.* at 252-53 (discussing facts of case).

97. *Id.* at 263 (explaining plaintiffs do not need to assert specific economic injury to satisfy burden of standing).

98. 456 U.S. 228 (1982).

99. *Id.* at 230-31 (setting forth factual basis of case).

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Court explained that due to the nature of the claim and its direct impact on petitioners and other similarly situated individuals, they did not need to prove a distinct economic injury.¹⁰⁰

IV. NARRATIVE ANALYSIS

A. Court's Analysis of California Petitioners' Article III Standing

The D.C. Circuit Court began its analysis by assessing the California Petitioners' challenge to the EPA's greenhouse gas emissions regulations.¹⁰¹ The court first addressed the arguments set forth by both the Petitioners and the EPA.¹⁰² In addressing these arguments, the court explained the controlling statute signified that any regulations proposed under the CAA provided "to any other [f]ederal agency for formal review and comment" must be made available to the Science Advisory Board (the Board) for review.¹⁰³ The California Petitioners argued that while the EPA submitted the standards to the Office of Management and Budget, the EPA failed to submit the proposed regulations to the Board for review.¹⁰⁴ Meanwhile, the EPA argued that despite the California Petitioners' assertions, the Petitioners had not set forth an injury-in-fact because "their allegations [were] too vague or otherwise deficient" and they did not "demonstrate causation or redressability."¹⁰⁵

When it came to assessing these arguments, the court concluded that there was no need to assess the California Petitioners' injury in fact, as they had not proven causation or redressability.¹⁰⁶ The court reasoned that the collaboration between the EPA and the NHTSA in creating the greenhouse gas emissions standards created regulations that were identical, and therefore, necessitated a

100. *Id.* at 241 (explaining petitioners' distinct injury giving rise to finding of standing).

101. *See* *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1293-95 (D.C. Cir. 2015) (addressing California Petitioners' argument against EPA emissions regulations).

102. *See id.* at 1295-96 (explaining arguments California Petitioners and EPA made). The California Petitioners asserted that the EPA did not comply with their mandatory duty to provide their proposed greenhouse gas emission standards to the Science Advisory Board prior to their final promulgation. *Id.* at 1296. The EPA, however, argued that the California Petitioners lacked Article III standing because they did not show an injury in fact caused by the EPA's conduct, and thus, could not attain the relief sought. *Id.*

103. *Id.* at 1296 (referencing language of 42 U.S.C. § 4365(c)(1) (2012)).

104. *Id.* (establishing factual basis of California Petitioners' argument).

105. *Id.* (explaining EPA position regarding California Petitioner's lack of injury-in-fact).

106. *Delta Constr. Co.*, 783 F.3d at 1296 (illustrating court's assessment of standing).

challenge to both.¹⁰⁷ As the court stressed, the California Petitioners challenged only the EPA regulations because the statute was not applicable to the NHTSA.¹⁰⁸ Even if the court struck down the EPA's standards, the California Petitioners were unable to be fully redressed because the NHTSA's nearly identical standards would still stand.¹⁰⁹

The court subsequently addressed that their decision in *Crete Carrier Corp. v. EPA* was instructive under the present circumstances.¹¹⁰ The court explained that, in *Crete Carrier Corp.*, like the present case, there were two separate instruments causing price increases for truck consumers.¹¹¹ The court, however, opined there must be a “necessary causal connection” set forth by the California Petitioners in order to link the challenged standard to the “purported injury” suffered.¹¹² The court maintained that while the EPA's and the NHTSA's standards did contain slight differences, the California Petitioners made no argument that there were distinct injuries caused by each of the separate standards, nor did they argue that the rescission of one of the two regulations would make a difference in vehicle manufacturers' behaviors, such as setting prices.¹¹³ Instead, the California Petitioners simply asserted the standards created an “indivisible ‘National Program,’” in which “the fuel economy standards cannot be bifurcated from the greenhouse gas emissions standards” that the EPA promulgated.¹¹⁴ The court rejected this interpretation, explaining that nothing in the NHTSA standards suggests that they are wholly dependent upon the EPA's emissions standards.¹¹⁵

Further, the court distinguished two of the cases the California Petitioners cited in support of their argument.¹¹⁶ The California

107. *Id.* (setting forth district court's rationale behind need to challenge both agency regulations).

108. *Id.* (describing fatal flaw in Petitioners' challenge).

109. *Id.* (describing why Petitioners cannot be redressed under present circumstances).

110. *See id.* at 1296-97 (setting forth court's analysis of *Crete Carrier Corp. v. EPA*).

111. *Delta Constr. Co.*, 783 F.3d at 1297 (describing factual similarities between *Crete Carrier Corp.* and *Delta Constr. Co.*).

112. *Id.* (explaining Petitioner's lack of causal link between challenged standard and injury).

113. *Id.* (setting forth gaps in Petitioners' argument relating to redressability and causation).

114. *Id.* (explaining Petitioners' argument that standards created indivisible National Program).

115. *Id.* (expounding on court's rejection of Petitioners' argument).

116. *Delta Constr. Co.*, 783 F.3d at 1297 (distinguishing Petitioners' supporting case law from present facts).

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Petitioners cited *Village of Arlington Heights* and *Larson* for the proposition that injuries are redressable for purposes of discerning standing when a favorable outcome extinguishes at least one of the regulatory problems, even if the outcome itself redresses the injury.¹¹⁷ The court, however, opined that these cases stood for the premise that plaintiffs can show standing, so long as they are able to prove that a favorable decision relieves a discrete injury to themselves, and therefore, “need not show that a favorable decision will relieve [their] every injury.”¹¹⁸ The court reiterated that, despite the California Petitioners’ reliance upon these cases, they failed to set forth evidence of a discrete injury redressable by the action requested of the court.¹¹⁹ The court held the California Petitioners lacked Article III standing in challenging the EPA’s greenhouse gas emissions.¹²⁰

1. POP Diesel’s Challenges to Truck Rule

Next, the court turned to POP Diesel’s various challenges against the Truck Rule.¹²¹ POP Diesel believed the Truck Rule was “arbitrary and capricious” because (1) “the Truck Rule measures the greenhouse gas emissions of fuels based on how much carbon dioxide is produced from vehicle tailpipes, ignoring greenhouse gas impacts created earlier in a fuel’s lifecycle;” (2) the EPA’s determination that the Truck Rule did not require incentives for biofuels because they were already incentivized by other programs was unreasonable; and (3) the EPA did not consider that the Truck Rule may “lead to greater economic activity that causes a net increase in greenhouse gas emissions.”¹²² The court then continued to consider the challenges to each portion of the Truck Rule, dividing its analysis based upon the entity defending the Rule.¹²³

117. *Id.* (describing Petitioners’ use of *Village of Arlington Heights* and *Larson* in comparison to Petitioners’ own case).

118. *Id.* at 1298 (interpreting *Village of Arlington Heights* and *Larson*).

119. *Id.* (applying applicable case law to Petitioners’ circumstances to demonstrate failure in setting forth discrete, redressable injury).

120. *Id.* (identifying court’s holding that California Petitioners lacked Article III standing).

121. *See Delta Constr. Co.*, 783 F.3d at 1297-98 (setting forth details of POP Diesel’s challenge to Truck Rule).

122. *Id.* (explaining POP Diesel’s arguments in challenge of Truck Rule). POP Diesel asserted that the EPA believed biofuels were already adequately incentivized under the Renewable Fuel Standards Program. *Id.*; *see also* 42 U.S.C. § 7545(o) (setting forth incentives for alternative fuels).

123. *See generally Delta Constr. Co.*, 783 F.3d at 1298-1301 (describing organization of court’s opinion).

a. *POP Diesel's Challenges to NHTSA's Standards*

First, the D.C. Circuit Court addressed whether it possessed jurisdiction over POP Diesel's claim against the NHTSA.¹²⁴ The court established that reviews of agency action may not be heard at first instance unless there is a direct review statute in place granting circuit courts subject matter jurisdiction.¹²⁵

The court next addressed POP Diesel's contention that the court had original jurisdiction under Title 49, Section 32909(a) of the United States Code (U.S.C.), by explaining that POP Diesel failed to comply with the procedural requirements.¹²⁶ The court further explained that pursuant to NHTSA's regulations under Title 49, Section 553.35(a) of the Code of Federal Regulations (C.F.R.), "a petition for reconsideration of a rule must be received within [forty-five] days of the publication of the rule in the Federal Register."¹²⁷ Additionally, the court explained that if the petition is not received within the forty-five days allotted by the regulation, it is treated as a petition for new rulemaking under Title 49, Section 552 of the C.F.R.¹²⁸ POP Diesel, however, did not submit its petition until fifty-nine days after the Federal Register published the Truck Rule, leaving the NHTSA to treat the petition as if it were a petition for new rulemaking.¹²⁹ As such, because the NHTSA treated it as a petition for new rulemaking and denied it, the D.C. Circuit Court explained that the statute does not allow this type of direct review of petitions in courts of appeals.¹³⁰

In further assessment, the court turned to *Public Citizen, Inc. v. NHTSA*, explaining that the analysis of the statute granting the NHTSA the power to regulate fuel economy turned on the defini-

124. *Id.* at 1298 (explaining court's analysis of original jurisdiction).

125. *Id.* (identifying rule about review of agency action).

126. *Id.* (establishing POP Diesel's argument and court's rationale for rejecting argument). Specifically, Section 32909(a)(1) of the United States Code reads:

A person that may be adversely affected by a regulation prescribed in carrying out any of sections 32901-32904 or 32908 of this title may apply for review of the regulation by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.

49 U.S.C. § 32909(a)(1) (explaining who may bring action under Section 32909(a)(1)).

127. *Delta Constr. Co.*, 783 F.3d at 1298 (describing NHTSA's regulations for filing challenges to regulations).

128. *Id.* (explaining consequences of not meeting forty-five day deadline).

129. *Id.* (establishing POP Diesel submitted petition after deadline).

130. *Id.* (explaining why court is unable to review POP Diesel's petition).

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tion of “prescribing.”¹³¹ The court elaborated that, in *Public Citizen*, the D.C. Circuit Court included the action of setting standards in the scope of the definition of “‘prescribing,’” as anticipated by the statute.¹³² The court noted that the language of Title 49, Section 32909 of the U.S.C. is substantially similar to that of the statute assessed in *Public Citizen* in respect to the types of petitions for review that courts of appeals may hear in the first instance.¹³³ The court, however, determined that because the petitions for rulemaking were not the same as prescribing a regulation under the statute, first instance review in the court of appeals was inappropriate.¹³⁴ The court, therefore, dismissed POP Diesel’s challenge to the NHTSA’s fuel economy regulations.¹³⁵

b. POP Diesel’s Challenges to EPA Standards

In the subsequent portion of the opinion, the court assessed POP Diesel’s challenge to the EPA’s greenhouse gas emissions standards.¹³⁶ The court began by establishing that it possessed “original jurisdiction over POP Diesel’s challenge to the EPA’s portion of the Truck Rule. . . .”¹³⁷ Still, despite this jurisdiction, the court also addressed two other objections raised by the EPA: (1) POP Diesel’s lack of Article III standing; and (2) POP Diesel’s failure to fall within the zone of protected interests.¹³⁸

In assessing POP Diesel’s Article III standing, the court explained that POP Diesel asserted competitor standing as allowed by the “law of the circuit.”¹³⁹ The court ruled that because POP Diesel imported and sold jatropa oil fuel, EPA regulations injured it by promoting other renewable fuels, which their competitors sold.¹⁴⁰ The court compared this situation to the facts it previously adjudi-

131. *Id.* at 1298-99 (addressing importance of *Public Citizen* in scope of court’s analysis).

132. *Delta Constr. Co.*, 783 F.3d at 1298 (describing *Public Citizen*’s relevance).

133. *Id.* at 1298-99 (emphasizing similarities between statutes).

134. *Id.* at 1299 (explaining why petitions for rulemaking do not fall within scope of statute).

135. *Id.* (asserting holding of court).

136. *Id.* at 1299-1301 (discussing POP Diesel’s challenge to EPA emissions standards).

137. *Delta Constr. Co.*, 783 F.3d at 1299 (explaining court has original jurisdiction, pursuant to 42 U.S.C. § 7607(b)(1)).

138. *Id.* at 1299-1300 (describing two threshold objections EPA set forth).

139. *Id.* at 1299 (explaining competitor standing). “The law of the circuit is clear that ‘any one competing for governmental benefit . . . [may] assert competitor standing when the [g]overnment takes a step that benefits his rival and therefore injures him economically.’” *Id.* (quoting *White Stallion*, 748 F.3d at 1256).

140. *Id.* (depicting how POP Diesel could assert competitor standing).

cated in *White Stallion Energy Ctr., LLC v. EPA*, emphasizing that, like that case, the EPA incentivized other renewable resources to the detriment of POP Diesel.¹⁴¹ The court further concluded that POP Diesel's injury could be redressed by requiring the EPA to provide a provision that incentivized vegetable fuels, in addition to those renewable resources that the regulations already incentivized.¹⁴²

Next, the court assessed whether POP Diesel fell within the zone of interests protected by Title 42, Section 7521 of the U.S.C.¹⁴³ The court reiterated that the purpose of the zone of interests test is to assess whether statute authorizes the petitioner to bring suit against the defendant.¹⁴⁴ The court further asserted that the zone of interests test under the Administrative Procedure Act is not demanding, but the scope of the zone of interests is specifically dependent upon the provisions of law under analysis.¹⁴⁵ Specifically, the court stated, “[W]hat comes within the zone of interests of a statute for purposes of obtaining judicial review of administrative action under the ‘generous review provisions’ of the APA may not do so for other purposes.”¹⁴⁶

Despite the “‘generous review provisions,’” the court elaborated that previously, a petitioner's interest in increasing the regulatory burden on others was not within the prescribed zone of interests protected by the CAA.¹⁴⁷ The court further explained that this rings true even when the goals of increasing the regulatory burden are directly in line with the purpose of the statute.¹⁴⁸ The court then compared the facts of the present case with those of *White Stallion*, in which the petitioner was outside the zone of interests because it stood to economically benefit from the increased burden on other similarly-situated parties.¹⁴⁹ Despite POP Diesel's noble cause of marketing, selling, and implementing renewable

141. *Id.* at 1300 (describing injury of POP Diesel).

142. *Delta Constr. Co.*, 783 F.3d at 1299-1300 (outlining how POP Diesel's injury may be redressed).

143. *Id.* at 1300 (explaining court's analysis of zone of interests).

144. *Id.* (setting forth purpose of zone of interests inquiry).

145. *Id.* (explaining scope of zone of interests).

146. *Id.* (quoting *Bennett v. Spear*, 520 U.S. 154, 163 (1997)) (differentiating between what falls within zone of interests for purposes of obtaining judicial review of administrative action under APA versus other types of judicial review).

147. *Delta Constr. Co.*, 783 F.3d at 1300 (explaining goal of increasing regulation of industry group does not fall within zone of interests that statute contemplates).

148. *Id.* (asserting increase of regulatory burden not within zone of interests, regardless of whether petitioners' goals fall in line with CAA).

149. *Id.* (explaining why petitioners in *White Stallion* fell outside zone of interests).

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fuel alternatives, as well as its intention for all renewable fuel promoters to be similarly situated, the court held that its potential economic benefit from court action placed it outside the zone of interests for purposes of the CAA.¹⁵⁰

Despite POP Diesel's efforts to distinguish *White Stallion* by characterizing itself as an "unusually suitable champion," the court remained reluctant to accept that assertion.¹⁵¹ The court explained that it has routinely refused to accept that corporate interests deemed to be "green" fall within the zone of interests.¹⁵²

The court did note one instance in which it allowed a competitor's suit challenging EPA emission regulations to proceed; this case was *Ethyl Corp. v. EPA*.¹⁵³ The court, however, opined in that instance, the petitioners sought regulation that would "help it develop and improve its products with an eye to conformity to emissions needs" and "secur[e] EPA approval for its own fuel additive products."¹⁵⁴ The court elaborated that the petitioner's goal in that case was to better conform to the statute and not increase the regulatory burden on competitors or achieve economic gain through legislative means.¹⁵⁵ In dismissing POP Diesel's challenge of the EPA's regulations, the court explained that "[m]erely seeking to boost sales of a particularly green product, however, is not sufficient."¹⁵⁶

V. CRITICAL ANALYSIS

Throughout its analysis of both the California Petitioners' claim against the EPA and POP Diesel's claims against the EPA and NHTSA, the court looked to the language of the regulations at issue, similar statutes, and rulings in the D.C. Circuit Court and the United States Supreme Court.¹⁵⁷ The D.C. Circuit Court's determinations that (1) the California Petitioners had no standing to chal-

150. *Id.* (describing court's analysis of why POP Diesel falls outside zone of interests).

151. *Id.* at 1301 (describing POP Diesel's "unusually suitable champion" argument). The main thrust of POP Diesel's argument was that its products were especially suited to "reduc[e] overall fuel consumption and greenhouse gas emissions." *Id.*

152. *Delta Constr. Co.*, 783 F.3d at 1301 (describing court's repeated refusal to extend zone of interests to "green" corporate interests).

153. *Id.* (carving out exception to general rule regarding zone of interests).

154. *Id.* (delineating difference between POP Diesel's goal and petitioners' goal in *Ethyl Corp.*).

155. *Id.* (asserting difference between two cases).

156. *Id.* (setting forth holding of D.C. Circuit Court).

157. See generally *Delta Constr. Co.*, 783 F.3d at 1296 (explaining analysis D.C. District Court employed).

lunge the EPA's portion of the Car Rule and that (2) the court lacked original jurisdiction over POP Diesel's claim against the NHTSA followed logically from the rules governing standing and the statutes at issue.¹⁵⁸ Despite this rational analysis, the court then determined that POP Diesel did not have standing to challenge the EPA's portions of the Truck Rule.¹⁵⁹ Not only is this holding contrary to the purpose of the statute, it is also counterintuitive because it bars plaintiffs with interests aligned with the EPA, such as POP Diesel, from challenging regulations that may hinder their ability to create new solutions to diminish humans' carbon footprint.¹⁶⁰

A. California Petitioners' Causal Link Inadequate

As the D.C. Circuit Court observed, because the two regulations are functionally identical, there is no way to discern whether it is the EPA emissions regulation or the NHTSA fuel economy regulation that caused harm to the California Petitioners.¹⁶¹ Following logically from that, there is, consequently, no way to redress the injury if only one of the regulations is struck down.¹⁶² Regardless, the California Petitioners would be left in the same position as they were in before challenging the regulation.¹⁶³ It would have been illogical for the D.C. Circuit Court to hold otherwise.¹⁶⁴ Beginning with the elements of standing, the court dissects specifically why the California Petitioners lacked the essential element of causation.¹⁶⁵

Honing in on the element of causation, the court used a common sense approach to discern that the California Petitioners lacked standing.¹⁶⁶ In doing so, the court correctly asserted that their previous decision in *Crete Carrier Corp. v. EPA* was instructive in that it contained substantially similar facts to the case at hand.¹⁶⁷ Analogizing those facts to the present facts, the court reaffirmed its original holding that when a separate action causes the same harm,

158. *Id.* (describing court's analysis).

159. *Id.* (describing court's analysis).

160. *Id.* (elaborating on court's inconsistencies with statute's purpose).

161. *Id.* at 1296 (setting forth analysis of causation).

162. *Delta Constr. Co.*, 783 F.3d at 1296 (explaining Petitioners could not be redressed if only one regulation struck down).

163. *See id.* (describing conundrum of Petitioners being left in same position, regardless of whether court strikes down EPA regulation).

164. *Id.* at 1297, 1300-01 (setting forth court's holding).

165. *Id.* at 1296 (dissecting Petitioners' standing).

166. *See generally id.* at 1296-97 (describing court's reasoning).

167. *Delta Constr. Co.*, 783 F.3d at 1296-97 (explaining application of standard in *Crete Carrier Corp.* to present case).

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it is up to the petitioner to establish a causal connection between the action and their specific harm.¹⁶⁸

In holding that the California Petitioners had no standing due to their lack of causation, the court continued to uphold a long line of cases requiring petitioners to explicitly establish their standing to bring a claim against governmental agencies.¹⁶⁹ Despite the likely annoyance that results from frustrated petitioners, like the present Petitioners, the D.C. Circuit Court has been consistent in holding that all three elements of standing must be met in order to pass this threshold inquiry.¹⁷⁰ In doing this, the court has maintained that remotely related harms that occur as a result of multiple statutory schemes must be proven to be directly related to the challenged regulation in order to satisfy the element of causation.¹⁷¹

The court's most forceful point, however, is that there are two separate and distinct rules at play in this particular circumstance.¹⁷² This notion provided an opening for the California Petitioners to plead that the differences in the two rules created distinct harms that are suffered only by the employment of one rule versus the other.¹⁷³ As the court accurately points out in its opinion, the California Petitioners did not take this path.¹⁷⁴ That being said, it appears that the court created an opening in this case where, if a petitioner were to plead that there was a distinct harm created by one rule versus the other, the court would be open to entertaining the claim.¹⁷⁵ This opening has seemed to create an outlet for frustrated petitioners to challenge joint agency rules, or at the very least, allows them to bring forth a claim that will not be automatically dismissed due to lack of standing.¹⁷⁶

B. POP Diesel Failed to Exhaust Administrative Remedies

In determining whether the court possessed original jurisdiction over POP Diesel's claim against NHTSA, it employed a method of statutory interpretation utilizing the explicit language of the stat-

168. *Id.* at 1297 (applying *Crete Carrier Corp.*'s analysis to case).

169. *Id.* at 1296-98 (describing court's adherence to previous case law).

170. *Id.* (reiterating court's consistent holdings).

171. *Id.* (elaborating on court's reasoning).

172. *Delta Constr. Co.*, 783 F.3d at 1297 (explaining court's most compelling argument).

173. *Id.* (setting forth court's interpretation of language within rules).

174. *Id.* (rejecting California Petitioners' argument and asserting Petitioners did not use court's proposed tactic).

175. *Id.* (describing opening court created in analysis).

176. *Id.* at 1297 (elaborating on impact of opening court created).

ute, the language of similar statutes, and previous cases tried in the circuit.¹⁷⁷ The court ultimately rejected POP Diesel's contention that it fell under Title 49, Section 32909(a)(1) of the U.S.C., as its petition for reconsideration was not filed within the explicit time limit under the statute.¹⁷⁸ In justifying its position, the court emphasized its previous decision in *Public Citizen*, which discussed the interpretation of the word "prescribing" as was used in that NHTSA statute.¹⁷⁹ The court deemed that definition applicable under this set of facts as well.¹⁸⁰

While POP Diesel raised a plausible argument, the court took care to analyze the statute at hand and explain why POP Diesel's argument fails.¹⁸¹ In light of the court's application of *Public Citizen*, it is unrealistic to expect the court to make an exception for POP Diesel when previous petitioners faced nearly the same set of facts and the court rejected original jurisdiction in those cases.¹⁸² It is inequitable to allow POP Diesel to avoid the obligations the statute imposes, but force others to comply.¹⁸³ In providing consistency and equity, the court produced a decision, which is in line with its previous interpretations of the word "prescribing," as it applies to the statute, and forces POP Diesel to comply with the procedural requirements of the statute.¹⁸⁴

C. Court's Application of Zone of Interests Test Counterintuitive

Despite the court's finding of original jurisdiction over POP Diesel's claims against the EPA, it was necessary for the court to assess the threshold objections of whether POP Diesel possessed Article III standing and fell within the zone of interests contemplated

177. *Delta Constr. Co.*, 783 F.3d at 1298 (setting forth court's analysis of original jurisdiction).

178. *Id.* (applying NHTSA regulation, requiring receipt of petition within forty-five days, to facts of case).

179. *Id.* (laying out court's application of *Public Citizen* as controlling precedent interpreting term "prescribing").

180. *Id.* at 1298-99 (explaining court's adoption of *Public Citizen*'s analysis in case).

181. *See generally id.* at 1298-99 (describing court's careful analysis of why POP Diesel's standing argument failed).

182. *See Delta Constr. Co.*, 783 F.3d at 1298-99 (elaborating on why court's deviation from *Public Citizen* is unrealistic).

183. *See generally id.* (describing effect of denial of petition for rulemaking).

184. *Id.* (describing court's application of legal principles consistent with relevant precedent).

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by the statute.¹⁸⁵ The court determined that POP Diesel had Article III standing to bring a claim; the court, however, rejected POP Diesel's contention that it fell within ambit of the zone of interests contemplated by the statute because POP Diesel's interests were directly in line with the EPA's interests.¹⁸⁶ In rejecting POP Diesel's arguments relating to zone of interests, the court determined that POP Diesel's economic interest in increasing the burden on its competitors eliminated its ability to fall within the zone of interests.¹⁸⁷

Generally, it would make sense to attempt to avoid an industry group benefitting from increased regulation; in this case, however, it is counterintuitive.¹⁸⁸ POP Diesel is an environmentally friendly producer of biofuels and its interests align perfectly with those of the statute.¹⁸⁹ The mere fact that its challenge of the EPA's regulations would positively impact POP Diesel economically has no bearing on its genuine motives of promoting environmentally friendly fuel alternatives.¹⁹⁰ Although the court attempts to follow precedent, this is a situation where it should have developed an exception, or at the very least, considered how its decision impacts the ability of inventors of renewable resources to challenge EPA regulations.¹⁹¹

VI. IMPACT

The D.C. Circuit Court's decision in *Delta Constr. Co.* increases the burden upon any petitioner seeking to challenge emissions regulations.¹⁹² More importantly, however, it places an impossible burden upon producers of alternative fuels, who stand to lose the most from unfair regulations that incentivize some portions of the market, but not others.¹⁹³ While it is intuitive that these industry groups would likely be the best equipped to challenge agency regulation, recent decisions have barred their entry into the proper fo-

185. *Id.* at 1299 (explaining court's analysis of POP Diesel's claims against EPA).

186. *Id.* at 1300 (determining POP Diesel does not possess Article III standing).

187. *Delta Constr. Co.*, 783 F.3d at 1300 (establishing POP Diesel's economic interests preclude group from challenging EPA's regulation).

188. *Id.* (describing court's rationale).

189. *Id.* (defining POP Diesel's purpose and goals).

190. *Id.* (elaborating on court's rationale for rejecting POP Diesel's standing).

191. *Id.* at 1300 (describing court's adherence to precedent).

192. *Delta Constr. Co.*, 783 F.3d at 1301 (describing overall impact of decision).

193. *Id.* (describing impact specific to alternative fuel producers).

runs to make any progress.¹⁹⁴ While the court in *Delta Constr. Co.* sought to prevent alternative fuel producers from challenging these regulations, the court inadvertently prevented nearly anyone from being able to challenge the regulations by requiring petitioners to jump through a number of procedural hoops and to fall within the arbitrary zone of interests.¹⁹⁵ Not only are these requirements frustrating, but they also create increased costs for small, alternative fuel producers, who often are still trying to get their businesses off the ground.¹⁹⁶

The procedural requirements imposed by the court are two-fold.¹⁹⁷ Not only must petitioners be sure to add all of the appropriate defendants to the action, but they must also be sure to comply with all of the administrative red tape required by the agencies.¹⁹⁸ While the D.C. District Court was reasonable in explaining that the California Petitioners could not establish standing because they lacked redress by only naming one of the two agencies who promulgated the regulations, the court itself raised the possibility that there could be a separate, distinct injury that may have been contemplated by the California Petitioners; the court, however, refused to entertain that idea.¹⁹⁹ In rejecting this notion, the court explained that the California Petitioners did not address any facts that led them to believe there was a distinct injury the court could redress, and therefore, dismissed their claim.²⁰⁰ This places an extraordinary burden upon petitioners to either carefully plead their injuries, so as to specify that there is, in fact, a separate, distinct injury the court can redress, or add each and every possible defendant that may have their own set of rules impacting regulation.²⁰¹ Despite this burden, the court did not absolutely foreclose similarly situated petitioners from establishing standing, and therefore, it is likely that in the future, petitioners could utilize this tactic to defeat defendants' challenges to petitioner standing.²⁰²

194. *Id.* (elaborating how recent decisions impacted producers of alternative fuels' ability to challenge agency regulation).

195. *Id.* (explaining rare occasion when court permitted standing).

196. *See generally id.* at 1300-01 (elaborating on impact of court's decision).

197. *Delta Constr. Co.*, 783 F.3d at 1300-01 (describing court's procedural requirements).

198. *Id.* (setting forth requirements imposed by court's decision).

199. *Id.* at 1297 (describing court's interpretation of alternative arguments).

200. *Id.* (noting court's assessment of facts).

201. *See generally id.* at 1297 (explaining impact of court's rejection of California Petitioners' arguments).

202. *See Delta Constr. Co.*, 783 F.3d at 1297 (noting future petitioners' avenue for litigation).

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Further, the court has established a precedent that individuals challenging the regulations must fall within the zone of interests of the statute.²⁰³ The court's rejection of POP Diesel as a qualified member of the zone of interests was troubling.²⁰⁴ While POP Diesel had met every other requirement in bringing suit, they were still barred entry merely because they could possibly economically benefit from the increased regulation of other industry entities.²⁰⁵ Thus, this decision will have a lasting impact on these environmentally-friendly fuel producers, prohibiting them from being able to have a real say in regulations that are often not directly targeting them, but still have a lasting impact on both their businesses and ability to produce alternative fuels.²⁰⁶ This holding directly defeats the purpose of challenging regulations.²⁰⁷ Those who are directly affected by the issues facing the alternative fuel market are barred from even stepping foot into a courtroom, leaving them with no other option.²⁰⁸

As a result, producers of alternative fuels will undoubtedly suffer from increased frustration and costs.²⁰⁹ The D.C. Circuit Court's decision in *Delta Constr. Co.* has only made it more difficult for these businesses to challenge regulations that place further hardship on them or unfairly benefit their competitors.²¹⁰ With greenhouse gasses constituting a looming problem for the worldwide community, it is necessary for the courts to examine the widely spread impact their decisions may produce upon these green businesses that may very well be the future of our fuel consumption.²¹¹

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203. *Id.* at 1300 (detailing court's established precedent).

204. *See id.* (describing court's analysis).

205. *Id.* at 1300-01 (discussing court's interpretation of POP Diesel's potential economic benefit from challenge to agency regulation).

206. *See generally id.* at 1297, 1300-01 (describing court's holdings).

207. *Delta Constr. Co.*, 783 F.3d at 1300-01 (describing court's analysis).

208. *Id.* (determining choices similarly situated petitioners may have under circumstances).

209. *Id.* (postulating ultimate impact decision will have on future petitioners and alternative fuel producers).

210. *Id.* at 1301 (describing court's ultimate holding and potential impact on alternative fuel producers).

211. *See Schwartz, supra* note 3 (describing human impact on global warming and tying impact to potential effect decision may have on alternative fuel producers).

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