SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of HEATING AIR-CONDITIONING REFRIGERATION DISTRIBUTORS INTERNATIONAL and THE AIR-CONDITIONING, HEATING, AND REFRIGERATION INSTITUTE,

Petitioners-Plaintiffs,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and ACTING COMMISSIONER AMANDA LEFTON, In her Official Capacity as Acting Commissioner,

Respondents-Defendants.

VERIFIED PETITION AND COMPLAINT

Index No. 2025-____

Oral Argument Requested

Petitioners-Plaintiffs, by and through their undersigned attorneys, as and for their Verified Petition and Complaint, state as follows:

PRELIMINARY STATEMENT

1. This is a hybrid proceeding which seeks a: (1) declaratory judgment pursuant to § 3001 of the Civil Practice Law and Rules ("CPLR") declaring that all or a portion of Title 6 of the New York Codes, Rules, and Regulations ("NYCRR") Part 494, as recently amended and adopted or approved by the Defendants-Respondents, entitled the "Hydrofluorocarbon Standards and Reporting" (hereinafter referred to as "amended Part 494"), are illegal, null and void; and (2) judgment pursuant to Article 78 of the CPLR annulling all or a portion of amended Part 494 on the grounds that the Respondents-Defendants have acted in excess of their jurisdiction, and that amended Part 494's enactment was affected by errors of law, was arbitrary and capricious and otherwise illegal. *See* Hennessey Aff. at Ex. A (providing a true and accurate copy of amended Part 494).

JURISDICTION AND VENUE

2. The County of Albany is an appropriate venue pursuant to Sections 506(b) and CPLR Article 78, as it is the county where the determinations under review was made, is the county where the material events at issue took place, and is where the principal office of the respondent is located, and pursuant to Section 503(a) of the CPLR, as it is the county where the material events at issue took place and where at least one of the parties reside.

3. Petitioner designates the venue and place of trial for this action in Albany County pursuant to CPLR §§ 503, 506 and 509.

4. For the reasons stated herein, this Court has the authority to issue a declaratory ruling as to the rights and other legal relations of the parties to a justiciable controversy pursuant to CPLR § 3001; and the authority to review the conduct of a "body or officer" pursuant to Article 78 of the CPLR.

PARTIES

5. Petitioner-Plaintiff Heating Air-Conditioning Refrigeration Distributors International ("HARDI") is a non-profit trade association incorporated in the State of Ohio.

6. HARDI has over 1,050 members, including distributors, suppliers, and manufacturers in the heating, ventilation, air-conditioning, and refrigeration ("HVACR") equipment, supplies, and products industry, with 31 HARDI Member companies operating or doing business in New York State.

7. HARDI members play a critical role in ensuring the efficient and reliable distribution of heating, cooling, and refrigeration equipment, parts, and supplies in New York State and the United States and employ over 60,000 people in the United States.

8. Approximately 70% of HARDI distributor members are classified as small businesses, and 80% are U.S.-based wholesale companies.

9. HARDI brings this verified petition and complaint (collectively the "Petition") on behalf of itself and its members (hereinafter "HARDI Members").

10. HARDI is involved in activities designed to educate HARDI Members, industry and the public regarding federal, state and local laws and regulations, particularly environmental, which affect companies operating in the HVACR industry and which may affect HARDI Members and their business operations.

11. HARDI Members are directly affected by amended Part 494 adopted and/or approved by the Respondents-Defendants relative to HVACR equipment and supplies. HARDI Members that operate in New York, or provide equipment and/or supplies to companies that operate in New York, are regulated by and must comply with the amended Part 494 regulations. Amended Part 494 affects, among other things, the economic interests of the HARDI Members. The economic interests of HARDI Members are affected through the costs associated with compliance with the requirements, standards and prohibitions of amended Part 494.

12. Petitioner-Plaintiff Air-Conditioning, Heating, and Refrigeration Institute ("AHRI") is a non-profit trade association incorporated in the State of Virginia.

13. AHRI represents more than 330 manufacturers of air conditioning, heating, water heating, commercial refrigeration equipment, and refrigerant producers ("AHRI Members"), including in New York State. It is an internationally recognized advocate for the HVACR and water heating industry and certifies the performance of many of the products manufactured by its members. In North America, the annual economic activity resulting from the HVACR and water

heating industry is more than $211 billion. In the United States alone, AHRI member companies, along with distributors, contractors, and technicians employ more than 700,000 people.

14. AHRI is engaged in activities designed to educate AHRI Members, industry and the public regarding federal, state and local laws and regulations which affect manufacturers and distributors of HVACR, and which may affect AHRI Members or their business operations.

15. AHRI Members are directly affected by amended Part 494 adopted and/or approved by the Respondents-Defendants relative to HVACR equipment and supplies. AHRI Members that operate in New York, or manufacture equipment and/or supplies that are distributed or sold in New York, are regulated by and must comply with the amended Part 494 regulations. Amended Part 494 affects, among other things, the economic interests of the AHRI Members. The economic interests of AHRI Members are affected through the costs associated with compliance with the requirements, standards and prohibitions of amended Part 494.

16. AHRI brings this Petition on behalf of itself and AHRI Members.

17. Respondent-Defendant the New York State Department of Environmental Conservation ("DEC" or the "Department") is a civil department and executive agency of New York State responsible for, among other things, promulgating regulations pursuant to ECL §3-0301(2)[a].

18. Respondent-Defendant Amanda Lefton is the Acting Commissioner of the Department.

REGULATORY BACKGROUND

Federal Regulation of HFCs

19. Refrigerants are substances that are used for cooling, heating and refrigeration in homes, commercial buildings, industrial operations, refrigerated transport, and motor vehicle air conditioning, amongst other sectors.

20. Refrigerants and their associated equipment are heavily regulated by both international and national regulating bodies, though the specific substances subject to regulation have changed with time and the evolving regulatory landscape.

21. Finalized in 1987, the Montreal Protocol for Substances that Deplete the Ozone Layer ("Montreal Protocol") was a global agreement to protect the ozone layer by phasing out over time the production and consumption of ozone-depleting substances ("ODS"). The Montreal Protocol called for the phase-out of ozone-depleting refrigerants, which at that time included chlorofluorocarbons ("CFCs") and hydrochlorofluorocarbons ("HCFCs").

22. The United States ratified the Montreal Protocol in 1989. In 1990, Congress amended the Clean Air Act to add Title VI to implement the Montreal Protocol, calling for the production and consumption of ODSs to be "phased-out" over time. *See* 42 U.S.C. §§ 7671c(b)-(c), 7671d(a).

23. Following the industry-wide move away from ODS, in the 1990s, hydrofluorocarbons ("HFCs") were commercialized and became widely used as an alternative to ODSs for air conditioning and refrigeration.

24. In the mid-2000s, the U.S. HVACR industry began working with the George W. Bush Administration to initiate discussions under the Montreal Protocol for a global phase-down of HFCs.[1]

25. Then, in 2013, President Obama issued his Climate Action Plan identifying HFC as a potential greenhouse gas ("GHG") and directed the United State Environmental Protection Agency ("EPA") to use its authority to reduce HFC emissions.[2]

26. In accordance with The President's Climate Action Plan, in 2015, the EPA promulgated a Final Rule to address HFC usage in certain equipment types.[3]

27. However, in its 2018 decision in *Mexichem Fluor, Inc. v. EPA*, 866 F.3d 451 (D.C. Cir. 2017), the D.C. Circuit Court of Appeals vacated the 2015 Final Rule to the extent that it required transitioning from HFCs to other substances. This left a gap in the federal regulation of HFCs.

28. On the international front, in 2016, in Kigali, Rwanda, the parties to the Montreal Protocol agreed to an amendment intended to ***phase-down*** the production and consumption of HFCs to 15 percent of the baseline period by 2036 for developed countries. This "Kigali Amendment" was ratified by the United States in 2022.

29. In 2020, Congress passed the American Innovation and Manufacturing Act ("AIM Act"), 42 U.S.C. §7675 *et. seq.*, which directs the EPA to "issue a final rule . . . phasing down"

[1] S. 2754, American Innovation and Manufacturing Act of 2019: Written Testimony and Questions for the Record, Senate Comm. on Env't and Public Works, 116th Cong. (2020) (written testimony of Stephen R. Yurek at 5).

[2] EXECUTIVE OFFICE OF THE PRESIDENT, THE PRESIDENT'S CLIMATE ACTION PLAN 10 (2013).

[3] Protection of Stratospheric Ozone: Change of Listing Status for Certain Substitutes Under the Significant New Alternatives Policy Program, 80 Fed. Reg. 42,870 (July 20, 2015).

production and consumption of HFCs and facilitate an orderly transition from HFCs with high Global Warming Potentials ("GWP") via other rules restricting the use of certain HFCs in specific sectors and ensuring the responsible management of HFCs in equipment.

30. The GWP is a measure of how much a given gas warms the Earth compared to carbon dioxide (CO_2) over a certain time period. For example, GWP20 is the measure over a 20-year period, while GWP100 is over a 100-year period.

31. The EPA has used a three-pronged approach to achieve the goals of the AIM Act (40 C.F.R. Part 9 and 84): (1) phasing down the production and consumption of HFCs through an allowance and allocation program ("Allowance Program"), (2) promulgating regulations to maximize reclamation and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers ("The Emissions Reduction and Reclamation Program"), and (3) facilitating the transition to next-generation technologies through sector-based restrictions ("The Technology Transitions Program").

32. The AIM Act sets the goal of an 85% phase-down of production and consumption, rather than a complete phase-out, of HFCs by 2036. 42 U.S.C. § 7675(e)(3).

33. Under the Allowance Program of the AIM Act, the EPA must calculate the 2011-2013 baseline levels of HFC production and consumption and then cap it to 15% of their baseline levels in a stepwise manner by 2036 through an allowance allocation and trading program, with interim step-downs of 40% by 2024, 70% by 2029 and 80% by 2034. *Id*. §§ 7675(e)(1)(C), 7675(e)(2)(A)-(D).

34. Through its regulation of HFCs under the AIM Act, the EPA has worked extensively with industry to create this three-prong program to regulate HFCs. This includes

industry-led petitions proposing technically and economically feasible GWP limits and transition dates on a sector-by-sector basis under the Technology Transitions Program, which were primarily reflected in the Technology Transitions Program rule.

35. The EPA regulatory programs also work with industry to create the incentives necessary to promote innovation in the refrigerants industry through the Technology Transition Program, the instruction necessary for the reclamation of used HFCs through the Emissions Reduction and Reclamation Program and the regulatory expectations for a phase-down approach to the use of HFCs through the Allocation Program.

New York State Regulation of HFCs

36. Following the vacatur of EPA's regulations addressing HFCs by the D.C. Circuit Court of Appeals in *Mexichem*, and prior to the enactment of the AIM Act in 2020, New York and other states began attempting to enact legislation to establish a state-level framework of HFC regulation.

37. In 2020, the Department adopted its original Part 494 for the regulation of HFCs.

38. The original Part 494 adopted a set of federal prohibitions on the sale of HFCs in new products and equipment in refrigeration, air conditioning chillers, foams, and aerosol propellant sectors previously addressed in the EPA's regulations under the Significant New Alternatives Policy ("SNAP") under section 612(c) of the Clean Air Act that were vacated in the *Mexichem* decision in 2017.

39. In 2019, New York enacted the Climate Leadership and Community Protection Act ("Climate Act" or "CLCPA"), which created Environmental Conservation Law ("ECL") Article

75 and required Statewide GHG emissions to be reduced 40 percent by 2030 and 85 percent by 2050.[4]

40. The CLCPA became effective January 1, 2020.

41. ECL Section 75-0101 defines GHG as "carbon dioxide, methane, nitrous oxide, ***hydrofluorocarbons [HFCs]***, perfluorocarbons, sulfur hexafluoride, and any other substance emitted into the air that may be reasonably anticipated to cause or contribute to anthropogenic climate change" (emphasis added).

42. The CLCPA created the Climate Action Council ("CAC"), which was tasked with developing a Scoping Plan with recommendations for how the State would achieve the 2030 and 2050 statewide GHG emission limits set forth in the CLCPA. ECL §75-0103(11).

43. In December 2022, the CAC released its final Scoping Plan.[5]

44. In the Scoping Plan, the CAC recognized that, "Meeting New York's ambitious climate requirements and goals in the residential and commercial buildings sector requires multi-pronged policy action, including new regulations and a major scale-up of public investments, to break through thorny market barriers and to manage significant risks to achieving the necessary equity and emissions reduction outcomes." *Id*. at 182.

45. With respect to the transition from HFCs, the CAC directs New York State agencies to "continue to adopt regulations and coordinate with other states on HFC reduction policies to ensure an effective ***phase-down*** of HFCs." *Id*. at 12 (emphasis added).

[4] S. 6599, 2019-2020 Sen., Reg. Sess. § 1 (N.Y. 2019).

[5] New York State Climate Action Council. 2022. "New York State Climate Action Council Scoping Plan," *available at https://climate.ny.gov/ScopingPlan* [hereinafter "Scoping Plan"].

46. Further, the CAC emphasizes that "the State should support technical resources and toolkits, workforce training, demonstration projects, incentives that make low-global warming potential refrigerant technologies and ***alternatives available and affordable***, including a focus on natural refrigerants" *Id*. (emphasis added).

Amendment to Part 494 Rulemaking Process

47. Pursuant to ECL § 75-0109(2)(c), the Department was directed to promulgate regulations that "reflect, ***in substantial part***, the findings of the scoping plan" prepared pursuant to the CLCPA (emphasis added).

48. As such, on May 25, 2022, the Department issued a notice of intent to amend the Part 494 regulation. The notice included a Request for Feedback from the public with a suggested 30-day comment period.

49. On June 30, 2022, HARDI submitted written comments, wherein HARDI urged the Department to adopt an orderly phase-down of HFCs and transition to refrigerants with a lower GWP by, among other things, adopting timelines for equipment transitions and prohibitions that are consistent with the federal EPA AIM Act rules, to allow for a nationwide transition to low-GWP equipment, thereby easing the economic hardships that more drastic and inconsistent prohibitions and accelerated timelines in New York would create.

50. HARDI also warned the Department that eliminating the ability to repair existing HVACR equipment, by prohibiting the use of the refrigerants used by these systems, would harm businesses and residents, including low-income residents and small businesses. The prohibition would make a simple relatively low-cost repair require a costly equipment replacement.

51. On March 2, 2023, AHRI submitted comments to the Department in response to its pre-stakeholder process.

52. In its March 2, 2023 comments, AHRI supported the Department's alignment of its regulatory structure with the anticipated federal regulations to reduce the burden on retailers and other end-users and manufacturers, and reiterated the need for an orderly transition to the phase-down of HFCs across all markets.

53. On December 29, 2023, the Department published its proposal to amend 6 NYCRR Part 494. The proposed amendments to Part 494 purportedly sought to address the Department's directive to implement the recommendations of the Scoping Plan with respect to HFC use in the State.

54. Notice of the proposal was provided in the State Register and Environmental Notice Bulletin ("ENB") on January 10, 2024, with comments accepted on the proposal until March 19, 2024.

55. As part of its rulemaking process, the Department contracted with a consultant, effecterra, to study the viability of natural refrigerants.

56. Effecterra generated the report, "Synthesis Report: New York State Assessment of Natural Refrigerants," (the "effecterra Report") wherein it specified that it worked with a technical group composed of persons and/organizations who work directly with natural refrigerants in the United States to reach its conclusions and recommendations.[6]

[6] effecterra, Synthesis Report: New York State Assessment of Natural Refrigerants (Sept. 2023) at 4 [hereinafter "effecterra Report"]; Hennessey Affirm. at Ex. E.

57. Natural refrigerants that can be used in HVACR equipment, supplies, and products include ammonia, carbon-dioxide, and hydrocarbons like propane and isobutane.

58. As noted in the effecterra Report, "there are some safety concerns related to some of the natural refrigerants, for e.g., toxicity and mild flammability of ammonia as well as the higher flammability of hydrocarbons like propane and butane, and some technological issues, for e.g., higher operating pressures and energy efficiency challenges at high ambient temperatures for CO2." effecterra Report at 8.

59. Upon information and belief, neither HARDI, AHRI, nor any of their members were asked to join the technical working group that worked together to generate and publish the effecterra Report.

60. As part of its published proposed rulemaking, the Department provided its Regulatory Impact Statement ("RIS"), as required by Section 202-a of the State Administrative Procedure Act ("SAPA").[7]

61. In the RIS, the Department asserts that "the amendments to Part 494 substantially reflect the findings and recommendations from the Scoping Plan." RIS at 2-3.

62. With respect to the costs imposed on those required to comply with amended Part 494, in the RIS the Department concludes that its regulation "imposes limited costs to those that would be incurred from complying with federal requirements…. There are no direct costs to consumers or additional costs beyond the federal requirements." *Id.* at 32.

[7] N.Y.S. DEP'T OF ENVTL. CONSERVATION, Revised Regulatory Impact Statement Part 494 (revised Sept. 2024), *available at* https://www.dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/climate-change.

63. The RIS recognizes that "unlike this regulation, the AIM Act does not itself regulate all HFC emissions or guarantee that emissions will be reduced as required by the Climate Act," but nonetheless continues to conclude that "[t]o estimate potential costs and benefits, the Department refers to the most recent analyses conducted by the EPA in support of the Allocation Rule." *Id*. at 33.

64. Two public hearings on the proposed amendments to Part 494 were held by the Department on March 13, 2024.

65. HARDI and AHRI representatives each attended at least one of these public hearings.

66. The HARDI representative provided oral comments to the Department's proposal during the public hearing. In the comments, the HARDI representative asked that the proposed amendments to Part 494 be rejected, as they would ban the installation of current technologies in the state and would not provide the time necessary for development of efficient technologies to meet the proposed requirements; and, the proposal exponentially accelerates the federal transition plans in place, and DEC's proposed requirement that ultra-low GWP refrigerants (less than GWP 10) are not feasible and significantly exceed the prohibitions in the federal rules. The HARDI representative also expressed concern about the variance process proposed and its inability to manage the hardship that would be created by the proposed regulations.

67. On March 19, 2024, HARDI submitted public comments to the proposed rulemaking on behalf of its members.

68. HARDI's March 19, 2024 comments, among other things, requested that the Department not finalize the Part 494 amendments as written because they are not consistent with the CLCPA; the prohibition dates and sell-through dates do not match those of the EPA and would

result in economic loss and harm to distributors required to carry parts necessary to repair or replace existing equipment; the proposed ultra-low GWP refrigerants required by the proposed amendments would require significant training and costs "because of the necessary equipment changes to mitigate these refrigerants' physical and health dangers" are unlikely to be achieved in the timeframe proposed; the proposed amendments prohibit the use of certain substances otherwise permitted in existing State law; and, the RIS fails to assess the transition costs, including those related to ultra-low GWP refrigerants.

69. AHRI also submitted public comments to the proposed rulemaking on behalf of its members on March 19, 2024.

70. In its public comments, AHRI:

a) reiterated its position that the regulations promulgated by the EPA are ambitious and highly protective of the environment and that compliance with those regulations already requires extensive coordination between the technical, legal and availability constraints of the HVACR market;

b) warned the Department that it's too early to determine if its ultra-low GWP requirements are necessary or feasible, and noted the Department's over reliance on the effecterra Report does not properly take into account the size and breadth of a globally integrated industry involving dozens of HVACR product categories and thousands or product lines;

c) requested that the Department allow replacement of components, parts, and partial units in existing refrigeration equipment. HVACR and water heating equipment, which is designed for 10 to 50 years of service, represent a significant

investment such that regulatory limitations should not obsolete it and cause economic hardship, and the Department must account for the carbon impact of prematurely obsoleting this equipment;

d) requested revisions to the variance process;

e) stated that it is concerned about the availability of reclaimed substances for a wide range of sectors and questioned whether the Department fully considered this in its assessment; and

f) requested that the Department follow the approach taken by California and expressly exclude reclaimed refrigerants from its bulk substance prohibitions.

71. On July 19, 2024, HARDI representatives along with several HARDI member representatives attended a meeting on behalf of HARDI with representatives of the Department to discuss the proposed amendments to Part 494.

72. At the meeting, the HARDI representatives discussed the overall negative effect of the proposed ultra-low GWP requirements of the proposed regulations, cautioned that there is a lack of existing technology to meet the requirements, and stated that the reclaim substances market needed to service existing equipment is not currently sufficient to meet the expected need that would be created by the proposed amended Part 494 prohibition on refrigerants that are not reclaimed.

73. Also on July 19, 2024, HARDI representatives along with several HARDI member representatives attended a meeting on behalf of HARDI with representatives of the Governor's office wherein they reiterated their concerns about the amended Part 494 regulations.

74. On November 27, 2024, HARDI representatives met with representatives of the Department wherein they reiterated HARDI Members' concerns and requested that the Department only adopt those January 2025 prohibition dates for substances already prohibited by the EPA's AIM Act.

75. After the close of the comment period provided in the notice, the Department reviewed the comments and published its Part 494 Assessment to Public Comments ("Comments Assessment").[8]

76. With less than a month remaining under SAPA 202(2) to finalize the rule or be required to file a notice of expiration, the Department filed its final amended Part 494 regulations with the Department of State on December 10, 2024.

77. No public notice of this filing by the Department with the Department of States was given despite the fact that certain requirements started running from the date of filing.

78. Notice of the final amended Part 494 regulations was published in the State Register and the ENB on December 24, 2024, with an effective date of January 9, 2025.

79. This provided only 16 days' notice inclusive of two national holidays after publication in the State Register and ENB of the changes manufacturers, distributors and repairers would need to make to be in compliance with the new regulations or risk enforcement actions by the Department.

[8] N.Y.S. DEP'T OF ENVTL. CONSERVATION, Assessment of Public Comments, 6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting, Comments Received from December 29, 2023 to March 19, 2024, *available at* https://www.dec.ny.gov/regulatory/regulations/proposed-emergency-recently-adopted-regulations/climate-change.

80. As summarized in the December 24, 2024 Notice of Adoption, amended Part 494 adopts a compliance schedule that prohibits specific HFC substances in certain new products and systems as follows:

a. Effective date of this Part or 2026: first step-down in GWP per EPA or US Climate Alliance state rules; New refrigeration facilities limited to GWP of 10;

b. January 2027: Prohibition on virgin refrigerants in small containers of automotive refrigerant;

c. January 2028: Use of 100% reclaim in new residential and light commercial air conditioning and heat pumps, stand-alone refrigeration equipment;

d. January 2034: Final stepdown for air conditioning and refrigeration end-uses to a GWP of 10; and

e. Prohibits the sale of bulk regulated substances on a graduated timeline between 2025 and 2040.

81. Based on the limited notice provided prior to the January 9, 2025 prohibition dates, on January 8, 2025, HARDI submitted a letter to the Department requesting that it "exercise its enforcement discretion, or other mechanism, allowing businesses in New York to continue to manufacture, sell, distribute and use certain substances that would otherwise be prohibited by 6 NYCRR 494-1.4(f)(1) after January 9, 2025, for a period of one year for the limited purpose of servicing and repairing existing refrigeration system."

82. Thereafter, the Department issued an Enforcement Discretion Letter dated January 31, 2025, wherein it states that it is exercising its enforcement discretion in three ways: (1) the Department will exercise its enforcement authority with regards to Part 494-1.4(f)(1) until 90 days

from the effective date of the rule, or April 9, 2025, (2) the Department will not enforce the provisions of Part 494 that pertain to bulk regulated substances, R-404A and R-507A, through December 31, 2025, and (3) the Department will not enforce the provisions of Part 494-1.4 during the pendency of the approval/disapproval process for any applications for Force Majeure variances under Part 494-1.8(b)(2) before December 31, 2027, or an amendment to Part 494-1.8 is promulgated, whichever is later.

COUNT I

REGULATION OF BULK REGULATED SUBSTANCES IN AMENDED PART 494 IS ARBITRARY AND CAPRICIOUS

83. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

84. In finalizing its amended Part 494, the Department did not fully contemplate the impacts, feasibility, and costs of compliance associated with Section 1.4(f) of amended Part 494, which prohibits the "sale and distribution" of "bulk regulated substances" based on various GWP20 levels over five prohibition dates. [9]

85. "Bulk regulated substances" are defined in amended Part 494-1.3(9) as:

> Regulated substances of any amount in a container for the transportation or storage of that substance, such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.

[9] GWP20 is defined in the amended Part 494-1.2(31) as "[a]n assessment of the Global Warming Potential of greenhouse gases over an integrated twenty-year time frame as published in the Intergovernmental Panel on Climate Change (IPCC) Assessment Report."

86. Section 494-1.4(f) states that "[n]o person may manufacture, sell, distribute, offer for sale or distribution, make available for sale or distribution, purchase or receive for sale or distribution, or attempt to purchase or receive for sale or distribution in New York State bulk regulated substances as listed in the table below after the prohibition date indicated."

87. The table accompanying Section 494-1.4(f) provides a list of prohibited substances and accompanying prohibition dates.

88. For example, Section 494-1.4(f) provides that, effective the date of amended Part 494, no person may manufacture, distribute, or sell bulk regulated substances pursuant to requirements in Cal. Health & Safety Code Section 39735(b)(2). This category of regulated substances includes bulk regulated substances with a GWP20 greater than 4600.

89. Currently, bulk regulated substances with a GWP20 greater than 4600 (specifically, R-404A and R-507A) are widely used in HVACR systems in existing businesses like grocery stores, restaurants, convenience stores, pharmacies, nursing homes and hospitals. Section 1.4(f) of Part 494 prohibited the sale of these substances after January 9, 2025 (though, pursuant to the Department's Enforcement Discretion Letter, the date of enforcement has moved to April 9, 2025).

90. In the instance of GWP20 greater than 4600 substances, the ban was immediate upon enactment of the amended Part 494 regulations, providing little time for the industry to mobilize and account for the ban, as well as to determine the feasibility of alternatives.

91. This impact was further exacerbated by the fact that the notice of finalization of amended Part 494 was published on December 24, 2024 and was merely 16 days before the first prohibitions went into effect, inclusive of two federal holidays. This provided stakeholders with

considerably less notice in which to contemplate and execute the requirements of amended Part 494.

92. Manufacturers rely upon the applicable state and federal regulations to guide their design and development of HVACR products and systems and need sufficient notice to make such advancements and adjustments.

93. Further, these bans on virgin (*i.e.*, non-reclaimed) bulk regulated substances will have a significant and detrimental effect on the industries' abilities to repair and service ***existing*** equipment and to source and distribute such substances.

94. HVACR equipment and parts can have a lifespan of 10 to 50 years with considerable upfront costs for purchase and installation. A piece of equipment that was sold 5 years ago may no longer be able to be sold now or in the near future based on the amended Part 494 regulations. However, that existing equipment will still need to be repaired or serviced for years to come.

95. Where a repair or service is needed on existing HVACR equipment, the business owner will generally hire a HVACR service contractor. Existing equipment, either through repair or maintenance, may require the addition of refrigerants as a result of leakage. The refrigerant used to replace any loss through leakage in most instances must be of the same kind originally used, and cannot be replaced with another, new substance. For example, if R404-A is used in an existing HVACR system, it cannot be replaced in kind with a lower GWP refrigerant, such as a different HFC substance or a natural refrigerant, such as propane. Leakage is the only manner in which refrigerants are lost (*i.e.*, emitted into the ambient air), as HVACR systems are designed to be closed-loop systems.

96. The Department insists that where the amended Part 494 regulations require a prohibition on a specific refrigerant, reclaimed substances ***could*** be used to further the service life of the existing equipment and, thereby, not necessitate a total replacement of the equipment or retrofit for any and all repairs.

97. However, the Department failed to assess whether sufficient supply of reclaim substances would be available by the prohibition dates in the amended Part 494 regulations.

98. Reclaimed substances are refrigerants that are removed from a previously operational appliance or system and then can be used to service existing cooling and heating equipment.

99. Unfortunately, limitations on the reclaim market make the presumptive use of reclaimed substances for service and repairs largely unavailable based on the current state of the reclaim market and the projected high need for reclaimed substances in New York State and throughout the country.

100. Moreover, as New York will have to compete for reclaimed banned substances, the increase in demand will only cause prices to increase and supply to decrease.

101. Although pressed by public comments to its notice of rulemaking to address the constraints of the reclaim market, in the Department's Assessment of Public Comments, the Department does not expressly consider the current availability of reclaimed substances to meet service and repair needs, nor the projected need for reclaimed substances created by the amended Part 494 regulations.

102. Similarly, in the Part 494 RIS, there is not express mention of the current constraints of the reclaimed market or projected costs of reclaimed substances and needs of the reclaimed market after the promulgation of the amended Part 494 regulations.

103. Given the anticipated unavailability of reclaimed refrigerants, where reclaimed substances cannot be purchased, businesses will be required by Section 1.4(f) to replace equipment where a simple repair would have been sufficient.

104. Replacement costs can be significant and prohibitive, particularly for small businesses.

105. The 90-day extension of enforcement of this prohibition for most regulated substances, and the extension until December 31, 2025 for R-404A and R-507A, provided by the Department in January 2025, does little to alleviate the problems that the ban on non-reclaimed substances that Section 1.4(f) creates.

106. Amended Part 494 does not include an exemption to the 1.4(f) ban for the repair and maintenance of existing HVACR systems.

107. Although the Section 494-1.8 provides for a variance process from the requirements of 494-1.4, 494-2.4, 494-2.5, and 494-2.8, this process takes too long to reasonably address the needs of existing HVACR equipment owners that are unable to repair a broken freezer or other HVACR system needed to operate their business.

108. The variance process set out in Section 494-1.8 will have limited real-world applicability, as it will be difficult for small businesses to apply for let alone obtain within any reasonable timeframe.

109. The variance requires that the applicant show "clear and convincing evidence" of an impossibility, force majeure event or economic hardship.

110. After providing the extensive details required for each variance request pursuant to 494-1.8(c), the Department can take up to 30 days to notify the applicant if the application is complete.

111. If the application is found not to be complete, the applicant has an additional 90 days to cure the issue. Then the Department may hold a 30 day public comment period on the application.

112. The Department then has an additional 60 days from the date of the close of the public comments in which to approve or disapprove the application. The regulations do not even state how long the Department will have to make its decision on a variance request if it does not decide to hold a public comment period.

113. As such, the variance process the Department has set out for itself in the amended Part 494 regulations give it an almost unlimited amount of discretion to approve or deny a variance application and to decide on its own unexpressed terms whether the application will be affected by the extended public comments period.

114. Instead of properly addressing the feasibility and costs of compliance of its amended Part 494 regulations, the Department relies on the use of the variance process thereby giving itself unhinged discretion on an *ad hoc* basis to control the application of its regulations.

115. As such, these bans on presently used and widely distributed bulk storage substances required by Section 494-1.4(f) with very limited notice have wide ranging economic effects on manufacturers and distributors of regulated substances, repairers of HVACR systems,

and on the businesses that own HVACR systems that presently use these substances and rely on their availability for maintenance and repairs. Such impacts and feasibility should have been fully considered by the Department prior to enactment of amended Part 494, especially where the prohibition was immediate upon enactment.

116. Accordingly, the Respondents-Defendants have acted arbitrarily and capriciously and in excess of their jurisdiction, and Part 494 Section 1.4(f) should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

COUNT II

THE RIS FAILED TO COMPLY WITH THE REQUIREMENTS OF SAPA

A. The Department Failed to Comply with SAPA § 202-a(3)[c] By Not Including All Costs Associated with The Proposed Amendments to Part 494 In Its Regulatory Impact Statement

117. Petitioners-Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

118. In developing a rule, state agencies are required to generate a RIS. The purpose of the RIS is for the agency to consider "approaches which are designed to avoid undue deleterious economic effects or overly burdensome impacts of the rule upon persons…directly or indirectly affected by it or upon the economy or administration of state or local government agencies." SAPA §§ 202-a(1), (2).

119. In SAPA § 202-a(3), the Legislature set out the minimum elements required to be considered and discussed in an RIS. Amongst these requirements is the need to consider and discuss the costs associated with the proposed regulations.

120. Specifically, SAPA § 202-a(3)[c] requires a statement "detailing the projected costs of the rule." This detailed cost statement must include "the costs for the implementation of, and

continued compliance with, the rule to regulate persons." *Id*. § 202-a(3)[c](i). It must also include "information, including the source or sources of such information, and methodology upon which the cost analysis is based." *Id*. at § 202-a(3)[c](iii).

121. Although the statute recognizes that there may be instances where the agency cannot fully provide a statement of costs, it requires that the cost statement still set forth its "best estimate, which shall indicate the information and methodology upon which such best estimate is based and the reason or reasons why a complete and cost statement cannot be provided." *Id*. at § 202-a(3)[c][iv].

122. The RIS for amended Part 494 is wholly deficient in analyzing the cost of amended Part 494 in violation of SAPA § 202-a(3)[c].

123. Instead of assessing the costs specific to the amended Part 494 regulations, the Department relied solely upon the cost information provided by the EPA.

124. The Department states that "[t]o estimate potential costs and benefits, the Department refers to the most recent analyses conducted by the EPA in support of the Allocation Rule as these analyses considered the ***full HFC phasedown***." RIS at 33 (emphasis added) (citing 2024 Allocation Rule RIA Addendum; EPA-HQ-OAR-2022-0430 as support).)

125. In the Cost Section of the RIS, the Department concludes that amended Part 494 "imposes limited additional costs to those that would be incurred from complying with federal requirements" and that there are "no direct costs to consumers or additional costs beyond the federal requirements." *Id*. at 32.

126. The Department acknowledged throughout the RIS that, while it sought to align with the federal standards, its proposed regulations did not in all instances based on its need to be more stringent under the CLCPA.

127. There are significant differences between the EPA's HFC regulations and those of the amendments to Part 494 that necessitate their own individual considerations and reviews.

128. Specifically, in its RIS, the Department failed to consider the costs incurred as a result of:

a. the overall phase-out approach of the amended Part 494 regulations as opposed to the phase-down approach of the AIM Act;

b. accelerating the prohibition dates from those found in the EPA regulations under the AIM Act;

c. transitioning to ultra-low (natural) refrigerants;

d. the difference in sell through prohibitions between the EPA and amended Part 494 regulations (EPA allows three-year sell through period, DEC allows one year); and

e. other additional costs from specific amended Part 494 requirements and prohibitions that differ from those in EPA's regulations.

129. First, by not aligning with the phase-down approach of the AIM Act and the EPA, the amended Part 494 regulations will necessitate additional economic costs through its more stringent phase-out approach. Those costs, however, were not addressed in the RIS.

130. The CLCPA requires the Department to propose regulations that will achieve the 2030 and 2050 statewide GHG emission limits and net zero goal. Conversely, the AIM Act aims for an 85% reduction in the use of HFCs by 2036 through a phase-down approach.

131. The Department acknowledges multiple times in its RIS that the AIM Act and its regulations will not meet the goals of the CLCPA.

132. In recognition of these differences of aim and objective, in the RIS, the Department modified the model used in the NYSERDA HFC Report[10] to assess the potential emission reductions from its Part 494 rulemaking versus the EPA's rules. The Department also modeled a new scenario to assess the additional emission reductions that may be achieved by the Part 494 amendments.

133. Regardless of its own demonstration that the HFC emissions data would result in reductions beyond that anticipated from the AIM Act alone, the Department offers no assessment of the additional costs required to achieve such result.

134. As a result of the obvious difference in the scope of the HFC reductions, the Department's sole reliance on the cost analysis of the federal regulations under the AIM Act is insufficient to address those that will be inevitably incurred by the accelerated phaseout approach of amended Part 494.

135. Second, the RIS does not consider the costs associated with accelerating the prohibition dates from those found in the EPA regulations under the AIM Act, or incurred by national manufacturers and distributors that need to comply with both.

136. In its promulgation of the regulations under the AIM Act, the EPA has worked extensively with stakeholders, including manufacturers and distributors, to establish prohibition dates for the various HFC substances currently in use and the continued use of substances for repairs and maintenance.

137. The amendments to Part 494 include numerous instances in which these specific prohibition dates have been accelerated to require the end of use of various HFCs earlier than that proposed by the EPA.

[10] New York State Energy Research and Development Authority, *Hydrofluorocarbon Emissions Inventory and Mitigation Potential in New York State,* NYSERDA Report Number 21-28, prepared by Guidehouse, Inc.

138. For example, Amended Part 494 prohibits all products in the residential and commercial air conditioning and refrigeration sector categories from using regulated substances with a GWP of more than 10 or 20 by 2030 or 2034.[11]

139. Conversely, EPA's regulations contain no similar prohibition that require the use of ultra-low GWP regulated substances.

140. Besides noting that the CLCPA requires an overall GHG reduction timeline that differs from that of the AIM Act, the Department does not assess the cost impact of such prohibition accelerations on industry in its RIS.

141. Third, the Department did not consider the costs associated with requiring the use of ultra-low GWP/natural refrigerants in most subsectors of the HVACR industry in its RIS.

142. As of the effective date of the regulations, amended Part 494 is the only state or federal regulation requiring the transition to ultra-low GWP refrigerants for certain HVACR equipment and parts over various timelines.

143. Significant investments will be required for the HVACR industry, including in the design, manufacturing, installation and repair/maintenance, to transition to the use of ultra-low GWP substances and those costs should have been considered in the RIS.

144. The EPA does not require the use of ultra-low GWP refrigerants in its regulations and, therefore, reliance upon the cost assessment of the EPA is misplaced and misleading.

145. Fourth, the RIS did not contain a cost analysis of the difference in sell-through date prohibitions between amended Part 494 and the EPA.

[11] *See* 6 NYCRR §§ 494-1.4(e)(1)-(3); *see, e.g., id.* at § 494-1.4(e)(2)(iii) (providing for the prohibition on AC chillers of any regulated substances with a GWP20 greater than 20 by January 1, 2030.), *id.* at § 494-1.4(e)(2)(v) (providing for the prohibition of the use of any regulated substances with a GWP20 of greater than 10 for AC residential and light commercial AC and heat pumps by January 1, 2034).

146. Section 494-1.4(c) of amended Part 494 contains a one-year sell-through for products sold after the prohibition date.

147. Conversely, the regulations of the EPA incorporate a three-year sell through date. 40 C.F.R. § 84.54(b).

148. Moving to a shorter sell-through of one-year from the prohibition date will harm distributors who have made economic decisions based on the planned availability of products after the manufacturing prohibition.

149. This difference in costs to the industry from the shortening of the sell-through date from three years to one year could not have been considered in the EPA's cost assessments and, therefore, the RIS is insufficient for its lack of assessment.

150. Finally, even though amended Part 494 regulations have a much broader scope than that of the AIM Act, these differences in costs could not have been considered by the EPA in its cost assessment and, therefore, were not considered in the Department's RIS for the proposed amendments to Part 494.

151. Some of the specific differences between the EPA's regulation of HFCs and that of amended Part 494 that were not considered in the RIS include:

a. the ban as early as the effective date of the regulations of the use of certain virgin refrigerants for the repair, maintenance and service of existing HVAC equipment and parts;

b. the EPA does not have a provision similar to § 494-1.4(e)(2)(iv) (with a prohibition dates as early as the effective date of the amended regulations) for heat pump chillers;

c. the prohibition date for data centers compliance in § 494-1.4(2)(ix) is a full year earlier than that required by the EPA;

d. the proposed amendments to Part 494 added regulations to "other residential HVAC systems" not covered by the EPA; and

e. the EPA does not require ultra-low GWP.

This is not a fully inclusive list of the differences between the EPA's regulations and those of amended Part 494 where costs were not specifically considered in the RIS.

152. In the RIS, the Department did not provide any cost analysis for the requirement to use only reclaimed regulated substances for the repair, service and maintenance of existing equipment and parts, in some cases immediately upon the regulation becoming effective on January 9, 2025.

153. Under the Emissions Reduction and Reclamation Program, the EPA has set refrigerant recovery rules that require the use of reclaimed HFCs for the service and repair of certain existing HVACR equipment for some sectors after January 1, 2029. 40 C.F.R. § 84.112(e) (applying only to supermarket systems, refrigerated transport, and automatic commercial ice makers).

154. Therefore, contrary to its assertion that the EPA's Allocation Rule costs were all that it needed to consider for its proposed Part 494 regulations, there are several significant differences in the EPA regulations and amended Part 494 and the Department was required to consider them.

155. By reason of the foregoing, the Respondents-Defendants have violated SAPA § 202-a(3)[c] by acting in excess of their jurisdiction and Part 494 as amended should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

B. The Department Failed to Comply with SAPA § 202-b(1) By Failing To Minimize the Adverse Economic Impact of Amended Part 494 on Small Businesses

156. Petitioners-Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

157. Pursuant to the requirements of Section 202-b(1) of SAPA, in developing a rule, state agencies "must consider utilizing approaches that will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the rule on small businesses…."

158. Specifically, SAPA § 202-b(1)[a] requires that the agency consider the "the resources available to small businesses…or the time needed by small businesses…to come into compliance with the rule." .

159. Stakeholders, including small businesses, have worked with the EPA since the U.S. adoption of the Montreal Protocol to coordinate and properly assess the changes needed to the industry to comply with more stringent HFC regulations.

160. The Department's amendments to Part 494 included numerous restrictions not currently required by the EPA, as well as those that are more stringent or provide more accelerated timelines for compliance than those of the EPA.

161. In addition to not properly assessing the costs from these differences with federal regulations, in the RIS the Department does not expressly consider ways in which to minimize the economic effects of these differences on small businesses.

162. By reason of the foregoing, the Respondents-Defendants have violated SAPA § 202-b(1) by acting in excess of their jurisdiction and Part 494 as amended should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

C. The Department Failed to Comply with SAPA § 202-a(3)[h] by Failing to Identify Where and Explain Why Amended Part 494 Exceeds Federal Standards for HFC Regulation

163. Petitioners-Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

164. Also required to be included in the RIS, is a statement addressing the federal standards that apply to the same or similar area addressed by the proposed state rule and an explanation of why the proposed regulations exceed such standards.

165. Specifically, SAPA § 202-a(3)[h] requires that the state agency provide a statement "identifying whether the rule exceeds any minimum standards of the federal government for the same or similar areas and, if so, an explanation of why the rules exceeds such standards."

166. In Section 9 of the RIS entitled "Federal Standards," the Department merely states that "[t]his regulation will adopt federal minimum standards where applicable such as by adopting either the exact same standards as EPA, standards that are in line with the federal AIM Act, or standards in line with other US Climate Alliance states."

167. No further information is provided in that Section of the RIS on the specific differences between the standards proposed in amended Part 494 and those required by the federal government.

168. There are numerous instances wherein the federal standards and those of the proposed Part 494 amendments deviate, sometimes significantly such as with prohibition dates for bulk regulated substances and the requirement that categories of HVACR systems meet a GWP20 of no more than 20 or 10 by 2030 or 2034.

169. Although the Department notes some of these differences in its RIS, it relies solely on its assertion that the CLCPA requires a stricter approach (without any discussion of what that

means or why is does so) as its only basis for such deviations, which is wholly inadequate for compliance with SAPA § 202-a(3)[h].

170. By reason of the foregoing, the Respondents-Defendants have violated SAPA § 202-a(3)[h] by acting in excess of their jurisdiction and Part 494 as amended should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

COUNT III

THE DEPARTMENT'S PROHIBITION OF REGULATED SUBSTANCES WITH GWP20 GREATER THAN 10 OR GREATER THAN 20 IS ARBITRARY AND CAPRICIOUS

171. Petitioners-Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

172. The Scoping Plan states that Department should expand the scope of Part 494, "…including through establishment of a GWP threshold that decreases over time as low and ultra-low GWP options become available…" Scoping Plan at 217.

173. As part of its "Vision for 2050," the CLCPA Scoping Plan provides that the vision (i.e. the goal) for ***2050*** is "…ultra-low global warming potential (GWP) refrigerants.…" *Id*. at 180.

174. Section 494-1.4(e) requires new air conditioning and refrigeration systems to use substances with a GWP of less than 10 or less than 20 (*i.e.*, ultra-low GWP refrigerants) for air conditioning and refrigeration products and systems by 2027 for equipment like heat pump water heaters, and 2030 or 2034 for other sectors.

175. Specifically, the prohibitions found in the tables in section 494-1.4(e)(2) and (3) require the use of ultra-low GWP substances in the following instances, among others:

a. Section 494-1.4(e)(2)(iii) prohibits the use of regulated substances with a GWP20 greater than 20 to be used in chillers after January 1, 2030.

b. Section 494-1.4(e)(2)(iv) prohibits the use of regulated substances with a GWP20 greater than 10 to be used in heat pump chillers after January 1, 2034.

c. Section 494-1.4(e)(2)(v) prohibits the use of regulated substances with a GWP20 greater than 10 used in residential and light commercial air conditioners and heat pumps after January 1, 2034.

d. Section 494-1.4(e)(2)(vi) prohibits the use of regulated substances with a GWP20 greater than 10 used in VFR systems after January 1, 2030.

e. Section 494-1.4(e)(2)(viii) prohibits the use of regulated substances with a GWP20 greater than 10 to be used in "other residential HVAC" after January 1, 2027.

176. The Department claims that its amended Part 494 regulations align with those of the federal government, however, nowhere in the EPA regulations promulgated pursuant to the AIM Act does the EPA require the use of ultra-low GWP substances. Instead, the EPA set feasible GWP levels ranging from 150 to 700, depending on the application.[12]

177. Similarly, no other state presently requires the use of ultra-low GWP regulated substances in HVACR and its subsectors.

178. Due to technical and regulatory barriers, it is currently not feasible to meet the ultra-low GWP requirements by the deadlines in amended Part 494.

179. Practically, mandating refrigerants with a GWP less than 10 effectively restricts allowable refrigerants to those classified as A2L or A3 (also referred to as "natural" refrigerants) under ASHRAE Standard 34.

[12] 40 C.F.R. Part 84 provides the regulatory framework for the federal phasedown of HFCs by the EPA. Specifically, Section 84.54 sets out the restrictions on the use of HFCs.

180. To be able to use A2L refrigerants in heat pump water heaters or residential and light commercial HVACR systems would require, among other things, significant design modifications to meet fire safety standards that are not currently feasible.

181. The Department suggested in its RIS that to meet the ultra-low GWP requirements in Amended Part 494, "natural" refrigerants could be used. RIS at 26.

182. The three "natural" refrigerants that are most commonly used today are ammonia, carbon dioxide, and hydrocarbons like propane and isobutane.

183. These natural refrigerants are currently used in the industry in certain industrial and commercial refrigeration applications where safety standards and building codes allow.

184. However, these refrigerants are not technically feasible to use at this time in air conditioners, refrigerants, heat pump water heaters and heat pumps used in residential and commercial applications due to toxicity and flammability, and the need to use higher operating pressures that cannot meet energy efficiency requirements and standards.

185. Ammonia is toxic and not allowed for use in occupied dwellings.

186. Carbon dioxide requires high pressure in a liquid-vapor compression cycle (the technology utilized by all refrigeration, air conditioners, and heat pumps), which is energy inefficient and current technology does not meet federal energy-efficiency standards required by the U.S. Department of Energy ("DOE") under the Energy Policy and Conservation Act ("EPCA"), as amended (42 U.S.C. §§ 6291–6317).

187. Propane and isobutane are highly flammable and are categorically prohibited in most human-occupied comfort cooling applications.

188. Natural refrigerants such as propane and isobutane, while having a very low GWP (~3), are not approved by the EPA for use in most residential or commercial comfort cooling

applications due to their high flammability. EPA has restricted their use to specific low-charge applications such as self-contained refrigeration equipment, subject to stringent use conditions and charge limits.

189. Propane is used in minimal quantities in small commercial refrigeration systems. Many reach-in drink coolers, found next to the checkout line in grocery stores and mass-market retailers, use propane to keep their contents cool because it is relatively easy to cool a small space. These small refrigerators use very small quantities of propane, less than 114 grams, the limit written into current safety standards, to reduce the likelihood of fire if the refrigerant leaks out.

190. Using the same propane refrigerant technology to cool or heat large spaces, or heat pumps, and heat pump water heaters, requires larger charge sizes (*i.e.*, a higher quantity of propane) than safety standards allow.

191. The CAC recognizes the inability to currently transition to ultra-low GWP.

192. The Scoping Plan specifically states that "RD&D also should be pursued to develop and deploy specific technologies, such as … ultra-low GWP alternatives to HFCs, including natural refrigerants." Scoping Plan at 211.

193. However, the Department has not yet established a program to support the research and development needed to achieve these ultra-low standards required in amended Part 494.

194. In addition to these technical barriers, there are significant regulatory barriers to manufacturers being able to design, and installers and service providers being trained to install, repair and maintain ultra-low GWP residential and light commercial AC, heat pumps, or VRF systems.

195. When designing and manufacturing a product, industry must also consider not only the regulations required by amended Part 494 but also any and all other applicable state and federal

regulations. These include energy-efficiency standards required by the DOE and building and safety codes, as promulgated by both federal, state and local governments.

196. Lack of updated building and safety codes, as promulgated by both federal, state and local governments, also pose barriers to use of ultra-low GWP refrigerants with flammability or toxicity characteristics that are beyond the control of any individual manufacturer to address.

197. Currently, in New York, the building code does not allow for compliance with all of the requirements of Section 494-1.4(e) with respect to ultra-low GWP refrigerant use in residential and light commercial HVACR equipment, among other things, the high flammability and toxicity of some ultra-low GWP refrigerants.

198. The infeasibility of meeting ultra-low GWP by the deadlines was raised multiple times by AHRI, HARDI and other stakeholders during the rulemaking process.

199. Nevertheless, the Department ignored all of these technical and regulatory issues, and the Scoping Plan's directive, and it still adopted the ultra-low GWP substance requirements in Part 494-1.4(e).

200. While the Department acknowledged stakeholders' concerns about compliance with other federal and state regulations with the use of ultra-low GWP substances, it delayed consideration of this issue during the rulemaking process. Instead, the Department states in its Comments Assessment that it can evaluate the progress on codes and standards and the availability of alternatives as part of the regulatory review required by SAPA and the CLCPA.

201. Nevertheless, ultra-low GWP substances are required for some categories by January 1, 2027, and manufacturers will need time to design the products consistent with the codes and put into place manufacturing processes to make them; installers and repairers need to learn how to install and repair them; and developers and other businesses need time to plan for their use.

202. The variance process of Part 494-1.8 would do little to alleviate the economic and technical issues associated with application of the ultra-low GWP requirements of Section 494-1.4(e).

203. The Department did not consider all of the above relevant factors in its decision to adopt Section 1.4(e) of Part 494 and its prohibitions of regulated substances (*i.e.*, refrigerants) with a GWP20 of greater than 10 or 20.

204. To support its inclusion of ultra-low GWP substances, the Department primarily relies on a report generated by effecterra (and commissioned by the Department) in determining that ultra-low GWP refrigerants could be used in the air conditioning and refrigeration sectors by either 2027, 2030 or 2034 (depending on the subsector category).

205. The Department's decision to adopt an ultra-low GWP refrigerant requirement for certain subsectors based on the report generated by effecterra is misplaced, as that report failed to include the non-natural refrigerant sector so that feasibility and compatibility could properly be assessed by, among other stakeholders, HVACR manufacturers, distributors, and installers.

206. In fact, even the effecterra Report generated to guide the Department on the use and feasibility of natural refrigerants in the State warned that the current State building codes do not allow hydrocarbons to be used in residential and commercial cooling and heating appliances due to their high flammability and potential to leak. effecterra Report at 13, 23-24.

207. According to the effecterra Report, there is currently no commercial or residential air conditioning systems commercially available in the U.S. that use natural refrigerants except a very limited type of chiller. *Id.* at 15.

208. The process of updating international and national safety standards is rigorous, and includes updating national safety standards (IEC, UL and ASHRAE standards) and obtaining EPA approval, which ensures that the natural refrigerants can be deployed safely.

209. Subsequent adoption of the standards into state and local codes often takes several additional years.

210. According to the effecterra Report, the requisite national safety standard approvals and adoption of them into state and local building codes can be done by 2030 with a "whole of government" approach and assuming minimal delays. *Id*. at 21.

211. However, even if this timeframe was realistic, it does not appear to include the time for manufacturers to design systems that can use these natural refrigerants or the time necessary for readying the workforce to install and service them. This is particularly concerning due to the potential safety issues associated with natural refrigerants if they are not used in the correct manner.

212. The Department did not provide industry with a pathway to compliance with all these natural refrigerant ultra-low GWP standards within the allotted timeframe requirements of the amended Part 494 regulations, which requires all of these changes to occur in less than 5 years for some subsectors, and just a few more years for the other subsectors.

213. Although the HVACR market has and continues to adapt to the requirements of the AIM Act and other states' requirements, due to these technical and regulatory feasibility barriers U.S. manufacturers are unlikely to be able to meet the Section 494-1.4(e) ultra-low GWP20 standards for residential and light commercial air conditioning and heat pump water heaters ("HPWH") by the amended Part 494 deadlines.

214. As such, the Department did not fully contemplate the impacts, feasibility, and costs of compliance with the prohibitions in Part 494-1.4(e) for products and systems in the air conditioning and refrigeration sectors, including for residential and light commercial AC, heat pumps, VRF systems, and other residential HVAC categories.

215. Accordingly, the Respondents-Defendants have acted in excess of their jurisdiction and Part 494 Section 1.4(e) that prohibits refrigerants of GWP20 less than 10 and 20 should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

COUNT IV

THE DEPARTMENT VIOLATED ECL § 75-0109(1)(C) AND THEREBY ACTED IN EXCESS OF ITS JURISDICTION BY ADOPTING ITS AMENDMENTS TO PART 494

216. Petitioners-Plaintiffs repeat and reallege the foregoing paragraphs as if fully set forth herein.

217. ECL § 75-0109(1)(c) states that the Department shall promulgate regulations that "[r]eflect, in substantial part, the findings of the scoping plan pursuant to 75-0103."

218. An administrative agency, as a creature of the Legislature, is clothed with only those powers expressly conferred by its authorizing statute.

219. The Department exceeded its authority conferred by the Legislature in adopting the amended Part 494 regulations because the regulations do not reflect the approach recommended in the Scoping Plan.

220. Specifically, the amended Part 494 regulations fail to reflect the Scoping Plan by:

a. phasing-out the use of HFCs instead of phasing-down such use over time;

b. not aligning with the EPA and other HFC regulating states; and,

c. not providing the necessary toolkits and technical and economic support to make ultra-low GWP options available and economical.

221. First, the Scoping Plan repeatedly recommends that amended Part 494 promulgated by the Department ***phase-down*** high-GWP HFCs based on thresholds that decrease over time as alternative options become available.

222. The Scoping Plan expressly states that, "New York State agencies should continue to adopt regulations and coordinate with other states on HFC reduction policies to ensure an effective ***phase-down of HFCs.***" Scoping Plan at 12 (emphasis added).

223. While discussing high-GWP HFCs, the Scoping Plan also states that the Department should "expand the scope of 6 NYCRR Part 494, which prohibits certain HFCs in refrigerators/freezers, chillers, commercial refrigeration, and aerosols/foams/solvents end uses, including through the ***establishment of a GWP threshold that decreases over time as low and ultra-low GWP options become available*** and addressing leakage in existing equipment during the transition." *Id*. at 217 (emphasis added).

224. However, in many instances such as with HPWHs, the amended Part 494 regulations require a one-step phase-out of high-GWP HFCs and not the gradual phase-down over time as alternatives become available.

225. Moreover, in contrast to the phase-down approach of the EPA and the Scoping Plan requirements, the intended goal of the amended Part 494 is compliance with the CLCPA and its requirement to achieve the 2030 and 2050 statewide GHG emission limits through a more stringent phaseout approach.

226. In its Final Notice of rulemaking in the State Register, the Department states that "[t]he regulation will establish a full phasedown timeline for HFCs (i.e.., a 10 GWP limit) controls on emissions from existing equipment (i.e., a Refrigerant Management Program and prohibition

on bulk HFC substances) and enable a transition away from HFCs in the largest equipment types…."[13]

227. Second, the Scoping Plan directed the Department to use methods to phase-down the use of HFCs that align with the EPA and other HFC regulating states.

228. In the Scoping Plan, the CAC acknowledges the need to work with industry to make sure that the innovation necessary to achieve the goals of the CLCPA are feasible and competitive within the allocated timeframe.

229. Specifically, the Scoping Plan states that the Department "should align New York policy with anticipated federal (EPA) policy measures to meet HFC reduction requirements as well as with other U.S. Climate Alliance states, to send a strong market signal to manufacturers and industry while mitigating costs of the transition" Scoping Plan at 217.

230. There are numerous instances in which the amended Part 494 regulations deviate from those of the EPA, both in scope and in timeline and go beyond other U.S. Climate Alliance states' requirements.

231. Industry has worked closely with the EPA on its promulgation of regulations to reduce the use of HFCs in HVACR equipment and parts. They have used these federal and other state regulations to form business and design decisions for the last 30+ years.

232. The Department's use of regulations that exceed those contemplated by the EPA, and even other U.S. Climate Alliance states, greatly affects the ability of the HVACR industry to mobilize and innovate.

233. In the public comments to the amended Part 494 rulemaking, HARDI and AHRI continually requested that the Department align its standards with those of the EPA in order to

[13] Notice of Adoption, N.Y. State Register 2024, 21 (Dec. 24, 2024).

provide the industry with the time and technology necessary to meet the goals of phasing down HFC use.

234. Instead of working with industry and allotting the time needed to reach compliance with ultra-low GWP requirements, the Department moved ahead with its regulations.

235. Third, the Scoping Plan requires that the State provide the necessary toolkits and economic support to make ultra-low GWP options in the HVACR market available and economical.

236. The CAC recognized the need to work with industry to expand "ongoing innovation with respect to technology, design and planning, and business models is needed to reduce the cost and increase the value of such upgrades in order to make their value proposition competitive with conventional building systems" and that Federal and State funding for research and development in the area of ultra-low GWP availability is necessary to accomplish its goals. Scoping Plan at 211.

237. The Scoping Plan repeatedly states that the Department should "provide resource toolkits, program and incentives that make low-GWP refrigerants technologies and low-GWP alternatives available and affordable." *Id*. at 218.

238. Similarly, in Section B12 of the Scoping Plan, the CAC states, "[i]n addition to education and training, the State should provide economic support (such as, incentives to purchase leak detection and reclamation equipment, or compensation for refrigerant reclamation) to aid local industry with this transition. *Id*. at 216.

239. However, the amended Part 494 regulations are devoid of references and directives on incentives or programs to facilitate this transition to low-GWP alternatives. Instead, the amended Part 494 regulations require such transition with little guidance and no training or technical or economic incentives to achieve this goal.

240. These departures by the Department in its amended Part 494 exceed the scope of its authority by not comporting with the clear objective in the Scoping Plan to align with the regulations enacted by the EPA and U.S. Climate Alliance states, thereby violating § 75-0109.

241. Accordingly, the Department's adoption of the amended Part 494 has no basis in law, is arbitrary and capricious and an abuse of discretion, and must be annulled.

COUNT V

THE DEPARTMENT'S DECISION TO ADOPT PROHIBITION DATES DIFFERENT THAN THOSE OF THE EPA WAS ARBITRARY AND CAPRICIOUS

242. Petitioners repeat and reallege the foregoing paragraphs as if fully set forth herein.

243. The amended Part 494 regulations adopt standards that differ from those of the EPA in its regulations under the AIM Act with respect to the timelines for prohibiting certain HFC substances in HVACR equipment and parts.

244. For example, for ice rinks, the EPA prohibits the installation and manufacturing of GWP100 greater than 700 refrigerants in chillers on and after January 1, 2025, with no further prohibition dates at this time. (40 C.F.R. Part 84.54(a)(10)(ii).) The amended Part 494 prohibits the use of GWP20 greater than 580 substances on and after January 1, 2026, and then further requires by January 1, 2030 the use of GWP20 less than 10 substances. 6 NYCRR § 494-1.4(e)(3)(xv).

245. The EPA regulations were adopted after extensive public comment and input from stakeholders.

246. The HVACR industry has relied upon the timeline of the standards set forth by the EPA to make business and design decisions for its transition away from high GWP HFC substances.

247. The Department has accelerated timelines for compliance from those of the EPA without providing a pathway to such compliance, or considering the costs and difficulties associated with such accelerated timeframes.

248. The Department does not offer the industry guidance on how to achieve these more stringent standards and timelines.

249. Nor is the Department proposing to provide the industry with the training and economic incentives necessary to spur such innovation.

250. HARDI and AHRI repeatedly requested that the Department follow the timelines established by the EPA for compliance with prohibition dates for HFC substances used in HVACR equipment and parts.

251. In its Assessment to the Public Comments, the Department suggests that consideration of the availability of necessary alternative technologies can be assessed in the future.

252. However, many of the prohibition dates included in the amended Part 494 regulations provide only a few years for industry to create compliant technologies.

253. Accordingly, the Respondents-Defendants have acted in excess of their jurisdiction and Part 494 Section 1.4(e) that require prohibitions that are different than the EPA rules should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

COUNT VI

THE DEPARTMENT'S DECISION TO REGULATE ALL "OTHER RESIDENTIAL HVAC" WAS ARBITRARY AND CAPRICIOUS

254. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

255. Section 494-1.4(e) of the amended Part 494 regulations regulate "other residential HVAC" equipment and parts.

256. "Other residential HVAC" is not specifically regulated by the EPA in its regulations implemented pursuant to the AIM Act.

257. According to the Department, the definition of "Air Conditioning" in Section 494-1.3(a)(4) brings HPWH within the scope the regulations, thereby regulating it as an "other residential HVAC." This approach does not presently align with the EPA or other U.S. Climate Alliance states (*e.g.*, California and Washington) regulations.

258. Section 1.4(e)(2)(vii) requires that any equipment and parts regulated as "other residential HVAC" must transition to the use of regulated substances with a GWP20 of less than 10 by January 1, 2027.

259. In its public comments, AHRI and others commented that the EPA and state governments exempted the "other residential HVAC" end-uses and voiced its concern that the proposal to regulate this subsector gives these manufacturers little notice from the date of adoption in which to innovate and provide the necessary equipment and parts for the market.

260. With respect to HPWHs, unlike other areas of HVAC where federal and state regulation has been ongoing for several years, the HPWH industry had little notice of a requirement to transition to ultra-low GWP substances by January 1, 2027.

261. Rather than a stepdown approach, HPWHs manufacturers are required to meet the toughest standard for compliance (ultra-low GWP) within just one transitional step.

262. HPWHs are amongst the first subsector of equipment affected by the amended Part 494 regulation's ultra-low GWP requirement.

263. In its Comments Assessment, the Department briefly acknowledged these concerns but still decided to retain an ultra-low GWP stepdown in 2027 for other residential HVAC equipment. The Department stated that "[t]he revision reflects the comments and is intended to

enable this industry to invest in future proof and least cost alternative refrigerants." Comments Assessment at 29.

264. Instead of providing the analysis necessary at the time of rulemaking, the Department opined that it "can evaluate the progress on codes and standards and the availability of alternatives as part of the regulatory review required by SAPA and the Climate Act." *Id.*

265. Industry must consider not only the requirements of the amended Part 494 regulations, but also the building and safety standards and energy-efficiency requirements when innovating and designing new HVACR technologies.

266. The Department should have properly considered inclusion of the "other residential HVAC" subsector and all elements necessary for its required transition of "other residential HVAC" equipment from HFCs to ultra-low GWPs by 2027 prior to promulgation of its standard.

267. Accordingly, the Respondents-Defendants have acted in excess of their jurisdiction and Part 494 Section 1.4(e) that prohibits GWP20 greater than 10 refrigerants for "other residential HVAC" equipment should be declared null and void as irrational, arbitrary, and capricious and affected by an error of law.

COUNT VII

DECLARATORY JUDGMENT

268. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

269. The Department's adoption of the amended Part 494 regulations was based on numerous errors of law and fact.

270. A valid, ripe, justiciable controversy exists between Petitioners-Plaintiffs and the Department concerning the validity and enforceability of the amendments to 6 NYCRR Part 494.

271. Specifically, Petitioners-Plaintiffs and the Department disagree regarding the following:

a. Whether the amendments to Part 494 are arbitrary and capricious due to the Department's failure to fully contemplate the impacts, feasibility, and costs of compliance with amended Section 1.4(f) of Part 494 prohibiting the "sale and distribution" of "bulk regulated substances" based over five prohibition dates;

b. Whether the RIS generated by the Department failed to comply with SAPA § 202-a(3)[c]'s requirement that the Department issue a statement detailing the projected costs of the rule when it issued a RIS based upon cost information provided by the EPA in its regulations pursuant to the AIM Act and not costs in accordance with the mandates of SAPA § 202-a(3)[c];

c. Whether the RIS generated by the Department failed to comply with SAPA § 202-b(1)'s requirement that the Department consider ways to minimize the economic effects of amended Part 494 on small businesses where the amended Part 494 contained restrictions not required by the EPA or that are inconsistent with those restrictions currently required by the EPA;

d. Whether the RIS generated by the Department failed to comply with SAPA § 202-a(3)[h]'s requirement that the Department identify where and explain why amended Part 494 exceeds the federal standards for hydrofluorocarbon regulation;

e. Whether the amendments to Part 494 are arbitrary and capricious due to the Department's failure to fully contemplate the impacts, feasibility, and costs of compliance with the prohibitions in Part 494-1.4(e), requiring the use of regulated substances with GWP20 of less than 10 or 20 (*i.e.*, ultra-low GWP refrigerants) for

residential commercial air conditioning and refrigeration sectors, including residential and light commercial AC, heat pumps, VRF systems, and other residential HVAC;

f. Whether the amendments to Part 494 are arbitrary and capricious due to the Department's decision to adopt prohibition dates different than those established by the EPA under the AIM Act; and

g. Whether the amendments to Part 494 are arbitrary and capricious due to the Department's decision to include within the scope of regulation all "other residential HVAC" equipment and parts when the EPA and other state governments do not include "other residential HVAC" end-uses from regulation.

272. Pursuant to CPLR § 3001, Petitioners-Plaintiffs seek a declaratory judgment regarding the foregoing matters.

PRAYER FOR RELIEF

WHEREFORE, Petitioners-Plaintiffs respectfully request that this Court issue an Order pursuant to Articles 30 and 78 of the CPLR:

A. Declaring that the Respondents-Defendants have failed to perform duties specifically enjoined upon them by law and/or have acted in excess of their jurisdiction;

B. Declaring that the amended Part 494 regulations are, in whole or in part, arbitrary and capricious, in violation of lawful procedure, and affected by error of law;

C. Annulling, voiding, and invalidating, in whole or in part, the amended Part 494 regulations as illegal, arbitrary and capricious and not in accordance with law; and

D. Granting such other and further relief as this Court deems just, equitable and proper.

Dated: April 9, 2025

Respectfully submitted,

BARCLAY DAMON LLP

By: */s/ Yvonne E. Hennessey*

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VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

YVONNE E. HENNESSEY, an attorney duly admitted before the courts of the State of New York, hereby affirms the following under penalty of perjury:

1) I am the attorney for the Petitioners-Plaintiffs in the above-captioned action. My office is located in the County of Albany, State of New York. The Petitioner-Plaintiff, Heating Air-Conditioning Refrigeration Distributors International is located in the State of Ohio, and the Petitioner-Plaintiff, Air-Conditioning, Heating, and Refrigeration Institute is located in the State of Virginia. I have read the foregoing Petition-Complaint, and the same is true upon information and belief.

2) This verification is made by me instead of Petitioners-Plaintiffs because Petitioners-Plaintiffs are not located within the County of Albany, which is the county where I have my office.

By: *__/s/ Yvonne E. Hennessey__*
Yvonne E. Hennessey, Esq.