

**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for respondent U.S. Department of Transportation certify that the following have an interest in the outcome of this appeal:

Brown, Tristan, Deputy Administrator of the Pipeline and Hazardous Materials Safety Administration

Buttigieg, Peter, Secretary of the U.S. Department of Transportation;

Crawley, Deitra, Counsel for Metal Conversion Technologies, LLC, in the administrative proceeding before the Department of Transportation;

Dorsey, Osasu, Chief Counsel of the Pipeline and Hazardous Materials Safety Administration

Hinshelwood, Bradley A., Counsel for respondent U.S. Department of Transportation;

Li, Sheng, Counsel for petitioner Metal Conversion Technologies, LLC;

McMillan, Howard, Chief Safety Officer of the Pipeline and Hazardous Materials Safety Administration

Metal Conversion Technologies, LLC, Petitioner;

Patterson, John, President of Metal Conversion Technologies, LLC;

Rollins, Kara, Counsel for petitioner Metal Conversion Technologies, LLC;

Salzman, Joshua M., Counsel for respondent U.S. Department of
Transportation;

Tasagnov, Vasiliki, Deputy Chief Counsel of the Pipeline and
Hazardous Materials Safety Administration;

**U.S. Department of Transportation, Pipeline and Hazardous
Materials Safety Administration**, Respondent.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

METAL CONVERSION TECHNOLOGIES,
LLC,

Petitioner,

v.

U.S. DEPARTMENT OF
TRANSPORTATION,

Respondent.

No. 22-14140

RESPONDENT'S JURISDICTIONAL RESPONSE

The government files this response to the Court's order of January 31, 2023, which directed the parties to address "whether the petition for review, filed on December 15, 2022, is timely to challenge the July 25, 2022, final administrative action by the U.S. Department of Transportation." The petition is untimely and should be dismissed.

1. As a general matter, petitioner is responsible for showing that a petition is timely filed. *See, e.g., Matar v. Transportation Sec. Admin.*, 910 F.3d 538, 542 (D.C. Cir. 2018) (holding that a petition was untimely where petitioner "offer[ed] no evidence" to support timeliness); *Messias v. U.S. Att'y Gen.*, 371 F. App'x 41, 41 (11th Cir. 2010) (concluding that a petition was timely where petitioner provided "ample evidence" of timely filing). On its face, the petition for review here was filed long after the 60-day

period provided by 49 U.S.C. § 5127(a), and nothing in the petition for review explains the delay. Because the Court has ordered simultaneous filings by both parties with no schedule for further briefing, however, the agency further notes that petitioner cannot establish timeliness here.

2. This case is a petition for review of a final decision issued in a civil penalty proceeding before the Pipeline and Hazardous Materials Safety Administration (PHMSA), a component of the Department of Transportation. Petitioner Metal Conversion Technologies, LLC, filed an administrative appeal within PHMSA of an Order of the Chief Counsel assessing the penalty. In filing that appeal before the agency, petitioner was represented by counsel Deitra Crawley. *See* Ex. A to Decl. of Amelia Samaras.

3. The agency rendered its final decision on petitioner's administrative appeal on July 25, 2022. *See* Exhibit B to Samaras Decl. at 11. The regulations governing PHMSA proceedings provide that one option for serving that decision on petitioner was to send the decision by "[r]egistered or certified mail," and that "[a]n official United States Postal Service receipt from the registered or certified mailing is proof of service." 49 C.F.R. § 105.35(a)(1)(i), (ii). In addition, the regulations provide that the agency "may serve a person's authorized representative or agent by registered or certified mail" and that "[s]ervice on a person's authorized agent is the same as service on the person." *Id.* § 105.35(a)(1)(iii).

4. As explained in the attached declaration of Amelia Samaras, the agency here served the decision by sending a copy to petitioner’s counsel—Ms. Crawley—by certified mail on August 2, 2022. Decl. ¶ 6. A copy of the certified mail receipt is attached as Exhibit C to the Samaras declaration. In addition, although the receipt alone “is proof of service,” 49 C.F.R. § 105.35(a)(1)(ii), attached as Exhibit D to the Samaras declaration is a copy of a United States Postal Service tracking page indicating that the final decision was delivered to Ms. Crawley’s office on August 5, 2022.¹ Moreover, as explained in the attached declaration, there is no indication that Ms. Crawley ceased representing petitioner while the administrative appeal was pending or that substitute counsel appeared for petitioner while the administrative appeal was pending. Decl. ¶ 8.

5. As this Court’s jurisdictional order observes, under 49 U.S.C. § 5127(a), petitioner was required to file its petition “not more than 60 days after the Secretary’s action becomes final.” The petition here was not filed until December 15, 2022—143 days after the final decision was signed, 135 days after it was served, and 132 days after petitioner’s counsel received it. Petitioner cannot demonstrate timeliness, and this petition for review should be dismissed.

¹ The declaration further notes that, although not required by the governing regulations, the agency also mailed a courtesy copy of the final decision directly to petitioner, which apparently was not successfully delivered. Decl. ¶ 7. The agency did not attempt to send that copy again because, as noted, service had been effected on petitioner’s counsel, and that service “is the same as service on the person.” 49 C.F.R. § 105.35(a)(1)(iii); *see* Decl. ¶ 7.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This jurisdictional response contains 663 words. This response was prepared using Microsoft Word 2013 in Garamond, 14-point font, a proportionally-spaced typeface.

/s/ Brad Hinshelwood

Brad Hinshelwood

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2023, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I further certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Brad Hinshelwood

Brad Hinshelwood