**201http://www.r744.com/articles/7787/u\_s\_court\_rules\_hfcs\_cannot\_be\_limited\_by\_current\_epa\_rules7**

**Court of Appeals says EPA SNAP program can’t force companies to replace HFCs under the Clean Air Act.**

**Aug 11, 2017**

A federal court ruled yesterday that the U.S. EPA cannot require companies to replace HFCs with low-GWP substances under the SNAP (Significant New Alternatives Policy) program in the case *[Mexichem Fluor, Inc. v. EPA](https://www.eenews.net/assets/2017/08/08/document_gw_13.pdf" \t "_blank)*.   
  
The ruling specifically vacated an EPA rule released in 2015 "to the extent that it requires manufacturers to replace HFCs with a substitute substance."

The two plaintiffs in the case were manufacturers of HFCs: Mexican Mexichem Fluor and French company Arkema SA. In February, the Trump administration, along with intervenors (the National Resources Defense Council, Chemours and Honeywell), defended the EPA in oral arguments.

The EPA’s SNAP program, which specifically relates to HFC use under the Clean Air Act, was found by the U.S. Court of Appeals for the District of Columbia Circuit to have exceeded its authority.

The ruling requires the EPA to take action consistent with the court’s decision. The agency has other options, such as using the Toxic Substances Control Act to phase down HFCs.

"However much we might sympathize or agree with EPA's policy objectives, EPA may act only within the boundaries of its statutory authority. Here, EPA exceeded that authority," Judge Brett Kavanaugh, a George W. Bush appointee, wrote in a court statement on the decision.

The Obama administration in 2015 took the original SNAP program, which only dealt with ozone-depleting substances (ODS), and extended it non-ODS high global warming HFCs, [reports eenews.net](https://www.eenews.net/greenwire/2017/08/08/stories/1060058529).

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– Judge Brett Kavanaugh, District of Columbia Circuit

Kavanaugh, along with a majority of the three-judge panel and one dissenting judge, wrote that the law does not extend to non-ODS and does not allow the EPA to require companies to “replace” HFCs with low-GWP refrigerants.

Kavanaugh took particular issue with the EPA's interpretation of the word "replace" in the SNAP section of the Clean Air Act, and said that by using it to list more alternatives, the federal agency had gone "beyond its ordinary meaning" in a manner that "borders on the absurd".

"Under EPA's current interpretation of the word 'replace', manufacturers would continue to 'replace' an ozone-depleting substance with a substitute even 100 years or more from now," Kavanaugh wrote. "EPA would thereby have indefinite authority to regulate a manufacturer's use of that substitute."

Judge Robert Wilkins, an Obama appointee who dissented in part, wrote that he believes the court’s finding that the word "replace" under the SNAP program does not just relate to ODS.

Wilkins thinks the court should have deferred to the EPA in this case, because the position of Congress on the SNAP program is unclear and the EPA has made “reasonable” rules in this matter.

"I would deny the petition for review [of the legislation] on all grounds," Wilkins wrote.

**Where do we go from here?**

The EPA SNAP program is a crucial tool for U.S. efforts to limit the consumption of HFCs in air conditioning, refrigeration, heat pumps, foams and other applications.

The ruling by the district court means that SNAP’s HFC program is incompatible with the Clean Air Act in the current manner that it is being pursued. The EPA could use one of several other statutory authorities that are similar to the Clean Air Act, such as the Toxic Substances Control Act, to phase down HFC use instead.

The agency could also force manufacturers using ODS to leapfrog over HFCs to low-GWP refrigerants and blowing agents. It could also explore implementing a "retroactive disapproval" of HFCs under the Clean Air Act, which the court ruled would only be permissible if the EPA were to explain why it is pursuing this under the current legislation.

The ruling has now gone back to the EPA, which is required to take action consistent with the court’s decision.

David Doniger of the Natural Resources Defense Council (NRDC), which intervened on behalf of the EPA, said the U.S. NGO is "exploring all options for appeal”.