IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN CHEMISTRY COUNCIL, et al. Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 10-1167 (and consolidated cases)

MOTION FOR LEAVE TO INTERVENE OF THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Rule15(b) of the Circuit Rules of this Court, the Chamber of Commerce of the United States of America ("Chamber") respectfully moves for leave to intervene in the above-captioned cases.

BACKGROUND

On July 6, 2010, petitioners in the above-captioned cases filed petitions for review seeking to reopen the following final rules of the United States Environmental Protection Agency ("EPA"):

Part 51 – Requirements for Preparation, Adoption, and Submittal of Implementation Plans: Prevention of Significant Air Quality Deterioration, Final Rule, 43 Fed. Reg. 26,380 (June 19, 1978).

Part 52 – Approval and Promulgation of State Implementation Plans: 1977 Clean Air Act Amendments to Prevent Significant Deterioration, 43 Fed. Reg. 26,388 (June 19, 1978).

Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans, 45 Fed. Reg. 52,676 (Aug. 7, 1980).

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Baseline Emissions Determination; Actual-to-Future-Actual Methodology, Plant-wide Applicability Limitations, Clean Units, Pollution Control Projects, 67 Fed. Reg. 80,186 (Dec. 31, 2002).

These final rules, which are collectively referred to herein as the "Existing PSD Rules," are a series of regulations implementing the prevention of significant deterioration ("PSD") program under the Clean Air Act.

On April 2, 2010, EPA published its *Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs; Final Rule*, 75 Fed. Reg. 17,004 (Apr. 2, 2010) ("PSD Triggering Rule"). In that rule, EPA determined that the anticipated promulgation of regulations restricting greenhouse gas emissions from certain motor vehicles would also trigger the application of the PSD program to greenhouse gas emissions from

stationary sources. On May 7, 2010, EPA promulgated its *Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, Final Rule*, 75 Fed. Reg. 25324 (May 7, 2010). That final rule, commonly referred to as EPA's "Tailpipe Rule," constituted the trigger outlined in the PSD Triggering Rule.

In the petitions that are the subject of this motion, petitioners assert that the triggering effect constitutes "new information" requiring re-examination of the Existing PSD Rules.

GROUNDS FOR INTERVENTION

The Chamber seeks to intervene in these consolidated cases because it has a direct and substantial interest in these proceedings that cannot be adequately represented by any other party. *See Dimond v. District of Columbia*, 792 F2d 179, 192 (D.C. Cir. 1986) (intervention is appropriate if "representation" by other parties "'may be' inadequate"). As courts have recognized, entities, like the Chamber, "whose legal interests are at stake are appropriate intervenors." *Sierra Club v. EPA,* 358 F.3d 516, 518 (7th Cir. 2004).

The Chamber is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The PSD program directly affects

facilities owned, operated, or otherwise related to the Chamber's members, and the Chamber's members have invested and will continue to invest substantial resources in complying with the PSD program. Accordingly, because the Chamber represents numerous stationary source businesses that will be "directly affected by [the] application" of any changes to the PSD program, it has important interests in participating in any litigation seeking to reopen the Existing PSD Rules. *Yakima Valley Cablevision, Inc. v. FCC,* 794 F.2d 737, 744 (D.C. Cir. 1986); *accord Bales v. NLRB,* 914 F.2d 92, 94 (6th Cir. 1990) (granting motion to intervene where entity had "a substantial interest in the outcome of the petition").

Equally important, the Chamber is a petitioner in other cases challenging the PSD Triggering Rule and the Tailpipe Rule, as well as other EPA final rules concerning the emission of greenhouse gases that cross-reference each other and, operating in tandem, unleash what may be the most far-reaching, onerous, and costly regulatory program ever adopted by a federal agency in American history. *See Chamber of Commerce of the United States v. EPA*, Case No. 10-1030 (challenging EPA's Endangerment Rule); *Chamber of Commerce of the United States v. EPA*, Case No. 10-1123 (challenging EPA's PSD Triggering Rule); *Chamber of Commerce of the United States v. EPA*, Case No. 10-1160 (challenging EPA's Tailpipe Rule); *Chamber of Commerce of the United States v. EPA*, No. 10-1199 (challenging EPA's Tailoring Rule). Because some of the

issues raised in these consolidated cases could well overlap with issues to be briefed and argued in the cases filed by the Chamber, the Chamber has a strong interest in participating in these proceedings. *See Sierra Club v. Glickman*, 82 F.2d 106, 109–10 (5th Cir. 1996) ("the stare decisis effect of an adverse judgment constitutes sufficient impairment to compel intervention" as a matter of right) (citing *Sierra Club v. Espy*, 18 F.3d 1202, 1207 (5th Cir. 1994)).

Moreover, the Chamber is not adequately represented by EPA or any other party. The Chamber's principal position in this and all related litigation is that EPA's promulgated structure for regulation of greenhouse gas emissions from stationary sources is unlawful, and that any additional stringency, acceleration, or expansion of the PSD program is likewise unlawful. EPA thus clearly does not adequately represent all of the Chamber's interests. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 737 (D.C. Cir. 2003) (burden to demonstrate inadequate representation is "not onerous").

Finally, allowing the Chamber to participate as an intervenor in these proceedings would not inconvenience the Court or harm any other party. This motion is timely because it was filed within 30 days after petitioners in Case Nos. 10-1167, 10-1168, 10-1169, and 10-1170 filed their petitions for review. Moreover, the Court has not yet set a briefing schedule and none of the parties have submitted their initial submissions.

WHEREFORE, the Chamber respectfully requests that it be permitted to intervene in the above-captioned consolidated cases with full rights attendant thereto.

Respectfully submitted,

/s/ Ashley C. Parrish

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Counsel for the Chamber of Commerce of the United States of America

Dated: August 5, 2010

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) and Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that I have this day served a copy of the foregoing documents by first-class mail, postage prepaid, on the following:

Eric H. Holder, Jr.
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Dated at Washington, D.C., this 5th day of August, 2010.

/s/ Ashley C. Parrish
Ashley C. Parrish

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CORPORATE DISCLOSURE STATEMENT FOR THE
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Circuit Rules of this Court, the Chamber of Commerce of the United States of America ("Chamber") states as follows:

The Chamber is the world's largest business federation, representing 300,000 direct members and indirectly representing more than 3,000,000 businesses and professional organizations of every size and in every economic sector and geographic region of the country. A central function of the Chamber is to advocate for the interests of its members in important matters before courts, Congress, and the Executive Branch.

The Chamber is a "trade association" within the meaning of Circuit Rule 26.1(b). It is organized under the laws of the District of Columbia. It has no parent corporation, does not issue stock, and no publicly held company owns a 10 percent or greater interest in the Chamber.

Respectfully submitted,

/s/ Ashley C. Parrish

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Counsel for the Chamber of Commerce of the United States of America

Dated: August 5, 2010

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Dated at Washington, D.C., this 5th day of August, 2010.

/s/ Ashley C. Parrish
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