UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund,	)	
Petitioners	)	
v.	)	Case No. 09-1018
United States Environmental Protection Agency and Lisa Perez Jackson, Administrator,	)	
Respondent.	)	

MOTION FOR LEAVE TO INTERVENE

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Rule 15(b) of this Court, the Chamber of Commerce of the United States of America, the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Forest and Paper Association, the American Iron and Steel Institute, the American Petroleum Institute, the National Association of Manufacturers, the National Oilseed Processors Association, the National Petrochemical and Refiners Association, and the Rubber Manufacturers Association (collectively "Movants") seek leave to intervene as respondents in this case.[1]

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[1] Individual descriptions of Movants and their members' interests and business activities are provided in an Addendum to this Motion.

Petitioners Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund (collectively "Petitioners") filed the petition for review in this case to challenge an interpretive memorandum issued by the U.S. Environmental Protection Agency ("EPA") under the Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq*. The interpretive memorandum, entitled "EPA's Interpretation of Regulations That Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (hereinafter "PSD Interpretive Memorandum"), is dated December 18, 2008, and was published in the Federal Register on December 31, 2008. See 73 Fed. Reg. 80300. The petition for review was filed under Section 301(b)(1) of the CAA, 42 U.S.C. § 7407(b)(1), on January 15, 2009.

Movants are business organizations and trade associations whose members include many companies engaged in key business sectors in the United States, including manufacturing, construction, retail, and production and refining of petroleum. Members of the movant associations own and operate facilities that emit carbon dioxide ("CO_2"). Because CO_2 has never been subject to the Clean Air Act's Prevention of Significant Deterioration ("PSD") permitting program (42 U.S.C. §§ 7470-7479), the CO_2 emissions of Movants' members are not regulated under that program.

Responding to objections that Petitioner Sierra Club and similar groups have filed against recently issued PSD permits for electric-generating facilities, the PSD Interpretive Memorandum under review confirms that CO_2 is not a regulated pollutant under the PSD program. In challenging the PSD Interpretive Memorandum in this Court, Petitioners are likely to argue that the CAA requires CO_2 to be regulated under the PSD program. If this Court were to agree, EPA and States could be required—for the first time, and in the absence of implementing regulations evaluating appropriate technologies—to subject CO_2 emissions from facilities owned or operated by Movants' members to the PSD permitting program. Such a result not only would compel many members to undergo a costly permitting process never before required, but would also impose on members potentially enormous costs of prohibiting CO_2 emissions and/or installing emission-control technology. Movants therefore seek to intervene in this case to oppose the petition for review. For the reasons stated below, this Court should grant Movants' motion for leave to intervene.

BACKGROUND

The PSD Interpretive Memorandum clarifies the EPA CAA regulation that defines "regulated new-source review (NSR) pollutants." See 40 C.F.R. § 52.21(b)(50). Regulated NSR pollutants are subject to the federal Prevention of Significant Deterioration ("PSD") program under Title I, Part C of the Clean Air

Act, 42 U.S.C. §§ 7470-92. The PSD program includes a preconstruction permitting process that requires, among other things, any new or modified existing major stationary source of a regulated NSR pollutant to incorporate the best available control technology ("BACT") for those regulated NSR pollutants that the sources will emit in excess of specified amounts. 42 U.S.C. § 7475(a)(4). EPA has never treated CO_2 as a regulated NSR pollutant subject to the PSD program.

In the wake of the Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), which addressed the potential regulation of CO_2 from *mobile* sources under Title II of the CAA, EPA issued an Advanced Notice of Proposed Rulemaking ("ANPR") to consider whether and how CO_2 and other greenhouse gases could be regulated under the Clean Air Act. 74 Fed. Reg. 44354 (July 31, 2008). The ANPR makes clear EPA's view that *stationary sources* of CO_2 are not currently subject to the PSD program, *id.* at 44400, and that a new regulatory scheme would be necessary to control emissions of CO_2 from stationary sources because the "Clean Air Act, an outdated law originally enacted to control regional pollutants that cause direct health effects, is ill-suited for the task of regulating global greenhouse gases." *Id.* at 44355.

Nonetheless, Petitioner Sierra Club and other organizations have recently challenged PSD permits issued for CO_2 emitting facilities, arguing that the CAA requires the permitting authority to impose BACT limitations for CO_2 emissions.

E.g., *In re Deseret Power Elec. Coop.*, PSD Appeal No. 07-03, 2008 EPA App. LEXIS 47 (EAB Nov. 13, 2008). In November 2008, the EPA Environmental Appeals Board ("EAB") rejected that argument, holding that EPA had discretion to interpret the CAA to exclude from the PSD program pollutants, such as CO_2, that were subject only to reporting and monitoring requirements. *Id.* (slip. op. at 63). The EAB nonetheless remanded the permit at issue to EPA Region VIII for further consideration because the administrative record in the proceeding contained insufficient reasoning to support the authority's decision not to impose limits on CO_2 emissions. *Id.*

On December 18, 2008, EPA's Administrator issued the PSD Interpretive Memorandum to provide "EPA's definitive interpretation of 'regulated NSR pollutant'" and "to resolve any ambiguity in the definition, which includes 'any pollutant that otherwise is subject to regulation under the Act.'" 73 Fed. Reg. at 80301. After a thorough analysis of the regulation's text, overarching agency policies, and historical agency practice, as well as the broader context of the CAA, the PSD Interpretive Memorandum concludes that pollutants subject only to monitoring and reporting requirements, as opposed to actual emission controls, are not "regulated NSR pollutants." *Id.* Because CO_2 emissions are currently subject only to monitoring and reporting requirements by electric-generating facilities

under the CAA, they are not "regulated NSR pollutants," as confirmed by the PSD Interpretive Memorandum.[2]

ARGUMENT

The Court should grant Movants' motion for leave to intervene as respondents because they satisfy this Court's standard for intervention in petition-for-review proceedings. Movants' interests relate to the subject of this litigation, may be impaired if Petitioners prevail, and cannot be adequately represented by existing parties. In addition, Movants have standing to intervene.

I. Movants Satisfy the Standard for Intervention in This Case.

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." This Court, like other courts of appeals, has recognized that the standard for intervention under Federal Rule of Civil Procedure 24, while not binding, may inform its intervention inquiry. *Amalgamated Transit Union v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985); *see Int'l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965). The requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2) are: (1) the application is timely; (2) the

[2] Petitioners filed a petition for reconsideration of the PSD Interpretive Memorandum with EPA on December 31, 2008, and filed an amended petition for reconsideration on January 6, 2009.

applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Movants satisfy each of those requirements.

A. The Motion to Intervene Is Timely.

Petitioners filed the petition for review in this case on January 15, 2009. This motion is timely because it is being filed within 30 days after the filing of that petition. F.R.A.P. 15(d). Moreover, as a practical matter, allowing Movants to intervene will not disrupt the proceedings because Movants would be joining at an early stage, before this Court has established a schedule and format for briefing.

B. Movants and Their Members Have Interests Relating to the Subject of This Proceeding That May be Impaired If Petitioners Prevail.

An entity has sufficient interests to intervene where the proceeding has the potential to subject the movant to governmental regulation. *E.g.*, *Fund for Animals*, 322 F.3d at 735; *Military Toxins Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998). Based on the arguments Petitioners advanced in their administrative petition to EPA for reconsideration of the PSD Interpretive Memorandum, Movants anticipate that Petitioners will argue that the CAA compels EPA and States to regulate CO_2 emissions under the PSD program.

A ruling in Petitioners' favor could force EPA and States to expand the PSD program dramatically, sweeping in many of Movant members' facilities that currently are not subject to the PSD program, and increasing the regulatory burden on other facilities currently regulated under PSD program for pollutants other than CO_2. That is so because the CAA requires permitting of any new or modified existing stationary source that has the potential to emit 100 tons per year or 250 tons per year of a regulated pollutant, depending on the type of source. CAA § 169(1); 42 U.S.C. § 7479(1). For currently regulated NSR pollutants, such as particulate matter and sulfur dioxide, the statutory thresholds bring relatively few sources under regulation because those pollutants are emitted by relatively few facilities in large quantities. By contrast, CO_2 is emitted by large numbers of relatively small sources—*e.g.*, any fossil fuel-burning furnace, boiler, or engine—in quantities that exceed the statutory thresholds.[3]

As a result, thousands of members' facilities around the nation that do not currently fall within the PSD program could be forced to undergo the permitting process. In addition, those facilities newly regulated under the PSD program

[3] ANPR, 74 Fed. Reg. at 44499 ("Under existing major source thresholds, we estimate that if CO2 becomes a regulated NSR pollutant (either as an individual GHG or as a group of GHGs), the number of PSD permits required to be issued each year would increase by more than a factor of 10 (*i.e.*, more than 2000–3000 permits per year) . . . . The additional permits would generally be issued to smaller industrial sources, as well as large office and residential buildings, hotels, large retail establishments, and similar facilities.").

because of their CO_2 emissions would have to obtain permits certifying BACT compliance for *any* regulated pollutant they emit at the lower "significance" levels provided by regulation. See 40 C.F.R. § 52.21(b)(1), (b)(23). Moreover, both those newly covered facilities and facilities currently covered by the PSD program would be forced to install costly control technology for CO_2, without EPA first completing an in-depth analysis of the consequences of PSD regulation.

Each of the Movants has numerous members that own and operate many such facilities and thus face the potential of new regulation as a result of Petitioners' challenge. For example, the Chamber of Commerce's membership includes businesses that own large office, retail, or residential buildings that are not currently subject to the PSD program because they emit no regulated NSR pollutants. Under the Petitioners' view, Chamber members that wanted to construct or modify such buildings would need to undertake the burdensome PSD permitting process and potentially install costly control technology for CO_2. Similarly, the American Chemistry Council's ("ACC") members own or operate the majority of the nation's facilities used to produce basic industrial chemicals. Although many such facilities are currently subject to the PSD program because they emit regulated substances besides CO_2, Petitioners' position would force ACC members seeking to construct or modify certain facilities to determine BACT

compliance for CO_2. These same types of circumstances affect the members of the other Movants, as well.[4]

Because the Petitioners' challenge has the potential to bring Movants' members under new and burdensome governmental regulation, Movants clearly have interests sufficient to merit intervention. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) (noting with regard to parties who are the "objects" of governmental action or inaction that "there is ordinarily little question that the action or inaction has caused [them] injury.").

C. Existing Parties Cannot Adequately Represent Movants' Interests.

In considering whether Movants' interests are adequately represented by the parties, the burden of showing a difference in interests "should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). "The applicant need only show that representation of his interests 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986).

Because Petitioners oppose the PSD Interpretive Memorandum that Movants would defend, Petitioners cannot, of course, adequately represent Movants' interests. Nor can EPA adequately represent Movants' interests. As a governmental entity, EPA must avoid advancing the "narrower interest" of certain

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[4] See Addendum to this Motion.

businesses "at the expense of its representation of the general public interest." *Dimond*, 792 F.2d at 192-93. Although EPA must take into account the cost-effectiveness of regulations, EPA must also pursue its general public mandate to improve the nation's air quality. In contrast, Movants admittedly have a "narrower interest," namely, helping ensure that their members are not thrust into a new and potentially unwarranted permitting process, with dire economic consequences, in the absence of a thorough administrative analysis of the impacts of that regulation. Particularly at a time when American industry is reeling from the effects of a deep recession, Movants cannot rely solely on a mission-oriented public agency to safeguard their concerns.

Even if Movants' interests and EPA's interests were more closely aligned, "that [would] not necessarily mean that adequacy of representation is ensured." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). Precisely because Movants' interests are "more narrow and focused than EPA's," Movants' participation is "likely to serve as a vigorous and helpful supplement to EPA's defense." *Id.*

Finally, the Motion for Leave to Intervene in this case filed by the Utility Air Regulatory Group ("UARG") on February 6, 2009, has no bearing on this motion. The intervention inquiry considers how effectively the movant's interests would be represented by the *parties*, not by other movants for intervention.

Indeed, even if UARG were already a party, it would not adequately represent Movants' interests. Representation may be inadequate where the two entities' interests are "similar but not identical." *United States v. Amer. Tel. & Tel. Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980). Even where entities share broad strategic objectives, they may have differing interests and goals with respect to particular issues in the specific case, and those differences support intervention. *Id.*; *see also Fund for Animals*, 322 F.3d at 737; *Nuesse v. Camp*, 385 F.2d 694, 701 (D.C. Cir. 1967). That is true here: UARG represents the particular, distinct interests of electric utilities and other electric generating companies.[5] In contrast, Movants will present to this Court the distinct perspective and interests of a broad array of manufacturing, construction, retail, and petroleum production and refining companies. Additionally, whereas UARG's members are generally already subject to the PSD permitting process because their facilities emit sufficient quantities of other regulated NSR pollutants, many of Movants' members are not currently subject to the PSD permitting process and will therefore provide a distinct perspective on the potential burdens that an adverse decision could yield.

II. Movants Have Standing To Intervene In This Case.

To the extent this Court requires parties intervening as respondents to have

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[5] *See* UARG's Motion for Leave to Intervene as a Respondent, at 9 (filed Feb. 6, 2009).

Article III standing, Movants plainly satisfy that requirement.[6] Associations such as Movants have standing to sue on behalf of their members when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). As to the first requirement, where a party fulfills the conditions for intervention as of right under Federal Rule of Civil Procedure 24(a), the party necessarily also demonstrates Article III standing. *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (citing *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000)). In addition, a party has standing where this Court's rejection of an agency interpretation could result in the party being subject to governmental regulation. *E.g.*, *Military Toxins Project*, 146 F.3d at 954 (holding that association had standing to intervene in defense of an EPA regulation that interpreted a rule not to apply to activities in which association's members engaged).

As explained above, Movants' members satisfy the requirement for

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[6] This Court has recently suggested that a party intervening in a district court case as a defendant need not have standing. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("Requiring standing of someone who seeks to intervene as a defendant . . . runs into the doctrine that the standing inquiry is directed at those who invoke the court's jurisdiction."). Arguably, the same should be true of a party intervening in an appeal as a respondent.

intervention as of right under Federal Rule of Civil Procedure 24(a), given their interests in avoiding unnecessary and burdensome PSD permitting requirements and the risk that an adverse ruling could lead to that result. As such, Movants' members would have standing to sue in their own right. Moreover, since Petitioners' challenge threatens to subject Movants' members to new PSD permitting requirements for CO_2, the members "would suffer concrete injury if the court grants the relief the petitioners seek," and the members therefore have standing. *Military Toxins*, 146 F.3d at 954.

The remaining requirements of associational standing are also easily met here. The interests Movants seek to protect are germane to their organizational purposes of promoting the well-being of their respective industries because the new PSD permitting requirements—especially the prospect of installing new control technologies—would impose enormous financial burdens on its members. Additionally, Movants' defense of the PSD Interpretive Memorandum will not require the participation of individual members because Movants are capable of representing the members' position and interests in this case.

In sum, there is no question that Movants have a sufficient stake in this case. Even if this Court had doubts as to some particular Movant's standing, this Court should nonetheless grant this motion so long as just one of the Movants has standing. *Military Toxins Project*, 146 F.3d at 954 ("[I]f one party has standing in

an action, a court need not reach the issue of standing of other parties when it makes no difference to the merits of the case.") (quoting *Railway Labor Executives' Ass'n v. United States*, 987 F.2d 806, 810 (D.C. Cir. 1993)).

CONCLUSION

For the reasons stated above, Movants respectfully seek leave to intervene as respondents.

Dated: February 13, 2009

Respectfully submitted,

_________/s/_________________

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ADDENDUM TO MOTION FOR LEAVE TO INTERVENE

Following is a description of Movants and their members' business activities and interests in this case. Each Movant has many members that own or operate facilities that are or that, as a result of an adverse decision in this case, could become subject to the PSD permitting program.

1. The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country.

2. The American Chemistry Council is a nonprofit trade association whose member companies represent the majority of the productive capacity of basic industrial chemicals within the United States. The business of chemistry is a $664 billion enterprise and a key element of the nation's economy.

3. The American Coke and Coal Chemicals Institute is a trade association representing approximately 80% of the U.S. production of metallurgical coke, by both merchant coke producers and integrated steel companies with coke production capacity, and 100% of the U.S. manufacture of coal chemicals produced from coke byproducts.

4. The American Forest and Paper Association is the non-profit, national trade association of the forest products industry, representing 75 companies that

manufacture pulp, paper, packaging and wood products, and own forestland. The forest products industry accounts for approximately 6 percent of the total U.S. manufacturing GDP, and is among the top 10 manufacturing sector employers in 48 states.

5. The American Iron and Steel Institute represents approximately 28 member iron and steel companies, and 138 associate and affiliate members who are suppliers to or customers of the steel industry. These members operate and hold ownership interests in various steel manufacturing and related operations across the United States and its producer, associate and/or affiliate members supply various customers and projects in the United States.

6. The American Petroleum Institute ("API") is a national trade association that represents all aspects of America's oil and natural gas industry. API has approximately 400 members, from the largest major oil company to the smallest of independents, from all segments of the industry, including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry.

7. The National Association of Manufacturers is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states.

8. The National Oilseed Processors Association ("NOPA") is a national trade association comprised of 15 companies engaged in the production of vegetable meals and oils from oilseeds, including soybeans. NOPA's member companies process more than 1.4 billion bushels of oilseeds annually at 65 plants located throughout the country, including 60 plants which process soybeans.

9. The National Petrochemical and Refiners Association ("NPRA") is a national trade association whose members comprise more than 450 companies, including virtually all United States refiners and petrochemical manufacturers. NPRA's members supply consumers with a wide variety of products and services that are used daily in homes and businesses. These products include gasoline, diesel fuel, home-heating oil, jet fuel, asphalt products, and the chemicals that serve as "building blocks" in making plastics, clothing, medicine and computers.

10. The Rubber Manufacturers Association ("RMA") is the national trade association for the rubber products industry. RMA has more than 80 members, including all of the country's major tire manufacturers, as well as manufacturers of such rubber products as belts, hoses, gaskets, seals, anti-vibration components, and other automotive and industrial rubber goods.

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1 of the Rules of this Court, Movants seeking leave to intervene submit the following statement:

1. The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in court on issues of national concern to the business community. The Chamber has no outstanding shares or debt securities in the hands of the public and has no parent

company. No publicly held company has a 10% or greater ownership interest in Chamber.

2. The American Chemistry Council ("ACC") is a nonprofit trade association that participates on its members' behalf in administrative proceedings and in litigation arising from those proceedings. ACC represents the leading companies engaged in the business of chemistry. ACC has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in ACC.

3. The American Coke and Coal Chemicals Institute ("ACCCI") is a trade association representing approximately 80% of the U.S. production of metallurgical coke, by both merchant coke producers and integrated steel companies with coke production capacity, and 100% of the U.S. manufacture of coal chemicals produced from coke byproducts. ACCCI has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in ACCCI.

4. The American Forest and Paper Association ("AF&PA") is the non-profit, national trade association of the forest products industry, representing 75 companies that manufacture pulp, paper, packaging and wood products, and own forestland. AF&PA has no outstanding shares or debt securities in the hands of the

public and has no parent company. No publicly held company has a 10% or greater ownership interest in AF&PA.

5. The American Iron and Steel Institute ("AISI") represents approximately 28 member iron and steel companies, and 138 associate and affiliate members who are suppliers to or customers of the steel industry; these members operate and hold ownership interests in various steel manufacturing and related operations across the United States and its producer, associate and/or affiliate members supply various customers and projects in the United States. AISI represents its members interests in public policy, environmental and technology matters. AISI has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in AISI.

6. The American Petroleum Institute ("API") is a national trade association that represents all aspects of America's oil and natural gas industry. API has approximately 400 members, from the largest major oil company to the smallest of independents, from all segments of the industry, including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in API.

7. The National Association of Manufacturers ("NAM") is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards. NAM has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in NAM.

8. The National Oilseed Processors Association ("NOPA") is a national trade association comprised of 15 companies engaged in the production of vegetable meals and oils from oilseeds, including soybeans. NOPA's member companies process more than 1.4 billion bushels of oilseeds annually at 65 plants located throughout the country, including 60 plants which process soybeans. NOPA has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in NOPA.

9. The National Petrochemical and Refiners Association ("NPRA") is a national trade association whose members comprise more than 450 companies, including virtually all United States refiners and petrochemical manufacturers. NPRA's members supply consumers with a wide variety of products and services that are used daily in homes and businesses. These products include gasoline, diesel fuel, home-heating oil, jet fuel, asphalt products, and the chemicals that serve as "building blocks" in making plastics, clothing, medicine and computers. NPRA has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in NPRA.

10. The Rubber Manufacturers Association ("RMA") is the national trade association for the rubber products industry. RMA has more than 80 members, including all of the country's major tire manufacturers, as well manufacturers of such rubber products as belts, hoses, gaskets, seals, anti-vibration components, and other automotive and industrial rubber goods. RMA represents the domestic rubber and tire manufacturing sector in regulatory proceedings, legislative matters, and the development of technical standards. RMA member tire companies operate 36 manufacturing facilities in 18 states. RMA has no outstanding shares or debt securities in the hands of the public and has no parent

company. No publicly held company has a 10% or greater ownership interest in RMA.

Dated: February 13, 2009.   Respectfully submitted,

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Rule 27(a)(4) and Rule 28(a)(1) of this Court, Movants for leave to intervene in this case state the following:

1. Parties and Amici. Because this case concerns direct review of final agency action, the requirement in Rule 28a(a)(1) to list the parties, intervenors, and amici that appeared below does not apply. The petitioners that appear in this case are Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund. The respondents are the United States Environmental Protection Agency ("EPA") and its Administrator. At this time, to the knowledge of undersigned counsel, there are no intervenors or amici in this case. A motion for leave to intervene in this case as respondent has been filed by the Utility Air Regulatory Group.

2. Ruling Under Review. The petition seeks review of the EPA's interpretive memorandum entitled "EPA's Interpretation of Regulations That Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program," which is dated December 18, 2008, and was published in the Federal Register on December 31, 2008. See 73 Fed. Reg. 80300.

3. Related Cases. Movants are not aware of any related cases.

Dated: February 13, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2009, on behalf of Movants American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest and Paper Association, American Iron and Steel Institute, American Petroleum Institute, Chamber of Commerce of the United States of America, National Association of Manufacturers, National Oilseed Processors Association, National Petrochemical and Refiners Association, and Rubber Manufacturers Association, one copy each of the Motion for Leave To Intervene, Certificate as to Parties and Amici, and Rule 26.1 Disclosure Statement was served by first-class mail, postage prepaid, on each of the following:

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