ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, ***Petitioner,*** **v.** **U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,** ***Respondents*.**	**No. 18-1167**

MOTION OF THE UTILITY AIR REGULATORY GROUP, AIR PERMITTING FORUM, AMERICAN CHEMISTRY COUNCIL, AMERICAN COKE AND COAL CHEMICALS INSTITUTE, AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, AMERICAN IRON AND STEEL INSTITUTE, AMERICAN WOOD COUNCIL, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO INTERVENE AS RESPONDENTS

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, the Utility Air Regulatory Group ("UARG"), Air Permitting Forum ("APF"), American Chemistry Council ("ACC"), American Coke and Coal Chemicals Institute ("ACCCI"), American Forest & Paper Association ("AF&PA"), American Fuel & Petrochemical Manufacturers ("AFPM"), American Iron and Steel Institute ("AISI"), American Wood Council ("AWC"), and the Chamber of Commerce of the United States of America (the "Chamber")

(collectively the "Industry Movants") respectfully move for leave to intervene as respondents in the above-captioned case. On June 18, 2018, Sierra Club filed a petition for review challenging the issuance of a guidance memorandum by Respondents U.S. Environmental Protection Agency and Administrator Scott Pruitt (collectively, "EPA" or "Agency") dated April 17, 2018. Memorandum from Peter Tsirigotis, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10, "Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program," (Apr. 17, 2018) ("SILs Memo"), https://www.epa.gov/sites/production/files/2018-04/documents/sils_guidance_2018.pdf (Attachment 1).

Consistent with Federal Rule of Appellate Procedure 15(d), the Industry Movants are filing this motion within 30 days after Sierra Club filed its petition for review. Counsel for Petitioner Sierra Club states that Petitioner reserves its position until after it reviews this motion. Counsel for Respondents states that Respondents take no position on this motion.

BACKGROUND

UARG is a not-for-profit association of individual electric generating companies and national trade associations. UARG participates on behalf of certain of its members collectively in Clean Air Act ("CAA or "Act") administrative

proceedings that affect electric generators and in litigation arising from those proceedings. Electric utilities and other electric generating companies that are members of UARG own and operate power plants and other facilities that generate electricity for residential, commercial, industrial, institutional, and governmental customers.

APF is a trade association within the meaning of D.C. Circuit Rule 26.1, that since its formation in 1993 has advocated for appropriate implementation of the CAA and related statutes on behalf of its member companies. APF also participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. APF's members operate manufacturing facilities throughout the U.S. that are subject to and Prevention of Significant Deterioration permitting requirements, which are the requirements affected by the memorandum challenged in this case.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $768 billion enterprise and a key element of the nation's economy.

It is the nation's largest exporter, accounting for 14 percent of all U.S. exports. ACC participates on its members' behalf in administrative proceedings and in litigation arising from those proceedings.

Founded in 1944, ACCCI is an international trade association that represents 100% of the U.S. producers of metallurgical coke used for iron and steelmaking, and 100% of the nation's producers of coal chemicals, who combined have operations in 12 states. It also represents chemical processors, metallurgical coal producers, coal and coke sales agents, and suppliers of equipment, goods, and services to the industry. ACCCI participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members.

AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures approximately $200 billion in products annually, and employs nearly 900,000 men and women. The industry meets a payroll of approximately $50 billion annually

and is among the top 10 manufacturing sector employers in 47 states. AF&PA participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members.

AFPM is a national trade association whose members comprise virtually all U.S. refining and petrochemical manufacturing capacity. AFPM participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. AFPM's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case.

AISI serves as the voice of the North American steel industry and represents 21 member companies, including integrated and electric furnace steelmakers, accounting for the majority of U.S. steelmaking capacity with facilities located in 41 states, Canada, and Mexico, and approximately 120 associate members who are suppliers to or customers of the steel industry. AISI participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members.

AWC is the voice of North American wood products manufacturing, representing over 86 percent of the industry that provides approximately 400,000 men and women in the United States with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs

and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that sustain the wood products industry. AWC participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members.

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. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts.

Members in each of these organizations operate facilities throughout the United States that are subject to the CAA's Prevention of Significant Deterioration ("PSD") permitting program, which is the subject of the EPA guidance memo being challenged in this case. The Act's PSD program requires an owner or operator to obtain a permit for a proposed major emitting facility (or a facility for which a major modification is planned) in an area designated in attainment or

unclassifiable for a particular pollutant. 42 U.S.C. § 7475(a)(1). In its application for such a permit, the owner or operator must demonstrate:

> that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, [or] (B) national ambient air quality standard in any area air quality control region . . . .

Id. § 7475(a)(3). EPA has promulgated National Ambient Air Quality Standards ("NAAQS") for both particulate matter ("PM") and ozone. 40 C.F.R. §§ 50.7, 50.9, 50.10, 50.13, 50.15, 50.18. The Agency has also promulgated maximum allowable increases, known as "increments," for $PM_{2.5}$. *Id*. §§ 51.166(c), 52.21(c). No increments have been adopted for ozone.

Congress chose not to prescribe how an owner or operator would demonstrate that a proposed source "will not cause, or contribute to" a NAAQS violation or increment exceedance. In particular, Congress did not define either the phrase "cause, or contribute to," or the terms "cause" and "contribute" in the Act, leaving EPA to fill in the details.

Consistent with Congress' delegation of authority, EPA has long allowed permitting authorities to use Significant Impact Level ("SIL") values to demonstrate compliance with the requirements of the PSD program. Under EPA's view, CAA § 165(a)(3) requires a permit when a source has a significant impact on

ambient air quality. *See In re Prairie State Generating Co*., 13 E.A.D. 1, 92, 105 (EAB 2006). If a source will not exceed the SIL value, the source's impact on air quality is not significant and, thus, the source will not cause or contribute to air pollution in excess of any NAAQS or PSD increment. In other words, if the source's impact on air quality is below the SIL value, it is such a small impact as to be considered trivial or *de minimis*. If the source exceeds the SIL value, it must conduct a modeling impact analysis to determine whether its emissions would cause or contribute to a NAAQS or PSD increment violation. EPA can also use SIL values to determine whether the permit applicant's source is responsible for modeled violations of a NAAQS or PSD increment. SIL values are employed on a case-by-case basis in individual permit applications when the record supports their use.

EPA's SILs Memo is the latest in a series of memoranda from EPA that have provided guidance on how permitting authorities can implement SIL values in PSD permitting. In this non-binding guidance, EPA provides quantitative SIL values for ozone and $PM_{2.5}$ NAAQS and PSD increments of $PM_{2.5}$ that permitting authorities can use on a case-by-case basis, when appropriate and justified. EPA intends to use permitting authorities' experience with the SIL values in the non-binding guidance document to inform a potential future rulemaking that could promulgate a generally applicable rule regarding SIL values.

On June 18, 2018, Petitioner filed suit to challenge the SILs Memo. The Industry Movants request leave to intervene as respondents to protect their interests in ensuring that sources are not prevented from using the specified SIL values in appropriate circumstances to demonstrate compliance with the PSD program.

ARGUMENT

The Court should grant this motion because, for the reasons discussed below, the Industry Movants meet the standard for intervention in petition for review proceedings in this Court.

I. STANDARD FOR INTERVENTION

Intervention in petition for review proceedings in this Court is governed by Federal Rule of Appellate Procedure 15(d), which 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." Fed. R. App. P. 15(d). This rule "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors of the Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

The policies supporting district court intervention under Federal Rule of Civil Procedure 24, while not binding in cases originating in courts of appeals, may inform the intervention inquiry under Federal Rule of Appellate Procedure 15(d).

See, e.g., *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curiam). The requirements for intervention of right under Federal Rule of Civil Procedure 24(a)(2) are that: (1) the application is timely; (2) the 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). This Court has stated that an applicant for intervention that meets the test for intervention of right also thereby demonstrates Article III standing. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

As discussed below, the Industry Movants meet the elements of this intervention-of-right test and, thereby, satisfy any applicable standing requirements.[1]

[1] A group such as UARG, APF, ACC, ACCCI, AF&PA, AFPM, AISI, AWC, and the Chamber has standing to participate in litigation on their members' behalf 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.

II. THE INDUSTRY MOVANTS MEET THE STANDARD FOR INTERVENTION.

A. This Motion Is Timely.

This motion complies with Federal Rule of Appellate Procedure 15(d) because it has been filed within 30 days after the Petitioner filed its petition for review on June 18, 2018. Moreover, because this motion is being filed at an early stage of the proceedings and before establishment of a schedule and format for briefing, granting this motion will not disrupt or delay any proceedings. If granted intervention, the Industry Movants will comply with any briefing schedule established by the Court.

Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977); *see also, e.g.*, *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002). The interests of the members of UARG, APF, ACC, ACCCI, AF&PA, AFPM, AISI, AWC, and the Chamber would be harmed if the Petitioner prevails in its challenge. Individual members of each of the Industry Movants would have standing to intervene in their own right. Further, the interests each Industry Movant seeks to protect are germane to that organization's purpose of participating in EPA's CAA proceedings and related litigation that affect its members. Finally, participation of individual members is not required.

In addition, the Industry Movants meet any prudential standing requirements because their members, as regulated parties, have interests "within the zone of interests to be protected or regulated by the [CAA]." *Nat'l Petrochemical & Refiners Ass'n v. EPA*, 287 F.3d 1130, 1147 (D.C. Cir. 2002) (per curiam) (internal quotation marks and citation omitted).

B. The Industry Movants and Their Members Have Significantly Protectable Interests That Will Be Impaired If the Petitioner Prevails.

Members of UARG, APF, ACC, ACCCI, AF&PA, AFPM, AISI, AWC, and the Chamber are subject to the PSD permitting program when they seek to construct major new sources or conduct major modifications of existing major sources. EPA's SILs Memo is vital to ensuring that sources with *de minimis* impacts on air quality for the specified NAAQS and increments are not required to perform expensive and time-consuming modeling analyses to demonstrate compliance with the PSD program. As such, EPA's SILs Memo ensures that only those sources that have a more than *de minimis* impact on air quality are required to perform such modeling. If the Petitioner prevails in this case, the members of UARG, APF, ACC, ACCCI, AF&PA, AFPM, AISI, AWC and/or the Chamber may be restricted or barred from relying on the specified SIL values to demonstrate compliance with the PSD program. This would increase the costs of obtaining PSD permits and could force sources with *de minimis* air quality impacts to perform unnecessary, time-consuming, and expensive modeling, without any environmental benefit of doing so.

Although Rule 24(a)(2) does not specify the nature of the interest required for intervention of right, this Court has stated that a "'significantly protectable'" interest is required. *S. Christian Leadership Conference v. Kelley*, 747 F.2d 777,

779 (D.C. Cir. 1984) (per curiam) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). The interest test for intervention, under this Court's standard, is flexible and "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

Where parties are the subject of governmental regulation, "there is ordinarily little question that the action or inaction has caused [them] injury." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). The members of each Industry Movant are regulated by the PSD program, and the SILs Memo addresses key elements of how EPA implements and will implement that program for specific NAAQS and PSD increments.

Further, a legally protectable interest may exist where an intervenor-applicant demonstrates that it stands to "gain or lose by the direct legal operation and effect of the judgment." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980) (internal quotation marks and citation omitted). This Court recently held that "[t]he 'threatened loss' of [a] favorable action [by an agency] constitutes a 'concrete and imminent injury'" justifying intervention of right. Order, *New York v. EPA*, No. 17-1273 (D.C. Cir. Mar. 14, 2018) (quoting *Fund for Animals*, 322 F.3d at 733) (granting UARG's motion to intervene in challenge to EPA denial of rulemaking petition that would have subjected UARG member

facilities to more stringent regulation). Eliminating the SILs Memo would increase the burden of the PSD program for the specified NAAQS and PSD increments on affected facilities, including those owned or operated by members of each Industry Movant.

EPA's SILs Memo assists members of UARG, APF, ACC, ACCCI, AF&PA, AFPM, AISI, AWC, and the Chamber to demonstrate their compliance with the PSD program in a cost-effective manner. If the Petitioner prevails in its challenge, sources may be restricted in their ability to use SILs to demonstrate compliance with the PSD program, thus increasing compliance costs, and potentially leading to unnecessary and expensive modeling that provides no environmental benefit. Accordingly, the Industry Movants have significant, legally protectable interests in defending the EPA action that the Petitioner challenges here. Disposition of this case may impair the Industry Movants' ability to protect their interests.

C. Existing Parties Cannot Adequately Represent the Industry Movants' Interests.

Under Federal Rule of Civil Procedure 24(a)(2), the burden of showing inadequate representation in a motion for intervention "is not onerous" and "[t]he applicant need only show that representation of his interest '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) (citing *Trbovich v. United Mine Workers of*

Am., 404 U.S. 528, 538 n.10 (1972)). Assuming, for the sake of argument, that inadequate representation is an applicable test for intervention under Federal Rule of Appellate Procedure 15(d),[2] each of the Industry Movants easily passes that test here.

As the discussion above demonstrates, the Petitioner's interests are adverse to the Industry Movants' interests in this case. The Petitioner is challenging EPA's SILs Memo, whereas Industry Movants strongly support the SILs Memo. The Petitioner manifestly cannot adequately represent the interests of the Industry Movants and their members.

EPA also cannot adequately represent the Industry Movants' interests here. As a governmental entity, EPA necessarily represents the broader "general public interest." *Dimond*, 792 F.2d at 192-93 ("A government entity . . . is charged by law with representing the public interest of its citizens. . . . The [government entity] would be shirking its duty were it to advance th[e] narrower interest [of a business concern] at the expense of its representation of the general public interest."); *Fund for Animals*, 322 F.3d at 736 (stating that the D.C. Circuit "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.").

[2] Federal Rule of Civil Procedure 24(a)(2)'s "adequate representation" prong has no parallel in Federal Rule of Appellate Procedure 15(d), but the Industry Movants address it here to inform the Court fully of the Federal Rule of Civil Procedure 24(a)(2) analysis.

This Court has recognized that, "[e]ven when the interests of EPA and [intervenors] can be expected to coincide, . . . that does not necessarily mean that adequacy of representation is ensured . . . ." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). In *NRDC*, after rubber and chemical manufacturers had sought unsuccessfully to intervene in the district court in support of EPA, this Court on appeal reversed the denial of intervention. In light of the fact that the companies' interests were narrower than those of EPA and were "concerned primarily with the regulation that affects their industries," the companies' "participation in defense of EPA decisions that accord with their interest may also be likely to serve as a vigorous and helpful supplement to EPA's defense." *Id.* at 912-13. Similarly, the unique perspective that the Industry Movants bring to this case will supplement EPA's position.

Furthermore, the frequent adversarial nature of the relationship between EPA and the Industry Movants demonstrates that EPA does not and cannot adequately represent their interests. EPA is the federal agency with regulatory responsibility under the CAA, and the Industry Movants' members are the frequent subjects of EPA regulation under the Act.

In sum, the existing parties do not and cannot adequately represent the Industry Movants' interests in this case.

CONCLUSION

For the foregoing reasons, the Industry Movants respectfully request leave to intervene as respondents in Case No. 18-1167.

Respectfully submitted,

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Dated: July 18, 2018

ATTACHMENT 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RESEARCH TRIANGLE PARK, NC 27711

APR 17 2018

OFFICE OF
AIR QUALITY PLANNING
AND STANDARDS

MEMORANDUM

SUBJECT: Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program

FROM: Peter Tsirigotis
Director

TO: Regional Air Division Directors, Regions 1-10

The purpose of the attached document is to provide guidance on compliance demonstration tools for use with ozone and fine particles (PM2.5) in the Prevention of Significant Deterioration (PSD) permitting program. The Environmental Protection Agency (EPA) has developed a new analytical approach and has used it to identify a significant impact level (SIL) for each ozone and $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) and for the $PM_{2.5}$ PSD increments. Permitting authorities may use these values to help determine whether a proposed PSD source causes or contributes to a violation of the corresponding NAAQS or PSD increments. Separately, we have developed a technical document that provides a detailed discussion of the technical analysis used in the development of these values and a legal memorandum that provides further detail on the legal basis that permitting authorities may choose to adopt to support using SILs to show that requirements for obtaining a PSD permit are satisfied.[1] This guidance provides a summary of the results of the technical analysis and information on the particular points in the PSD air quality analysis at which permitting authorities may decide to use these values on a case-by-case basis in the review of PSD permit applications. This guidance, and the technical and legal documents, are not final agency actions and do not create any binding requirements on permitting authorities, permit applicants or the public.

Please share this guidance with permitting authorities in your Region. If you have questions regarding the guidance, please contact Raj Rao at *rao.raj@epa.gov* or (919) 541-5344. For questions regarding the technical document, please contact Tyler Fox at *fox.tyler@epa.gov* or (919) 541-5562. For questions regarding the legal document, please contact Brian Doster at *doster.brian@epa.gov* or (202) 564-1932.

Attachment

[1] "Technical Basis for the EPA's Development of Significant Impact Thresholds for $PM_{2.5}$ and Ozone," EPA-454/R-18-001, April 2018; "Legal Memorandum: Application of Significant Impact Levels in the Air Quality Demonstration for Prevention of Significant Deterioration Permitting under the Clean Air Act," April 2018.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(f) and (g), I hereby certify that the foregoing motion complies with the type volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,458 words, excluding exempted portions, according to the count of Microsoft Word.

I further certify that the motion complies with Federal Rules of Appellate Procedure 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in 14-point Times New Roman type.

Respectfully submitted,

/s/ Makram B. Jaber
Makram B. Jaber

Dated: July 18, 2018

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, ***Petitioner,*** **v.** **U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,** ***Respondents*.**	**No. 18-1167**

MOVANT-INTERVENOR-RESPONDENTS'
RULE 26.1 DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Movant-Intervenor-Respondents submit the following statements:

The Utility Air Regulatory Group ("UARG") is not-for-profit association of individual electric generating companies and national trade associations. UARG participates on behalf of certain of its members collectively in Clean Air Act administrative proceedings that affect electric generators and in litigation arising from those proceedings. UARG 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 percent or greater ownership interest in UARG.

The Air Permitting Forum ("APF") is a trade association, within the meaning of D.C. Circuit Rule 26.1, that advocates for the appropriate implementation of the Clean Air Act and other relevant statutes on behalf of its member companies. APF also participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. APF's members operate manufacturing facilities throughout the U.S. and as a result would be subject to the requirements at issue in the memorandum challenged in this case. APF has not issued shares or debt securities to the public, has no parent company, and no publicly-held company has a 10 percent or greater ownership interest in APF.

The American Chemistry Council ("ACC") represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®; common sense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a $768 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for 14 percent of all U.S. goods exported. ACC states that it is a "trade association" for purposes of Circuit Rule 26.1(b). ACC has no parent

corporation, and no publicly held company has 10 percent or greater ownership in ACC.

The American Coke and Coal Chemicals Institute ("ACCCI") is an association for the metallurgical coke and coal chemicals industry. ACCCI members include U.S. merchant coke producers and integrated steel companies with coke production capacity, as well as the companies producing coal chemicals in the U.S. ACCCI states that it is a "trade association" for purposes of Circuit Rule 26.1(b). ACCCI has no parent company, and no publicly held company has a 10 percent or greater ownership interest in ACCCI.

The American Forest & Paper Association ("AF&PA") serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry's sustainability initiative – *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately four percent of the total U.S. manufacturing GDP, manufactures over $200 billion in products annually, and employs nearly 900,000 men and women. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA states that it is a "trade association" for purposes

of Circuit Rule 26.1(b). AF&PA has no parent corporation, and no publicly held company has a 10 percent or greater ownership in AF&PA.

American Fuel & Petrochemical Manufacturers ("AFPM") is a national trade association whose members comprise virtually all U.S. refining and petrochemical manufacturing capacity. AFPM operates for the purpose of promoting the general commercial, professional, legislative, or other interests of its membership. AFPM has no parent companies, and no publicly held company has a 10 percent or greater ownership interest in AFPM. AFPM is a "trade association" within the meaning of Circuit Rule 26.1(b).

The American Iron and Steel Institute ("AISI") serves as the voice of the North American steel industry and represents 21 member companies, including integrated and electric furnace steelmakers, accounting for the majority of U.S. steelmaking capacity with facilities located in 41 states, Canada, and Mexico, and approximately 120 associate members who are suppliers to or customers of the steel industry. AISI participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. AISI states that it is a "trade association" for purposes of Circuit Rule 26.1(b). AISI has no parent corporation, and no publicly held company has a 10 percent or greater ownership in AISI.

The American Wood Council ("AWC") is the voice of North American wood products manufacturing, an industry that provides approximately 400,000 men and women in the U.S. with family-wage jobs. AWC represents 86 percent of the structural wood products industry, and members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC states that it is a "trade association" for purposes of Circuit Rule 26.1(b). AWC has no parent corporation and no publicly held company has a 10 percent or greater ownership interest in AWC.

The Chamber of Commerce of the United States of America (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 Chamber is a "trade association" within the meaning of Circuit Rule 26.1(b). No publicly held company has a 10 percent or greater ownership interest in the Chamber.

Respectfully submitted,

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Dated: July 18, 2018

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ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, ***Petitioner,*** **v.** **U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,** ***Respondents*.**	**No. 18-1167**

CERTIFICATE OF MOVANT-INTERVENOR-RESPONDENTS UTILITY AIR REGULATORY GROUP, AIR PERMITTING FORUM, AMERICAN CHEMISTRY COUNCIL, AMERICAN COKE AND COAL CHEMICALS INSTITUTE, AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, AMERICAN IRON AND STEEL INSTITUTE, AMERICAN WOOD COUNCIL, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS TO PARTIES AND *AMICI CURIAE*

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), Movant-Intervenor-Respondents Utility Air Regulatory Group, Air Permitting Forum, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Wood Council, and the Chamber of Commerce of the United States of America (collectively the "Industry Movants") certify that the parties, including intervenors, and *amici curiae* in this case are as set forth

below. Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), disclosure statements for Industry Movants as required by Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1 are being filed herewith. Because this case involves direct review in this Court of agency action, the requirement to furnish a list of parties, including intervenors, and *amici curiae* that appeared below is inapplicable.

Petitioner: Sierra Club is the Petitioner.

Respondents: Respondents are U.S. Environmental Protection Agency and Andrew Wheeler, Acting Administrator, U.S. Environmental Protection Agency.[3]

Intervenors: There are no intervenors at the time of this filing.

***Amici Curiae*:** There are no *amici curiae* at the time of this filing.

Respectfully submitted,

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[3] The Petition for Review assigned case No. 18-1167, filed June 18, 2018, named U.S. Environmental Protection Agency and Scott Pruitt, Administrator, U.S. Environmental Protection Agency, as Respondents. Effective July 9, 2018, Andrew Wheeler became the Acting Administrator of the U.S. Environmental Protection Agency.

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Dated: July 18, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2018, the foregoing motion and accompanying documents were electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

I further certify that one copy of the foregoing motion and accompanying documents was served on each of the following by first class postage pre-paid United States mail:

The Honorable Andrew Wheeler
Acting Administrator
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

The Honorable Jeff Sessions
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Correspondence Control Unit
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/s/ Makram B. Jaber