No. 20-2215

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CLEAN AIR COUNCIL,
Plaintiff-Appellant,
v.

UNITED STATES STEEL CORPORATION,
Defendant-Appellee.

On Appeal from United States District Court
For the Western District of Pennsylvania
Case No. 2-19-cv-01072 (Horan, J.)

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN CHEMISTRY COUNCIL, NATIONAL MINING ASSOCIATION, AMERICAN COKE AND COAL CHEMICALS INSTITUTE, AND PENNSYLVANIA CHAMBER OF BUSINESS & INDUSTRY SUPPORTING APPELLEE

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Under Rule 26.1 and Third Circuit LAR 26.1, the *amici*, Chamber of Commerce of the United States, the American Chemistry Council, the National Mining Association, the American Coke and Coal Chemicals Institute, and the Pennsylvania Chamber of Business & Industry, make the following disclosure:

1) For non-governmental corporate parties please list all parent corporations:

None.

2) For all non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

None.

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

None.

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and 3) any entity not named in the caption which is an active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by the appellant.

Not Applicable.

Dated: October 30, 2020

/s/ *Jason A. Levine*
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STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber"), American Chemistry Council ("ACC"), National Mining Association ("NMA"), American Coke and Coal Chemicals Institute ("ACCCI"), and Pennsylvania Chamber of Business & Industry ("Pennsylvania Chamber") submit this brief as *amici curiae* in support of appellee United States Steel Corporation ("U.S. Steel"). Many of *amici*'s respective members are regulated under the two statutes at issue in this appeal—the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and the Clean Air Act ("CAA")—and may be impacted by this Court's resolution of the questions presented.

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies of every size, in every industry sector, and from every region of the country. A principal function of the Chamber is to represent its members' interests before Congress, the Executive Branch, and the courts on issues that concern the nation's business community.

[1] Pursuant to Federal Rule of Appellate Procedure 29, *amici* certify that all parties have consented in writing to the filing of this brief. *Amici* also certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than the *amici* and their members and counsel contributed money intended to fund the brief's preparation or submission.

ACC is a nonprofit trade association that represents the leading companies engaged in the business of chemistry. The business of chemistry is a $565 billion industry and a key component of the nation's economy. ACC's members apply the science of chemistry to make innovative products that make people's everyday lives better, healthier and safer.

NMA is a nonprofit national trade association whose members include the producers of most of America's coal, metals, and industrial agricultural minerals; the manufacturers of mining and mineral-processing machinery, equipment, and supplies; and engineering and consulting firms, financial institutions and other firms serving the mining industry. NMA often participates in litigation raising issues of concern to the mining community.

ACCCI is a non-profit, national trade association incorporated in Illinois and headquartered in the District of Columbia. ACCCI serves as the voice of American producers of metallurgical coke and coal chemicals in the public policy arena and advances the legislative, regulatory, and technical interests of its members.

The Pennsylvania Chamber is the largest broad-based business association in Pennsylvania. Its members employ more than 50% of Pennsylvania's private workforce. The Pennsylvania Chamber's mission is to improve Pennsylvania's business climate and increase competitive advantages for its members.

The businesses represented by *amici* operate manufacturing, fabrication, and other facilities across the country. Many of these facilities must comply with complicated environmental regulatory programs, including air pollution permitting and control regulations under the CAA, and they would be unduly burdened by unnecessarily duplicative regulation under CERCLA if this Court adopts Appellant's position. *Amici* all have a significant interest in explaining to the Court the legal and economic implications of the District Court's order granting U.S. Steel's motion to dismiss, and they further have an interest in reaffirming courts' duty under *Chevron*[2] to engage in independent statutory interpretation.

SUMMARY OF ARGUMENT

Businesses need a stable regulatory landscape with clearly-identifiable compliance obligations. Otherwise, they cannot plan, invest, and grow. This case raises an important issue of statutory interpretation—one that requires courts to give meaning to CERCLA's plain language to effectuate Congress's exemption of certain emissions from CERCLA's notification requirements. The District Court correctly held that CERCLA's "federally permitted release" exception is "unambiguous and does not require that air emissions comply with a Clean Air Act permit in order to be exempt." JA-012. Appellant's argument that the District Court's ruling produces

[2] *Chevron, U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984) (requiring judicial deference to certain executive agency statutory interpretations).

an "absurd, odd and dangerous result" is incorrect. To the contrary, the District Court gave effect to Congress's comprehensive scheme for regulating emissions and emissions reporting under the CAA. This ensures, as Congress intended, that regulated businesses throughout the country will not face duplicative regulatory burdens that benefit neither public health nor the environment.

"[C]larity and predictability" are crucial in environmental law. *Sackett v. EPA*, 566 U.S. 120, 133 (2012) (Alito, J., concurring). Neither an "uncertain reach" nor "draconian penalties imposed for . . . violations" can be tolerated. *Id.* at 132. The extensive and expansive scope of federal environmental law—which spans different media across all industries throughout the United States—requires substantial coordination to ensure a proper scope of regulation and clearly-identifiable regulatory obligations. Nowhere is this more apparent than in CERCLA's definition of "federally permitted release."

As pertains to air, a "federally permitted release" encompasses "any emission into the air subject to a permit or control regulation" under the CAA's New Source Performance Standards or Hazardous Air Pollutant programs, the New Source Review Programs, and emissions regulated by a State Implementation Plan. 42 U.S.C. § 9601(10)(H). This language is unambiguous, especially when read in the context of the CAA. By recognizing as much, the District Court gave effect to Congress's statutory framework for air regulation with CERCLA in a way that

prevents duplicative reporting requirements and leaves no unintended gaps in the regulatory scheme, as Congress intended. This Court should affirm, to give credence to Congress's plain text and prevent the severe economic consequences and unwarranted litigation that would surely follow if Appellant's interpretation of the "federally permitted release" exception were upheld.

ARGUMENT

I. THE DISTRICT COURT'S OPINION IS CONSISTENT WITH CERCLA'S UNAMBIGUOUS TEXT.

This case presents a straightforward question: whether emissions are exempt from CERCLA's reporting requirements as "federally permitted releases" because they are "subject to" a permit or control regulation under the CAA. JA-007. Or, as the District Court put it: "what does 'subject to' in § 9601(10)(H) mean?" *Id.*

The words "subject to" are unambiguous and require no linguistic cartwheels to decode congressional intent. "Subject to" is plain English. Where, as here, "the statute's own terms supply an answer," a court must not "invent an atextual explanation for Congress's drafting choices." *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1357-58 (2018). The statute itself is "the end of the matter." *Chevron*, 467 U.S. at 842.

The District Court correctly employed the tools of statutory interpretation—specifically, legal and colloquial dictionaries and statutory context—to render its decision. JA-008; *In re Phila. Newspapers, LLC*, 599 F.3d 298, 304 (3d. Cir. 2010)

(statute must be read in its ordinary and natural sense); *see also Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997) (statutory provision must be read in the context of the statute as a whole). Not only is the phrase "subject to" clearly (and consistently) defined in legal and colloquial dictionaries, it is also readily distinguishable from the phrases "in compliance with" and "authorized under," which Congress used for other definitions of "federally permitted release." JA-010.

Because the statute is unambiguous, this Court must reject Appellant's invitation to defer to EPA or to mine legislative history. An agency's power "to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Only "if the statute is silent or ambiguous with respect to the specific issue" can the Court proceed to ask "whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. "And before concluding that a rule is genuinely ambiguous, a court must exhaust all the 'traditional tools' of construction." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415-16 (2019) (citing *Chevron*, 467 U.S. at 843, n. 9).

Indeed, the United States Supreme Court has repeatedly rejected requests for deference to an administrative interpretation or attempt to decipher the legislative history when the text of the statute resolves the question at issue. *See, e.g.*, *SAS Inst.*, 138 S. Ct. at 1358 (rejecting plea for deference because "after employing traditional tools of statutory construction," the Court's "duty [wa]s to give effect to the

[statutory] text"); *FERC v. Elec. Power Supply Ass'n*, 136 S. Ct. 760, 773 n.5 (2016) ("Because we think FERC's authority clear, we need not address the Government's alternative contention that FERC's interpretation of the statute is entitled to deference under *Chevron*."); *State Farm Fire & Cas. Co. v. United States ex rel. Rigsby*, 137 S. Ct. 436, 444 (2016) ("[B]ecause the meaning of the FCA's text and structure is plain and unambiguous, we need not . . . consider the legislative history.") (citations and internal quotations omitted). "For again, only when [the] legal toolkit is empty, and the interpretive question still has no single right answer can a judge conclude that it is 'more [one] of policy than of law." *Kisor*, 139 S. Ct. at 2415 (quoting *Pauley v. Beth Energy Mines, Inc.*, 501 U.S. 680, 696 (1991)).

Rigorous textual analysis and "tools of statutory construction" provide the answer here. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1630 (2018) (citation omitted). This Court should use the same tools as the District Court to effectuate Congress's plain language and refrain from imposing duplicative reporting requirements that undermine Congress's intent.

II. THE DISTRICT COURT CORRECTLY RECOGNIZED THAT CONGRESS'S DEFINITION OF "FEDERALLY PERMITTED RELEASE" REFLECTS THE COMPREHENSIVE AND COMPLEMENTARY NATURE OF CERCLA AND THE CAA.

Congress set forth not one, but *eleven*, different definitions of "federally permitted release." 42 U.S.C. § 9601(10). Each definition is specific to a particular statutory program: the CAA, the Clean Water Act, the Solid Waste Disposal Act,

and others. Given the use of the term across multiple environmental statutes, many of which have their own unique regulatory systems, interpreting the term "federally permitted release" fundamentally requires courts to "reconcil[e] . . . distinct statutory regimes." *Epic Sys.*, 138 S. Ct. at 1629 (quoting *Gordon v. N.Y. Stock Exch., Inc.*, 422 U.S. 659, 685-86 (1975)) (internal quotation omitted); *cf.* Arnold W. Reitze & Steven D. Schell, *Reporting Requirements for Nonroutine Hazardous Pollutant Releases under Federal Environmental Laws*, 5 ENVTL. LAW 1, 13-14 (1998) (suggesting that the federally permitted release exemption to CERCLA is designed to minimize duplicative reporting requirements). The District Court did just this: it read CERCLA according to its plain language, a reading that is all the more compelling when read in the context of the CAA as a whole.

A. The CAA Comprehensively Regulates Air Emissions and Air Emissions Reporting.

Since the 1970s, few topics have garnered more attention from lawmakers and regulators than air emissions. Today's network of federal air pollution laws "represents decades of thought" and consideration of "the vast array of interests seeking to press . . . a variety of air pollution policies." *N.C. ex rel. Cooper v. Tenn. Valley Auth.*, 615 F.3d 291, 298 (4th Cir. 2010).

At the forefront of this regime is the CAA, the "primary mechanism under which emissions in the United States are managed." *Id.* at 298. Through the CAA, Congress established a framework to "protect and enhance the quality of the

Nation's air resources so as to promote the public health." *See, e.g.*, 42 U.S.C. § 7409(b)(1) (requiring that National Ambient Air Quality Standards "protect the public health"). Federal and state governments share responsibility for the CAA's implementation, with EPA setting national standards for air quality, and States crafting State Implementation Plans that, once approved by EPA, provide for the implementation, maintenance, and enforcement of those standards. *See Nat'l Parks Conservation Ass'n v. EPA*, 803 F.3d 151, 153 (3d Cir. 2015). In addition, EPA is charged with setting standards under the New Source Performance Standards program, Section 111, and the National Emissions Standards for Hazardous Air Pollutants, Section 112, which apply directly to sources regardless of their location.[3]

So, for example, regulated facilities, like the one at issue in this case, have air emissions standards established through state and federal cooperation that reflect the best demonstrated technology for limiting air emissions at that type of facility under Section 111 of the CAA. *See* 42 U.S.C. § 7411(a)(1). They also have specific limits on hazardous air pollutants (including those that otherwise might raise CERCLA concerns) that reflect the reductions achieved by the best performing sources in the category at issue, *e.g.*, Iron and Steel Manufacturing facilities, under Section 112.

[3] The comprehensive scope of these standards is limited only by narrowly-crafted exceptions promulgated by EPA under an express grant of Congressional authority in those provisions. *See, e.g.*, 40 C.F.R. §§ 63.7880–63.7957 (exempting certain site remediation activities).

42 U.S.C. § 7412; Subpart CCCCC--National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stocks, 40 C.F.R. §§ 63.7280–63.7352. Section 112, the hazardous emissions standards program, further subjects the facility to specific requirements governing the reporting and management of accidental releases of those pollutants—the exact sort of concern plaintiffs believe would be addressed through CERCLA's reporting requirements.

Indeed, Congress created three different reporting systems "regarding risk management, emergency response, and accident reporting." JA-011. *First*, Congress created the Chemical Safety and Hazardous Investigation Board (the "CSB") and charged it with "establish[ing] by regulation requirements binding on persons for reporting accidental releases into the ambient air." 42 U.S.C. § 7412(r)(6)(C)(iii). Modeled after the National Transportation Safety Board, the CSB "serves a public safety mission by investigating accidental releases of hazardous substances into the ambient air." *United States v. Transocean Deepwater Drilling, Inc.*, 767 F.3d 485, 488 (5th Cir. 2014). Failure to report a release per CSB's regulations violates the CAA. 42 U.S.C. § 7412(r)(6)(O). Any lag between the creation of the CSB or promulgation of its reporting rules cannot detract from Congressional intent. Congress expressly mandated that the CSB play a critical role in accidental releases.[4]

[4] CSB exercised that authority this year by promulgating accidental release reporting requirements effective on March 23, 2020. *See* 40 C.F.R. § 1604.

Second, Congress delegated to EPA the authority to mandate reporting of certain hazardous chemical releases. *See* 42 U.S.C. § 7412(r)(7)(A). EPA, in turn, has promulgated detailed regulations that require entities to report accidental releases of air emissions. *See, e.g.*, 40 C.F.R. § 68.42 (requiring regulated entities to include eleven categories of information about accidental releases in reports); 40 C.F.R. § 68.60 (requiring regulated entities to investigate and prepare a report on the any incident that could have resulted in a catastrophic release).

Third, Congress required regulated entities to establish risk management plans ("RMPs") for potential releases of such pollutants. RMPs "prevent or minimize accidental releases [and] provide a prompt emergency response . . . in order to protect human health and the environment." 42 U.S.C. § 7412(r)(7)(B)(ii). Congress emphasized that an RMP's core components are "specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases." 42 U.S.C. § 7412(r)(7)(B)(ii)(III). RMPs must be registered with EPA and available to the public. *Id.* § 7412(r)(7)(B)(iii).

The above programs controlling federally permitted releases of hazardous substances under Section 111 and 112 of the CAA are explicitly referenced in CERCLA's definition of federally permitted release. 42 U.S.C. § 9601(10)(H).

Beyond these programs, the CAA contains additional provisions that regulate even more comprehensively and makes it clear that when a facility is authorized to emit, it is subject to an array of enforceable conditions and requirements. Indeed, to make sure that the public stays aware of all conditions on air emissions that a facility remains subject to, Congress created a comprehensive permitting scheme that lays out all of a facility's relevant conditions in one spot: Title V.

Added to the CAA in 1990, Title V makes it unlawful to operate any "major source, wherever located, without a comprehensive operating permit." *Util. Air Regulatory Grp. v. EPA*, 573 U.S. 302, 309 (2014) (citation and internal quotation omitted). The permit is "comprehensive" because it "consolidate[s] into a single document . . . all of the clean air requirements applicable to a particular source of air pollution." *United States v. EME Homer City Generation, L.P.*, 727 F.3d 274, 280 (3d. Cir. 2013) (citation omitted). Title V is the "source-specific bible for [CAA] compliance." *Bell v. Cheswick Generating Station*, 734 F.3d 188, 190 (3d Cir. 2013) (citation omitted). Title V permits set bright-line, readily-identifiable reporting requirements for permittees. *See Util. Air Regulatory Grp.*, 573 U.S. at 309-10 ("The permit must include 'all emissions limitations and standards' that apply to the source [and] inspection, monitoring, and reporting requirements."). Each Title V permittee must "compl[y] with the permits terms and conditions" and "promptly report any deviations from permit requirements to the permitting authority." 42 U.S.C. §§

7661b(b)(2), 7661c(c). Failure to operate in accordance with the Title V permit violates the CAA. 42 U.S.C. § 7661a(a).

In sum, between programs like Section 111, Section 112, the accidental release reporting requirements, and Title V, Congress has established a robust and comprehensive regulatory regime to ensure that certain air emissions do not go unreported. At significant cost and effort, businesses throughout the country have developed and implemented environmental management systems, facility-specific RMPs, and other mechanisms to ensure CAA compliance.

B. The District Court's Interpretation Of 42 U.S.C. § 9601(10)(H) Leaves No Unintended Gaps In Congress's Air Regulation Scheme.

The District Court's holding effectuates the regime Congress established in the CAA and interprets CERCLA's notification requirements in a way that leaves no unintended gaps in the regulatory scheme. When it created the Title V program and delegated authority to state and local agencies for the implementation and enforcement of the CAA, Congress intended that facilities "subject to" a Title V permit would report in accordance with that permit. Likewise, when it added the accidental reporting requirements to the CAA, Congress intended facilities "subject to" those requirements to report to the CSB, to EPA, or in accordance with the facility-specific RMP requirements. To the extent a facility does not meet its reporting obligations under its Title V permit or the CAA's accidental release reporting requirements, it can be held accountable for such violation under the CAA.

The District Court's decision does not weaken or contravene this reporting regime but rather gives effect to Congress's intent.

III. APPELLANT'S INTERPRETATION OF 42 U.S.C. § 9601(10)(H) WOULD HAVE NEGATIVE CONSEQUENCES THAT CONGRESS DID NOT INTEND.

Appellant's interpretation of 42 U.S.C. § 9601(10)(H) curbs the plain language of the "federally permitted release" exception. Construing this provision to require reporting of air pollutant emissions under *two* different statutes—CAA and CERCLA—undermines Congress's intent to exempt releases of air pollutants "subject to" the CAA's permitting or control regulations from CERCLA. Not only does Appellant's reading impose duplicative burdens on the regulated community, it may impede emergency response and increase the costs and burdens on regulatory agencies by needlessly duplicating response efforts.

CERCLA's notification requirements are designed "to facilitate the development by a lead agency of a coordinated governmental response." *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 899 (9th Cir. 1986). In Allegheny County, the Allegheny County Health Department ("ACHD") is authorized to regulate air quality and has developed comprehensive reporting requirements in Article XXI of the ACHD Rules and Regulations. *See* 40 C.F.R. § 52.2020(c)(2). In this way, the ACHD serves as the "lead agency" in Allegheny County. If, as here, a regulated entity notifies the lead agency of unpermitted releases or releases subject to the

CAA's accidental release reporting requirements, additional notification to the NRC is merely duplicative. The second report serves no purpose, creating unnecessary costs and requiring excess staff time for both the facility and the agencies involved, contrary to Congress's intent.

Additionally, Appellant's interpretation of 42 U.S.C. § 9601(10)(H) could slow emergency response efforts and increase the risk of confusion or conflicting agency directions. In a true emergency, all parties must have a common understanding of the agency in charge of leading the response. Clear direction from regulators can be key for ensuring that actions are taken promptly in circumstances where minutes can make the difference. Indeed, if a facility were required to report the same release to two different agencies, the two reports could trigger disparate emergency response efforts. And, when multiple agencies are involved, conflicting directions may be given or time-critical actions may be overlooked absent a clear understanding of who is in charge. This is the very harm that Congress sought to prevent in crafting CERCLA's notification requirement to facilitate a "coordinated government response." *See NL Indus.*, 792 F.2d at 899. Therefore, by creating *overlapping* requirements, Appellant's interpretation of the exception would undermine the Congressional intent behind both CERCLA and the CAA to ensure "coordination" and one "comprehensive" response.

Duplicative reporting obligations may also expose regulated businesses to extensive financial risks by opening the door to opportunistic litigation that serves no public good. Businesses today face a maximum civil penalty under CERCLA of $57,317 per day. *See* 42 U.S.C. § 9609(b); 40 C.F.R. § 194, Table 2. The daily multiplier is particularly draconian in the reporting context. Appellant here is seeking more than $50 million in civil penalties simply because U.S. Steel did not report its releases of air pollutants to both the Allegheny County Health Department and the NRC. A holding for Appellant would spur more citizen suits for these "paper only" violations, creating an avalanche of litigation and a cottage industry of reporting violation "bounty hunters" that would expose an already-taxed regulated community to tremendous risk. This risk would be especially pronounced in this context because a potential plaintiff can easily obtain public records to target operators that have reported under the CAA.

Congress did not intend this result. Instead, by expressly defining "federally permitted release" in relation to other federal permitting programs, and by specifically stating the releases of air pollutants "subject to" a CAA permit or control regulation are "federally permitted releases," Congress harmonized CERCLA's reporting requirements with the CAA's extensive air regulations. The Court should effectuate Congress's plain text and statutory schemes and affirm the District Court's decision.

CONCLUSION

This case raises a question of vital importance to the regulated business community because Appellant's proposed reading of 42 U.S.C. § 9601(10) would supplant the plain language enacted by Congress and impose duplicative statutory regimes for regulating releases of air pollutants. To impose duplicative reporting requirements on regulated entities would subject thousands of businesses, large and small, throughout the United States to unnecessary regulatory burdens without a public benefit and be contrary to Congress's intent.

For the foregoing reasons, the District Court's dismissal of Appellant's Complaint should be affirmed.

Dated: October 30, 2020

Respectfully submitted.

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COMBINED CERTIFICATES OF COMPLIANCE

In accordance with Local Appellate Rules 28.3(d) and 46.1(e), I certify that I am a member in good standing of the bar of this Court.

In accordance with Local Appellate Rule 31.1(c), I certify that the texts of the electronic brief and paper copies are identical and that Symantec Endpoint Protection was run on the file and did not detect a virus.

In accordance with Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that this brief complies with the type-volume limitation of Federal Rules of Appellate Procedure 21(d)(1) and 29(a)(5) because it contains 3,916 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), according to the word count of Microsoft Word 2016. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in New Times Roman 14-point font, a proportionally spaced typeface.

Dated: October 30, 2020

/s/ *Jason A. Levine*
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN CHEMISTRY COUNCIL, NATIONAL MINING ASSOCIATION, AMERICAN COKE AND COAL CHEMICALS INSTITUTE, AND PENNSYLVANIA CHAMBER OF BUSINESS & INDUSTRY SUPPORTING APPELLEE** has been filed with the Clerk of the Court for the United States Court of Appeals for the Third Circuit through the appellate CM/ECF system on October 30, 2020. I further certify that all participants in the case are registered CM/ECF users and that seven hard copies of the foregoing brief were sent to the Clerk's Office via overnight delivery.

Dated: October 30, 2020

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