UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Safety Chemicals Healthy Families, *et al.*, Petitioners, v. United States Environmental Protection Agency, *et al.*, Respondents.	Nos. 17-72260 and Consolidated Cases (MCP No. 148)

MOTION OF AMERICAN CHEMISTRY COUNCIL ET AL. FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT

Pursuant to Fed. R. App. P. 15(d) and 27, the American Chemistry Council, American Coatings Association, American Coke and Coal Chemicals Institute, American Fuel & Petrochemical Manufacturers, American Forest and Paper Association, Battery Council International, American Petroleum Institute, Chamber of Commerce of the United States of America, EPS Industry Alliance, IPC International, Inc., doing business as IPC – Association Connecting Electronics Industries, National Association of Chemical Distributors, National Mining Association, Polyurethane Manufacturers Association, Silver Nanotechnology Working Group, Society of Chemical Manufacturers and Affiliates, Styrene Information and Resource Center, and the Utility Solid Waste

Activities Group (collectively, "Movants") hereby move this Court for leave to intervene in support of Respondents the U.S. Environmental Protection Agency ("EPA") and its Administrator in each of the petitions for review consolidated under the lead case *Safer Chemicals Healthy Families, et al. v. EPA, et al.*, No. 17-72260 ("Petitions").

The Petitions were originally filed in three separate courts of appeals and were consolidated before this Court by the United States Judicial Panel on Multidistrict Litigation. Consolidation Order at 1, MCP 148 (Sept. 1, 2017) (Doc. No. 3).[1] The to-be consolidated Petitions seek review of the "Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act," 82 Fed. Reg. 33,753 (July 20, 2017); 40 C.F.R. § 23.5(a) ("Prioritization Rule"), a rule promulgated by EPA under the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601-2697, the primary federal statute that regulates the manufacturing, processing, distribution, and use of chemical substances and mixtures in the United States.

Movants' timely request to intervene in support of EPA's final rule should be granted. Movants are associations that represent industries directly regulated and affected by the Prioritization Rule because they manufacture, process,

[1] Movants seek to intervene in all of the consolidated cases but are aware that the Court has not yet completed the consolidation process.

distribute, or use chemicals on the TSCA inventory of chemicals that are subject to the procedures and criteria established in the Prioritization Rule. Petitioners object to the approach EPA has taken, and seek a ruling by this Court, the practical effect of which would be to (a) expand the number of chemicals that would be prioritized for evaluation by EPA, (b) increase the breadth and extent of restrictions that would arise from a related rule establishing procedures for chemical risk evaluation, and (c) otherwise negatively affect the market prospects of existing chemicals. Hence, the consequences of any relief Petitioners might obtain would be borne directly by Movants' members, for whom chemicals regulated by TSCA are essential to the very conduct of their businesses. As such, Movants have direct, substantial, and legally protectable interests in the outcome of these consolidated petitions, which seek to overturn the Prioritization Rule. These are interests that Respondents do not adequately represent.

Counsel for Movants contacted counsel for the each of the Petitioners and for Respondents in these consolidated cases. *See* Circuit Rule 27-1(2). All of the parties responded that they take no position on the motion at this time.[2]

[2] Specifically, counsel for Respondents stated that "EPA will reserve taking a position until after reviewing the potential intervenors' motion." Counsel for Alliance for Nurses for Healthy Environments, et al. stated that "Alliance of Nurses for Healthy Environments, Cape Fear River Watch, and Natural Resources Defense Council take no position on the motion at this time, but reserve their right to oppose the motion based on its content." Counsel for the Environmental

BACKGROUND

TSCA was amended in 2016 to require EPA to select a minimum number of chemicals in commerce for risk evaluations. The amended statute requires EPA to promulgate three regulations to achieve its mandate, *see* 15 U.S.C. § 2605(b)(1), (4), all of which have now been promulgated. The first (known as the "Inventory Reset Rule"[3]) sorts the master list of chemicals, called the TSCA Inventory, based on whether the chemicals are active or inactive in commerce. The second (the "Prioritization Rule" at issue here) sets out procedures for the agency's designation of High Priority chemicals for purposes of risk evaluation. The third (known as the "Risk Evaluation Rule"[4]) mandates a risk-based determination for the evaluated chemicals. Although these rules are separate, they are designed to function together; for example, the risk evaluation process cannot start until chemicals are prioritized. Although only the Prioritization Rule is at issue in the instant matter, all three rules are described below for context to evaluate this Motion.

Defense Fund stated that "[t]he Environmental Defense Fund takes no position on this motion at this time."

[3] TSCA Inventory Notification (Active- Inactive) Requirements, 82 Fed. Reg. 37,520 (Aug. 11, 2017). Environmental Defense Fund has separately petitioned for review of this rule. *Envtl. Def. Fund v. EPA*, No. 17-1201 (D.C. Cir.).

[4] Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act, Fed. Reg. 33,726 (July 20, 2017). Petitioners here have separately petitioned to review this rule. *See Alliance of Nurses for Healthy Env't*s, *et al. v. EPA*, No. 17-1926 and consolidated cases (4th Cir.) (MPC No. 149).

Inventory Reset Rule. The Inventory Reset Rule establishes the procedures EPA will follow to "reset" the TSCA chemical inventory. Only chemicals listed on the TSCA inventory are legal for use in the United States. Under the new rule, EPA has directed chemical manufacturers to identify the chemicals they manufacture that are currently in commerce. If a chemical is not identified as active, it will be listed as "inactive." Only active chemicals would be subject to prioritization and, potentially, EPA's risk review procedures.

Prioritization Rule. The Prioritization Rule establishes the procedures and criteria EPA will use to designate "High-Priority Substances" for risk evaluation, or "Low-Priority Substances" for which risk evaluations are not necessary until such time as determined by the Administrator. This Rule "describes the processes for formally initiating the prioritization process on a selected [chemical substance], providing opportunities for public comment, screening the [substance] against certain criteria, and proposing and finalizing designations of priority." 82 Fed. Reg. at 33,753. The Prioritization Rule also clarifies EPA's authority to determine what "conditions of use"[5] of a chemical are appropriate for risk evaluation.

[5] "[C]onditions of use" is a term of art, *see* 15 U.S.C. § 2602(4) (the term "means the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of") and is not the same as the term "use."

Risk Evaluation Rule. A risk evaluation cannot occur until a chemical has been designated High Priority. In its Risk Evaluation Rule, EPA establishes the procedures and criteria it will use when conducting those risk evaluations to determine whether such a chemical presents an unreasonable risk of injury to health or the environment under the conditions of use for that chemical. The Risk Evaluation Rule specifies procedures for the following steps of the risk evaluation process that must be followed: scoping, hazard assessment, exposure assessment, risk characterization, and finally a risk determination. Subsequent risk management action may result in new requirements being placed on the use of a chemical. EPA has further elaborated on the risk assessment in guidance.

The Movants are associations that represent industries and members that the Prioritization Rule directly regulates and affects, because they manufacture, process, distribute, or use chemicals that will be affected by the rule and the related Risk Evaluation Rule. These include:

- Movant American Chemistry Council ("ACC"). ACC represents a diverse set of nearly 150 leading companies engaged in the business of chemistry, including by participating on behalf of its members in administrative proceedings before EPA and in litigation arising from those proceedings that affects member company interests. The business of chemistry is a $797 billion enterprise and a key element of the nation's economy.

- Movant American Coatings Association ("ACA") is the national nonprofit trade association working to advance the paint and coatings industry and the 287,000 professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers,

distributors, and technical professionals who produce over $30 billion in paint and coating product shipments. ACA members use and produce chemicals subject to regulation under TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant 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. Coke and coals chemicals are subject to regulation under TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant American Fuel & Petrochemical Manufacturers ("AFPM") is a national trade association whose members include over 400 refiners and petrochemical manufacturers that produce gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals. AFPM members use and produce chemicals subject to regulation under TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant American Forest & Paper Association ("AF&PA") serves the sustainable pulp, paper, packaging, tissue and wood products manufacturing industry in the United States. AF&PA member companies make products essential for everyday life from renewable and recyclable resources. The forest products industry accounts for approximately four percent of the total United States manufacturing Gross Domestic Product, manufactures over $200 billion in products annually, and employs approximately 900,000 men and women. AF&PA's members use chemical substances subject to TSCA to manufacture or process their products, including chemicals subject to the Prioritization and Risk Evaluation Rules.

- Movant American Petroleum Institute ("API") is a national trade association representing all aspects of America's oil and natural gas industry. API has more than 625 members, from the largest major oil companies 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 industry. API's members are involved in all major points of the chemical supply chain—from natural gas and crude oil production,

to refinery production of fuels and other products, to service companies using chemicals. API's members are affected by all of EPA's activities under TSCA, both directly as companies subject to regulation and indirectly as customers of regulated companies. API members manufacture and use chemicals subject to the Prioritization and Risk Evaluation Rules.

- Movant Battery Council International ("BCI") promotes the interests of the battery industry whose members include lead battery manufacturers and recyclers, marketers and retailers, and suppliers of raw materials and equipment. Components used by the industry are subject to regulation under TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents 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's members include companies in all of the sectors covered by each of the other intervenors—chemicals, coatings, refiners, petrochemicals, petroleum, forestry, wood products, batteries, electronics, energy, and electricity, among many others. These companies use chemicals subject to regulation under TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant EPS Industry Alliance represents manufacturers of expanded polystyrene ("EPS"). EPS and the chemistries used to produce it are subject to TSCA jurisdiction, including the Prioritization and Risk Evaluation Rules.

- Movant IPC International, Inc., doing business as IPC – Association Connecting Electronics Industries ("IPC"), is a not-for-profit association consisting of 4,200 member facilities that manufacture electronics or supply equipment and materials to industries manufacturing electronics. The majority of IPC members use chemicals to manufacture products or sell products containing chemicals, but a small percentage manufacture and/or distribute chemicals to electronics manufacturers. As manufacturers, distributors and users of chemicals, IPC members are affected by TSCA rulemaking. The Risk Evaluation and Prioritization Rule proscribe the process under which the chemicals used by our

members will be regulated in the future. The development and manufacture of electronics is directly affected by restrictions on the chemical used to manufacture them and thus effect IPC members.

- Movant National Association of Chemical Distributors ("NACD") is an association of chemical distributors and their supply-chain partners. NACD's members process, formulate, blend, repackage, warehouse, transport, and market chemical products for over 750,000 customers. The chemical distribution industry represented by NACD employs over 70,000 people and generates $5.14 billion in tax revenue for local communities. The products distributed by NACD members are subject to EPA's TSCA jurisdiction, including the Prioritization and Risk Evaluation Rules.

- Movant National Mining Association ("NMA") is a national trade association that represents the interests of the mining industry—including the producers of most of America's coal, metals, and industrial, and agricultural minerals, as well as the manufacturers of mining and mineral processing machinery, equipment, and supplies—before Congress, the administration, federal agencies, the judiciary, and the media. NMA has more than 300 members, many of which manufacture, process, and/or use chemical substances subject to TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant Polyurethane Manufacturers Association ("PMA") is the association dedicated to the advancement of the cast polyurethane industry. Its members include processors, suppliers and other members in the cast urethane industry. The chemicals which are used to manufacture polyurethanes are substances subject to EPA's TSCA jurisdiction, including the Prioritization and Risk Evaluation Rules.

- Movant SOCMA – Society of Chemical Manufacturers and Affiliates ("SOCMA") is the U.S.-based trade association dedicated solely to the specialty chemical industry. SOCMA's 200 members produce intermediates, specialty chemicals and ingredients used to develop a wide range of industrial, commercial and consumer products. SOCMA's manufacturing members all produce chemicals subject to regulation under TSCA that could be addressed by the Prioritization and Risk Evaluation Rules, and all of its members could be impacted by EPA's actions under the rules. SOCMA was actively involved in the legislative

and rulemaking processes leading to issuance of the Prioritization Rule and the Risk Evaluation Rule, filing comments on the proposed versions of both.

- Movant Silver Nanotechnology Working Group ("SNWG") is an industry-wide effort to advance the science and public understanding of the beneficial uses of silver nanoparticles in a wide-range of consumer and industrial products. Silver nanotechnology is subject to EPA's TSCA jurisdiction, including the Prioritization and Risk Evaluation Rules.

- Movant Styrene Information and Resource Center ("SIRC") is a nonprofit trade association that collects, develops, analyzes, and communicates information to guide industry and government on health and environmental issues associated with styrene and ethylbenzene. Member companies manufacture or process styrene and ethylbenzene. Associate member companies fabricate styrene-based products. Styrene and ethylbenzene are chemical substances subject to TSCA, including the Prioritization and Risk Evaluation Rules.

- Movant Utility Solid Waste Activities Group ("USWAG") is responsible for addressing solid and hazardous waste and chemical management issues on behalf of the utility industry. USWAG was formed in 1978, and is a trade association of over 130 utility operating companies, energy companies and industry associations. USWAG engages in regulatory advocacy pertaining to TSCA, among other policy areas. The industry uses substances subject to the requirements of TSCA, including the Prioritization and Risk Evaluation Rules.

ARGUMENT

I. Movants Satisfy the Standards for Intervention as of Right

Federal Rule of Appellate Procedure 15(d) provides that an applicant for intervention in a petition for review must file a motion for leave to intervene within 30 days after the petition is filed, supported by a concise statement of the interests and the grounds for intervention. Although the appellate rules do not specify a

standard for intervention, this Court looks to the principles underlying intervention under Rule 24 of the Federal Rules of Civil Procedure. *See Sw Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 817 (9th Cir. 2001). Under Rule 24(a), a court must grant intervention of right: (1) upon timely application; (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action; and (3) when the applicant is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, (4) unless the applicant's interest is adequately represented by existing parties. Fed. R. Civ. P. 24(a); *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011).[6]

When applying this framework, "courts are guided primarily by practical and equitable considerations, and the requirements for intervention are broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.*, 370 F.3d

[6] Movants are not required to satisfy the requirements for Article III standing to intervene on behalf of the Respondents. *See Vivid Entertainment, LLC v. Fielding*, 774 F. 3d 566, 573 (9th Cir. 2014) (intervenor that is not initiating action or appeal "need not meet Article II standing requirements."); *accord Town of Chester v. Laroe Estates*, 137 S. Ct. 1395 (2017) (requiring standing only when intervenor sought relief different from plaintiff). Nonetheless, Movants have Article III standing to intervene here because the Movants members would have standing (as members of the regulated community directly impacted by the rules at issue who stand to be injured by this litigation), the subject of the litigation is germane to the Movants' interests, and no individual member's participation is necessary for the litigation. *See* Declaration of Michael P. Walls (Attachment A) ("Walls Decl."); Declaration of Jim McCloskey (Attachment B) ("McCloskey Decl."); *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977).

915, 919 (9th Cir. 2004); *see also Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080 (8th Cir. 1999). "A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *United States v. City of Los Angeles,* 288 F.3d 391, 397-98 (9th Cir. 2002).

Here, Movants satisfy these requirements, and this Court should grant this Motion so that they may protect their important interests.

A. The Motion to Intervene is Timely

Petitioners filed their Petitions on August 10 and 11, 2017. This motion is timely, because Movants are filing within the time allotted. *See* Fed. R. App. P. 15(d) (intervention motion due within 30 days of petition) and 26(a)(1) (when, as here, deadline is on weekend, filing on the "next day that is not a Saturday, Sunday or a legal holiday"). Moreover, no prejudice or delay would result from Movants' intervention, because they are seeking to join this case at the earliest possible stage.

B. Movants Have a Direct and Substantial Interest in the Subject of the Petitions

In this Circuit, "[a] putative intervenor will generally demonstrate a sufficient interest for intervention as of right . . . in all cases, if 'it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d at 1180 (citations omitted). The "interest" test is "primarily a practical guide to disposing of lawsuits by involving as many concerned persons as is compatible with efficiency and due process." *Id.*

at 1179. The inquiry "should be, as in all cases, whether . . . 'there is a relationship between the legally protected interest and the claims at issue.'" *Id.* at 1176 (*citing Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). An intervening party's interest in the remedy a petitioner seeks can also establish a protectable interest. *City of Los Angeles*, 288 F.3d at 399-400.

Here, unquestionably, Movants have a vital interest in the subject of these consolidated Petitions: Movants' members manufacture, process, distribute, or use chemicals that are essential to their industries and businesses and are subject to the Prioritization Rule. *See, e.g.*, Walls Decl. ¶¶ 5, 20(a)(-(p); McCloskeyDecl. ¶¶ 4-5, 8. The procedures and criteria EPA has adopted in the Prioritization Rule set the process by which EPA will determine which chemicals will be deemed High Priority and evaluated under the related Risk Evaluation Rule. The outcome of the process under the Prioritization Rule will thus provide Movants with greater certainty planning future operations. At the same time, the process set forth in the Prioritization Rule will also allow Movants to focus on collecting information about those High Priority substances that are then evaluated under the Risk Evaluation Rule. If a risk evaluation ultimately determines that a chemical presents an unreasonable risk under a condition of use, that determination results in restrictions on chemicals essential to Movants' members' operations. Movants

have a direct interest in these Petitions, which challenge and seek to overturn the process and criteria set by the Prioritization Rule.

Movants have also demonstrated their direct and substantial interest in the Prioritization Rule by participating in the rulemaking that culminated in the final rule.[7] When a group seeking intervention has participated "in the administrative process leading to the governmental action," the group has a direct and substantial interest in the litigation. *Michigan State AFL-CIO* v. *Miller*, 103 F.3d 1240, 1245-46 (6th Cir. 1997). Likewise, other courts of appeals have routinely found associations representing third parties affected by a federal regulation have a sufficient interest to intervene to challenge or support actions by EPA or other federal agencies. *See, e.g.*, *Sierra Club v. EPA*, 557 F.3d 401 (6th Cir. 2009); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003); *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 41-44 (1st Cir. 1992); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998).

In sum, Movants have the direct, practical interest needed to intervene.

C. The Disposition of These Petitions May as a Practical Matter Impair or Impede Movants' Ability to Protect Their Interests

The resolution of these Petitions may impair or impede Movants' ability to protect their interests. "[I]f an absentee would be substantially affected in a

[7] *See, e.g.*, Walls Decl. ¶ 13; McCloskey Decl. ¶ 6. Other examples can be found at www.regulations.gov, docket number HQ-OPPT-2016-0636.

practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene . . . ." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (reversing denial of intervention). In this Circuit, where a proposed intervenor has a significant protectable interest, the Court has had "little difficulty concluding that the disposition of the case may, as a practical matter, affect it." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006).

As discussed above, Movants' members manufacture, process, distribute, or use chemicals that are central to their members' businesses. The Prioritization Rule will directly affect them and their operations by determining which chemicals are subject to risk evaluations, as well as their priority and timing for review. Here, Petitioners seek to strike down elements of the Prioritization Rule and change the process and criteria that EPA has carefully established. Only if this Court allows Movants to participate in this action will Movants be able to protect fully their interests in the procedures and criteria set by the Prioritization Rule.

D. Movants' Interests Are Not Adequately Represented by Existing Parties

Lastly, the existing parties do not adequately represent Movants' interests. The requirement to show inadequate representation is not a high bar, as it "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."

Berg, 268 F.3d at 823 (*citing Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (citation omitted)). In assessing this factor, this Court has looked to whether a present party "will undoubtedly make all of a proposed intervenor's arguments," the party "is capable and willing to make such arguments," and "whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003); *see Fresno Cty. v. Andrus*, 622 F.2d 436 (9th Cir. 1980). Moreover, the focus is on the overall "subject of the action" not any particular issues before the court given the early stage at which intervention is considered. *Berg*, 268 F.3d at 823.

Here, Movants' interests are not represented at all by the Petitioners, who are directly adverse to Movants. Nor can Respondents adequately represent Movants' interests, as EPA does not represent the distinct private business and commercial interests of Movants and their members. Movants are groups founded in part to help ensure that their members are able to manufacture, process, distribute, or use chemicals as needed, and thereby operate the nation's manufacturing and energy facilities, preserve and create jobs, and produce successful businesses, all in an environmentally sound manner. EPA may well be focused to a greater extent than Movants on issues of administrative convenience and flexibility. Likewise, Movants are likely to be focused to a greater degree than

EPA on the potentially deleterious consequences that particular agency actions may have on Movants' members' chemicals or operations.

Movants' interests are thus aligned with but distinct from EPA's more general mandate, and these differences are sufficient to justify intervention. *See, e.g.*, *Fund for Animals*, 322 F.3d 736 ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors."); *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 973-74 (3d Cir. 1998) (federal agency and private businesses seeking to intervene had "interests inextricably intertwined with, but distinct from" each other and thus agency could not adequately represent private interests); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994) (industry intervention allowed because "[t]he government must represent the broad public interest, not just the [concerns of the industry group]"). EPA simply cannot be assumed to "undoubtedly" make all of the arguments Movants would make. *See Berg*, 268 F.3d at 823 ("a federal agency" as regulator "cannot be expected under the circumstances presented to protect these private interests.").[8]

[8] Because Petitioners have not yet identified the precise arguments they intend to raise, it is premature to offer definitive examples of actual differences between Movants' arguments here and those of Respondents. In addition to jurisdictional arguments, examples of potential divergence or emphasis may include issues of statutory interpretation and the scope of agency deference.

In particular, precisely because Movants' possess significant knowledge of the practical impact of implementation of the Prioritization Rule, their participation will supplement EPA's defense and offer "elements to the proceeding" that EPA cannot provide. Accordingly, Movants urge this Court to grant them leave to intervene as of right to fully and fairly represent their legitimate interests in this litigation.

II. In the Alternative, Movants Should Be Granted Permissive Intervention

In the alternative, Movants seek leave for permissive intervention. Fed. R. Civ. P. 24(b)(1) authorizes permissive intervention when, on a timely motion, the applicant's claim or defense, and the main action, have a question of law or a question of fact in common. *E.g.*, *Kootenai Tribe of Idaho v. Veneman*, 313 F. 3d 1094, 1108 (9th Cir. 2002) ("all that is necessary for permissive intervention is that intervenor's claim or defense and the main action have a question of law or fact in common" as the rule "plainly dispenses with" the other requirements of intervention as of right), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Permissive intervention neither requires a showing of the inadequacy of representation, nor a direct interest in the subject matter of the action.

First, as demonstrated above, this motion to intervene is timely, as it is filed within the required timeframe and will not cause undue delay, prejudice the

parties, or contribute to the waste of judicial resources. With the three petitions only recently consolidated by Multidistrict Panel's order, this Court has taken no significant steps to begin scheduling any briefing on the merits of Petitioners' claims. Second, if allowed to intervene, Movants will address the issues of law and fact that the Petitioners present on the merits and detail why the Prioritization Rule satisfies TSCA and is otherwise lawful. Because Movants and Petitioners maintain opposing positions on these common questions, Movants meet the standards for permissive intervention as well.

As intervention would contribute to the just and equitable adjudication of the legal questions presented, it should be permitted.

CONCLUSION

For these reasons, Movants' Motion to Intervene should be granted.

Dated: September 11, 2017

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2) because it contains 4,706 words, excluding the items exempted by Rule 32(f).

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionately spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

/s/ *Peter D. Keisler*
Peter D. Keisler

CERTIFICATE OF SERVICE

I hereby certify that the copies of the foregoing Motion of American Chemistry Council et al. for Leave to Intervene as Respondents was served, this 11th day of September, 2017, through CM/ECF on all registered counsel.

/s/ Peter D. Keisler
Peter D. Keisler