

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

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ENVIRONMENTAL DEFENSE FUND)
NATURAL RESOURCES COUNCIL,)
and SIERRA CLUB,)
)
	Petitioners,)
)
	v.)
)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY, and SCOTT PRUITT,)
Administrator, U.S. Environmental Protection)
Agency,)
)
	Respondents.)
<hr/>)

No. 18-1149

UNOPPOSED MOTION OF THE AIR PERMITTING FORUM, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN CHEMISTRY COUNCIL, AMERICAN COKE AND COAL CHEMICALS INSTITUTE, AMERICAN FOREST & PAPER ASSOCIATION, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, AMERICAN IRON AND STEEL INSTITUTE, AMERICAN PETROLEUM INSTITUTE, AMERICAN WOOD COUNCIL, AUTO INDUSTRY FORUM, BRICK INDUSTRY ASSOCIATION, COUNCIL OF INDUSTRIAL BOILER OWNERS, THE FERTILIZER INSTITUTE, PORTLAND CEMENT ASSOCIATION, AND UTILITY AIR REGULATORY GROUP FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENTS

Pursuant to Federal Rules of Appellate Procedure Rule 15(d) and 27, and Circuit Rules 15(b) and 27, Air Permitting Forum, Chamber of Commerce of the United States of America, National Association of Manufacturers, American

Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Auto Industry Forum, Brick Industry Association, Council of Industrial Boiler Owners, The Fertilizer Institute, Portland Cement Association, and Utility Air Regulatory Group (collectively referred to herein as Business Movant-Intervenors) respectfully move for leave to intervene in the above-captioned case in support of Respondents, U.S. Environmental Protection Agency (EPA or the Agency) and EPA Administrator Scott Pruitt. Counsel for Business Movant-Intervenors has contacted counsel for both Respondents and Petitioners to determine their position on this motion. Counsel for Respondents states that Respondents do not oppose this motion. Counsel for Petitioners likewise state that they take no position on this motion.

In support of this motion, Business Movant-Intervenors state as follows:

1. On May 29, 2018, Petitioners filed a petition for review of a March 13, 2018 memorandum from Scott Pruitt, Administrator, EPA to Regional Administrators entitled, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” and the *Federal Register* notice published at 83 Fed. Reg. 13,745 (Mar. 30, 2018) and entitled “Issuance of

Guidance Memorandum, ‘Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program’” (hereafter “memorandum”)

2. In the memorandum, EPA provided guidance on accounting of emissions changes in determining applicability of New Source Review (“NSR”) requirements under 40 C.F.R. §§ 52.21, 51.165, and 51.166. Step 1 of the NSR applicability process requires a determination of whether a proposed project will, by itself, result in a “significant emissions increase.” 83 Fed. Reg. at 13,746. In the memorandum, EPA clarified its regulatory interpretation that emissions decreases as well as increases are to be considered at Step 1. *Id.*

3. The Air Permitting Forum 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 Clean Air Act and related statutes on behalf of its member companies. The Air Permitting Forum also participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. The Air Permitting Forum’s members operate manufacturing facilities throughout the U.S. that are subject to NSR and Prevention of Significant Deterioration (PSD) permitting requirements, which are the requirements affected by the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the Air Permitting Forum’s members because they own or operate

facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR and PSD regulations. As a result, projects that the Air Permitting Forum's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the Air Permitting Forum's members.

4. The Chamber of Commerce of the United States of America (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. The Chamber's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the Chamber's members because they own or operate facilities that

may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that the Chamber's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the Chamber's members.

5. The National Association of Manufacturers (NAM) is the largest manufacturing association in the U.S. It is a national not-for-profit trade association representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S. The NAM participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect

its members. The NAM's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the NAM's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that the NAM's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the NAM's members.

6. 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 exports. ACC participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. ACC's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the ACC's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that ACC's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on ACC's members.

7. The American Coke and Coal Chemicals Institute (ACCCI) was formed in 1944 by companies interested in establishing a forum to discuss and act upon issues of common concern to the metallurgical coke and coal chemicals industry. Today, ACCCI represents over 95 percent of the metallurgical coke

produced in the U.S. and Canada, including both merchant coke producers and integrated steel companies with coke production capacity, and 100 percent of companies producing coal chemicals in the U.S. and Canada. Nearly 150 representatives from about 45 companies contribute their knowledge and expertise to enhance the effectiveness of the Institute's programs. ACCCI participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. ACCCI's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the ACCCI's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that ACCCI's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on ACCCI's members.

8. The American Forest and 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 4 percent of the total U.S. manufacturing gross domestic product (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 participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. AF&PA's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the AF&PA's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR and PSD regulations. As a result, certain projects or modifications

that AF&PA's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AF&PA's members.

9. The American Fuel & Petrochemical Manufacturers (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. If granted, the relief sought by Petitioners will harm the interests of the AFPM's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that AFPM's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions

increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AFPM's members.

10. 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's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the AISI's members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that the AISI's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those

projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AISI's members.

11. The American Petroleum Institute (API) is a national trade association with over 625 corporate members that represents all aspects of America's oil and natural gas industry, including producers, refiners, suppliers, marketers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. API's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of API's members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that API's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and

should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on API's members.

12. 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 its members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. AWC participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. AWC's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the AWC's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that AWC's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the

existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AWC's members.

13. The Auto Industry Forum is a trade association, as defined by 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, which are major automobile and light duty truck manufacturers with operations in the U.S. The Auto Industry Forum participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect the manufacturing plants of its members. Auto Industry Forum members operate facilities throughout the U.S. that are subject to NSR and PSD permitting and therefore are subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the Auto Industry Forum's members because they own or operate facilities that would no longer be able to consider emissions decreases from proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR and PSD regulations. As a result, certain projects or modifications that the Auto Industry Forum's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in

a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the Auto Industry Forum's members.

14. The Brick Industry Association (BIA) is a national trade association representing clay brick manufacturers, distributorships, and their suppliers. Two-thirds of all the brick shipped in North America is manufactured by BIA members. BIA participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. BIA's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of the BIA's members because they own or operate facilities that may no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that the BIA's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis.

Therefore, disposition of the issues raised in this case will have a substantial direct impact on the BIA's members.

15. The Council of Industrial Boiler Owners (CIBO) is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations. CIBO participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. CIBO's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of CIBO's members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that CIBO's members may be considering or may consider in the future could be prevented from going forward or be significantly

delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on CIBO's members.

16. The Fertilizer Institute (TFI) is a national trade association that represents the nation's fertilizer industry, including processors, importers, retailers, wholesalers, and companies that provide services to the fertilizer industry. It is governed by a board of directors representing the importing, manufacturing, wholesale and retail sectors of the industry. TFI is a continuing association operating for the purpose of promoting the general commercial, regulatory, legislative, or other interests of its membership. TFI participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. TFI's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of TFI's members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a result, certain projects or modifications that TFI's members may be considering or may consider

in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on TFI's members.

17. The Portland Cement Association (PCA), founded in 1916, is the premier policy, research, education, and market intelligence organization serving America's cement manufacturers. PCA members represent 92 percent of the U.S. cement production capacity and have facilities in all 50 states. The Association promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment. PCA participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. PCA's members operate facilities throughout the U.S. that would be subject to the requirements at issue in the memorandum challenged in this case. If granted, the relief sought by Petitioners will harm the interests of PCA's members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations.

As a result, certain projects or modifications that PCA's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on PCA's members.

18. The Utility Air Regulatory Group (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 administrative proceedings under the Clean Air Act 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 government customers. These facilities are subject to the requirements at issue in the memorandum. If granted, the relief sought by Petitioners will harm the interests of UARG members because they own or operate facilities that would no longer be able to consider emissions decreases from certain proposed projects at existing major stationary sources under Step 1 of the major modification applicability process in EPA's NSR regulations. As a

result, certain projects or modifications that UARG's members may be considering or may consider in the future could be prevented from going forward or be significantly delayed, even though those projects would not result in a significant emissions increase and should not be treated under the existing regulations as requiring NSR permits or a complex emissions netting analysis. Therefore, disposition of the issues raised in this case will have a substantial direct impact on UARG's members.

19. Federal Rule of Appellate Procedure 15(d) requires 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 interest of the moving party and the grounds for intervention.” 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 in this Court. *See, e.g., 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).

20. This motion is timely because it is being filed within 30 days after the filing of the petition for review. Moreover, this motion is filed at an early stage of the proceedings, before a briefing schedule has been set and Business Movant-Intervenors do not intend to seek delay in the briefing. Accordingly, intervention will not prejudice any party or result in delay.

21. Business Movant-Intervenors seek leave to intervene because their members have a direct and substantial interest in this proceeding that would otherwise go unrepresented by any other party. *See Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (intervention appropriate if “representation of [the movant’s] interest ‘may be’ inadequate”) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Because Movant Respondent-Intervenors’ members “indisputably will be directly affected” by the guidance, their standing and interest in this action is “self-evident[.]” *See Am. Library Ass’n v. FCC*, 401 F.3d 489, 491-92 (D.C. Cir. 2005). Further, because Movant Respondent-Intervenors’ members would otherwise have standing to sue in their own right and the interests they seek to protect are germane to their organizational purposes, each of them has representational standing. *See Sierra Club v. EPA*, 292

F.3d 895, 900 (D.C. Cir. 2002) (“In particular, if the complainant is ‘an object of the action (or forgone action) at issue’ – as is the case usually in review of a rulemaking and nearly always in review of an adjudication – there should be ‘little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.’”) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992)); see also *S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 895-96 (D.C. Cir. 2006)(.

22. Intervention is appropriate where an intervenor-applicant’s legally protectable interest 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) (ECF No. 1722115) (quoting *Fund for Animals*, 322 F.3d at 733). As discussed above, each Business Movant-Intervenor member would be harmed by Petitioners’ requested relief because they seek to prevent consideration if emissions decreases from proposed projects at major stationary sources under Step 1 of the major modification definition in EPA’s NSR regulations, delaying or preventing potentially beneficial projects.

23. No other party to this case directly represents Business Movant-Intervenors' interests. Petitioners environmental advocacy organizations do not represent Business Movant-Intervenors' interests. Indeed, Business Movant-Intervenors anticipate that Petitioners asserted positions asserted will be largely contrary to Business Movant-Intervenors' positions. Further, while Business Movant-Intervenors' positions will likely align somewhat with Respondents' positions, Business Movant-Intervenors' interests are likely to diverge from Respondents' regulatory and institutional interests in significant ways, given that Respondents are governmental regulators responsible to the public as a whole. Even where Business Movant-Intervenors' and Respondents' interests may coincide, "that [would] not necessarily mean that adequacy of representation is ensured." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). Precisely because Business Movant-Intervenors' interests are "more narrow and focused than [Respondents']," its participation is "likely to serve as a vigorous and helpful supplement to [Respondents'] defense." *Id.* at 912-913. Further, this Court has long recognized the "inadequacy of governmental representation" when the government has no financial stake in the outcome of the suit but the private intervenor does. *See, e.g., Dimond*, 792 F.2d at 192 (application fit "squarely within the relatively large class of cases ... recognizing the inadequacy of governmental representation of the interests of private parties ..."); *Fund for*

Animals, 322 F.3d at 736 (despite overlap in interests, U.S. Fish and Wildlife Service would not give Mongolia’s interests necessary “primacy” that Mongolia would); *NRDC*, 561 F.2d at 912 n.41 (representation may not be adequate because “parties have different scopes to their interest.”). Mere general alignment between a private party and a government agency is insufficient to establish adequate representation. *See, e.g., Fund for Animals*, 322 F.3d at 736.

WHEREFORE, Business Movant-Intervenors respectfully request that the Court grant this Motion for Leave to Intervene in Support of Respondents.

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DATED: June 25, 2018

CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion of Business Movant-Intervenors Air Permitting Forum, Chamber of Commerce of the United States of America, National Association of Manufacturers, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Auto Industry Forum, Brick Industry Association, Council of Industrial Boiler Owners, The Fertilizer Institute, Portland Cement Association, and Utility Air Regulatory Group for Leave to Intervene in Support of Respondents, complies with the requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it has been prepared in proportionally spaced 14-point Times New Roman type.

I further certify that the motion complies with the type volume limitation of Fed. R. App. P. 27(d)(2) and 32(g) because it contains 5,187 words, excluding exempted portions, according to the count of Microsoft Word.

/s/ Shannon S. Broome
Shannon S. Broome

DATED: June 25, 2018

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND NATURAL RESOURCES COUNCIL, and SIERRA CLUB,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and SCOTT PRUITT, Administrator, U.S. Environmental Protection Agency,

Respondents.

No. 18-1149

MOVANT RESPONDENT-INTERVENORS RULE 26.1 STATEMENTS

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Movant Respondent-Intervenors make the following Disclosures:

The Air Permitting Forum 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. The Air Permitting Forum also participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. The Air Permitting Forum'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. The Air Permitting Forum 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 the Air Permitting Forum.

The Chamber of Commerce of the United States of America (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.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the U.S. It is a national not-for-profit trade association representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S.

The NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S. The NAM states that it is a “trade association” for purposes of Circuit Rule 26.1(b). The NAM has no parent corporation, and no publicly held company has 10 percent or greater ownership in the NAM.

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 fourteen percent of all U.S. goods exports. 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 and 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 10 percent or greater ownership in AF&PA.

The American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association whose members comprise virtually all U.S. refining and

petrochemical manufacturing capacity. AFPM states that it is a “trade association” for purposes of Circuit Rule 26.1(b). AFPM has no parent company, and no publicly traded corporation owns 10 percent or more of its stock.

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 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 10 percent or greater ownership in AISI.

The American Petroleum Institute (API) is a national trade association with over 625 corporate members that represents all aspects of America’s oil and natural gas industry, including producers, refiners, suppliers, marketers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of the industry. API states that it is a “trade association” for purposes of Circuit Rule 26.1(b). API has no parent corporation, and no publicly held company has 10 percent or greater ownership in API.

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 Auto Industry Forum represents the interests of U.S. auto and light duty truck manufacturers with respect to the appropriate implementation of the Clean Air Act as it applies to its facilities and for other relevant statutes on behalf of its member companies. The Auto Industry Forum also participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. The Auto Industry Forum’s members operate auto and light duty 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. The Auto Industry Forum states that it is a “trade association” for purposes of Circuit Rule 26.1(b). The Auto Industry Forum 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 the Auto Industry Forum.

The Brick Industry Association (BIA) is a national trade association representing clay brick manufacturers, distributorships, and their suppliers. Two-thirds of all the brick shipped in North America is manufactured by BIA members. BIA states that it is a “trade association” for purposes of Circuit Rule 26.1(b). BIA has no parent company, and no publicly held company has a 10 percent or greater ownership interest in BIA.

The Council of Industrial Boiler Owners (CIBO) is a trade association of industrial boiler owners, architect-engineers, related equipment manufacturers, and University affiliates representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information about issues affecting industrial boilers, including energy and environmental equipment, technology, operations, policies, laws and regulations. CIBO states that it is a “trade association” for purposes of Circuit Rule 26.1(b). CIBO has not issued shares to the public and has no parent company.

The Fertilizer Institute (TFI) is a national trade association that represents the nation’s fertilizer industry, including processors, importers, retailers,

wholesalers, and companies that provide services to the fertilizer industry. It is governed by a board of directors representing the importing, manufacturing, wholesale and retail sectors of the industry. TFI has no parent companies, and no publicly-held company has a 10 percent or greater ownership interest in TFI. TFI is a “trade association” within the meaning of Circuit Rule 26.1. TFI is a continuing association operating for the purpose of promoting the general commercial, regulatory, legislative, or other interests of its membership.

The Portland Cement Association (PCA), founded in 1916, is the premier policy, research, education, and market intelligence organization serving America’s cement manufacturers. PCA members represent 92 percent of US cement production capacity and have facilities in all 50 states. The Association promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment. PCA states that it is a “trade association” for purposes of Circuit Rule 26.1(b). PCA has no parent corporation, and no publicly held company owns a 10 percent or greater interest in PCA.

The Utility Air Regulatory Group (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 administrative

proceedings under the Clean Air Act 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.

Respectfully submitted,

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DATED: June 25, 2018

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ENVIRONMENTAL DEFENSE FUND)
NATURAL RESOURCES COUNCIL,)
and SIERRA CLUB,)
)
	Petitioners,)
)
	v.)
)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY, and SCOTT PRUITT,)
Administrator, U.S. Environmental Protection)
Agency,)
)
	Respondents.)
<hr/>)

No. 18-1149

**MOVANT RESPONDENT-INTERVENORS
CERTIFICATE OF PARTIES AND *AMICI***

As required by Circuit Rule 27(a)(4) and pursuant to Circuit Rule 28(a)(1)(A), the following Certificate as to Parties and *Amici* is made on behalf of Movant Respondent-Intervenors:

Parties and *Amici*

This case involves a challenge to a memorandum signed on March 13, 2018 by E. Scott Pruitt, Administrator, EPA to Regional Administrators entitled, “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program,” and the *Federal Register* notice published at 83 Fed. Reg. 13,745 (Mar. 30, 2018) and entitled “Issuance of Guidance Memorandum, ‘Project

Emissions Accounting Under the New Source Review Preconstruction Permitting Program.”” There was no action in the district court, and so there were no parties in the district court. The parties in this case include:

Petitioners

Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club.

Respondents

U.S. Environmental Protection Agency and Scott Pruitt, Administrator, U.S. Environmental Protection Agency.

Movant Respondent-Intervenors

Air Permitting Forum, Chamber of Commerce of the United States of America, National Association of Manufacturers, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Auto Industry Forum, Brick Industry Association, Council of Industrial Boiler Owners, The Fertilizer Institute, Portland Cement Association, and Utility Air Regulatory Group.

We are unaware that this Court has granted any interventions at this time.

We also believe that no entity has been admitted as an *amicus* at this time.

Respectfully submitted,

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DATED: June 25, 2018

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2018, I caused to be electronically filed the foregoing Motion of Business Movant-Intervenors Air Permitting Forum, Chamber of Commerce of the United States of America, National Association of Manufacturers, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Auto Industry Forum, Brick Industry Association, Council of Industrial Boiler Owners, The Fertilizer Institute, Portland Cement Association, and Utility Air Regulatory for Leave to Intervene in Support of Respondents, Rule 26.1 Statements, and Certificate of Parties and *Amici* with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the Court's CM/ECF system.

s/ Shannon S. Broome
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