

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

ENVIRONMENTAL DEFENSE FUND,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and SCOTT
PRUITT, Administrator, ENVIRONMENTAL
PROTECTION AGENCY,
Respondents.

Case No. 17-1201

**MOTION FOR LEAVE TO
INTERVENE ON BEHALF OF RESPONDENTS**

Pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure and Rules 15(d) and 27 of this Court, the American Chemistry Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Chamber of Commerce of the United States of America, Society of Chemical Manufacturers and Affiliates, American Coatings Association, American Coke and Coal Chemicals Institute, American Forest & Paper Association, EPS Industry Alliance, IPC International, Inc., doing business as IPC – Association Connecting Electronics Industries, National Association of Chemical Distributors, National Association of Manufacturers, National Mining Association, and Polyurethane Manufacturers Association, (collectively, “Movants”) by and through undersigned

counsel, respectfully move to intervene in support of Respondents, the United States Environmental Protection Agency and EPA Administrator Pruitt (collectively “EPA”), in opposition to this petition for review (“Petition”).

Movants contacted Counsel for both Petitioner and Respondents. Petitioner stated that it takes no position on this motion at this time. Respondents have advised that they take no position on the motion.

The Petition challenges the “TSCA Inventory Notification (Active-Inactive) Requirements,” 82 Fed. Reg. 37,520 (Aug. 11, 2017) (“Inventory Reset Rule”), a rule EPA promulgated under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601-2697. TSCA is the primary federal statute that regulates the manufacturing, processing, distribution, and use of chemical substances and mixtures in the United States.

Movants are associations that represent industries directly regulated and affected by the Inventory Reset Rule. They manufacture, process, distribute, or use chemicals in commerce, and the Inventory Reset Rule establishes a process for reporting those chemical substances that are active in commerce in the United States, defined as those manufactured (including imported) or processed over the 10 year period preceding June 22, 2016. Those substances in commerce will in turn be subject to the procedures and criteria established in two related rules EPA also has promulgated under TSCA, which Petitioner challenged in petitions for

review now pending in two other circuits. In addition, chemicals identified as “inactive” in commerce following the Reset will not be able to be manufactured, imported, or processed without violating TSCA and exposure to daily civil penalties.

Movants clearly satisfy each requirement to intervene: (1) Movants’ request is timely; (2) Movants have material interests related to the Petition, as Movants’ members are regulated and affected by the Inventory Reset Rule; (3) disposition of the Petition for Review may impair Movants’ interests, as the consequences of any relief Petitioners might obtain would be borne directly by Movants’ members; and (4) Respondents cannot adequately represent Movants, whose members have direct commercial interests in the Inventory Reset Rule. Moreover, for similar reasons, Movants have standing, as the EPA rule addressed in the Petition regulates Movants’ members who would be affected adversely if Petitioners receive the relief they seek. Accordingly, Movants’ motion should be granted.

BACKGROUND

Congress amended TSCA in 2016 to, *inter alia*, require EPA to select a minimum number of chemicals in commerce for risk evaluations. The amended statute required EPA to promulgate three regulations within one year to achieve its mandate, *see* 15 U.S.C. § 2605(b)(1), (4), all of which have now been promulgated. The first, the “Inventory Reset Rule” at issue here, sorts the master

list of chemicals, called the TSCA Chemical Substances Inventory (“TSCA Inventory”), based on whether the chemicals are active or inactive in commerce in the ten year period before June 22, 2016. The second (the “Prioritization Rule”)¹ sets out procedures and criteria for the agency’s designation of chemicals that are a high priority for purposes of risk evaluation. The third (the “Risk Evaluation Rule”)² mandates a risk-based determination for the evaluated chemicals. While these are separate rules, they are designed to function together: the risk evaluation process cannot start until chemicals are prioritized, and the chemicals are not prioritized unless on the TSCA Inventory. Hence, although only the Inventory Reset Rule is at issue in this matter, all three rules are described below for context to support this Motion.

Inventory Reset Rule. The Inventory Reset Rule establishes the procedures EPA will follow to “reset” the TSCA Inventory. Unless an exemption applies, only chemicals listed on the TSCA Inventory are legal for commercial use in the United

¹ “Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act,” 82 Fed. Reg. 33,753 (July 20, 2017). *See Safer Chemicals Healthy Families, et al. v. EPA, et al.*, No. 17-72260 and consolidated cases (9th Cir.) (MCP No. 148).

² “Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act,” 82 Fed. Reg. 33,726 (July 20, 2017). *See Alliance of Nurses for Healthy Env’ts, et al. v. EPA*, No. 17-1926 and consolidated cases (4th Cir.) (MPC No. 149).

States. Under the new rule, EPA has directed chemical manufacturers to identify the chemicals they manufacture that have recently been in commerce. If a chemical is not identified as active, it will be listed as “inactive.” After the Reset, it will be illegal to manufacture, import, or process chemicals designated on the Inventory as inactive. Active chemicals are expected to receive heightened interest for prioritization and risk evaluation. The Inventory Reset Rule also requires anyone seeking to maintain the confidentiality of an active chemical substance to reassert that claim and authorizes persons to assert and rely on confidentiality claims previously asserted by others. The Inventory Reset Rule affects those who domestically manufacture, import, or process a chemical substance listed on the TSCA Inventory for nonexempt commercial purpose during the 10-year time period ending on June 21, 2016. It also affects those who intend to domestically manufacture, import, or process in the future a chemical substance listed on the TSCA Inventory, and in particular, those who wish to manufacture, import, or process a chemical designated as inactive. *See* 82 Fed. Reg. at 37,521.

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”³ of a chemical are appropriate for risk evaluation.

Risk Evaluation Rule. EPA cannot initiate a risk evaluation until a chemical has been designated High Priority, unless specifically requested by a manufacturer.⁴ In its Risk Evaluation Rule, EPA establishes the procedures and criteria it will use when conducting those risk evaluations to determine whether a high priority 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

³ “[C]onditions of use” is a regulatory 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.”

⁴ TSCA required EPA to identify and start a risk evaluation process for ten chemicals. 15 U.S.C. § 2605(b)(2)(A).

action may result in new requirements being placed on the use of a chemical. EPA has further elaborated on the risk assessment process in guidance.

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

- Movant American Chemistry Council (“ACC”). ACC represents a diverse set of nearly 170 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. ACC members use and produce chemicals subject to regulation under TSCA, including the Inventory Reset, Prioritization, and Risk Evaluation Rules.
- 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 Inventory Reset, 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 Inventory Reset, 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 Inventory Reset, Prioritization, and Risk Evaluation Rules.

- Movant American Fuel & Petrochemical Manufacturers (“AFPM”) is a national trade association whose members include approximately 400 refiners and petrochemical manufacturers that produce gasoline, diesel, jet fuel, other fuels and home heating oil, as well as petrochemicals. AFPM members use and produce chemicals subject to regulation under TSCA, including the Inventory Reset, 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 Inventory Reset, 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 Inventory Reset, 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 Inventory Reset, 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 Inventory Reset, Prioritization, and Risk Evaluation Rules 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 chemicals used to manufacture them and thus affect 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 Inventory Reset, Prioritization, and Risk Evaluation Rules.
- Movant the National Association of Manufacturers (“NAM”) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes \$2.17 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 powerful voice of the manufacturing community, whose members manufacture, use, and/or distribute chemicals subject to EPA’s TSCA jurisdiction, including the Inventory Reset, 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 Inventory Reset, 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 that are used to manufacture polyurethanes are substances subject to EPA’s TSCA jurisdiction, including the Inventory Reset, 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 the TSCA Inventory Reset, 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 these rules, filing comments on the proposed versions of all three.

ARGUMENT

I. Movants’ Members Satisfy the Standards for Intervention

This Court has recognized that the standard for intervention under Federal Rule of Civil Procedure 24 informs “the grounds for intervention” required by Federal Rule of Appellate Procedure 15(d). *Amalgamated Transit Union Int’l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985); *see also Int’l Union v.*

Scofield, 382 U.S. 205, 217 n.10 (1965); *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004). For an applicant to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), it must: (1) file a timely application; (2) claim an interest relating to the subject of the action; (3) show that disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) demonstrate that 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). Each of these requirements is satisfied here.

A. The Motion to Intervene is Timely

Petitioner filed its petition for review on September 1, 2017. This motion is timely because it is being filed within the time allotted. 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, allowing Movants to intervene will not, as a practical matter, disrupt the proceedings because they are seeking to join this case at the earliest possible stage.

B. Movants Have an Interest Relating to the Subject of This Proceeding That May As a Practical Matter Be Impaired By the Outcome of this Petition

In this Court, consistent with Rule 24, a party seeking intervention need only "claim[] an interest relating to the property or transaction that is the subject of the

action, and [be] so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest." *Karsner v. Lothian*, 532 F.3d 876, 885-88 (D.C. Cir. 2008). This Circuit has interpreted the interest prong broadly. *See Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) ("the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process."); *Jones v. Prince George's Cty.*, 348 F.3d 1014, 1018 (D.C. Cir. 2003) ("intervenor of right need only an 'interest' in the litigation—not a 'cause of action' or 'permission to sue.'").

Likewise, the "impairment" requirement has also been interpreted liberally. *Nuesse*, 385 F.2d at 701 (finding intent of revised rules is to "liberalize the right to intervene in federal actions" by requiring only that disposition of the pending action impair the applicant's interest as a "practical matter"); *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (impairment sufficient if litigation "could establish unfavorable precedent that would make it more difficult for [the intervenor] to succeed" in any future suit to enforce his rights); *NRDC v. Costle*, 561 F.2d 904, 909–11 (D.C. Cir. 1977) (industry members' interests practically impaired if not permitted to intervene in proceedings which would determine which rulemakings EPA would initiate and which pollutants would be covered).

Here, unquestionably, Movants have vital interests that could be impaired or impeded by the outcome of this Petition. Movants' members manufacture, process, distribute, or use chemicals that are essential to their industries and businesses and are directly subject to the requirements of the Inventory Reset Rule. *See, e.g.*, Declaration of Michael P. Walls (Attachment A) ("Walls Decl.") ¶¶ 4, 5, 20. Their interests are affected by the Inventory Reset Rule's procedures for manufacturers to identify the chemicals they have manufactured, imported, or processed during a statutory look back period that are considered currently in commerce. Walls Decl. ¶ 15. Most directly, therefore, Movants have an interest in the outcome of those procedures, as they will identify those chemical substances that may be used in the United States.

The Inventory Reset Rule will further affect Movants by determining which chemicals are in active commerce and therefore more likely to be subject to prioritization and, potentially, risk evaluations. A risk evaluation potentially could determine that a chemical presents an unreasonable risk under a condition of use, which could mean restrictions on chemicals essential to Movants' members' operations. In addition, inactive chemicals may not be legally manufactured, imported, or processed after EPA completes the Reset.

Finally, the Inventory Reset Rule will affect the ability of manufacturers and processors of chemicals to protect the confidentiality of their chemical substances,

by establishing procedures for asserting confidential business information claims. Any changes in these procedures as a result of the instant case could impact Movants' members' operations and core commercial interests, as protecting confidential information has substantial value for many companies and, more generally, is a major factor in promoting innovation and research into new chemicals. Hence, Movants have a direct interest that could be impaired or impeded by this Petition, which challenges the procedures set by the Inventory Reset Rule. Only if this Court allows Movants to participate in this action will Movants be able to protect fully their interests in the Inventory Reset Rule.

Further, as associations representing companies that are directly and indirectly affected by portions of Inventory Reset Rule, Movants fall within the class of parties that this Court and others have routinely allowed to intervene in cases reviewing final agency action. *See Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (ACC, whose member companies produced military munitions and operated military firing ranges, allowed to intervene in a challenge to EPA's Military Munitions Rule); *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 41-44 (1st Cir. 1992) (commercial fishing groups subject to regulatory plan to address overfishing had a cognizable interest in litigation over the plan's implementation); *NRDC v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983) (pesticide manufacturers subject to challenged rules and industry representatives

had a protected interest supporting intervention); *see also Fund for Animals*, 322 F.3d at 735 (Mongolia allowed to intervene in a case concerning application of the Endangered Species Act to a species within Mongolia's borders); *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998) (patent holder that brought infringement action against drug manufacturer allowed to intervene in a challenge by drug manufacturer to compel FDA to withdraw or change the effective date of its approval given to competitor).⁵

In sum, Movants have an interest that may be impaired or impeded as a practical matter if not allowed to intervene in this matter.

C. Existing Parties Cannot Adequately Represent Movants' Interests

It is likewise clear that the existing parties do not adequately represent Movants' interests in this case. The Supreme Court has held that a movant seeking to intervene as of right need only show that representation of its interests "may be" inadequate, and the burden of showing so is "minimal." *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972); *see also Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) ("applicant need only show that representation of his interests 'may be' inadequate, not that representation will in fact be

⁵ Movants have also demonstrated their direct and substantial interest in the Inventory Reset Rule by participating in the rulemaking that culminated in the final rule. Walls Decl. ¶¶ 13, 20.

inadequate.”). 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 in this circuit recognizing the inadequacy of governmental representation of the interests of private parties in certain circumstances”); *Fund for Animals*, 322 F.3d at 736 (despite overlap in interests, the U.S. Fish and Wildlife Service would not give Mongolia’s interests the necessary “primacy” that Mongolia would); *NRDC*, 561 F.2d at 912 n.41 (sufficient if representation may not be adequate because “the parties have different scopes to their interest.”). Mere general alignment between a private party and a government agency is not sufficient to establish adequate representation. *See Fund for Animals*, 322 F.3d at 736; *see also 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 allowed to intervene because “government must represent the broad public interest” not only the interests of an industry group).

Here, Movants are not represented at all by the Petitioners, who are directly adverse to Movants. Nor do Respondents adequately represent Movants’ interests,

as EPA does not represent the distinct private interests of Movants and their members. Movants exist in part to ensure that the companies they represent 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. Walls Decl. ¶ 20. Movants cannot rely solely on a public agency to safeguard these narrower concerns. *See Dimond*, 792 F.2d at 192-93. Hence, while Movants are generally aligned with EPA in support of the Inventory Reset Rule, Movants' interests are likely focused to a far greater degree than EPA on the potentially harmful consequences that revisions to the Inventory Reset Rule may possibly have on Movants' members' operations and commercial interests, including the ability to protect confidential business information. Moreover, precisely because Movants possess significant knowledge of the practical effects of implementing the Inventory Reset Rule and of any possible changes to it, their participation will supplement EPA's defense and offer elements to the proceeding that EPA cannot provide. Indeed, for these reasons, this Court and others have routinely granted industry requests to intervene in support of an agency rule. *See* decisions cited *supra* at 14, 16.

Thus, Movants and their members have significant interests, distinct from EPA's more general mandate, that could be impaired or impeded by the disposition

of these Petitions.⁶ Accordingly, Movants urge this Court to grant them leave to intervene as of right to represent fully their legitimate interests.

II. Movants Have Standing to Intervene in This Case

Movants also have Article III standing to intervene in support of Respondents here.⁷ An association has standing to intervene on behalf of its members when:

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

Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977). Only one Movant must satisfy these requirements. *See Military Toxics Project*, 146 F.3d at 954 (standing for one party among a group of aspiring intervenors is sufficient for the group). Here, each of these elements is met.

First, “at least some of [Movants’] members would have standing to [intervene] in their own right.” *Fed’n for Am. Immigration Reform, Inc. v. Reno*, 93 F.3d 897, 899 (D.C. Cir. 1996) (Federation would have had standing to sue if

⁶ 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.

⁷ Movants make the necessary showing of standing, while reserving the argument that standing is not required to intervene on behalf of a Respondent.

some of its members would, citing *Hunt*). Member companies have standing for the same reasons they fulfill the grounds for intervention, *see Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (“any person who satisfies Rule 24(a) will also meet Article III’s standing requirement”), as persons directly regulated and affected by the EPA action who would be impacted by the relief sought by the Petitioner. *See Fund for Animals*, 322 F.3d at 733. Indeed, the case law is clear: there is “little question” that a party who “is himself an object of [the governmental] action (or foregone action) at issue” has standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992); *cf. Grocery Mfrs. Ass’n v. EPA*, 693 F.3d 169, 175 (D.C. Cir. 2012) (parties “easily” establish standing when agency action imposes “regulatory restrictions, costs, or other burdens” on them). As outlined, Petitioner challenges the framework created by EPA’s Inventory Reset Rule that directly regulates Movants’ members’ ability to use certain chemical substances and further affects Movants’ members through the cascading procedures applied primarily to chemicals listed on active TSCA Inventory by the Prioritization and Risk Evaluation Rules. *See generally Walls Decl.*

Second, the interests that Movants seek to protect are germane to their organizational purposes of promoting the well-being of their member companies and of representing those interests in many contexts, including federal agency rulemaking. As detailed, one of Movants’ missions is to protect their members’

valuable interest in continuing to manufacture, process, distribute, and use chemicals. Walls Decl. ¶ 20. Hence, participating in litigation that could negatively impact that mission and potentially result in additional requirements clearly is germane to the Movants' purpose.

Finally, the participation of individual member companies is not required. Petitioner is seeking to overturn elements of a rulemaking applicable to multiple manufacturers, importers, processors, and users, and therefore this action is not directed at, and does not depend on the circumstances of, any specific entity.

Hence, Movants unquestionably have a sufficient stake in this case to support Article III standing.

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

Movants also qualify for permissive intervention.⁸ Federal Rule of Civil Procedure 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., EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998) (supporting flexible reading of Rule 24(b)).

⁸ This Circuit has not decided if standing is needed for permissive intervention. *E.g., In re Endangered Species Act Section 4 Deadline Litig.*, 704 F.3d 972 (D.C. Cir. 2013). Regardless, Movants have standing. *See* Section II, *supra*.

Permissive intervention requires neither 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 Petition only recently filed, 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 Petitioner presents on the merits and detail why the Inventory Reset Rule satisfies TSCA and is otherwise lawful. Because Movants and Petitioner maintain opposing positions on these common questions, Movants meet the standards for permissive intervention as well.

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

CONCLUSION

For the foregoing reasons, Movants respectfully seek leave to intervene in support of Respondents.

Dated: October 2, 2017

Respectfully submitted,

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PRUITT, Administrator, ENVIRONMENTAL
PROTECTION AGENCY,
Respondents.

Case No. 17-1201

RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, the American Chemistry Council, American Coatings Association, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Fuel & Petrochemicals Manufacturers, the 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, the National Association of Manufacturers, National Mining Association, Polyurethane Manufacturers Association, and Society of Chemical Manufacturers and Affiliates, respectfully submit this Corporate Disclosure Statement and state as follows:

1. The American Chemistry Council (“ACC”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in ACC.

2. The American Coatings Association (“ACA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in ACA.

3. The American Coke and Coal Chemicals Institute (“ACCCI”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in ACCCI.

4. The American Forest & Paper Association (“AF&PA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in AF&PA.

5. The American Fuel & Petrochemical Manufacturers (“AFPM”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in AFPM.

6. The American Petroleum Institute (“API”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in API.

7. The Chamber of Commerce of the United States of America (“the Chamber”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in the Chamber.

8. EPS Industry Alliance (“EPS-IA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in EPS-IA.

10. IPC International, Inc., doing business as “IPC - Association Connecting Electronics Industries (“IPC”),” states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in IPC.

11. The National Association of Chemical Distributors (“NACD”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in NACD.

12. The National Association of Manufacturers (“NAM”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in NAM.

13. The National Mining Association (“NMA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in NMA.

14. The Polyurethane Manufacturers Association (“PMA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in PMA.

15. The Society of Chemical Manufacturers and Affiliates (“SOCMA”) states that it has no parent companies, and no publicly-held company has a 10% or greater ownership interest in SOCMA.

Dated: October 2, 2017

Respectfully submitted,

/s/ Timothy K. Webster

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ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

ENVIRONMENTAL DEFENSE FUND,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and SCOTT
PRUITT, Administrator, ENVIRONMENTAL
PROTECTION AGENCY,
Respondents.

Case No. 17-1201

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 15(c)(3) and 28(a)(1), Movants submit this certificate as to parties, rulings, and related cases.

A. Parties and Amici. Because this case involves direct review of a final agency action, the requirement to furnish a list of parties, intervenors, and *amici* that appeared below is inapplicable. This case involves the following parties:

(i) Petitioners

The Petitioner in this case is the Environmental Defense Fund.

(ii) Respondents

Respondents in this case are the United States Environmental Protection Agency (“EPA”) and Scott Pruitt, in his official capacity as Administrator of EPA.

(iii) **Intervenors and Amici**

There are no *amici* at this time.

The Movant-Intervenors for Respondents are the American Chemistry Council, American Coatings Association, American Coke and Coal Chemicals Institute, American Forest and Paper Association, American Fuel & Petrochemical Manufacturers, 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, the National Association of Manufacturers, National Mining Association, Polyurethane Manufacturers Association, and Society of Chemical Manufacturers and Affiliates (collectively, “Movants”).

B. Ruling Under Review. The final agency action under review is the EPA action entitled “TSCA Inventory Notification (Active-Inactive) Requirements,” 82 Fed. Reg. 37,520 (Aug. 11, 2017).

C. **Related Cases.** This case has not previously been before this Court or any other court. Movants are aware of the following cases related to this matter: *Safer Chemicals Healthy Families, et al. v. EPA, et al.*, No. 17-72260 and consolidated cases (9th Cir.) (MCP No. 148); *Alliance of Nurses for Healthy Env'ts, et al. v. EPA*, No. 17-1926 and consolidated cases (4th Cir.) (MPC No. 149).

Dated: October 2, 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 5,069 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.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Leave to Intervene on Behalf of Respondents, along with associated Corporate Disclosure Statement and Certificate as to Parties, Rulings, and Related Cases, will be served this 2nd day of October 2017, electronically through the Court's CM/ECF system on all registered counsel.

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