

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

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NATURAL RESOURCES DEFENSE)	
COUNCIL,)	
)	
	Petitioner,)	
)	
	v.)	No. 19-1007
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, <i>et al.</i> ,)	
)	
	Respondents.)	
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**UNOPPOSED MOTION OF THE AIR PERMITTING FORUM,
AMERICAN CHEMISTRY COUNCIL, AMERICAN FOREST AND PAPER
ASSOCIATION, AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS, AMERICAN IRON AND STEEL INSTITUTE,
AMERICAN PETROLEUM INSTITUTE, AMERICAN WOOD COUNCIL,
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
NATIONAL ASSOCIATION OF MANUFACTURERS, 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, the Air Permitting Forum, American Chemistry Council, American Forest and Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Chamber of Commerce of the United States of America, National Association of Manufacturers, Portland Cement Association, and the

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. Counsel for Business Movant-Intervenors has contacted counsel for both Respondents and Petitioner to determine their position on this motion. Counsel for Respondents states that Respondents do not oppose this motion. Counsel for Petitioner states that it takes no position on this motion and does not intend to file an opposition or other response.

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

1. On January 14, 2019, Petitioner, Natural Resources Defense Council (“NRDC”) filed a petition for review challenging a final action taken by Respondents, U.S. Environmental Protection Agency and Acting EPA Administrator Andrew Wheeler (collectively “EPA” or “Agency”) entitled, “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Aggregation; Reconsideration,” which was published in the *Federal Register* at 83 Fed. Reg. 57,324 (Nov. 15, 2018) (“Final Action on Reconsideration”).

2. The Final Action on Reconsideration resolves a petition for reconsideration that was filed many years ago following the issuance of a final regulation by EPA on January 15, 2009. “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation and Project

Netting; Final Rule,” 74 Fed. Reg. 2376 (Jan. 15, 2009) (“2009 Final Action”). The 2009 Final Action was issued to provide a more accurate assessment of how companies should evaluate projects undertaken at their plants to determine applicability of NNSR and PSD. In the 2009 Final Action, EPA explained that “activities should be aggregated for the purposes of the NSR applicability determination only in cases where there is a substantial relationship among the activities, either from a technical or an economic standpoint.” *Id.* at 2377. EPA also clarified that the “determination of this relationship is based on the relevant case-specific facts and circumstances.” *Id.* In addition, the Agency reiterated “the role of timing in making aggregation decisions and establishe[d] for the first time a rebuttable timing-based presumption that permitting authorities [could] rely upon to support a determination for nonaggregation.” *Id.* The 2009 Final Action was put on hold indefinitely by the prior administration while it undertook its reconsideration process.¹ See “Prevention of Significant Deterioration (PSD) and

¹ On March 16, 2009, NRDC, the Petitioner in the current case, filed a Petition for Review challenging the January 15, 2009 final rule. Pet. for Review, *NRDC v. EPA*, 09-1103 (D.C. Cir. Mar. 16, 2009). This court subsequently granted a joint motion filed by NRDC and EPA requesting that the case be placed in abeyance pending decision on reconsideration. Order, *NRDC v. EPA*, 09-1103 (D.C. Cir. May 5, 2009). On December 7, 2018, EPA filed an motion to govern future proceedings in the 09-1103 case notifying the court that the Agency had concluded the reconsideration proceeding. Unopposed Motion to Govern Future Proceedings Following Conclusion of Administrative Reconsideration, *NRDC v. EPA*, 09-1103 (D.C. Cir. Dec. 7, 2018). In response, this court issued an order directing the parties “to file any procedural motions to consolidate and . . . other appropriate

Nonattainment New Source Review (NSR): Aggregation; Delay of effective date,” 75 Fed. Reg. 27,643, 27,644 (May 18, 2010). The reconsideration proceedings, though initiated, became dormant and was never completed by the prior administration. The Final Action on Reconsideration denies the reconsideration petition and lifts the stay to allow the 2009 Final Action to become effective.

3. For each of the Business Movant-Intervenors, their member companies routinely need to determine the scope of the projects subject to evaluation for NNSR and PSD permitting applicability. The 2009 Final Action provided important guidance as to how to conduct that evaluation. Based on comments filed during the comment period for the 2009 Final Action and in response to the EPA proposal on reconsideration, it is anticipated that Petitioner will seek to invalidate the EPA’s 2009 Final Action and establish an interpretation of the Clean Air Act that compels more projects to become subject to NNSR and PSD based on considering multiple projects a single project. *See NRDC, et al. Comments on EPA’s “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Debottlenecking, Aggregation, and Project Netting; Proposed Rule,”* 71 Fed. Reg. 54,235 (Sept. 14, 2006), EPA Docket No. EPA-HQ-OAR-2003-0064-0075. If successful, such a result would

motions to govern further proceedings” by February 14, 2019. Order, *NRDC v. EPA*, 09-1103 (D.C. Cir. Dec. 19, 2018). Assuming that this court consolidates the current case with the No. 09-1103, Business Movant-Intervenors are prepared to comply with whatever scheduling orders are set for the consolidated cases.

adversely affect Business Movant-Intervenors, subjecting projects at their plants to delays and potentially new, inappropriate control or emission offset requirements. Paragraphs 4 through 14 provide descriptions of the associations that comprise the Business Movant-Intervenors.

4. The Air Permitting Forum (“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 Forum participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. The Forum’s members operate manufacturing facilities throughout the U.S. that are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA’s Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on Forum members.

5. 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 \$526 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for ten 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 manufacturing facilities throughout the U.S. that are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on ACC's members.

6. 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, manufactures over \$300 billion in products annually, and employs nearly 950,000 men and women. The industry meets a payroll of approximately \$55 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 manufacturing facilities throughout the U.S. that are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AF&PA's members.

7. 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AFPM's members.

8. 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AISI's members.

9. The American Petroleum Institute (“API”) is a national trade association with over 600 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA’s Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on API’s members.

10. The American Wood Council (AWC) is the voice of North American wood products manufacturing, an industry that provides approximately 450,000 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on AWC's members.

11. 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under

the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the Chamber's members.

12. 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the NAM's members.

13. 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 91 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 are subject to NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA’s Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on PCA’s members.

14. 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 NNSR and PSD permitting requirements, which are the requirements affected by the final action challenged in this case. Its members undertake projects that, if Petitioner is successful in its challenge to EPA's Final Action on Reconsideration, could be required to be treated as a single project under the NNSR and PSD regulations. Therefore, disposition of the issues raised in this case will have a substantial direct impact on UARG's members.

15. 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).

16. 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.

17. 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 Business Movant-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 Business Movant-

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).

18. 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 Petitioner's requested relief because they operate manufacturing facilities throughout the U.S. that are subject to the NNSR

and PSD permitting requirements being challenged in this case. This Court has held that these requirements are “self-executing.” *See Texas v. EPA*, 726 F.3d 180, 187 (D.C. Cir. 2013). If Petitioner is successful in its challenge to the final action at issue in this case, projects that should be considered separate from one another would be considered a single project, subjecting them to delays and additional permitting requirements. Thus, if Petitioner prevails in this case, Business Movant-Intervenors’ member companies will be required to obtain permits or bear additional costs that would not be required if EPA’s action is upheld.

19. No other party to this case directly represents Business Movant-Intervenors’ interests. The Petitioner, an environmental advocacy organization, does not represent Movant-Intervenors’ interests. Indeed, Business Movant-Intervenors anticipate that Petitioner’s asserted positions will be largely contrary to Movant-Intervenors’ positions. Further, while Business Movant-Intervenors’ positions will likely align somewhat with Respondents’ positions, 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']," their 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: February 13, 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion of Movant-Intervenors the Air Permitting Forum, American Chemistry Council, American Forest and Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Chamber of Commerce of the United States of America, National Association of Manufacturers, Portland Cement Association, and the 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 3,800 words, excluding exempted portions, according to the count of Microsoft Word.

/s/ Shannon S. Broome
Shannon S. Broome

DATED: February 13, 2019

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**MOVANT-INTERVENORS
RULE 26.1 STATEMENTS**

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

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

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 \$526 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for ten 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 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 gross domestic product, manufactures over \$300 billion in products annually, and employs nearly 950,000 men and women. The industry meets a payroll of approximately \$55 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 600 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 450,000 men and women in the U.S. with family-wage jobs. AWC represents 86 percent of the structural wood products industry, and members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC states that it is a “trade association” for purposes of Circuit Rule 26.1(b). AWC has no parent corporation and no publicly held company has a 10 percent or greater ownership interest in AWC.

The Chamber of Commerce of the United States of America (“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 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 91 percent of US cement production capacity and have facilities in all 50 states. PCA 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.

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DATED: February 13, 2019

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

<hr/>)	
NATURAL RESOURCES DEFENSE)	
COUNCIL,)	
)	
	Petitioner,)	
)	
	v.)	No. 19-1007
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, <i>et al.</i> ,)	
)	
	Respondents.)	
<hr/>)	

**MOVANT-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 Business Movant-Intervenors:

Parties and *Amici*

This case involves a challenge to a final action taken by Respondents, U.S. Environmental Protection Agency and Acting EPA Administrator Andrew Wheeler (collectively “EPA” or “Agency”) entitled, “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Aggregation; Reconsideration,” which was published in the *Federal Register* at 83

Fed. Reg. 57,324 (Nov. 15, 2018). There was no action in the district court, and so there were no parties in the district court. The parties in this case include:

Petitioner

Natural Resources Defense Council

Respondents

U.S. Environmental Protection Agency and Andrew Wheeler, Acting Administrator, U.S. Environmental Protection Agency.

Movant Respondent-Intervenors

Air Permitting Forum, American Chemistry Council, American Forest and Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Chamber of Commerce of the United States of America, National Association of Manufacturers, Portland Cement Association, and the Utility Air Regulatory Group. In addition, the National Development Association's Clean Air Project has also filed a separate motion for leave to intervene in support of Respondents.

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.

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DATED: February 13, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of February, 2019, I caused to be electronically filed the foregoing Motion of Business Movant-Intervenors the Air Permitting Forum, American Chemistry Council, American Forest and Paper Association, American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, American Petroleum Institute, American Wood Council, Chamber of Commerce of the United States of America, National Association of Manufacturers, Portland Cement Association, and the Utility Air Regulatory Group 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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