

**ORAL ARGUMENT NOT YET SCHEDULED**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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LOUISIANA ENVIRONMENTAL ACTION	)	)
NETWORK, SIERRA CLUB, CLEAN AIR	)	)
COUNCIL, DESERT CITIZENS AGAINST	)	)
POLLUTION, MONTANANS AGAINST	)	)
TOXIC BURNING, HURON	)	)
ENVIRONMENTAL ACTIVIST LEAGUE,	)	)
DOWNWINDERS AT RISK, PARTNERSHIP	)	)
FOR POLICY INTEGRITY, AND	)	)
ENVIRONMENTAL INTEGRITY PROJECT,	)	)
	)	)
Petitioners,	)	)
	)	)
v.	)	)
	)	)
UNITED STATES ENVIRONMENTAL	)	)
PROTECTION AGENCY and ROBERT	)	)
PERCIASEPE, in his official capacity as	)	)
Acting Administrator of the U.S.	)	)
Environmental Protection Agency,	)	)
	)	)
Respondents.	)	)
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No. 13-1120  
 (consolidated with  
 No. 13-1111, 13-1113,  
 13-1114, 13-1116,  
 13-1116, 13-1118,  
 13-1119, 13-1120,  
 13-1121, 13-1123,  
 13-1124, 13-1125,  
 and 13-1127)

**MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, the American Wood Council (“AWC”), American Forest & Paper Association (“AF&PA”), Chamber of Commerce of the United States of America (“Chamber”), Corn Refiners Association (“CRA”), National Association of Manufacturers (“NAM”), and National Oilseed Processors Association

(“NOPA”) (collectively, “the Associations”) respectfully move for leave to intervene as respondents in case No. 13-1120, which has been consolidated with case No. 13-1111 and related challenges.<sup>1</sup> The petition for review in case No. 13-1120 was filed by the Louisiana Environmental Action Network, Sierra Club, Clean Air Council, Desert Citizens Against Pollution, Montanans Against Toxic Burning, Huron Environmental Activist League, Downwinders at Risk, Partnership For Policy Integrity, and Environmental Integrity Project (“Petitioners”) and challenges a final regulation of the U.S. Environmental Protection Agency (“EPA” or the “Agency”) entitled “Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste,” published at 78 Fed. Reg. 9112 *et seq.* (February 7, 2013) (“Final CISWI Rule”).

Certain of the Associations filed a petition for review with this court on April 8, 2013, challenging the Final Rule. That petition was docketed as No. 13-1123. The following cases have subsequently been consolidated with this petition: Nos. 13-1111, 13-1113, 13-1114, 13-1116, 13-1118, 13-1119, 13-1120, 13-1121, 13-1124, 13-1125 and 13-1127. The Associations now seek leave to intervene as

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<sup>1</sup> Counsel for all parties to this motion have given consent to Counsel for AWC, et al. to sign the motion on their behalf.

Respondents in support of the U.S. Environmental Protection Agency (“EPA”) as to issues that may be raised in the Petitioners’ petition for review.

EPA takes no position on this motion. Petitioners do not oppose this motion as to associations with members affected by the Final CISWI Rule.

### **BACKGROUND**

The Final CISWI Rule was promulgated by EPA under the authority of the Clean Air Act (“CAA”) § 129, 42 U.S.C. § 7429. 78 Fed. Reg. at 9115. The standard strictly regulates emissions of specified pollutants from commercial and industrial solid waste incinerators. The term “commercial and industrial solid waste incineration (CISWI) unit” is defined in the rule to mean “any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241.” *Id.* at 9188. Members of the Associations operate solid waste incinerators that are subject to the Final CISWI Rule. *See, e.g., AF&PA et al., Comments on Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments (EPA-HQ-OAR-2003-0119) at 1 (Feb. 21, 2012), Doc. ID No. EPA-HQ-OAR-2003-0119-2611 (“AF&PA Comments”).*

In their comments on the proposed rule, the Petitioners asserted that EPA “persists in several approaches that are unlawful and arbitrary.” Comments of Earthjustice, *et al.* at 1 (Feb. 21, 2012), Doc. ID No. EPA-HQ-OAR-2003-0119-2638. Many of the issues on which the Petitioners commented were not resolved in the final rule in the manner suggested by the Petitioners. For example, the Petitioners asserted in their comments that “[a]ll of EPA’s subcategories are unlawful and arbitrary . . . . In the proposed reconsidered CISWI Rule, EPA compounds the errors made in the final rule with respect to subcategories, for example treating coal and biomass ERUs separately for a larger number of pollutants.” *Id.* at 2.

Notwithstanding this comment, EPA chose in the final rule to utilize subcategories for coal and biomass units. 78 Fed. Reg. at 9122 (“[W]e have determined that it is appropriate to subcategorize solid fuel ERUs for all nine CAA section 129 pollutants. We recognize that there are significant design and operational differences between biomass and coal ERU units that impact the generation of all nine regulated pollutants, and, for this reason, we are establishing separate emission standards for all nine pollutants from coal and biomass ERUs in the final rule.”).

In contrast to the Petitioners, the Associations filed comments in support of the use of subcategories for coal and biomass units. AF&PA Comments at 28

(“We support the further differentiation between coal-fired and biomass ERUs proposed in the December 2011 rule due to the differences highlighted by EPA.”). The Associations have a legal interest in litigation challenging the Final CISWI Rule and in supporting EPA’s final decision to subcategorize for coal and biomass units as well as other similar issues that may be raised by the Petitioners.

### **ARGUMENT**

The Court should grant the Associations’ motion for leave to intervene as a Respondent because the Associations meet the standard for intervention in petition for review proceedings in this Court.

#### **I. Standard for Intervention in Petition for Review Proceedings in This Court.**

Intervention in petition for review proceedings in this Court is governed by Federal Rule of Appellate Procedure 15(d), which provides 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 the interest of the moving party and the grounds for intervention.” This Court has held that this rule “simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991). Under the Federal Rules of Civil Procedure, “the ‘interest’ test [for intervention] is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency

and due process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); *see also* *id.* at 704 (citing *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 133 (1967)). Appellate courts, including this Court, have recognized that policies supporting district court intervention under Federal Rule of Civil Procedure 24, while not binding in cases originating in courts of appeals, may inform their intervention inquiries. *See, e.g., Int’l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *Amalgamated Transit Union Int’l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985). As discussed below, the Associations meet the elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2)<sup>2</sup> and, thus, satisfy any standing test that arguably might apply to intervention. *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (“Requiring standing of someone who seeks to intervene as a defendant. . . runs into the doctrine that the standing inquiry is directed at those who invoke the court’s jurisdiction.”) (citing *Virginia v. Hicks*, 539 U.S. 113, 118-22 (2003)); *see also Jones v. Prince George’s Cnty.*, 348 F.3d 1014, 1018 (D.C. Cir. 2003).<sup>3</sup>

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<sup>2</sup> Rule 24(a)(1) does not apply here; it authorizes intervention when a federal statute confers an unconditional right to intervene.

<sup>3</sup> Each of the Associations is a trade association and has standing to litigate on its members’ behalf 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

The requirements for intervention of right under Federal Rule of Civil Procedure 24(a)(2) are: (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). The Associations satisfy these requirements in the present case.

## **II. The Associations Meet the Standard for Intervention in this Case.**

### **A. The Motion Is Timely.**

The Associations meet the timeliness requirement because this motion is being filed, in compliance with Federal Rule of Appellate Procedure 15(d), within 30 days after the Petitioners filed their petitions for review. Moreover, because this motion is being filed at an early stage of the proceedings and before proposal or establishment of a schedule and format for briefing, granting this motion will

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relief requested requires the participation of individual members in the lawsuit.

*Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). For reasons discussed herein, the interests of members of the Associations will be harmed if the Petitioners prevail in this litigation. Those members, therefore, would have standing to intervene in their own right. Moreover, the participation of individual members of the Associations in this litigation is not required.

not disrupt or delay any proceedings. If granted intervention, the Associations will comply with any briefing schedule established by the Court.

**B. The Associations and Their Members Have Interests that Will Be Impaired If the Petitioners Prevail.**

The individual companies that are members of the Associations operate numerous solid waste incinerators that are subject to the Final CISWI Rule. A ruling in the Petitioners' favor in this case on key issues, such as a decision overturning EPA's decisions to subcategorize and other similar issues, would harm the Associations' interests. Such an outcome on this or other similar issues would ultimately make the Final CISWI Rule more stringent or difficult to meet, causing the Associations' members to face additional costly requirements that would significantly affect their business and ability to operate.

Where parties are, as the Associations' members are here, objects of governmental regulation, "there is ordinarily little question that the action or inaction has caused [them] injury . . . ." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992); *see also Croplife Am. v. EPA*, 329 F.3d 876, 884 (D.C. Cir. 2003) (where there is "no doubt" a rule causes injury to a regulated party, standing is "clear"); *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) (in many cases standing is "self-evident").

In sum, the additional regulatory burdens and compliance costs the Associations' members would bear if Petitioners prevail in their challenge to the



Final CISWI Rule would harm the interests of members of the Associations. As a result, the Associations should be granted leave to intervene as a respondent.

**C. Existing Parties Cannot Adequately Represent the Associations' Interests.**

Under Federal Rule of Civil Procedure 24(a)(2), the burden of showing inadequate representation in a motion for intervention “is not onerous . . . [t]he applicant need only show that representation of his interest ‘may be’ inadequate, not that representation will in fact be inadequate.” *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Assuming *arguendo* that inadequate representation is an applicable test for intervention under Federal Rule of Appellate Procedure 15(d),<sup>4</sup> the Associations easily pass that test here.

The interests of the Petitioners are directly opposed to those of the Associations; the Petitioners cannot adequately represent the Associations' interests.

Moreover, EPA cannot adequately represent the Associations' interests. The Agency, as a governmental entity, necessarily represents the broader “general public interest.” *Dimond*, 792 at 192-93 (“A government entity . . . is charged by

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<sup>4</sup> Federal Rule of Civil Procedure 24(a)(2)'s “adequate representation” prong has no parallel in Federal Rule of Appellate Procedure 15(d), but we address it here to inform the Court fully.

law with representing the public interest of its citizens . . . . The District [of Columbia] would be shirking its duty were it to advance th[e] narrower interest [of a business concern] at the expense of its representation of the general public interest.”). Unlike EPA, the Associations have the comparatively narrow interest of avoiding the imposition of unreasonably expensive emission control obligations on their members.

This Court has recognized that, “[e]ven when the interests of EPA and [potential intervenors] can be expected to coincide, . . . that does not necessarily mean that adequacy of representation is ensured . . . .” *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). In *NRDC v. Costle*, rubber and chemical manufacturers sought to intervene in support of EPA. In light of the fact that the companies’ interests were narrower than those of EPA and were “concerned primarily with the regulation that affects their industries . . . [the companies’] participation in defense of EPA decisions that accord with their interest may also be likely to serve as a vigorous and helpful supplement to EPA’s defense.” *Id.* at 912-13 (emphasis omitted). Similarly, the unique perspective the Associations bring to this case with regard to the operation of solid waste incinerators will supplement EPA’s position.

Furthermore, that EPA does not and cannot adequately represent the Associations is reinforced by the nature of the relationship between EPA, as the federal agency with regulatory responsibility under the CAA, and members of the

Associations, as the frequent object of EPA regulations under the Act. This relationship can feature litigation under the Act in which the Associations and EPA oppose each other. Indeed, certain of the Associations have filed a petition for review against EPA on other aspects of this very same rule. *See* Petition for Review, *American Wood Council v. EPA*, No. 13-1123 (D.C. Cir. filed Apr. 8, 2013).

In sum, EPA does not and cannot adequately represent the Associations' interests in this case.

### **CONCLUSION**

For the foregoing reasons, the Associations respectfully requests leave to intervene as respondents.

Respectfully submitted,

/s/ William L. Wehrum

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Dated: May 8, 2013

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**RULE 26.1 DISCLOSURE STATEMENT OF  
MOVANT-INTERVENOR AMERICAN WOOD COUNCIL**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant-Intervenor American Wood Council (“AWC”) makes the following declarations:

The American Wood Council (AWC) is the voice of North American traditional and engineered wood products, representing over 75% of the industry. From a renewable resource that absorbs and sequesters carbon, the wood products industry makes products that are essential to everyday life and employs over one-third of a million men and women in well-paying jobs. AWC's engineers, technologists, scientists, and building code experts develop state-of-the-art engineering data, technology, and standards on structural wood products for use by design professionals, building officials, and wood products manufacturers to assure the safe and efficient design and use of wood structural components. AWC also provides technical, legal, and economic information on wood design, green building, and manufacturing environmental regulations advocating for balanced government policies that sustain the wood products industry.

Respectfully submitted,

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*Counsel for American Wood Council*

Dated: May 8, 2013

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**RULE 26.1 DISCLOSURE STATEMENT OF MOVANT-INTERVENOR  
AMERICAN FOREST & PAPER ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant-Intervenor, American Forest & Paper Association (“AF&PA”), makes the following declarations:

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about \$175 billion in products annually and employ nearly 900,000 men and women, exceeding employment levels in the automotive, chemicals and plastics industries. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 47 states. No parent corporation or publicly held company has a ten percent (10%) or greater ownership interest in AF&PA.

Respectfully submitted,

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*Counsel for American Forest & Paper  
Association*

Dated: May 8, 2013



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**RULE 26.1 DISCLOSURE STATEMENT OF MOVANT-INTERVENOR  
CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and  
Circuit Rule 26.1, the undersigned Movant-Intervenor, Chamber of Commerce of  
the United States of America (the “Chamber”), makes the following declarations:

The Chamber is a non-profit corporation organized and existing under the laws of the District of Columbia. The Chamber is not a publicly held corporation and no corporation or other publicly held entity holds more than 10% of its stock.

The Chamber is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry, from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before the courts, Congress, and the Executive Branch. Many of the Chamber's members are subject to the regulations at issue in this matter.

Respectfully submitted,

/s/ Rachel L. Brand

Rachel L. Brand

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Dated: May 8, 2013

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**RULE 26.1 DISCLOSURE STATEMENT OF  
MOVANT-INTERVENOR CORN REFINERS ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and  
Circuit Rule 26.1, Movant-Intervenor Corn Refiners Association (“CRA”) makes  
the following declarations:

CRA is a non-profit, national trade association headquartered in the District of Columbia. CRA has no parent corporation. CRA serves as the voice of the U.S. corn wet millers industry in the public policy arena. CRA is comprised of 6 member companies with 23 plants located throughout the United States.

Respectfully submitted,

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*Counsel for Corn Refiners Association*

Dated: May 8, 2013

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**RULE 26.1 DISCLOSURE STATEMENT OF MOVANT-INTERVENOR  
THE NATIONAL ASSOCIATION OF MANUFACTURERS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and  
Circuit Rule 26.1, Movant Intervenor, the National Association of Manufacturers  
("NAM"), makes the following declarations:

The NAM is the nation's largest industrial trade association, representing small and large manufacturers in every industrial sector and in all 50 states. The NAM's mission is to enhance the competitiveness of manufacturers by shaping a legislative and regulatory environment conducive to U.S. economic growth and to increase understanding among policymakers, the media and the general public about the vital role of manufacturing to America's economic future and living standards. The NAM has no parent company, and no publicly held company has a 10% or greater ownership interest in the NAM.

Respectfully submitted,

/s/ Quentin Riegel

Quentin Riegel

Vice President, Litigation

& Deputy General Counsel

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No. 13-1120  
 (consolidated with  
 No. 13-1111, 13-1113,  
 13-1114, 13-1116,  
 13-1116, 13-1118,  
 13-1119, 13-1120,  
 13-1121, 13-1123,  
 13-1124, 13-1125,  
 and 13-1127)

**RULE 26.1 DISCLOSURE STATEMENT OF MOVANT-INTERVENOR  
NATIONAL OILSEED PROCESSORS ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and  
 Circuit Rule 26.1, Movant-Intervenor National Oilseed Processors Association  
 (“NOPA”) makes the following declarations:

NOPA is a non-profit, national trade association headquartered in the District of Columbia. NOPA has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in NOPA. NOPA represents 12 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process more than 1.6 billion bushels of oilseeds annually at 62 plants located in 19 states throughout the country, including 57 plants that process soybeans.

Respectfully submitted,

/s/ William L. Wehrum

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*Counsel for National Oilseed Processors  
Association*

Dated: May 8, 2013



**ORAL ARGUMENT NOT YET SCHEDULED**

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

<hr/>		)
LOUISIANA ENVIRONMENTAL ACTION	)	)
NETWORK, SIERRA CLUB, CLEAN AIR	)	)
COUNCIL, DESERT CITIZENS AGAINST	)	)
POLLUTION, MONTANANS AGAINST	)	)
TOXIC BURNING, HURON	)	)
ENVIRONMENTAL ACTIVIST LEAGUE,	)	)
DOWNWINDERS AT RISK, PARTNERSHIP	)	)
FOR POLICY INTEGRITY, AND	)	)
ENVIRONMENTAL INTEGRITY PROJECT,	)	)
	)	)
Petitioners,	)	)
	)	)
v.	)	)
	)	)
UNITED STATES ENVIRONMENTAL	)	)
PROTECTION AGENCY and ROBERT	)	)
PERCIASEPE, in his official capacity as	)	)
Acting Administrator of the U.S.	)	)
Environmental Protection Agency,	)	)
	)	)
Respondents.	)	)
	)	)
<hr/>		)

No. 13-1120  
 (consolidated with  
 No. 13-1111, 13-1113,  
 13-1114, 13-1116,  
 13-1116, 13-1118,  
 13-1119, 13-1120,  
 13-1121, 13-1123,  
 13-1124, 13-1125,  
 and 13-1127)

**CERTIFICATE AS TO 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 the American Wood Council (“AWC”), American Forest & Paper Association (“AF&PA”), Chamber of Commerce of the United States of America

(“Chamber”), and National Association of Manufacturers (“NAM”) (collectively, “the Associations”):

### **Parties and Amici**

This case involves consolidated petitions for review of a final regulation of the United States Environmental Protection Agency entitled “Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste,” published at 78 Fed. Reg. 9112 *et seq.* (February 7, 2013) (“Final CISWI Rule”). There was no action in the district court, and so there were no parties in the district court.

The parties in this Court in these consolidated petitions for review are:

### **Petitioners**

Portland Cement Association (Case No. 13-1111);  
CEMEX, Inc. and CEMEX Construction Materials Florida, LLC  
(Case No. 13-1113);  
Eastman Chemical Company (Case No. 13-1114);  
American Petroleum Institute (Case No. 13-1116);  
American Chemistry Council (Case No. 13-1118);  
Coalition for Responsible Waste Incineration (Case No. 13-1119);

Louisiana Environmental Action Network, Sierra Club, Clean Air Council, Desert Citizens Against Pollution, Montanans Against Toxic Burning, Huron Environmental Activist League, Downwinders at Risk, Partnership for Policy Integrity and Environmental Integrity (Case No. 13-1120);

The Alaska Oil and Gas Association, Alaska Miners Association, and ConocoPhillips Alaska, Inc. (Case No. 13-1121);

Energy Recovery Council (Case No. 13-1124);

Auto Industry Forum (Case No. 13-1125); and,

WM Organic Growth, Inc., Wheelabrator Technologies, Inc., Wheelabrator Ridge Energy, Inc. and Waste Management, Inc. (Case No. 13-1127).

### **Respondents**

United States Environmental Protection Agency is the Respondent in all of these cases.

Robert Perciasepe, Acting Administrator, United States Environmental Protection Agency, is also named as a Respondent in cases Nos. 13-1111, and 13-1120.

### **Movant-Intervenors**

As of the date of the filing, the Associations are aware of the following movant-intervenors: American Chemistry Council; Portland Cement Association; Council of Industrial Boiler Owners; WM Organic Growth, Inc., Wheelabrator

Technologies, Inc., Wheelabrator Ridge Energy, Inc., WM Renewable Energy, LLC, and Waste Management, Inc.; Eastman Chemical Company; Clean Air Council, Huron Environmental Activist League, Partnership for Policy Integrity, and Sierra Club; Coalition for Responsible Waste Incineration; Auto Industry Forum; and, Alaska Miners Association, Alaska Oil and Gas Association, and ConocoPhillips Alaska, Inc.

We are unaware that this Court has granted any interventions at this time on these petitions for review.

**Amici**

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

Respectfully submitted,

/s/ William L. Wehrum

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Refiners Association, and National Oilseed  
Processors Association*

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Dated: May 8, 2013

Of Counsel:

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**CERTIFICATE OF SERVICE**

I hereby certify that, on this 8<sup>th</sup> day of May, 2013, a copy of the foregoing Motion for Leave to Intervene as Respondents was served electronically through the court's CM/ECF system on all registered counsel.

/s/ William L. Wehrum

William L. Wehrum