UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Docket No. 10-1115 (consolidated with Nos. 10-1109, 10-1110, 10-1114, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, 10-1129)

MOTION FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT

Pursuant to Federal Rules of Appellate Procedure Rule 15(d) and 27 and Circuit Rules Rule 15(b) and 27, the National Association of Manufacturers, American Frozen Food Institute, American Petroleum Institute, Brick Industry Association, Corn Refiners Association, Glass Packaging Institute, Independent Petroleum Association of America, Michigan Manufacturers Association, Mississippi Manufacturers Association, National Association of Home Builders, National Federation of Independent Business, National Oilseed Processors Association, National Petrochemical and Refiners Association, Specialty Steel Industry of North America, Tennessee Chamber of Commerce and Industry, Western States Petroleum Association, West Virginia Manufacturers Association, and Wisconsin Manufacturers & Commerce (collectively "Movants") respectfully

request leave to intervene on behalf of the Respondent in No. 10-1115.

Petitioner Center for Biological Diversity filed the petition for review in this case to challenge a final action of Respondent, the U.S. Environmental Protection Agency ("EPA") entitled "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs; Final Rule." 75 Fed. Reg. 17,004 (Apr. 2, 2010) (hereinafter, "Final Action"). This rule established the EPA's position on the reconsideration of a memorandum that the Agency issued on December 18, 2008, entitled "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." The petition for review was filed under Section 307(b)(1) of the Clean Air Act ("CAA"), 42 U.S.C. § 7607(b)(1), on May 28, 2010.

I. Introduction and Interests of Intervenor

Movants are business organizations and trade associations whose members include many companies engaged in key business sectors in the United States, including manufacturing, construction, retail, and production and refining of petroleum. Members of the movant associations own and operate facilities that emit carbon dioxide ("CO_2") and/or other greenhouse gases ("GHGs"). Because GHGs have not previously been subject to the CAA's Prevention of Significant Deterioration ("PSD") permitting program (42 U.S.C. §§ 7470-7479), the GHG

emissions of Movants' member facilities are not currently regulated under that program.

The Final Action under review confirms that GHGs have not previously been regulated pollutants under the PSD program and purports to begin regulation of GHGs under PSD as of January 2, 2011.[1] In challenging the Final Action in this Court, Petitioner is likely to argue that the CAA required GHGs to be regulated under the PSD program prior to January 2, 2011 (and that GHGs are *currently* subject to regulation under the Act). If this Court were to agree, Movants' members could face liability for activities that occur or have occurred prior to January 2, 2011, including potentially being subject to penalties and injunctive relief. Such a result not only could compel many members to undergo a costly permitting process never before required, but would also impose on members potentially significant costs of control and emission reduction. It could also cause some members' projects that are not yet complete to be abandoned or at least very significantly delayed. As such, Movants have a substantial interest in the outcome of this case.[2]

---

[1] Movants have also filed a petition for review of the final action at issue in D.C. Circuit Case No. 10-1127. By intervening in the instant case, Movants do not concede that January 2, 2011, is the correct date for subjecting GHGs to regulation or that GHGs should be considered subject to regulation at all.

[2] A corporate disclosure statement pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1 and a certificate of parties pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A) are attached as an addendum to this motion.

II. Reasons for Granting Intervention

Movants should be permitted to intervene in this case because they have a significant, direct interest in the outcome of this case that will be harmed if the Final Action is reversed in whole or in part, and that interest will not be adequately represented in the absence of intervention. In addition, the petition to intervene is timely, and granting intervention will not adversely affect any party or the timely resolution of the case.

A. Movants have a direct and substantial interest in the outcome of this case.

Movants have a substantial interest in the subject matter of this case because its members are subject to the regulations at issue.[3] Movants anticipate that Petitioners will argue that the CAA compels EPA and States to regulate GHG emissions under the PSD program (*i.e.,* that GHGs are currently subject to regulation under the Act).

[3] Movants meet Article III standing requirements because its members are the subject of the provisions in question in this case, and the individual participation of the members in the case is not required. *See Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (finding trade association had standing in challenge of EPA regulation where some of its members were subject to challenged regulation). Nonetheless, this Court has indicated that Article III standing should not be required of any party seeking to intervene as a defendant. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003), *cert. denied*, 542 U.S. 915 (2004) ("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") (citations omitted). This principle applies equally to parties seeking to intervene as respondents in CAA petitions for review.

A ruling in Petitioners' favor could force an expansion of the PSD program that reaches back in time and places in past and present activities in jeopardy. It could also mean that Movant members' facilities that had obtained or are in the process of obtaining permit emission limitations to avoid triggering the PSD program would become subject to the PSD program, thus increasing the regulatory burden for other facilities owned and/or operated by Movants' members that are currently regulated under PSD for pollutants other than GHGs. That is so because the CAA requires permitting of any new or modified existing stationary source that has the potential to emit 100 tons per year or 250 tons per year of a regulated pollutant, depending on the type of source. CAA § 169(1); 42 U.S.C. § 7479(1). For currently regulated PSD pollutants, such as particulate matter and sulfur dioxide, the statutory thresholds bring relatively few sources under regulation because those pollutants are emitted by relatively few facilities in large quantities. By contrast, GHGs, in particular CO_2, are emitted by large numbers of facilities of all sizes—*e.g.*, any fossil fuel-burning furnace, boiler, or engine—in quantities that exceed the emission thresholds.[4]

[4] On June 3, 2010, EPA issued another action that purports to increase these thresholds, but that action is also subject to review in this court. *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule*, 75 Fed. Reg. 31,514 (June 3, 2010) ("Tailoring Rule"); *see* Coalition for Responsible Regulation v. EPA, No. 10-1132 (D.C. Cir.) and Southeastern Legal Foundation v. EPA, No. 10-1131 (D.C. Cir.). Moreover, because the Tailoring Rule is predicated on the beginning of GHG regulation being January 2, 2011, the

As a result, thousands of members' facilities around the nation that were not considered by EPA or states to fall within the PSD program could be forced to undergo the permitting process, and new facilities exceeding relevant thresholds because of their GHG emissions could have to obtain permits including "best available control technology" for *any* regulated pollutant they emitted at the lower "significance" levels provided by regulation. *See* 40 C.F.R. § 52.21(b)(1), (b)(23). Moreover, both those newly covered facilities and facilities previously covered by the PSD program could be forced to install costly control technology for GHGs.

Because Petitioner's challenge has the potential to bring Movants' members under these burdensome governmental regulations, Movants clearly have interests sufficient to merit intervention.

B. The interests of Movants are not adequately represented by any of the existing parties.

Intervention is appropriate and necessary to adequately protect Movants' interests. The burden of showing inadequate representation "is not onerous," and an "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) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Because Petitioner opposes the Final

---

effect of that action on new and modified sources initiated prior to its promulgation is unclear.

Action that Movants would defend,[5] Petitioner cannot, of course, adequately represent Movants' interests.

Nor can EPA adequately represent Movants' interests. As a governmental entity, EPA must avoid advancing the "narrower interest" of certain businesses "at the expense of its representation of the general public interest." *Dimond*, 792 F.2d at 192-93. Although EPA must take into account the cost-effectiveness of regulations, EPA must also pursue its general public mandate to improve the nation's air quality. In contrast, Movants admittedly have a "narrower interest," namely, helping ensure that their members are not thrust into a new and potentially unwarranted permitting process, with dire economic consequences, in the absence of a thorough administrative analysis of the impacts of that regulation or in a manner that is inconsistent with the Clean Air Act and Congressional intent. Particularly at a time when American industry continues to try to recover from the effects of a deep recession, Movants cannot rely solely on a mission-oriented public agency to safeguard their concerns.

Even if Movants' interests and EPA's interests were more closely aligned, "that [would] not necessarily mean that adequacy of representation is ensured."

[5] As noted above, Movants would defend the Final Action to the extent it concludes that GHGs are not currently "subject to regulation" under the CAA. Movants reserve their rights, *inter alia*, to contend that GHGs do not become subject to regulation on January 2, 2011 as EPA states in the Final Action and the Tailoring Rule.

NRDC v. Costle, 561 F.2d 904, 912 (D.C. Cir. 1977). Precisely because Movants' interests are "more narrow and focused than EPA's," Movants' participation is "likely to serve as a vigorous and helpful supplement to EPA's defense." *Id.* Furthermore, while both Movants and EPA agree that GHGs are not currently "subject to regulation" under the CAA, they disagree as to how and when GHGs will become subject to regulation in the future. In that respect, their positions are not aligned. EPA's defense of the common issue (that GHGs are not currently subject to regulation) will be colored by its position that GHGs will become subject to regulation on January 2, 2011. Movants' arguments will suffer no such coloration and therefore will not be squarely represented by EPA.

C. The requested intervention would be timely and consistent with the orderly resolution of the case.

Under Federal Rule of Appellate Procedure 15(d), 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." The current motion is being filed within 30 days after the filing of the petition for review by Petitioner Center for Biological Diversity in this case and, therefore, is timely.

Moreover, this case is in its early stages, and no schedule for the filing of briefs has been issued to date. Granting the instant motion to intervene in No. 10-1115, therefore, will not delay the proceedings in this Court and will not cause

undue prejudice to any party. On the other hand, if intervention is not granted, Movants' ability to defend the interests of its members in this proceeding will be severely prejudiced. Movants agree to follow any schedule issued by this Court.

CONCLUSION

For the reasons stated above, Movants respectfully request that the Court enter an order granting leave to intervene in support of Respondents.

Respectfully submitted,

/s/Charles H. Knauss

Charles H. Knauss
David B. Salmons
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000

Timothy K. Webster
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

Matthew G. Paulson
Brian Faulkner
BAKER BOTTS LLP
98 San Jacinto Boulevard
1500 San Jacinto Center
Austin, TX 78701
(512) 322-2500

Dated: June 28, 2010

Of Counsel

Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004-1790
(202) 637-3000

Harry M. Ng
Michele M. Schoeppe
AMERICAN PETROLEUM INSTITUTE
1220 L Street, NW
Washington, DC 2005-4070
(202) 682-8251

Michael R. Barr
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 Fremont Street
San Francisco, CA 94105
(415) 983-1151

Attorneys for Petitioner Western States Petroleum Association

Thomas J. Ward
Amy C. Chai
NATIONAL ASSOCIATION OF HOME BUILDERS
1201 15th Street, NW
Washington, DC 20005
(202) 266-8200

Gregory M. Scott
NATIONAL PETROCHEMICAL AND REFINERS ASSOCIATION
1667 K Street, NW
Suite 700
Washington, DC 20006
(202) 457-0480

Karen R. Harned
Elizabeth Milito
NFIB SMALL BUSINESS LEGAL CENTER
1201 F Street, NW
Suite 200
Washington, DC 20004
(202) 552-6342
Attorneys for National Federation of Independent Business

John Wittenborn
KELLEY DRYE AND WARREN
3050 K Street, NW
Suite 400
Washington, DC 20007
(202) 342-8514
Attorneys for Specialty Steel Industry of North America

Patrick Traylor
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW`
Washington, DC 20004
(202) 637-6866
Attorneys for American Frozen Food Institute

John E. Milner
Susan F. King
BRUNINI, GRANTHAM,
GROWER & HEWES
The Pinnacle Building
Suite 100
190 East Capitol Street
Jackson, MS 39201
(601) 960-6842
Attorneys for Mississippi Manufacturers Association

Stephen P. Mahinka
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000
Attorneys for Glass Packaging Institute

Robert J. Martineau, Jr.
Waller Lansden Dortch & David, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
Counsel for Tennessee Chamber of Commerce and Industry

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Docket No. 10-1115 (consolidated with Nos. 10-1109, 10-1110, 10-1114, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, 10-1129)

RULE 26.1 DISCLOSURE STATEMENT

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

The National Association of Manufacturers ("NAM") states that it 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.

The American Frozen Food Institute ("AFFI") states that it is a trade association that serves the frozen food industry by advocating its interests in Washington, D.C., and communicating the value of frozen food products to the public. The AFFI is comprised of 500 members including manufacturers, growers, shippers and warehouses, and represents every segment of the $70 billion frozen food industry. As a member-driven association, AFFI exists to advance the frozen food industry's agenda in the 21st century. The AFFI has no parent company, and no publicly held company has a 10% or greater ownership interest in the AFFI.

The American Petroleum Institute ("API") states that it is a national trade association representing all aspects of America's oil and natural gas industry. API has approximately 400 members, from the largest major oil company 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 has no parent company, and no publicly held company has a 10% or greater ownership interest in API.

The Brick Industry Association ("BIA") states that it is a national trade association representing small and large brick manufacturers and associated

services. Founded in 1934, the BIA is the recognized national authority on clay brick construction, representing approximately 270 manufacturers, distributors, and suppliers that generate approximately $9 billion annually in revenue and provide employment for more than 200,000 Americans. BIA has no parent company, and no publicly held company has a 10% or greater ownership interest in BIA.

The Corn Refiners Association ("CRA") states that it is the national trade association representing the corn refining (wet milling) industry of the United States. CRA and its predecessors have served this important segment of American agribusiness since 1913. Corn refiners manufacture starches, sweeteners, corn oil, bioproducts (including ethanol), and animal feed ingredients. CRA has no parent company, and no publicly held company has a 10% or greater ownership interest in CRA.

The Glass Packaging Institute ("GPI") states it is a national trade association that represents the interests of the North American glass container industry to promote understanding of the industry and promote sound environmental and health regulatory policies. GPI member companies bring a broad array of products to consumers, producing glass containers for food, beer, soft drinks, wine, liquor, cosmetics, toiletries, medicines and other products. GPI members are involved in a highly competitive market that includes both glass containers and potential

substitute container products such as metals and plastics. GPI has no parent company and no publicly-held company holds more than a 10% ownership interest in it.

The Independent Petroleum Association of America ("IPPA") states that it is the leading, national upstream trade association representing more than 5,000 independent oil and natural gas producers that drill 90 percent of the nation's oil and natural gas wells. These companies account for 68 percent of America's oil production and 82 percent of its natural gas production. Independent producers represent the exploration and production segment of the industry. IPAA has no parent company, and no publicly held company has a 10% or greater ownership interest in IPAA.

The Michigan Manufacturers Association ("MMA") states that it is a private nonprofit organization and is the state of Michigan's leading advocate exclusively devoted to promoting and maintaining a business climate favorable to industry. MMA represents the interests and needs of over 2,500 members, ranging from small manufacturing companies to some of the world's largest corporations. MMA's members operate in the full spectrum of manufacturing industries, which account for 90% of Michigan's industrial workforce and employ over 500,000 Michigan citizens. MMA has no parent company, and no publicly held company has a 10% or greater ownership interest in MMA.

The Mississippi Manufacturer's Association states that it is Mississippi's largest industrial trade association, representing small and large manufacturers in every industrial sector within the state. The mission of the Mississippi Manufacturer's Association is to provide unrelenting advocacy in support of measures benefiting manufacturers while also working to eliminate unfair, unnecessary or costly burden on the operation of Mississippi's manufacturing community. The Mississippi Manufacturer's Association has no parent company, and no publicly held company has a 10% or greater ownership interest in the Mississippi Manufacturer's Association.

The National Association of Home Builders ("NAHB") states that it is a not-for-profit trade association organized for the purposes of promoting the general commercial, professional, and legislative interests of its approximately 175,000 builder and associate members throughout the United States. NAHB's membership includes entities that construct and supply single family homes, as well as apartment, condominium, multi-family, commercial and industrial builders, land developers and remodelers. NAHB has no parent company, and no publicly held company has a 10% or greater ownership interest in NAHB.

The National Federation of Independent Business ("NFIB") states that it is the nation's leading association of small businesses and has a presence in all 50 States and the District of Columbia. NFIB's mission is to promote and protect the

rights of its members to own, operate, and grow their businesses. NFIB has no parent company, and no publicly held company has a 10% or greater interest in NFIB.

The National Oilseed Processors Association ("NOPA") states that it is a national trade association that represents 15 companies engaged in the production of vegetable meals and oils from oilseeds, including soybeans. NOPA's member companies process more than 1.7 billion bushels of oilseeds annually at 64 plants located throughout the country, including 59 plants that process soybeans. NOPA has no parent company, and no publicly held company has a 10% or greater ownership interest in NOPA.

The National Petrochemical and Refiners Association ("NPRA") states that it is a national trade association whose members comprise more than 450 companies, including virtually all United States refiners and petrochemical manufacturers. NPRA's members supply consumers with a wide variety of products and services that are used daily in homes and businesses. These products include gasoline, diesel fuel, home-heating oil, jet fuel, asphalt products, and the chemicals that serve as "building blocks" in making plastics, clothing, medicine, and computers. NPRA has no parent company, and no publicly held company has a 10% or greater ownership interest in NPRA.

The Specialty Steel Industry of North America ("SSINA") states that it is a national trade association comprised of 17 producers of specialty steel products, including stainless, electric, tool, magnetic, and other alloy steels. SSINA members produce steel by melting scrap metal in electric arc furnaces ("EAFs") and account for over 90 percent of the specialty steel manufactured in the United States. The SSINA has no parent company, and no publicly held company has a 10% or greater ownership interest in the SSINA.

The Tennessee Chamber of Commerce and Industry states that it is Tennessee's largest statewide, broad-based business and industry trade association, representing small and large businesses and organizations in every economic sector across the state. The Tennessee Chamber exists to protect and enhance the business climate in Tennessee, enabling Tennessee companies to be competitive and to grow and create jobs. The Tennessee Chamber has no parent company, and no publicly held company has a 10% or greater ownership interest in the Tennessee Chamber.

The Western States Petroleum Association ("WSPA") states that it is headquartered in California and is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation, and marketing in the six western states of Arizona, California,

Hawaii, Nevada, Oregon, and Washington. WSPA has no parent company, and no publicly held company has a 10% or greater ownership interest in WSPA.

The West Virginia Manufacturers Association ("WVMA") states that it is a non-profit, statewide organization that has been continuously representing the interests of the manufacturing industries in West Virginia since 1915. Its membership currently consists of one hundred fifty (150) member companies employing twenty-five thousand (25,000) men and women in Wet Virginia. The average wage of employees of WVMA's members in West Virginia is forty-four thousand two hundred dollars ($44,200). WVMA has no parent company, and no publicly held company has a 10% or greater ownership interest in WVMA.

The Wisconsin Manufacturers and Commerce ("WMC") states that it is a business trade association with nearly 4,000 members and is dedicated to making Wisconsin the most competitive state in the nation to do business through public policy that supports a healthy business climate. Its members are Wisconsin businesses that operate throughout the state in the manufacturing, energy, commercial, health care, insurance, banking, and service industry sectors of the economy. Roughly one-fourth of Wisconsin's workforce is employed by a WMC member company. WMC has no parent company, and no publicly held company has a 10% or greater ownership interest in WMC.

Respectfully submitted,

/s/Charles H. Knauss

Charles H. Knauss
David B. Salmons
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000

Timothy K. Webster
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

Matthew G. Paulson
Brian Faulkner
BAKER BOTTS LLP
98 San Jacinto Boulevard
1500 San Jacinto Center
Austin, TX 78701
(512) 322-2500

Dated: June 28, 2010

Of Counsel

Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004-1790
(202) 637-3000

Harry M. Ng
Michele M. Schoeppe
AMERICAN PETROLEUM INSTITUTE
1220 L Street, NW
Washington, DC 2005-4070
(202) 682-8251

Michael R. Barr
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 Fremont Street
San Francisco, CA 94105
(415) 983-1151

Attorneys for Petitioner Western States Petroleum Association

Thomas J. Ward
Amy C. Chai
NATIONAL ASSOCIATION OF HOME BUILDERS
1201 15th Street, NW
Washington, DC 20005
(202) 266-8200

Gregory M. Scott
NATIONAL PETROCHEMICAL AND REFINERS ASSOCIATION
1667 K Street, NW
Suite 700
Washington, DC 20006
(202) 457-0480

Karen R. Harned
Elizabeth Milito
NFIB SMALL BUSINESS LEGAL CENTER
1201 F Street, NW
Suite 200
Washington, DC 20004
(202) 552-6342

Attorneys for National Federation of Independent Business

John Wittenborn
KELLEY DRYE AND WARREN
3050 K Street, NW
Suite 400
Washington, DC 20007
(202) 342-8514

Attorneys for Specialty Steel Industry of North America

Patrick Traylor
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
(202) 637-6866

Attorneys for American Frozen Food Institute

John E. Milner
Susan F. King
BRUNINI, GRANTHAM,
GROWER & HEWES
The Pinnacle Building
Suite 100
190 East Capitol Street
Jackson, MS 39201
(601) 960-6842
Attorneys for Mississippi Manufacturers Association

Stephen P. Mahinka
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000
Attorneys for Glass Packaging Institute

Robert J. Martineau, Jr.
Waller Lansden Dortch & David, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
Counsel for Tennessee Chamber of Commerce and Industry

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY	)	
Petitioner,	)	Docket No. 10-1115 (consolidated with Nos. 10-1109, 10-1110, 10-1114, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, 10-1129)
v.	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

CERTIFICATE AS TO PARTIES

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 National Association of Manufacturers, American Frozen Food Institute, American Petroleum Institute, Brick Industry Association, Corn Refiners Association, Glass Packaging Institute, Independent Petroleum Association of America, Michigan Manufacturers Association, Mississippi Manufacturers Association, National Association of Home Builders, National Federation of Independent Business, National Oilseed Processors Association, National Petrochemical and Refiners Association, Specialty Steel Industry of North America, Tennessee Chamber of Commerce and Industry, Western States Petroleum Association, West Virginia Manufacturers Association and Wisconsin

Manufacturers & Commerce:

Parties and Amici.

This case involves consolidated petitions for review of an informal rulemaking action undertaken by the United States Environmental Protection Agency entitled "Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs; Final Rule." 75 Fed. Reg. 17,004 (Apr. 2, 2010). 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

American Iron and Steel Institute (Case No. 10-1109);

Gerdau Ameristeel US Inc. (Case No. 10-1110);

Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation (Case No. 10-1114);

Center for Biological Diversity (Case No. 10-1115);

Peabody Energy Company (Case No. 10-1118);

American Farm Bureau Federation (Case No. 10-1119);

National Mining Association (Case No. 10-1120);

Utility Air Regulatory Group (Case No. 10-1122);

Chamber of Commerce of the United States of America (Case No. 10-1123);

Missouri Joint Municipal Electric Utility Commission (Case No. 10-1124);

National Environmental Development Association's Clean Air Project (Case No. 10-1125);

Ohio Coal Association (Case No. 10-1126);

the National Association of Manufacturers, American Frozen Food Institute, American Petroleum Institute, Brick Industry Association, Corn Refiners Association, Glass Packaging Institute, Independent Petroleum Association of America, Indiana Cast Metals Association, Michigan Manufacturers Association, Mississippi Manufacturers Association, National Association of Home Builders, National Federation of Independent Business, National Oilseed Processors Association, National Petrochemical and Refiners Association, Specialty Steel Industry of North America, Tennessee Chamber of Commerce and Industry, Western States Petroleum Association, West Virginia Manufacturers Association and Wisconsin Manufacturers & Commerce (Case No. 10-1127);

State of Texas, State of Alabama, State of South Carolina, State of South Dakota, State of Nebraska, State of North Dakota, Commonwealth of Virginia, Rick Perry, Governor of Texas, Greg Abbott, Attorney General of Texas, Texas Commission on Environmental Quality, Texas Agriculture Commission, Texas Public Utilities Commission, Texas Railroad Commission, Texas General Land Office, Haley Barbour, Governor of the State of Mississippi (Case No. 10-1128);

Portland Cement Association (Case No. 10-1129).

Respondents

Lisa P. Jackson, Administrator, United States Environmental Protection Agency

United States Environmental Protection Agency

We are unaware that this Court has granted any interventions at this time on these petitions for review. We also believe that no entity has been admitted as an amicus at this time.

Respectfully submitted,

/s/Charles H. Knauss

Charles H. Knauss
David B. Salmons
BINGHAM MCCUTCHEN LLP
2020 K Street, NW
Washington, DC 20006
(202) 373-6000

Timothy K. Webster
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

Matthew G. Paulson
Brian Faulkner
BAKER BOTTS LLP
98 San Jacinto Boulevard
1500 San Jacinto Center
Austin, TX 78701
(512) 322-2500

Dated: June 28, 2010

Of Counsel

Quentin Riegel
NATIONAL ASSOCIATION OF MANUFACTURERS
1331 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004-1790
(202) 637-3000

Harry M. Ng
Michele M. Schoeppe
AMERICAN PETROLEUM INSTITUTE
1220 L Street, NW
Washington, DC 2005-4070
(202) 682-8251

Michael R. Barr
PILLSBURY WINTHROP SHAW PITTMAN LLP
50 Fremont Street
San Francisco, CA 94105
(415) 983-1151

Attorneys for Petitioner Western States Petroleum Association

Thomas J. Ward
Amy C. Chai
NATIONAL ASSOCIATION OF HOME BUILDERS
1201 15th Street, NW
Washington, DC 20005
(202) 266-8200

Gregory M. Scott
NATIONAL PETROCHEMICAL AND REFINERS ASSOCIATION
1667 K Street, NW
Suite 700
Washington, DC 20006
(202) 457-0480

Karen R. Harned
Elizabeth Milito
NFIB SMALL BUSINESS LEGAL CENTER
1201 F Street, NW
Suite 200
Washington, DC 20004
(202) 552-6342

Attorneys for National Federation of Independent Business

John Wittenborn
KELLEY DRYE AND WARREN
3050 K Street, NW
Suite 400
Washington, DC 20007
(202) 342-8514

Attorneys for Specialty Steel Industry of North America

Patrick Traylor
HOGAN LOVELLS US LLP
Columbia Square
555 Thirteenth Street, NW`
Washington, DC 20004
(202) 637-6866

Attorneys for American Frozen Food Institute

John E. Milner
Susan F. King
BRUNINI, GRANTHAM,
GROWER & HEWES
The Pinnacle Building
Suite 100
190 East Capitol Street
Jackson, MS 39201
(601) 960-6842
Attorneys for Mississippi Manufacturers Association

Stephen P. Mahinka
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000
Attorneys for Glass Packaging Institute

Robert J. Martineau, Jr.
Waller Lansden Dortch & David, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
Counsel for Tennessee Chamber of Commerce and Industry

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CENTER FOR BIOLOGICAL DIVERSITY Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Docket No. 10-1115 (consolidated with Nos. 10-1109, 10-1110, 10-1114, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, 10-1129)

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2010, the foregoing Motion for Leave to Intervene on Behalf of Respondent and accompanying papers were served upon the following, by mailing a copy thereof, first class, postage prepaid:

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of General Counsel 20460A
Ariel Rios Building (AR)
1200 Pennsylvania Avenue, NW
Washington, DC 20004

LISA P. JACKSON
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building (AR), 1101A
1200 Pennsylvania Avenue, NW
Washington, DC 20004

ERIC H. HOLDER, JR.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

David Gunter
U.S. Department of Justice
Environment and Natural Resources Division
L'Enfant Plaza Station
P.O. Box 23986
Washington, DC 20026

Michael W. Steinberg
Levi McAllister
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004-2541

Counsel for Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation

Brendan R. Cummings
Center for Biological Diversity
PO Box 549
Joshua Tree, CA 92252

Vera P. Pardee
Center for Biological Diversity
351 California Street
Suite 600
San Francisco, CA 94104

Counsel for Center for Biological Diversity

Peter S. Glaser
Troutman Sanders LLP
401 9th Street, NW
Suite 1000
Washington, DC 20004-2134

Counsel for Peabody Energy Company, American Farm Bureau Federation and National Mining Association

F. William Brownell
Allison D. Wood
Norman W. Fichthorn
Hunton & Williams LLP
Suite 1200
1900 K Street, NW
Washington, DC 20006-1109

Counsel for Utility Air Regulatory Group

Mark A. Behrens, Esquire
Shook Hardy & Bacon, LLP
1155 F Street, NW
Suite 200
Washington, DC 20004-1305

Terry J. Satterlee
Shook, Hardy & Bacon
2555 Grand Boulevard
Kansas City, MO 64108-2613

Counsel for Missouri Joint Municipal Electric Utility Commission

Leslie S. Ritts
Ritts Law Group, PLLC
620 Fort Williams Parkway
Carriage House
Alexandria, VA 22304

Counsel for National Environmental Development Association’s Clean Air Project

Robin S. Conrad
Amar D. Sarwal
National Chamber Litigation Center
Suite 230
1615 H Street, NW
Washington, DC 20062

Jeffrey A. Rosen
William H. Burgess, IV
Jeffrey B. Clark, Sr.
Robert R. Gasaway
Kirkland & Ellis LLP
655 15th Street, NW
Suite 1200
Washington, DC 20005

Counsel for Chamber of Commerce of the United States of America

Gordon R. Alphonso
McGuire Woods LLP
1170 Peachtree Street, NE
Suite 2100
Atlanta, GA 30309

Neal J. Cabral
McGuire Woods LLP
1050 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036-5317

Virginia Louise Hudson Nesbitt
Scott Charles Oostdyk
McGuire Woods LLP
One James Center
901 East Cary Street
Richmond, VA 23219-4030

Counsel for Ohio Coal Association

John R. Clay, Jr.
William J. Cobb, III
Office of the Attorney General
State of Texas
PO Box 12548
Austin, TX 78711-2548

James E. Smith, Jr.
Office of the Attorney General
State of South Carolina
PO Box 11549
Columbia, SC 29211

Robert D. Tambling
Office of the Attorney General,
State of Alabama
500 Dexter Avenue
Montgomery, AL 36130

Roxanne Giedd
Office of the Attorney General
State of South Dakota
1302 East Highway 14
Suite 1
Pierre, SD 57501-8501

Katherine J. Spohn
Office of the Attorney General,
State of Nebraska
2115 State Capitol
PO Box 98920
Lincoln, NE 68509-8920

Earle D. Getchell, Jr.
Office of the Attorney General
Commonwealth of
Virginia
900 East Main Street
Richmond, VA 23219

Paul D. Clement
Ashley C. Parrish
Cynthia Anne May Stroman
King & Spalding LLP
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006-4706

Counsel for Portland Cement Association

Margaret I. Olson
Assistant Attorney General
Office of the Attorney General
State of North Dakota
Solicitor General
500 North 9th Street
Bismarck, ND 58501-4509

John E. Milner
Brunini, Grantham, Grower &
Hewes, PLLC
P.O. Box 119
Jackson, MS 39205

Counsel for Haley Barbour, Governor of the State of Mississippi

Chet M. Thompson
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595

Counsel for American Iron and Steel Institute and Gerdau Ameristeel US Inc.

/s/Charles H. Knauss

Charles H. Knauss