ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

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 Forest & Paper Association ("AF&PA"), National Association of Manufacturers ("NAM"), American Iron and Steel Institute ("AISI"), American Municipal Power ("AMP"), American Wood Council ("AWC"), Biomass Power Association ("BPA"), Chamber of Commerce of the United States of America (the "Chamber"), Corn Refiners Association ("CRA"), National Oilseed Processors Association ("NOPA"), Rubber Manufacturers Association ("RMA"), Society of Chemical Manufacturers and Affiliates ("SOCMA"), and Treated Wood Council ("TWC") (collectively, "the

Associations") respectfully move for leave to intervene as a Respondent in case No. 11-1263.[1] The petition for review in Case No. 11-1263 was filed by Sierra Club ("Petitioner") and challenges the U.S. Environmental Protection Agency's ("EPA" or the "Agency") decision to delay the effective dates of regulations concerning major source industrial boilers ("Boiler Rule") and commercial and industrial solid waste incinerators ("Incinerator Rule") pending the outcome of administrative reconsideration. On March 21, 2011, EPA published the final Boiler Rule, at 76 Fed. Reg. 15608, and the final Incinerator Rule, at 76 Fed. Reg. 15704. On the same day, EPA also announced that it would initiate administrative reconsideration of both rules. 76 Fed. Reg. 15266. Then on May 18, 2011, EPA took action to delay the effective dates of the Boiler Rule and the Incinerator Rule during the reconsideration period. 76 Fed. Reg. 28662. This latter action is the subject of this case.

The Associations now seek leave to intervene as a Respondent in support of EPA as to issues that may be raised in Sierra Club's petition for review of the Agency's decision to delay the effective dates of the Boiler Rule and the Incinerator Rule pending the outcome of administrative reconsideration.

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[1] Counsel for all parties to this motion have given consent to Counsel for AF&PA, *et al*., to sign the motion on their behalf.

Petitioner has indicated that it does not oppose this motion. Respondents have indicated they take no position.

BACKGROUND

The Boiler Rule was promulgated by EPA under the authority of Clean Air Act ("CAA") § 112(d), 42 U.S.C. § 7412(d). 75 Fed. Reg. at 15609. The Rule strictly regulates hazardous air pollutant ("HAP") emissions from "major source" industrial boilers and related industrial combustion equipment. The term "boiler" is defined in the Rule to mean "an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water." *Id.* at 15682. An "industrial boiler" is "a boiler used in manufacturing, processing, mining, and refining or any other industry to provide steam and/or hot water." *Id*. at 15684. Entities represented by the Associations operate numerous industrial boilers that are subject to the Boiler Rule. *See, e.g.*, Letter to EPA Docket Center from Paul Noe, Vice President, Public Policy, AF&PA (Aug. 23, 2010) (EPA Docket No. EPA-HQ-OAR-2002-0058-3213) at 22-23. *See also* Comments submitted by David M. Kiser, Vice President, Environment, Health, Safety, and Sustainability, International Paper Company, (Aug. 25, 2010) (EPA Docket No. EPA-HQ-OAR-2002-0058-2777) (commenting on the applicability of the Boiler Rule to International Paper's 42 boilers and 4

process heaters at 19 International Paper facilities). International Paper is a member of AF&PA. *See* http://www.afandpa.org/memberdirectory.aspx.

The Incinerator Rule was promulgated by EPA under the authority of CAA § 129, 42 U.S.C. § 7429. 75 Fed. Reg. at 15704. 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 15762. Entities represented by the Associations operate solid waste incinerators that are subject to the Incinerator Rule. *See, e.g.*, Letter to EPA Docket Center from Paul Noe, Vice President, Public Policy, AF&PA (Aug. 23, 2010) (EPA Docket No. EPA-HQ-OAR-2003-0119-1951) at 13-14, 18. *See also* Revised Economic Impacts Analysis Inputs for Existing CISWI Units (Jan. 12, 2011) (EPA Docket ID No. EPA-HQ-OAR-2003-0119-2490 (identifying five International Paper facilities affected by the Incinerator Rule — the Riverdale Mill, Red River Mill, Mansfield Mill, Valiant Mill, and Texarkana Mill).

On the same day EPA published the final Boiler Rule and the final Incinerator Rule, the Agency also granted administrative reconsideration of both rules. 76 Fed. Reg. 15266 (Mar. 21, 2011).

On April 29, 2011, certain of the Associations (including AF&PA, NAM, AISI, AMP, AWC, BPA, the Chamber, CRA, NOPA, RMA, SOCMA, and TWC) filed a petition for review with this Court challenging the final Boiler Rule. That petition was docketed as No. 11-1124 and has subsequently been consolidated with petition Nos. 11-1108, 11-1134, 11-1142, 11-1145, 11-1147, 11-1152, 11-1157, 11-1159, 11-1160, 11-1162, 11-1165, 11-1166, 11-1169, 11-1170, 11-1172, 11-1174, and 11-1181. The Sierra Club is a petitioner in the consolidated Boiler Rule cases (Case No. 11-1181, filed with two additional co-petitioners.).

Similarly, certain of the Associations (including AF&PA, NAM, AISI, AWC, BPA, the Chamber, CRA, NOPA, RMA, and TWC) filed a petition for review with this Court challenging the Incinerator Rule. That petition was docketed as No. 11-1125 and has subsequently been consolidated with petition Nos. 11-1144 , 11-1149, 11-1153, 11-1154, 11-1155, 11-1161, 11-1163, 11-1171, 11-1173, 11-1175, 11-1176, 11-1178, 11-1180, 11-1183, 11-1186, and 11-1188. The Sierra Club is a petitioner in the consolidated Incinerator Rule cases. (Case No. 11-1183, filed with two additional co-petitioners.)

Certain of the Associations have filed motions requesting leave to intervene as a Respondent in the two consolidated cases. AF&PA, *et al*., Motion for Leave to Intervene as Respondents, filed June 20, 2011, in Case No. 11-1181 (and

consolidated cases); AF&PA, *et al*., Motion for Leave to Intervene as Respondents, filed June 20, 2011, in Case No. 11-1183 (and consolidated cases).

Certain of the Associations also joined in filing with EPA a Petition for Administrative Stay (April 27, 2011) (EPA Docket ID No. EPA-HQ-OAR-2002-0058-3292). Certain of the Associations also filed Petitions for Reconsideration of critical aspects of the Boiler Rule and Incinerator Rule. *See, e.g.*, AF&PA's Petition for Reconsideration (EPA Docket ID No. EPA-HQ-OAR-2002-0058-3337).

On May 18, 2011, in response to Associations' stay request, EPA delayed the effective dates of the Boiler Rule and Incinerator Rule for the period of reconsideration. 76 Fed. Reg. 28662. The Sierra Club filed the instant action challenging that stay on July 15, 2011. (Case No. 11-1263).

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. Board 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 Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 133-35 (1967), quoted in *Nuesse*, 385 F.2d at 701. 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 v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985).

Some cases have suggested that Article III standing is a prerequisite to intervention. *E.g. Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533, 537-39 (D.C. Cir. 1999); *Military Toxics Project v. EPA*, 146 F.3d 948, 953-54 (D.C. Cir. 1998). More recently, this Court has stated that Article III standing should not be required of any party seeking to intervene as a defendant. *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, 123 S. Ct. 2191, 2196-98 (2003)); *see also Jones v. Prince George's County*, 348 F.3d 1014, 1018 (D.C. Cir. 2003). Presumably, this conclusion would apply equally to parties seeking to intervene as respondents. In any event, this Court determined in *Roeder* that an intervenor applicant that meets the requirements for intervention of right under Federal Rule of Civil Procedure 24(a) demonstrates Article III standing. *Roeder*, 333 F.3d at 233 ("any person who satisfies Rule 24(a) will also meet Article III's standing requirements") (*citing Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000)). As discussed below, the Associations meet the elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2)[2] and thus satisfy any standing test that arguably might apply to intervention.[3]

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

[3] 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 relief requested requires the participation of individual members in the lawsuit.

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).

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.[4] 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 not disrupt or delay any proceedings.

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.

[4] Sierra Club filed this case on July 15, 2011. Because the deadline for seeking leave to intervene thus falls on Sunday, August 14th, this motion is timely since it is being filed on the next business day.

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

The individual entities that are represented by the Associations operate industrial boilers, incinerators, and other units that are subject to the Boiler Rule, the Incinerator Rule, or both rules. These rules impose stringent and significantly costly new regulatory requirements on the entities represented by the Associations. As noted earlier, when EPA issued these rules, it announced simultaneously that it was also initiating procedures to reconsider them. In its announcement, EPA made clear that it had received substantial relevant information that it simply had not had time to incorporate into the rules.[5] It is reasonable to expect, therefore, that the forthcoming new rules will revise some of the current rules' demanding requirements.

A ruling in the Petitioner's favor in this case to lift the stay of the effective dates will expose the entities represented by the Associations to the very real risk of incurring unreasonable and unnecessary costs. For example, because the rules require major equipment installations across a large number of existing facilities within a limited timeframe, the entities represented by the Associations cannot wait

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[5] *See* EPA Press Release, "EPA Announces Next Step on Air Toxics Standards for Boilers and Certain Incinerators/Agency allows time to see and review additional public input on new standards," (May 16, 2011), *available at* http://yosemite.epa.gov/opa/admpress.nsf/1e5ab1124055f3b28525781f0042ed40/8117e40c6c2537da85257892005a7d26!OpenDocument.

until the final resolution of reconsideration before making these purchases and still ensure timely compliance with the new, stringent standards. Thousands of existing facilities will need to begin to make massive compliance investments soon, in light of the pressing compliance deadlines, and will not be able to undo such investments if EPA ultimately changes the rules and standards following reconsideration. New facilities will immediately feel adverse impacts from the rules, forcing the entities represented by the Associations to make crucial decisions regarding plant upgrades or shutdowns, all of which may be undone depending on the outcome of the reconsideration process. *See, e.g.,* AF&PA Petition for Administrative Stay (April 27, 2011) (EPA Docket ID No. EPA-HQ-OAR-2002-0058-3292) at 18-19.

Where parties are objects of governmental regulation, as the entities represented by the Associations are here, "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").

EPA has informed this Court that the Agency will issue a proposed new Boiler Rule by November 2011 and issue a final new Rule by May 2012. EPA's

Motion to Hold Case in Abeyance, filed in No. 11-1181, July 8, 2011. The Agency also informed the Court that it will issue a proposed new Incinerator Rule in September 2011 and issue a final new Rule in April 2012. EPA's Reply in Further Support of Respondent's Motion to Hold Case in Abeyance, filed in Nos. 11-1125, *et al*., June 24, 2011. However, if the Sierra Club's requested relief were granted by this Court in this case, the current Boiler Rule and the current Incinerator Rule would take effect before EPA has had sufficient time to address the numerous flaws and other serious concerns the Associations and other parties have identified in the rules.

In sum, the additional regulatory burdens and compliance costs the entities the Associations represent would bear if Petitioner prevails in its challenge to EPA's stay of the effective dates of both rules would harm the interests of the entities the Associations represent. 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) (c*iting 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),[6] the Associations easily pass that test here.

The interests of Petitioner are directly opposed to those of the Associations; Petitioner 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." *Id.* at 192-93 ("A government entity … is charged by 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 the entities they represent.

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,

[6] 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.

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 entities' interests were narrower than those of EPA and were "concerned primarily with the regulation that affects their industries," the entities' "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 industrial boilers and incineration units will supplement EPA's position — but the reverse is not necessarily true.

Furthermore, EPA's inability to represent Associations adequately is reinforced by the nature of the relationship between EPA, as the federal agency with regulatory responsibility under the CAA, and the entities the Associations represent, as the frequent target of EPA regulations under the Act. This relationship can feature litigation under the Act in which Associations and EPA oppose each other. Indeed, certain of the Associations have filed a petition for review against EPA on other aspects of these very same rules. *See* Case No. 11-1124 and Case No. 11-1125.

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 a Respondent.

Respectfully submitted,

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August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

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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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

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,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR AMERICAN IRON AND STEEL INSTITUTE

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor American Iron and Steel Institute ("AISI") makes the following declarations:

AISI is a non-profit, national trade association headquartered in the District of Columbia. AISI has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in AISI. AISI serves as the voice of the North American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI is comprised of 25 producer member companies, including integrated and electric

furnace steelmakers, and 118 associate and affiliate members who are suppliers to or customers of the steel industry. AISI's member companies represent approximately 80 percent of both U.S. and North American steel capacity.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR AMERICAN MUNICIPAL POWER, INC.

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor, American Municipal Power, Inc. ("AMP "), makes the following declarations:

Petitioner AMP is a nonprofit corporation headquartered in Columbus, Ohio that provides services on a cooperative, nonprofit basis for its member communities operating municipal electric systems. AMP has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in AMP.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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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:

AWC is the voice of North American traditional and engineered wood products, representing over 60% 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 360,000 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. No parent corporation and no publicly held company has a ten percent (10%) or greater ownership interest in AWC.

Respectfully submitted,

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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR BIOMASS POWER ASSOCIATION

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor Biomass Power Association ("BPA") makes the following declarations:

BPA is a non-profit, national trade association headquartered in Portland, Maine and organized under the laws of the State of Maine. BPA has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in BPA. BPA serves as the voice of the U.S. biomass industry in the federal public policy arena. BPA is comprised of 23 member companies who either own or operate biomass power plants, and 16 associate and affiliate

members who are suppliers to or customers of the industry. BPA's member companies represent approximately 80 percent of the U.S. biomass to electricity sector.

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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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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 federation of business, trade, and professional organizations. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of more than three million

businesses and organizations of every size, sector, and region. 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.

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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
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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,

/s/ William L. Wehrum

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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

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 13 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process

more than 1.7 billion bushels of oilseeds annually at 63 plants located in 19 states throughout the country, including 58 plants that process soybeans.

Respectfully submitted,

/s/ William L. Wehrum
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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR RUBBER MANUFACTURERS ASSOCIATION

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

RMA is a non-profit, national trade association headquartered in the District of Columbia. RMA has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in RMA. RMA is the national trade association representing tire manufacturing companies that manufacture tires in the United States. RMA member companies include: Bridgestone Americas, Inc.; Continental Tire the Americas, LLC; Cooper Tire & Rubber Company; The Goodyear Tire & Rubber Company; Michelin North America, Inc.; Pirelli North

America; Toyo Tire (U.S.A.) Corporation and Yokohama Tire Corporation. RMA's eight tire manufacturer member companies operate 30 manufacturing plants, employ thousands of Americans and ship over 90 percent of the original equipment ("OE") tires and 80 percent of the replacement tires sold in the United States.

Respectfully submitted,

/s/ William L. Wehrum
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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

RULE 26.1 DISCLOSURE STATEMENT OF MOVANT INTERVENOR SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor, Society of Chemical Manufacturers and Affiliates ("SOCMA"), makes the following declarations:

SOCMA is a non-profit, national trade association headquartered in the District of Columbia. SOCMA has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in SOCMA. SOCMA is the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's nearly 250 member companies employ more than 100,000 workers across the country and produce some 50,000 products – valued at $60 billion annually – that make our standard of living possible. From

pharmaceuticals to cosmetics, soaps to plastics and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 80% of SOCMA's active members are small businesses. SOCMA advocates for U.S. laws and regulations that promote our members' competitiveness and bottom line.

Respectfully submitted,

/s/ James W. Conrad, Jr.
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Dated: August 15, 2011

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and LISA P. JACKSON, Administrator, Respondents.	No. 11-1263

RULE 26.1 DISCLOSURE STATEMENT OF
MOVANT INTERVENOR TREATED WOOD COUNCIL

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Movant Intervenor, the Treated Wood Council ("TWC"), makes the following declarations:

TWC is a not-for-profit, national trade association headquartered in the District of Columbia. TWC has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in TWC. TWC serves as the voice of the US treated wood industry in the public policy arena. TWC is comprised of 470 total member organizations, including wood treaters, preservative manufacturers, wood product producers and associate/association members who are related to the treated wood industry.

Respectfully submitted,

/s/ Jane C. Luxton

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Counsel for Treated Wood Council

Dated: August 15, 2011

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of August, 2011, a copy of the foregoing Petition to Intervene and Disclosure Statements were served electronically through the court's CM/ECF system on all registered counsel.

/s/ William L. Wehrum
William L. Wehrum