UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 18-25 Caption: NRDC v. EPA

Motion for: Intervention by the American Chemistry Council (ACC) and National Association of Manufacturers (NAM)

Set forth below precise, complete statement of relief sought:

ACC and NAM seek intervention as a right or, in the alternative, permissive intervention

MOVING PARTY: ACC and NAM

☐ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: Natural Resources Defense Council

MOVING ATTORNEY:
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OPPOSING ATTORNEY:
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Court-Judge/Agency appealed from:

Petition to review federal agency action

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes ☐ No (explain):

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☒ Don't Know

NRDC and EPA each take no position on the motion at this time

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☒ Don't Know

NRDC and EPA each reserves the right to file a response after each reviews the motion

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ☐ No

Requested and return date and explanation of emergency:

Is oral argument on motion requested? ☐ Yes ☒ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:

/s/ Kathryn E. Szmuszkovicz **Date:** February 5, 2018 Service by: ☒ CM/ECF ☐ Other [Attach proof of service]

No. 18-25

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, Petitioner, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 18-25

MOTION OF AMERICAN CHEMISTRY COUNCIL AND NATIONAL ASSOCIATION OF MANUFACTURERS FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Rule 27.1 of the Local Rules and Internal Operating Procedures of the Court of Appeals for the Second Circuit ("Second Circuit Rules"), the American Chemistry Council ("ACC") and National Association of Manufacturers ("NAM") (collectively "Movants"), by and through undersigned counsel, respectfully move to intervene in support of Respondent, the United States Environmental Protection Agency ("EPA"), in opposition to the Natural Resources Defense Council's ("NRDC's") petition for review ("Petition").

Counsel for Movants contacted Counsel for Petitioner NRDC and Counsel for Respondent EPA about their positions on the motion and whether they intend to file a response to the motion. *See* Second Circuit Rule 27.1(b). The Parties responded that they take no position on the motion at this time and reserve their decisions on whether to file a response until they have reviewed the motion.

The Petition challenges an EPA document currently undergoing public comment entitled, "*New Chemicals Decision-Making Framework: Working Approach to Making Determinations under Section 5 of TSCA*" (Nov. 2017) (the "Framework"). EPA held a public meeting on aspects of its New Chemicals Review Process, including the Framework, on December 6, 2017. At the meeting EPA took oral comments and also invited written public comments on the Framework by January 20, 2018. 82 Fed. Reg. 51415 (Nov. 6, 2017). EPA is currently in the process of considering the public's oral and written comments.

"TSCA" is an acronym for the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2697. TSCA is the primary federal statute regulating the manufacture, processing, distribution in commerce, and use of chemical substances and mixtures in the United States. It was amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Pub. L 114-182 (June 22, 2016) ("LCSA"). The Framework document outlines EPA's proposed working approach to making decisions on new chemical substance notices (premanufacture notices or "PMNs")

submitted to EPA by anyone who plans to manufacture or import a new chemical substance and EPA's approach to promulgating significant new use rules ("SNURs") under TSCA section 5.

Movants' timely request to intervene in support of Respondent should be granted. Movants are associations that represent entities directly regulated and affected by the Framework because they manufacture, process, distribute in commerce, or use chemical substances that are the subject of PMNs and SNURs.

Petitioner objects to EPA's Framework, asserts that it is a final rule, disputes its substance, and asks this Court to vacate and remand the Framework to EPA. The consequences of any relief Petitioner might obtain would be borne directly by Movants' members, for whom chemical substances regulated by TSCA are essential to their businesses. As such, Movants have direct, substantial, and legally protectable interests in the outcome of the Petition, which seeks to disrupt the ongoing EPA process of developing the Framework.

Movants' interests also differ from those of Respondent. Movant represents regulated entities engaged in the business of chemistry. Respondent regulates those entities and is not expected to adequately represent Movant's interests.

BACKGROUND

Under TSCA section 5, 15 U.S.C. § 2604, with certain exceptions not relevant here, no person may manufacture a new chemical substance without

submitting a PMN to EPA at least 90 days beforehand. EPA's process for its review and decisionmaking regarding PMNs is known as the New Chemicals Review Program.

The LCSA amendments to TSCA were signed into law in June 2016 and included changes to section 5. The section 5 amendments were made effective immediately upon LCSA's enactment. EPA now must review each PMN under revised criteria, make one of several determinations described in section 5, and then take an action based on the determination.

EPA has been reviewing PMNs under amended section 5 since the amendments were enacted in 2016. EPA's approach to the New Chemicals Review Program is evolving as it gains experience with amended section 5. The Framework outlines EPA's current approach to making decisions about PMNs under amended section 5 and related SNURs. EPA has asked for and received both oral and written comments on the Framework. EPA is now considering those comments, including whether to make any changes to the Framework.

ARGUMENT

I. Movants Satisfy the Standards for Intervention as a Right

Federal Rule of Appellate Procedure 15(d) provides that an applicant for intervention in a case arising from a petition to review a government action must file a motion for leave to intervene within 30 days after the petition is filed,

supported by a concise statement of the interest and the grounds for intervention. Although the appellate rules do not specify a standard for intervention, this Court utilizes the principles underlying intervention under Rule 24 of the Federal Rules of Civil Procedure. Rule 24 provides that the Court must permit anyone to intervene who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." *See Floyd v. City of New York*, 770 F.3d 1051, 1057 (2d Cir. 2014) (citing Fed.R.Civ.P. 24(a)(2)). In the Second Circuit, "[t]o intervene as of right, a movant must: '(1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action.'" *Brennan v. New York City Bd. of Educ.*, 260 F.3d 123, 128-29 (2d Cir. 2001) (citations omitted).[1]

[1] Movants are not required to satisfy the requirements for Article III standing to intervene. *Hoblock v. Albany County Bd. of Elections*, 233 F.R.D. 95, 97 (N.D.N.Y. 2005) (explaining that "there is no Article III standing requirement in the Second Circuit, with an intervenor only needing to meet the Rule 24(a) requirements and have an interest in the litigation…"); *accord, Town of Chester v. Laroe Estates*, 137 S. Ct. 1395 (2017) (requiring standing only when intervenor sought relief different from plaintiff). Nonetheless, Movants have Article III standing to intervene here because the Movants' members would have standing as members of the regulated community directly impacted by the action at issue who stand to be injured by this litigation, the subject of the litigation is germane to the

(continued)

When applying Rule 24, "courts are guided primarily by practical and equitable considerations, and the requirements for intervention are broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *see also Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080 (8th Cir. 1999). "A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *United States v. City of Los Angeles*, 288 F.3d 391, 397-98 (9th Cir. 2002).

Here, Movants satisfy these requirements, and this Court should grant this Motion so that they may protect their important interests.

A. The Motion to Intervene is Timely

Petitioner filed its Petition on January 5, 2018. Movants are filing by the February 5, 2018, deadline. *See* Fed. R. App. P. 15(d) (intervention motion due within 30 days of petition) and 26(a)(1)(C) (when, as here, deadline is on weekend, filing on the "next day that is not a Saturday, Sunday or a legal holiday"). Moreover, no prejudice or delay would result from Movants' intervention, because they are seeking to join this case at the earliest possible stage.

(continued)
Movants' interests, and no individual member's participation is necessary for the litigation. *See* Declaration of Michael P. Walls (Attachment A) ("Walls Decl."); *Hunt v. Wash. State Apple Advert. Com'n*, 432 U.S. 333 (1977).

B. Movants Have A Direct and Substantial Interest in the Subject of the Petition

The "interest" test is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173, 1179 (9th Cir. 2011). The inquiry "should be, as in all cases, whether . . . 'there is a relationship between the legally protected interest and the claims at issue.'" *Id.* at 1176 (*citing Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). An intervening party's interest in the remedy a petitioner seeks can also establish a protectable interest. *City of Los Angeles*, 288 F.3d at 399-400.

Movants unquestionably have a vital interest in the subject of this Petition: Movants' members manufacture, process, distribute, or use chemical substances that are essential to their businesses and are subject to the Framework. *See, e.g.*, Walls Decl. ¶¶ 5, 13-15. EPA's continued review of PMNs is essential to the ability of Movants' members to plan and implement advances in chemistry that make people's lives better, healthier and safer. Movants' members submit many PMNs and are subject to many SNURs. Movants have a direct interest in this Petition, which challenges the Framework that EPA is in the process of developing.

ACC also has demonstrated a direct and substantial interest in the Framework by participating in EPA's December 6, 2017, hearing and by

submitting written comments to EPA on the Framework.[2] When a group seeking intervention has participated "in the administrative process leading to the governmental action," the group has a direct and substantial interest in the litigation. *Michigan State AFL-CIO* v. *Miller*, 103 F.3d 1240, 124546 (6th Cir. 1997). This Court and other courts of appeals have routinely found that associations representing members affected by a federal regulation have a sufficient interest to intervene to challenge or support actions by EPA or other federal agencies. *See, e.g.*, *Nat. Res. Def. Council v. Costle*, 561 F.2d 904 (2d Cir. 1977); *Sierra Club v. EPA*, 557 F.3d 401 (6th Cir. 2009); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003); *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 41-44 (1st Cir. 1992); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998).

Movants have the direct, practical interest needed to intervene.

C. The Petition's Disposition Could Impair Movants' Ability to Protect Their Interests

The resolution of this Petition may impair Movants' ability to protect its interests. "'If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to

[2] *See, e.g.*, Walls Decl. ¶ 10. Movants seek intervention in this matter to support Respondent, although, as reflected in the detailed written comments ACC submitted to EPA on January 19, 2018, for instance, Movants do not agree with all aspects of the Framework as initially proposed.

intervene . . . .'" *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011) (reversing denial of intervention). In this Circuit, where a proposed intervenor has a significant protectable interest, the Court has held that "the disposition of the action may as a practical matter impair or impede their ability to protect their interests[,]" and the party would be entitled to intervene. *New York Pub. Interest Research Grp., Inc. v. Regents of Univ. of State of New York*, 516 F.2d 350, 352 (2d Cir. 1975).

As discussed above, Movants' members manufacture, process, distribute, or use chemicals that are central to their businesses. The Framework directly affects them and their operations by guiding EPA's working approach to determining which chemical substances will enter commerce and under what conditions. Petitioner seeks to vacate the Framework that EPA is in the process of developing. Only if this Court allows Movants to participate in this action will Movants be able to protect fully the interests of their members in EPA's implementation of the Framework.

D. Movants' Interests Are Not Adequately Represented by Existing Parties

Finally, the existing parties do not adequately represent Movants' interests. The question is whether the existing parties' interests are so similar to those of the Movants that adequacy of representation would be assured. *Brennan v. New York City Bd. of Educ.*, 260 F.3d 123, 133 (2d Cir.2001) (finding that while the existing

party and intervenor had a mutual interest in bringing the litigation, the existing party had different incentives, and could simply settle and refuse to defend the interests of the intervenor). The requirement to show inadequate representation is not a high bar, as it "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972) (citation omitted). In assessing this factor, courts have looked to whether a present party will undoubtedly make all of a proposed intervenor's arguments, the party is capable and willing to make such arguments, and whether a proposed intervenor would offer any necessary elements to the proceeding that would not be covered by the other parties. *Cook v. Pan American World Airways, Inc.*, 636 F.Supp. 693, 697 (S.D.N.Y. 1986) (citing *Blake v. Pallan*, 554 F.2d 947, 955 (9th Cir.1977)). Moreover, the focus is on the overall "subject of the action" not any particular issues before the court given the early stage at which intervention is considered. *Sw Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001).

Here, Movants' interests are not represented at all by Petitioner, who is directly adverse to Movants. Petitioner is challenging EPA's Framework while EPA is considering comments on its proposed approach. Nor can Respondent adequately represent Movants' interests, as EPA is the regulatory authority and

does not represent the distinct private business and commercial interests of Movants and their members.

Movants are groups founded in part to help ensure that their members are able to manufacture, process, distribute, or use chemical substances consistently with the law. ACC's members operate many of the nation's manufacturing facilities, preserve and create jobs, and produce successful businesses, all in an environmentally sound manner. They are part of the $768 billion business of chemistry, which creates the building blocks for 96 percent of the manufactured goods in the United States. Walls Decl. ¶ 4. NAM is the largest manufacturing association in the United States. Manufacturing employs more than 12 million people, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private sector research and development in the nation. Walls Decl. ¶ 13. EPA may be focused to a greater degree than Movants on issues such as administrative flexibility, while Movants are likely to be focused to a greater degree than EPA on the potential consequences that agency action or inaction may have on the chemical substances or operations of Movants' member companies.

Movants' interests are thus aligned with, but distinct from, EPA's more general mandate, and these differences are sufficient to justify intervention. *See, e.g.*, *Nat. Res. Def. Council v. Costle*, 561 F.2d at 911-12 (finding that EPA may

not adequately represent an industry intervenor's interests since the parties may disagree on legal and factual matters, and their interests may diverge with respect to settling the case); *U.S. v. City of Niagara Falls*, 103 F.R.D. 164, 166 (W.D.N.Y. 1984) (holding that a municipality could not adequately represent the interests of an industry group since the governmental entity did not share the business and economic interests of the group); *Fund for Animals*, 322 F.3d 736 ("[W]e have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors."); *Kleissler v. U.S. Forest Serv*., 157 F.3d 964, 973-74 (3d Cir. 1998) (federal agency and private businesses seeking to intervene had "interests inextricably intertwined with, but distinct from," each other and thus agency could not adequately represent private interests); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994) (industry intervention allowed because "[t]he government must represent the broad public interest, not just the [concerns of the industry group]"). EPA simply cannot be assumed to "undoubtedly" make all of the arguments Movants would make. *See Berg*, 268 F.3d at 823 ("a federal agency" as regulator "cannot be expected under the circumstances presented to protect these private interests.").[3]

[3] As Petitioner has not yet identified the precise arguments it intends to raise, it is premature to provide definitive examples of differences between Movants' and Respondent's potential arguments, but they may include jurisdictional, procedural or substantive matters.

II. In The Alternative, Movants Should Be Granted Permissive Intervention

In the alternative, Movants seek leave for permissive intervention. As above, the Federal Rules of Civil Procedure may be used as a reference in the absence of a directly relevant Federal Rule of Appellate Procedure. Fed. R. Civ. P. 24(b)(1) authorizes permissive intervention when, on a timely motion, the applicant's claim or defense, and the main action, have a question of law or a question of fact in common. *Comer v. Cisneros*, 37 F.3d 775, 801 (2d Cir. 1994) (finding that permissive intervention was appropriate under Rule 24(b) where the "claims of the intervenors and those presented by the plaintiffs…present common issues of fact and identical issues of law[,]" and "the claims presented by the intervenors would not delay or prejudice the adjudication of the rights of either the original parties…but will in fact help to facilitate a resolution in this case."). Permissive intervention requires neither a showing of the inadequacy of representation nor a direct interest in the subject matter of the action.

First, as demonstrated above, this motion to intervene is timely. It is filed within the required timeframe and will not cause undue delay, prejudice the parties, or contribute to the waste of judicial resources. With the Petition only recently filed, this Court has scheduled a telephone conference for February 20, 2018, but has not yet set a schedule for briefing the merits of Petitioner's claims.

Second, Movants would address the issues of law and fact that the Petitioner presents on the merits. Because Movants and Petitioner maintain opposing positions on these common questions, Movants meet the standards for permissive intervention as well.

Intervention would contribute to the just and equitable adjudication of the legal questions presented and should be permitted.

CONCLUSION

For these reasons, Movants' Motion to Intervene should be granted.

Dated: February 5, 2018

Respectfully Submitted,

/s/ Kathryn E. Szmuszkovicz

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Federal Rules of Appellate Procedure Form 6. Certificate of Compliance With Type-Volume Limit

Certificate of Compliance With Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

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/s/ Kathryn E. Szmuszkovicz

Attorney for Movants American Chemistry Council and National Association of Manufacturers

Dated: February 5, 2018

ATTACHMENT A

**DECLARATION OF MICHAEL P. WALLS
IN SUPPORT OF AMERICAN CHEMISTRY COUNCIL AND
NATIONAL ASSOCIATION OF MANUFACTURERS
MOTION FOR LEAVE TO INTERVENE ON BEHALF OF RESPONDENT**

I, Michael P. Walls, hereby state as follows.

1. I am employed by the American Chemistry Council ("ACC"). I make this declaration in support of the Motion to Intervene that ACC is filing.

2. For more than 30 years, I have had a range of legal, policy and business responsibilities for ACC. Currently, I am Vice President - Regulatory and Technical Affairs, and have primary responsibility for ACC's policy development. I have managed ACC's policy function for over a decade, with responsibility for ACC policies concerning chemical regulation, science/science policy, environment, energy, distribution/transportation, process safety and security matters. Through my work at ACC, I have developed broad experience across a wide range of U.S. domestic chemical regulatory issues, including the Toxic Substances Control Act ("TSCA") and the 2016 amendments to the law made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act ("LCSA").

3. I am a 1980 graduate of the Georgetown University School of Foreign Service and a 1984 graduate of the Syracuse University College of Law. I also received an MBA from the Georgetown University Graduate School of Business in 1999. I began work at ACC in the Office of General Counsel in 1986, where I first

provided legal advice on a range of international environmental, trade and product regulation issues. Before joining ACC, I was in private law practice in Washington, D.C., and I served as a legislative assistant on the staff of U.S. Senator Jim Sasser.

4. ACC is one of America's oldest trade associations, representing a diverse group of nearly 170 companies in the $768 billion business of United States chemistry. This industry creates the building blocks for 96% of all manufactured goods. Chemistry is responsible for more than 25% of the U.S. gross domestic product, accounts for 14% of all U.S. exports, provides nearly 15% of the world's chemicals, and supports over 800,000 American jobs — while indirectly supporting millions more jobs across the county in businesses that formulate, distribute, and use or rely on chemicals.

5. ACC's members include leading companies of all sizes, engaged in every aspect of the business of chemistry, including chemical manufacturing, transportation and distribution, storage and disposal, sales and marketing, consulting, use, logistics and equipment manufacturing. Because TSCA applies to virtually all chemical substances and mixtures, each and every one of ACC's members is directly regulated by TSCA.

6. ACC's mission is to engage with and advocate on behalf of ACC's members through legislative, regulatory and legal advocacy, communications and

scientific research. This includes participating in the development of policies, guidance documents, rules and other regulatory matters by the United States Environmental Protection Agency ("EPA") that significantly affect ACC's member companies, as well as related litigation.

7. LCSA was signed into law on June 22, 2016, amending TSCA. TSCA is the nation's primary chemicals management law. It was originally enacted in 1976 and had not been substantially amended before 2016. ACC had long urged Congress to update the law to keep pace with scientific advancements and ensure that chemical products are safe for their intended uses while also encouraging innovation and protecting American jobs. ACC strongly supported the new amendments. Congress passed the amendments with strong bipartisan support because they delivered long-needed reforms and improvements to TSCA. I was directly and substantively involved in the negotiations that led to the amendments, on ACC's behalf.

8. LSCA did not fundamentally change the statutory framework for EPA's review of premanufacture notices ("PMNs") for new chemical substances and its promulgation of significant new use rules ("SNURs"), which are part of EPA's New Chemicals Review Program under TSCA section 5 and the subject of the Petition.

9. EPA's discretion and authority to make decisions under TSCA section 5 remain essentially the same after the 2016 amendments. Certain aspects of EPA's approach to reviewing PMNs are affected. Because of this, EPA prepared and published the "*New Chemicals Decision-Making Framework: Working Approach to Making Determinations under Section 5 of TSCA*" ("Framework"), held a public hearing on the Framework on December 6, 2017, and invited the public to comment on the Framework during a comment period that closed on January 20, 2018. EPA published a Federal Register notice about the Framework and these opportunities for public comment at 82 Fed. Reg. 51415 (Nov. 6, 2017).

10. ACC representatives attended EPA's December 6, 2017 public meeting on the Framework and made oral comments during the meeting. ACC subsequently submitted detailed written comments on the Framework. *See* Comments of the American Chemistry Council on EPA's Implementation of the New Chemicals Review Program, (Docket No. EPA-HQ-OPPT-2017-0585-0062) (submitted Jan. 19, 2018).

11. EPA is considering the extensive oral and written comments recently provided by the public.

12. As part of my responsibilities for ACC, I personally developed a working knowledge and understanding of the National Association of Manufacturers and its interest in the Framework. NAM has interests similar to

ACC because its members are involved in manufacturing of all types, and the business of chemistry creates the building blocks for 96% of all manufactured goods.

13. NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industry sector and in all 50 states. Manufacturing employs more than 12 million people, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private sector research and development in the nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S.

14. ACC and NAM have a substantial and direct interest in EPA's implementation of the New Chemicals Review Program and in the outcome of any litigation that would affect EPA's work in that Program. ACC's and NAM's interest includes EPA's description of the new chemicals review process embodied in the Framework document.

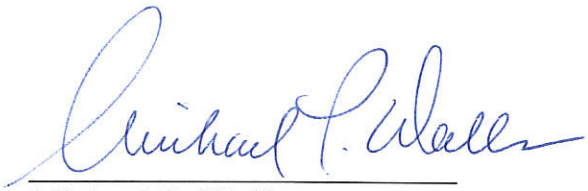
15. The Petitioner has objected to both the process EPA is following and the substance of EPA's Framework document. The Court's decision in this litigation will directly impact ACC and NAM members, who manufacture,

distribute, supply, formulate, use, or rely on chemicals that EPA evaluates under the Framework.

16. Any impact on availability of chemicals and innovations in chemistry will be felt in turn by the many downstream users of ACC and NAM members' products and ultimately the final consumers.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 5th day of February, 2018.



Michael P. Walls

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of American Chemistry Council and National Association of Manufacturers for Leave to Intervene on Behalf of Respondent, along with Certificate of Compliance and supporting Declaration of Michael P. Walls, are being served this 5th day of February 2018, electronically through the Court's CM/ECF system on all registered counsel.

Respectfully Submitted,

/s/ Kathryn E. Szmuszkovicz

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