

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AIR ALLIANCE HOUSTON,
CALIFORNIA COMMUNITIES
AGAINST TOXICS, CLEAN AIR
COUNCIL, COALITION FOR A
SAFE ENVIRONMENT,
COMMUNITY IN-POWER &
DEVELOPMENT ASSOCIATION,
DEL AMO ACTION COMMITTEE,
ENVIRONMENTAL INTEGRITY
PROJECT, LOUISIANA BUCKET
BRIGADE, OHIO VALLEY
ENVIRONMENTAL COALITION,
SIERRA CLUB, TEXAS
ENVIRONMENTAL JUSTICE
ADVOCACY SERVICES, UNION
OF CONCERNED SCIENTISTS, and
UTAH PHYSICIANS FOR A
HEALTHY ENVIRONMENT,

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY, and
SCOTT PRUITT, Administrator, U.S.
Environmental Protection Agency,

Respondents.

Case No. 17-1155

**MOTION TO INTERVENE IN SUPPORT OF PETITIONERS FILED BY
THE UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE
WORKERS INTERNATIONAL UNION, AFL-CIO/CLC**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27, and Rule 15(b) of this Court, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC (“USW”) hereby moves for leave to intervene in support of Petitioners’ petition filed on June 15, 2017, seeking review of the final action taken by Respondents United States Environmental Protection Agency’s (“EPA” or “the Agency”) and Administrator Scott Pruitt in Case No. 17-1155, and any other similar cases involving the same agency action.

Counsel for Petitioners has stated that Petitioners consent to this motion. Counsel for Respondents has stated that Respondents reserve taking a position until they have had a chance to review the motion. In support of this motion, USW states as follows.

INTRODUCTION

This case seeks review of EPA’s final agency action entitled “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Further Delay of Effective Date” and published at 82 Fed. Reg. 27,133 (June 14, 2017) (“Delay Rule”) (amending 40 C.F.R. Pt. 68).

The Delay Rule delays the effective date and thereby the compliance deadlines for new safety requirements for hazardous chemicals at industrial facilities covered by EPA's Risk Management Program ("RMP") established in EPA's final rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act," 82 Fed. Reg. 4,594 (Jan. 13, 2017) ("Chemical Disaster Rule") (amending 40 C.F.R. Pt. 68). USW submitted timely comments opposing the proposed Delay Rule to delay the effective date of the Chemical Disaster Rule, 82 Fed. Reg. 16,146 (Apr. 3, 2017).¹ As USW stated in the USW Delay Rule Comments, "a delay in this regulation is inappropriate and would cause harm. Releases of RMP-regulated substances pose a real and immediate threat to USW members and their families who work, reside and/or recreate near these facilities. Our members cannot wait any longer for implementation of these protections." *Id.*

EPA finalized the Chemical Disaster Rule after an extensive and transparent rulemaking process in response to a series of chemical disasters like the 2012 Chevron Richmond refinery fire that endangered workers and caused 15,000 community members to seek medical treatment (82 Fed. Reg. 4,599-600) that had

¹ Letter from USW (Holly Hart) to EPA (Administrator Pruitt) (Re: Docket EPA-HQ-OEM-2015-0725) (May 19, 2017) (hereinafter "USW Delay Rule Comments"), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0859>.

real-world implications for USW members.² In response to these catastrophic releases – many of which harmed USW members directly³ – USW actively advocated for more robust RMP requirements before the United States Senate⁴ and EPA.⁵ The Chemical Disaster Rule contains many but not all of the regulatory improvements that USW recommended in its comments to EPA.⁶ USW asserts that the Chemical Disaster Rule will reduce the frequency of chemical releases from RMP covered facilities and ensure that workers, first responders and community members are better prepared to respond to such releases when they do occur.⁷ Given the important goals of the Chemical Disaster Rule and the harm to USW members associated with further delay, USW seeks to have the Delay Rule vacated to avoid delay of the effective date of Chemical Disaster Rule for an additional twenty months.

² See Declaration of Kim Nibarger (hereinafter “Nibarger Declaration”) ¶ 18.

³ See, e.g., Nibarger Declaration ¶¶ 13-18.

⁴ See Nibarger Declaration ¶¶ 8-12.

⁵ Letter from USW (Holly Hart) to EPA (Administrator McCarthy) (Re: Docket EPA-HQ-OEM-2015-0725) (May 13, 2016) (hereinafter “USW Chemical Disaster Rule Comments”), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0519>; Declaration of Anna Fendley (hereinafter “Fendley Declaration”) ¶¶ 17-18; and Nibarger Declaration ¶¶ 19-20. See also Fendley Declaration ¶ 14; and Pet’n to EPA to Exercise Its Authority Under Section 112(r) to Prevent Chemical Facility Disasters (July 25, 2012), EPA-HQ-OEM-2015-0725-0249 (hereinafter “RMP Coalition Petition”).

⁶ USW Chemical Disaster Rule Comments.

⁷ See Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

I. EPA'S CHEMICAL DISASTER RULE

The Chemical Disaster Rule is EPA's first significant update in over 20 years to the Agency's regulations under 42 U.S.C. § 7412(r) for the prevention of accidental releases at facilities that use or store hazardous chemicals. As part of the 1990 amendments to the Clean Air Act ("CAA" or "the Act"), Congress added section 7412(r) "in response to a number of catastrophic chemical accidents occurring worldwide that had resulted in public and worker fatalities and injuries, environmental damage, and other community impacts." 82 Fed. Reg. 4,599.

Pursuant to section 7412(r) of the Act, Congress requires EPA to list substances which, "in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment." 42 U.S.C. § 7412(r)(3); *see* 40 C.F.R. § 68.130. The Act further provides that, "[i]n order to prevent accidental releases of [such] regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements" applying a range of measures and methods for this purpose. 42 U.S.C. § 7412(r)(7)(A). The Act directs that EPA must "promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases" of these regulated substances "and for response to such

releases by the owners or operators of the sources of such releases.” *Id.* CAA § 7412(r)(7)(B)(i).

The Chemical Disaster Rule applies to approximately 12,500 covered facilities, including oil refineries, chemical manufacturers, and others that use, store, and have the potential to release highly hazardous chemicals that can cause death, serious injury, and other health threats. 42 U.S.C. § 7412(r)(3); *see also* 82 Fed. Reg. 4,596, tbl.1; Reg. Impact Analysis (“RIA”) at 81, 83 ex. 6-2, 6-3, 118 ex. 7-9 (Feb. 24, 2016), EPA-HQ-OEM-2015-0725-0037 (listing deaths and injuries from 10 years of chemical accidents at covered facilities). USW members who work in chemical and petrochemical facilities and their families who often are fence-line community members are amongst the most vulnerable to death, injury, and other harm caused by releases of RMP regulated substances.⁸

In furtherance of USW’s interest in protecting the health and safety of its members and their families, USW joined a coalition of over fifty labor, environmental, health and safety groups in 2012 petitioning EPA to improve the RMP by requiring the use of inherently safer technologies and alternatives at chemical facilities. RMP Coalition Petition. In 2013, President Obama signed an executive order directing federal agencies to consider changes to chemical safety

⁸ *See* RIA at 8; Fendley Declaration ¶¶ 2-3; Declaration of Ben Lilienfeld (hereinafter “Lilienfeld Declaration”) ¶¶ 2-6, 9-10; Nibarger Declaration ¶¶ 2-3, 13-18; Wright Declaration ¶¶ 2-3.

regulations to prevent disasters. E.O. 13,650, Improving Chemical Facility Safety and Security, 78 Fed. Reg. 48,029 (Aug. 7, 2013).

Since July 2014, EPA formally requested information on potential revisions to RMP regulations from the public and other stakeholders,⁹ and published a proposed rule at 81 Fed. Reg. 13,647 (Mar. 14, 2016) intended to reduce the risk of fires, explosions, spills, releases, and other chemical disasters. During the course of the rulemaking, EPA held a public hearing and received over 61,000 public comments (82 Fed. Reg. at 4,599) including the USW Chemical Disaster Rule Comments.

EPA finalized the Chemical Disaster Rule after concluding that under the prior RMP regulations, “[m]ajor incidents” continue to occur and “highlight the importance of reviewing and evaluating current practices and regulatory requirements, and applying lessons learned from other incident investigations to advance process safety.” *Id.* at 4,600. In the proposed rule that lead to the Chemical Disaster Rule, EPA identified a number of chemical releases and disasters at oil refineries and chemical manufacturing facilities in recent years that spurred the Chemical Disaster Rule including *inter alia*: (i) the March 23, 2005, explosions at the BP Refinery in Texas City, Texas, that killed 15 people and injured more than 170 people; (ii) the April 2, 2010, explosion and fire at the

⁹ 79 Fed. Reg. 44,604 (July 31, 2014), EPA-HQ-OEM-2014-0328.

Tesoro Refinery in Anacortes, Washington, that killed seven people; and (iii) the August 6, 2012, release from the Chevron Refinery in Richmond, California, resulting from a fire that endangered nineteen (19) Chevron employees and created a large plume of highly hazardous chemicals that traveled across the Richmond, California, area. 81 Fed. Reg. 13,644 (Mar. 14, 2016) (footnotes omitted).

Significantly, all of the aforementioned chemical releases occurred at refineries with workers represented by USW,¹⁰ prompting USW to initiate a study in 2010 entitled, “A Risk Too Great, Hydrofluoric Acid in U.S. Refineries” (2013) (hereinafter “*A Risk Too Great*”) (<http://assets.usw.org/resources/hse/pdf/A-Risk-Too-Great.pdf>), which was attached and incorporated by reference to USW’s Delay Rule Comments. <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0859>. *A Risk Too Great* surveyed twenty-three (23) USW work sites, which represented nearly half of the fifty (50) refineries in the United States that use hydrofluoric acid (HF) as a catalyst in the alkylation process. *A Risk Too Great* at 4 noted: “[t]wenty-five oil companies use HF at 50 U.S. refineries. **Collectively, these refineries put more than 26 million persons at risk from an HF release. Among these are 19 refineries in or near eight major metropolitan areas that put more than 22 million persons at risk.** USW

¹⁰ Nibarger Declaration ¶¶ 14-19.

represents approximately 7,000 workers at 28 of these refineries.” (Emphasis supplied.).

EPA also collected data on hazardous releases and their consequences, documenting that during a recent 10-year period (2004-13), there were over 2,292 incidents at RMP regulated facilities, including 1,517 incidents where facilities reported on or off-site harm. 81 Fed. Reg. at 13,699; RIA at 88; EPA, RMP Facility Accident Data, 2004-2013 (Feb. 2016), EPA-HQ-OEM-2015-0725-0002. EPA documented that these “reportable accidents were responsible for 58 deaths, 17,099 people were injured or sought medical treatment, almost 500,000 people evacuated or sheltered-in-place, and over \$2 billion in property damages.” *Id.* In total, EPA found that RMP covered facility accidents cause about \$274.7 million in quantified damages per year, which excluded unquantified harm such as the fear and loss of security resulting from being forced to evacuate from one’s home, school or workplace, or to shelter in place indefinitely without information on or protection from exposure to RMP substances. 82 Fed. Reg. at 4,683-84, tbl. 17 (Summary of Quantified Damages); RIA at 8-9 & ex. C.

The Chemical Disaster Rule establishes a set of measures specifically designed to reduce the threat of the range of chemical releases and threats from RMP regulated facilities as documented in the rulemaking record. First, the Chemical Disaster Rule clarifies and enhances the preventative measures of the

RMP framework applicable to processes at those facilities that have potential to cause significant off-site impacts or have had a fatal or serious accident within the last five years. *See* 40 C.F.R. § 68.3 (defining process); 40 C.F.R. § 68.10 (defining Program 2 and Program 3 processes). If a facility experiences an incident that results in a “catastrophic release”¹¹ or which “[c]ould reasonably have resulted in a catastrophic release,” a facility must investigate the root cause of the incident with the goal of preventing a similar future incident (40 C.F.R. §§ 68.60, 68.81; *see also* 82 Fed. Reg. at 4,595) as recommended by USW.¹²

The Chemical Disaster Rule also strengthens requirements for compliance audits and where needed, ensures that a third-party leads the compliance audit (40 C.F.R. §§ 68.58, 68.79) as supported by USW.¹³ Additionally, for the three industry sectors with the highest accident rates as shown in RMP data – petroleum refineries, chemical manufacturers, and pulp and paper mills – the Chemical Disaster Rule requires such facilities to assess “safer technology and alternative

¹¹ “Catastrophic release” means “a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.” 40 C.F.R. § 68.3.

Conversely, “accidental release” means “an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source,” including an unanticipated release caused by a criminal act of a third-party. *Id.*; 82 Fed. Reg. at 4,630, n.62.

¹² *See* USW RMP Comments at 3-5; Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

¹³ *See* USW RMP Comments at 5-6; Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

risk management measures applicable to eliminating or reducing risk for process hazards” (40 C.F.R. § 68.67(c)(8); 82 Fed. Reg. at 4,632) as advocated by USW.¹⁴ Covered facilities in these three sectors must consider whether there is a safer or simpler way to use or store hazardous chemicals and determine whether such safer technologies and alternatives are practicable under the Chemical Disaster Rule. *See* 81 Fed. Reg. 13,663; 82 Fed. Reg. 4,629; 40 C.F.R. § 68.67(c)(8)(i)-(ii).

In addition, the Chemical Disaster Rule requires all covered facilities to bolster emergency preparedness as recommended by USW.¹⁵ Covered facilities under the Chemical Disaster Rule must coordinate annually with local first responders and emergency planning committees to strengthen preparation from accidents and disasters. Emergency preparedness requirements include testing notification systems, ensuring facilities provide emergency coordination information, and scheduling simulated-emergency field exercises at least once every 10 years. *See, e.g.*, 40 C.F.R. § 68.96(a); *see also* 40 C.F.R. § 68.90(b)(5); 40 C.F.R. § 68.93 (information coordination requirements); 40 C.F.R. § 68.96(b); 82 Fed. Reg. at 4,595. According to the preamble to the Chemical Disaster Rule, providing first responders with “easier access to appropriate facility chemical

¹⁴ *See* EPA RMP Comments at 6-9; Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

¹⁵ USW Chemical Disaster Rule Comments at 9-10; Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

hazard information ... can significantly improve emergency preparedness and their understanding of how the facility is addressing potential risks.” 82 Fed. Reg. 4,596.

Finally, so that vulnerable fence-line communities may participate in emergency preparedness and be aware of the threats and security measures affecting them, the Chemical Disaster Rule requires information be made available to community members with safety concerns about covered facilities as advocated by USW.¹⁶ For example, within 90 days of a chemical release or incident, facilities must hold a meeting to inform communities regarding the incident and any response. 40 C.F.R. § 68.210(e); 82 Fed. Reg. 4,596; *see also* 40 C.F.R. § 68.210(b). EPA determined that these provisions will help assure community members “that the facility is adequately prepared to properly handle a chemical emergency,” to “improve their awareness of risks ... and to be prepared to protect themselves in the event of an accidental release.” 81 Fed. Reg. 13,681.

II. PETITIONERS’ CHALLENGE TO THE DELAY RULE

Petitioners Air Alliance Houston, *et al.* are local and national non-profit organizations, including fence-line community groups, whose members and constituents live and engage in other regular activities near facilities covered by the

¹⁶ USW Chemical Disaster Rule Comments at 10-11; Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20.

Chemical Disaster Rule and the Delay Rule. Petitioners' missions and objectives include preventing and reducing health and safety threats from such facilities (among others) for their members, constituents and affected communities.

Petitioners have worked for years to urge EPA to strengthen, not weaken, protections from chemical disasters, including the RMP requirements, providing "invaluable information about impacts on poor and minority communities, directly from affected community members." *See, e.g.*, Comments of Coal. to Prevent Chem. Disasters, EPA-HQ-OEM-2015-0725-0575 (including various petitioners); RIA at 127.

On March 13, 2017, EPA responded to the February 28, 2017, petition for reconsideration filed by the "RMP Coalition," stating that EPA is "convening a proceeding for reconsideration," and would prepare a notice of proposed rulemaking "in the near future." EPA-HQ-OEM-2015-0725-0763. EPA simultaneously stayed the Chemical Disaster Rule's effective date for 90 days, through June 19, 2017. 82 Fed. Reg. 13,968, 13,969 (Mar. 16, 2017). Then, on April 3, 2017, EPA published a notice of the proposed delay rule to further stay the Chemical Disaster Rule's effective date for an additional 20 months. 82 Fed. Reg. 16,146 (Apr. 3, 2017). Petitioners objected to the Delay Rule asserting that EPA does not have authority to postpone the effectiveness of the Chemical Disaster

Rule, and that the delay will irreparably harm Petitioners' members as well as the public generally.¹⁷

III. INFORMATION ABOUT MOVANT USW

Similarly, USW objected to the proposed Delay Rule in its May 19, 2017, comments to the proposed rule indicating that further delay was untenable to USW's members and their families.¹⁸ USW is the largest private-sector union in North America, representing approximately 850,000 workers employed in metals, mining, rubber, paper and forestry, energy, chemicals transportation, health care, security, hotels, and municipal governments. Significantly, USW represents the majority of organized workers in the petrochemical industry. Approximately 25,000 members work in 350 United States chemical plants. USW represented oil refineries account for almost two-thirds of United States production. No single company, and no other union, either operates, or represents the workers in more plants that are the subject of the RMP regulations than USW.¹⁹

USW members are highly skilled and highly-trained workers who operate and maintain chemical and petrochemical facilities including refineries. USW

¹⁷ Comments of Petitioners, EPA-HQ-OEM-2015-0725-0861 (May 19, 2017), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0861>.

¹⁸ USW Delay Rule Comments, <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0859>.

¹⁹ Declarations ¶ 2.

members who work at these facilities would be hurt “first and worst” when employers and federal regulations do not do enough to prevent catastrophic releases and explosions. In addition, many of USW’s members and their families work, reside and recreate within close proximity of these chemical and petrochemical facilities located throughout the United States putting them at risk of harm to person and property in the event of an accidental chemical release.²⁰

As noted above, USW worked closely with the United States Senate, EPA, and other stakeholders including trade associations such as the Chemical Manufacturing Association now known as the American Chemistry Council,²¹ and environmental, health and safety groups to (i) improve chemical safety and strengthen chemical disaster prevention measures, emergency response programs, and community access to hazards and disaster prevention information, and (ii) reduce unplanned releases of toxic chemicals that threaten public health and safety near chemical facilities.

USW has demonstrated strong interest in the Chemical Disaster Rule as reflected by USW’s efforts to strengthen chemical disaster prevention and secure the protections for its members that are set forth in this Rule. USW is intervening in this litigation to protect the interests of USW, its members and their families

²⁰ *Id.* ¶ 3; Nibarger Declaration ¶ 7.

²¹ Wright Declaration ¶ 4.

relating to the potential release of regulated substances from RMP covered facilities to stop the Delay Rule and any further delay of the effective date of the Chemical Disaster Rule.

ARGUMENT

USW requests petitioner-intervenor status to protect the interests of USW members and their families who live, work, and engage in other activities in proximity to chemical/petrochemical facilities subject to RMP requirements. USW meets the requirements for intervention under Fed. R. App. P. 15 and the D.C. Circuit Rules.

I. STANDARD APPLICABLE TO A MOTION TO INTERVENE

Under Fed R. App. P. 15(d) and the local rules, a motion to intervene need only include “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. 15(d); D.C. Cir. L.R. 15(b). Significantly, “in the intervention area 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.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967).

USW seeks intervention to support Petitioners’ efforts to ensure that the effective date and compliance deadlines set forth in the Chemical Disaster Rule are not unlawfully delayed by EPA pursuant to the Delay Rule. EPA’s final action

would inappropriately delay implementation of important improvements required by the Chemical Disaster Rule thereby irreparably harming USW members and their families. As set forth below, USW has a strong interest in ensuring that the Chemical Disaster Rule is not further delayed by EPA under the Delay Rule. USW's interests warrant a grant of intervention to USW in this litigation.

II. USW MEETS THE REQUIREMENTS FOR INTERVENTION

USW meets the requirements for intervention pursuant to Fed. R. App. P. 15(d) in a proceeding to review EPA's final agency action²² as (i) USW's motion is timely; (ii) USW has a demonstrated interest relating to the subject matter of this action that may be impaired by disposition in USW's absence; and (iii) USW satisfies all applicable requirements under the rules (Fed. R. App. P. 15(d)), and judicial precedent. *See, e.g., United States Steel Corp. v. EPA*, 614 F.2d 843, 844 (3d Cir. 1979). *See also Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015) (The intervention standard for a plaintiff-intervenor is the same as that for a defendant-intervenor.); *Southern Pacific Transportation Co. v. ICC*, 69 F.3d 583, 586-87 (D.C. Cir. 1995) (A plaintiff-intervenor must show standing and cannot raise new issues.).

²² Section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), is silent with regard to intervention in an action seeking review of EPA's final agency action. Thus, Fed. R. App. P. 15(d) prescribes the method of intervention for such actions.

A. This Motion is Timely Filed and Will Not Cause Delay.

Motions to intervene “must be filed within 30 days after the petition for review is filed.” Fed. R. App. P. 15(d). In the instant case, Petitioners filed their petition on June 15, 2017, and USW’s motion is being filed timely within the 30-day period shortly after the Petition. *See Ala. Power Co. v. ICC*, 852 F.2d 1361, 1367 (D.C. Cir. 1988). Also, USW’s participation will not delay the proceedings or prejudice any party as no briefing schedule has been established to date. Importantly as discussed below, USW, whose members work at chemical and petrochemical facilities subject to RMP requirements, offers a distinct perspective that may be of assistance to this Court. *See, e.g., Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977).

B. USW Has A Demonstrated Interest in The Delay Rule.

First, USW has Article III standing with a demonstrated interest in the Delay Rule because USW filed timely comments on the Delay Rule with EPA on May 19, 2017, raising objections to any further delay of the effective date of the Chemical Disaster Rule by EPA to protect USW’s interests in expeditious implementation of the Rule.

Releases of regulated substances from chemical/petrochemical facilities subject to RMP requirements pose a real and immediate threat to USW members and their families who work, reside and/or recreate in close proximity to these

facilities. Such releases from covered facilities are likely to cause irreparable harm to USW members and their families due to (i) exposure to contaminants during the accidental release of air emissions, (ii) personal injuries including death caused by catastrophic releases and explosions, and (iii) related damage and deterioration to their property resulting in diminution of property values.²³

USW's concerns regarding releases of regulated substances from chemical and petrochemical facilities subject to RMP requirements are supported by the history of safety problems at these covered facilities as documented by EPA's rulemaking record,²⁴ and USW reports including "A Risk Too Great," and "Papered Over: Safety and Health in the U.S. Paper Mills" (2010) at 11-12.

<http://www.usw.org/union/mission/industries/paper-and-forestry/resources/papered-over-safety-and-health-in-u-s-paper-mills>, which were attached and incorporated by reference to USW's Delay Rule Comments. Indeed, many of these catastrophic events occurred at facilities that employ workers represented by USW resulting in fatalities and serious injuries to USW members.²⁵

Moreover, USW members and their families experience on-going harms due to exposure to regulated substances and concerns about potential health impacts

²³ See Fendley Declaration ¶¶ 2-3, 19-21; Lilienfeld Declaration ¶¶ 2-6, 8-11; Nibarger Declaration ¶¶ 2,7, 13-18, 21-22; Wright Declaration ¶¶ 2-3, 12-14.

²⁴ See, e.g., EPA-HQ-OEM-2015-0725-0002 (data on accidents, deaths, injuries, and other harm caused by releases from covered facilities from 2004 to 2013).

²⁵ See Nibarger Declaration ¶¶ 13, 21-22; Lilienfeld Declaration ¶¶ 8-11.

resulting from accidental releases at RMP covered facilities. The ever-present threat of accidents and consequent health and safety implications for USW members and their families impair their ability to engage in and diminish their enjoyment of, activities important to USW members' and their families' quality of life.²⁶

EPA data documents that, on average, there were over 225 accidental releases reported per year from 2004-2013, more than one every other day in neighborhoods and communities near chemical facilities. Accidents at chemical facilities “occur every year, causing fires and explosions; damage to property; acute and chronic exposures of workers and nearby residents to hazardous materials; and resulting in serious injuries and death.” 82 Fed. Reg. 4,597.

The record for the Chemical Disaster Rule establishes that implementation of the Rule will reduce the likelihood of accidental releases and the harm caused by such releases. *See, e.g., id.* (“implementation of this rule would result in a reduction of the frequency and magnitude of damages from releases”).

Additionally, the Chemical Disaster Rule provides USW and its members, and first-responders who protect the well-being of USW members and their families, access to information about the chemical hazards and measures in place or that are

²⁶ *See* Lilienfeld Declaration ¶¶ 2-6, 8-10; Nibarger Declaration ¶¶ 2, 7, 13-17; Wright Declaration ¶¶ 4-6, 12-14.

available to reduce and prevent harm from toxic releases. USW seeks to ensure access to information about community threats and emergency response so USW members and their families are better prepared to respond to potential chemical disasters in their community.²⁷

Delaying the Chemical Disaster Rule will (i) lessen the safeguards in place to protect USW's members and their families, (ii) remove important procedural steps certain facilities must take under the Rule to strengthen protections from chemical disasters, and (iii) deny USW and its members, and the first-responders who protect them, access to essential safety and emergency response information as described in the preamble.²⁸ USW, therefore, seeks to intervene to prevent injury to USW members and their families that will occur if the Delay Rule remains in place.

For purposes of Fed. R. App. P. 15(d) and Article III standing, this motion and the accompanying declarations establish that USW's interests satisfy the test. *See, e.g., Sierra Club v. EPA*, 755 F.3d 968, 975-76 (D.C. Cir. 2014); *Natural Res. Def. Council v. EPA*, 489 F.3d 1364, 1370-71 (D.C. Cir. 2007); *see also*

²⁷ *See* Fendley Declaration ¶ 18; Nibarger Declaration ¶ 20; Wright Declaration ¶ 6.

²⁸ *See* Fendley Declaration ¶¶ 18-21; Nibarger Declaration ¶¶ 13, 20-22; Lilienfeld Declaration ¶¶ 8-11; Wright Declaration ¶¶ 12-14.

Crossroads, 718 F.3d at 316 (requiring Art. III standing for defendant-intervenors as with plaintiff-intervenors, but not prudential).

USW has a legally protected interest in challenging the Delay Rule, which delays the effective date and compliance deadlines for the Chemical Disaster Rule that establishes vital prevention and compliance requirements, chemical emergency preparedness measures, and community access to information designed to protect USW's members and their families. The Chemical Disaster Rule that EPA seeks to delay improperly per the Delay Rule provides greater security and better tools to prevent and prepare for accidental releases at RMP regulated facilities thereby reducing the likelihood that USW members and their families will confront such accidental releases or incur as much harm if such releases occur.

USW seeks to intervene to oppose EPA's delay of the effective date and compliance deadlines for the Chemical Disaster Rule pursuant to the Delay Rule, which undermines USW's organizational interests in protecting its members' and their families' health and safety, as well as their ability to enjoy recreational and aesthetic activities. Similarly, delaying implementation of the Chemical Disaster Rule deprives USW, its members and their families of the enhanced protections from releases of RMP regulated substances provided by the Chemical Disaster Rule and denies USW access to information to assist its members in understanding

and strengthening protections from the releases of RMP regulated substances into the environment.

C. USW's Interests May Not Be Adequately Protected in USW's Absence.

While not mandatory under Fed. R. App. P. 15(d), USW's interests may not be adequately represented by Petitioners; USW should not be required to rely on Petitioners alone to make arguments necessary to protect the health and welfare of USW members and their families. Courts have recognized that a movant may seek to intervene in a petition proceeding to protect its interests that may be related to, but not identical with petitioners' interests. *See United States Steel Corp. v. EPA*, 614 F.2d 843, 846 (3d Cir. 1979). The adequacy of representation test is "not onerous." *Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (explaining that movant need only show representation "may be" inadequate) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

USW represents members who work inside covered facilities subject to the RMP requirements and are harmed by the Delay Rule. USW members' interests, as workers inside the facilities subject to the RMP requirements, are similar to, but not identical with Petitioners' interests as representatives of fence-line communities outside of these covered facilities.

The Chemical Disaster Rule is replete with specific references to workers and their concerns that are distinct from the concerns of fence-line communities.

See, e.g., 82 Fed. Reg. at 4619 (Discussion relating to worker involvement in RMP audits.); *id.* at 4633 (Discussion relating to the calculation of incident rates based on accidents per hours worked or number of accidents per full time worker.); *id.* at 4641 (Discussion relating to involvement of workers in the Safer Technology and Alternatives Analysis (“STAA”) process.); *id.* at 4646 (Discussion relating to worker participation in Process Hazard Analysis (“PHA”) requirements.); *id.* at 4659 (Discussion relating to worker review of Emergency Response Plan.); *id.* at 4675 (Discussion relating to worker training under the RMP.); *id.* at 4677 (Discussion relating to RMP information sharing with facility workers.); *id.* at 4684 (Discussion relating to whether Chemical Disaster Rule will increase costs or provide benefits for covered facilities with regard to hiring and retaining workers.)

USW’s motion to intervene meets this Court’s “interest” test.” USW’s intervention is necessary to protect USW’s and its members’ unique interest in preventing further delay of the Chemical Disaster Rule and assuring compliance with the Rule as expeditiously as practicable. USW, therefore, requests to intervene to present relevant information to this Court and advocate on behalf of its members pursuant to Rule 15(d), and to prevent harm to its interests. *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977).

CONCLUSION

For the foregoing reasons, USW respectfully requests leave to intervene in support of Petitioners in Case No. 17-1155 and any other related cases.

Respectfully submitted,

/s/ Susan J. Eckert

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CERTIFICATE OF SERVICE

I certify that on June 20, 2017, the foregoing was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

/s/ Susan J. Eckert

SUSAN J. ECKERT