ORAL ARGUMENT NOT YET SCHEDULED

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

AMERICAN CHEMISTRY COUNCIL, *et al.*, *Petitioners*, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents*.	Case No. 17-1085 (and consolidated cases)

MOTION TO INTERVENE IN SUPPORT OF RESPONDENT U.S. ENVIRONMENTAL PROTECTION AGENCY FILED BY 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

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27, and Rule 15(b) of this Court, 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 (collectively,

"Movants") hereby move for leave to intervene in support of Respondents U.S. Environmental Protection Agency and Administrator Scott Pruitt, in his official capacity, (collectively, "EPA" or "the agency") in case Nos. 17-1085, 17-1087, 17-1088, and any other similar cases involving the same agency action. Counsel for Petitioners in case No. 17-1085 and counsel for Respondents have stated that their respective clients take no position at this time, but are reserving the right to respond after the motion has been filed. Counsel for petitioners in case Nos. 17-1087 and 17-1088 take no position on this motion; and counsel for petitioner Chemical Safety Advocacy Group (No. 17-1087) further noted that it does not intend to file a response. In support of their motion, Movants state as follows.

INTRODUCTION

These consolidated cases seek review of the U.S. Environmental Protection Agency's final rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act" and published at 82 Fed. Reg. 4594 (Jan. 13, 2017) ("the Rule").

The Rule sets new safety requirements for hazardous chemicals at industrial facilities covered by EPA's Risk Management Program ("RMP"). EPA finalized this rule in response to serious chemical disasters like the 2012 Chevron Richmond refinery fire that endangered workers and caused 15,000 community members to seek medical treatment. *Id.* at 4599. To reduce the frequency of chemical disasters

and the harm they can cause, the Rule puts common-sense measures in place that strengthen accident prevention and emergency preparedness. Movants seek to intervene to safeguard their interests in preserving these protections for their members, including fenceline community residents who, along with workers and first-responders, are the Rule's primary beneficiaries.

I. EPA'S CHEMICAL DISASTER PREVENTION RULE

The Rule updates the agency's regulations under 42 U.S.C. § 7412(r) for the prevention of accidental releases at facilities that use or store certain extremely dangerous chemical substances. As part of the 1990 Clean Air Act Amendments, Congress enacted § 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. at 4599. As the Conference Report states, "[t]he purpose of [§ 7412(r)] is to prevent accidents like that which occurred at Bhopal and require preparation to mitigate the effects of those accidents that do occur." 136 Cong. Rec. S16,985, S16,926-27 (Oct. 27, 1990), 1990 WL 164490; *see also* S. Rep. No. 101-228, at 134 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3519 (citing the Bhopal, India tragedy in 1984, when a catastrophic release of a cloud of methyl isocyanate over the densely populated city killed over 3,400 people and injured more than 200,000, and an incident the following year when "409 residents and chemical workers in Institute,

West Virginia were sent to hospital emergency rooms by an accidental toxic release from Bhopal's sister facility").

With § 7412(r), 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 (listing chemicals such as hydrogen fluoride). The Act further provides authority and direction to EPA to set regulatory requirements to prevent, detect, correct, and respond to releases of these hazardous substances in order to prevent and reduce harm from chemical disasters. *See, e.g.*, 42 U.S.C. § 7412(r)(7)(A) (authorizing a range of measures "to prevent accidental releases of regulated substances"); *id.* § 7412(r)(7)(B)(i) (requiring regulations that, among other things provide, "to the greatest extent practicable, for the prevention and detection of accidental releases … and for response to such releases").

The Rule at issue here is the first major update to the prevention requirements of EPA's chemical Risk Management Program in over 20 years, adding significant protections for vulnerable communities. *See* 82 Fed. Reg. at 4599-600. There are about 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. 82 Fed. Reg. at 4596 tbl.1; Regulatory Impact Analysis ("RIA") at 81 ex.6-2, 83 ex.6-3, 118 ex.7-9 (Dec. 16, 2016), EPA-HQ-OEM-2015-0725-0734 (listing deaths and injuries from 10 years of chemical accidents at covered facilities).

The people most vulnerable to death, injury, and other harm from a chemical disaster are facility workers, first-responders, and fenceline community members. *See* RIA at 9-10. Nationwide, one in three schoolchildren go to school in a chemical disaster vulnerability zone near an RMP-covered facility. Comments of Coal. to Prevent Chem. Disasters at 35 n.54, 41, EPA-HQ-OEM-2015-0725-0172 (citing Ctr. For Eff. Gov't, *Kids in Danger Zones* (Sept. 2014)[1]). Black, Latino, and low-income people face disproportionate threats because they are more likely to live within a danger or vulnerability zone. *Id.* at 34 (citing Envtl. Justice and Health Alliance for Chem. Policy Reform, *Who's In Danger*, EPA-HQ-OEM-2015-0725-0574[2]).

In view of these hazards, in 2012, a coalition of over fifty labor, environmental, health, and safety groups, including some movants, filed a petition urging EPA to require use of inherently safer technologies at chemical facilities.

---

[1] http://www.foreffectivegov.org/sites/default/files/kids-in-danger-zones-report.pdf.

[2] https://www.epa.gov/sites/production/files/2017-03/documents/rmp_final_rule_qs_and_as_3-13-17.pdf.

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 ("2012 Pet'n"). After a series of major releases at chemical facilities, President Obama signed an executive order directing federal agencies to consider changes to chemical safety regulations to prevent disasters. E.O. 13,650, Improving Chemical Facility Safety and Security, 78 Fed. Reg. 48,029 (Aug. 7, 2013).

As a first step toward this rulemaking, EPA published a notice requesting information on potential revisions to the RMP regulations. 79 Fed. Reg. 44,604 (July 31, 2014), EPA-HQ-OEM-2014-0328. Based in part on over 100,000 comments received, and working in consultation with sister agencies (including the U.S. Chemical Safety Board; Occupational Safety and Health Administration; Department of Homeland Security; and Bureau of Alcohol, Tobacco, Firearms, and Explosives) in March 2016, EPA published a proposed rule to reduce the incidence of and harm from chemical disasters. Proposed Rule, 81 Fed. Reg. 13,638, 13,644 (Mar. 14, 2016). During the course of the rulemaking, EPA held a public hearing and received over 61,000 comments from a variety of stakeholders, including former EPA Administrator Christine Todd Whitman, in support of stronger requirements. 82 Fed. Reg. at 4599; Comments of Christine Whitman, EPA-HQ-OEM-2015-0725-0518.

EPA signed the Final Rule on December 21, 2016, after concluding that under the prior RMP regulations, "major 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." 82 Fed. Reg. at 4600. EPA's proposed rule highlighted a number of examples of chemical releases and disasters at oil refineries and chemical manufacturing facilities, among others, as evidence supporting the need for and guiding its action:

> On March 23, 2005, explosions at the BP Refinery in Texas City, Texas, killed 15 people and injured more than 170 people. On April 2, 2010, an explosion and fire at the Tesoro Refinery in Anacortes, Washington, killed seven people. On August 6, 2012, at the Chevron Refinery in Richmond, California, a fire involving flammable fluids endangered 19 Chevron employees and created a large plume of highly hazardous chemicals that traveled across the Richmond, California, area. Nearly 15,000 residents sought medical treatment due to the release. On June 13, 2013, a fire and explosion at Williams Olefins in Geismar, Louisiana, killed two people and injured many more.

81 Fed. Reg. at 13,644 (footnotes omitted) (also citing West, TX fertilizer plant explosion that killed 15 people on April 17, 2013). EPA also collected data on hazardous releases and their consequences, finding that during a recent 10-year period (2004-2013), there were 2,291 incidents at covered facilities, including 1,517 where facilities reported on- or off-site harm. RIA at 80; *see also* EPA,

RMP Facility Accident Data, 2004-2013 (Feb. 2016), EPA-HQ-OEM-2015-0725-0002 ("RMP Data"). EPA found that these reportable accidents were responsible for 58 deaths, 17,099 people were injured, hospitalized or sought medical treatment, almost 500,000 people evacuated or sheltered-in-place, and over $2 billion in property damages. RIA at 87 ex.6-5. In total, RMP-covered facility accidents cause about $274.7 million in quantified damages per year. 82 Fed. Reg. at 4683 tbl.17 (Summary of Quantified Damages); RIA at 10-11 & ex.C (finding that "[r]educing the probability of chemical accidents and the severity of their impacts, and improving information disclosure by chemical facilities … would provide benefits to potentially affected members of society."). In the Final Rule, EPA adopted measures designed to reduce the threat of the full range of chemical releases and threats documented in the rulemaking record.

In particular, the Rule clarifies and enhances the preventative measures of the RMP framework applicable to processes at facilities that have potential to cause significant off-site impacts or have had a fatal or serious accident within the last five years. If a facility experiences an incident that results in a "catastrophic release" or which "[c]ould reasonably have resulted in a catastrophic release," it must investigate the root cause of the incident with the goal of preventing a similar future incident. 40 C.F.R. §§ 68.3, 68.60, 68.81; *see also* 82 Fed. Reg. at 4595. The Rule also requires that compliance audits be conducted by a third party when

incidents have occurred or other conditions are met at a facility. 40 C.F.R. §§ 68.58, 68.79. And, for the three industry sectors with the highest accident rates as shown in RMP data (*i.e.*, petroleum refineries, chemical manufacturers, and pulp and paper mills), the Rule requires facilities to assess "safer technology and alternative risk management measures applicable to eliminating or reducing risk from process hazards." *Id.* § 68.67(c)(8); 82 Fed. Reg. at 4632. Facilities must consider whether there is a safer way to use or store hazardous chemicals and determine whether it is practicable and can be implemented. *See* 81 Fed. Reg. at 13,663; 82 Fed. Reg. at 4629; 40 C.F.R. §§ 68.67(c)(8)(i)-(ii).

In addition, as a result of the Rule, all covered facilities are required to coordinate annually with local first-responders and emergency planning committees to strengthen preparation to protect communities in the event of accidents and disasters. Emergency preparedness requirements include: testing notification systems, ensuring facilities provide emergency coordination information, and scheduling simulated-emergency table top exercises at least once every three years and field exercises at least once every 10 years. *See, e.g.*, 40 C.F.R. § 68.96(a); *see also id.* §§ 68.90(b)(5), 68.93 (information coordination requirements), 68.96(b); 82 Fed. Reg. at 4595. As EPA found, providing first-responders with "easier access to appropriate facility chemical hazard information

… can significantly improve emergency preparedness and their understanding of how the facility is addressing potential risks." 82 Fed. Reg. at 4596.

Finally, so that vulnerable fenceline communities may more effectively participate in emergency preparedness and be aware of the hazards and appropriate ways to respond for themselves and their families, the Rule also strengthens interactions between facilities and community members with safety concerns about covered facilities. *See, e.g.*, 40 C.F.R. §§ 68.210(e) (public meeting requirement), 68.210(b) (requiring information on chemical hazards, accident history, and emergency response to be provided to community members); 82 Fed. Reg. at 4596. These provisions will help community members assure themselves "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. at 13,681; 82 Fed. Reg. at 4668-69.

II. PETITIONERS' CHALLENGE TO EPA'S RULE

Petitioners in case Nos. 17-1085, 17-1087, and 17-1088, filed on March 13 and 14, 2017, include various industry trade associations such as the American Chemistry Council, *et al.*; the Chemical Safety Advocacy Group; and the Utility Air Regulatory Group. DN1666100; DN1666295; DN1666605. In letters to Congress and in their comments and other submissions to the agency, Petitioners

have opposed the improvements in the Rule. *See, e.g.*, Comments of Am. Chemistry Council, EPA-HQ-OEM-2015-0725-0537; Comments of Am. Petroleum Inst., EPA-HQ-OEM-2015-0725-0536; Comments of Chem. Safety Advocacy Grp., EPA-HQ-OEM-2015-0725-0594; Comments of Util. Air Regulatory Grp., EPA-HQ-OEM-2015-0725-0587. Many of these petitioners have also asked Congress to nullify the Rule via the Congressional Review Act, demonstrating an unequivocal intention to vacate every protective measure it includes to protect health and safety, and simultaneously prevent the agency from issuing a "substantially similar" rule in the future. 5 U.S.C. § 801(b)(2); Letter to Congressional Leaders (Jan. 25, 2017).[3] Some industry petitioners have filed petitions for administrative reconsideration with EPA, requesting that the agency weaken, delay, or vacate the Final Rule. *See* 82 Fed. Reg. 16,146, 16,148 (Apr. 3, 2017) (describing three reconsideration petitions).

On March 13, 2017, EPA responded to the first petition for reconsideration (filed by certain industry petitioners describing themselves as the "RMP Coalition" on February 28, 2017), stating it is "convening a proceeding for reconsideration," and would prepare a notice of proposed rulemaking "in the near future." Letter to Justin Savage (Mar. 13, 2017), EPA-HQ-OEM-2015-0725-0763. EPA simultaneously stayed the rule's effective date through June 19, 2017. 82 Fed.

[3] https://www.americanchemistry.com/Trade-Assoc-Letter-Urging-Congress-to-Act-on-RMP-Rule.pdf.

Reg. 13,968, 13,969 (Mar. 16, 2017). On April 3, 2017, EPA published a notice of proposed rulemaking to further stay the rule's effective date for 20 additional months. 82 Fed. Reg. 16,146.

III. MOVANT ENVIRONMENTAL AND COMMUNITY GROUPS

Movants include local and national non-profit organizations whose missions include working to prevent and reduce health and safety threats from chemical facilities. Movants do this work on behalf of their members and constituents, many of whom live, work, and take care of their families near facilities covered by the rule Petitioners are challenging, and who face significant harm from the fires, explosions, spills, leaks, and other disasters that take place at these facilities. *See* Declarations. Many Movants have been working for years to improve chemical safety; strengthen chemical disaster prevention measures, emergency response programs, and community access to hazards and disaster prevention information; as well as reduce unplanned releases of toxic chemicals that regularly threaten public health and safety near chemical facilities. *See, e.g.*, Moench Decl. ¶ 15; Kothari Decl. ¶¶ 5-6; Marquez Decl. ¶¶ 2, 15, 17; Nixon Decl. ¶¶ 2-3, 12; Medina Decl. ¶ 2; Kelley Decl. ¶¶ 3-4; Nelson Decl. ¶¶ 6-7; Parras Decl. ¶¶ 5-6; Rolfes Decl. ¶ 9. In 2012, four Movants petitioned EPA to address inherently safer technologies, a core part of the Final Rule. 2012 Pet'n (filed by Air Alliance Houston, Louisiana Bucket Brigade, Texas Environmental Justice Advocacy

Services, and Sierra Club, among others), *supra* at 5. Movant Texas Environmental Justice Advocacy Services is an affiliate and co-coordinator of the Environmental Justice and Health Alliance for Chemical Policy Reform ("EJHA"), a leadership network on chemical safety that has called for stronger protections, gathered information and raised public awareness on the need for chemical safety, and has worked for years, including during EPA's rulemaking, to show the need for strong action for vulnerable communities. Parras Decl. ¶ 5; *see also Who's In Danger*, *supra* at 5 & n.2. Movant Louisiana Bucket Brigade regularly tracks and publishes reports on chemical facility accidents in the Gulf region to raise awareness and try to reduce these incidents. Rolfes Decl. ¶¶ 6-8.

In addition, many Movants supported EPA's rulemaking and have participated in the Coalition to Prevent Chemical Disasters, which includes over 140 labor, national security, environmental, community, and public health groups that took part in the rulemaking process, and filed comments seeking to strengthen the RMP requirements as part of the Rule. *See* Comments of Coal. to Prevent Chem. Disasters, EPA-HQ-OEM-2015-0725-0575 (signed by many movants); *see, e.g.*, Kothari Decl. ¶¶ 5-6, 11; Marquez Decl. ¶ 2; Nixon Decl. ¶ 12; Parras Decl. ¶ 5; Rolfes Decl. ¶ 9. In the record, EPA highlighted its consideration of testimony from movants Louisiana Bucket Brigade, Texas Environmental Justice Advocacy Services, Community In-Power & Development Association, Air Alliance

Houston, Coalition For A Safe Environment, as well as the EJHA and others, as providing "invaluable information about impacts on poor and minority communities, directly from affected community members." RIA at 127. After working to strengthen chemical disaster prevention and secure the Rule's protections, Movants need the ability to participate in these cases to defend and prevent backsliding on the important requirements it contains.

ARGUMENT

I. STANDARD APPLICABLE TO A MOTION TO INTERVENE

Under Federal Rule of Appellate Procedure 15(d) and this Circuit's 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. R. 15(b). Further, "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) (reversing intervention denial under Fed. R. Civ. P. 24(a)); *see also Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015) (describing test for intervention).

II. MOVANTS MEET THE REQUIREMENTS FOR INTERVENTION.

Movants timely filed this motion, have a demonstrated interest relating to the subject matter of this action that may be impaired by its disposition in their

absence, and satisfy all applicable requirements under Rule 15(d) and this Court's precedent. As shown below, Movants meet the test for intervention and seek respondent-intervenor status to oppose attempts to vacate, weaken, or delay the health and safety protections and informational access afforded to them and their members by the Rule, and thereby to protect their and their members' interests.

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

This motion is timely filed on April 12, 2017, within 30 days of the petitions filed on March 13 and 14, 2017. *See Ala. Power Co. v. ICC*, 852 F.2d 1361, 1367 (D.C. Cir. 1988); Fed. R. App. P. 15(d). No briefing schedule has been set. As this case is in abeyance with a status report due by June 19, 2017, consideration of this motion will not cause delay or impede the efficient adjudication of any issue. *See* Order of Apr. 4, 2017, DN1669461. Further, as Movants intend to file their briefing jointly, as directed by D.C. Circuit Rule 28(d)(4), their participation will be consistent with the efficient adjudication of this case. And as nonprofit, environmental and community groups with members and constituents living near chemical facilities regulated by the Rule, Movants will offer 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. Movants Have Legally Protected Interests in Defending the Rule.

Movants' members, constituents, and their families live, work, attend school, and engage in recreation and other activities near chemical facilities to which the Rule applies. *See* Declarations. Movants have members and constituents who live, work, and often visit areas within the danger zones near such facilities, and who have reasonable concerns about the health and safety threats chemical releases and disasters pose to them and their families. *See, e.g.*, Fontenot Decl. ¶¶ 4, 5-8; Hays Decl. ¶¶ 4-10, 12; Kelley Decl. ¶¶ 2, 5-18; Land Decl. ¶¶ 1, 3-9; Marquez Decl. ¶¶ 4-15; Medina Decl. ¶¶ 3, 5-6; Moench Decl. ¶¶ 6-16; Nixon Decl. ¶¶ 1, 5-10; Parras Decl. ¶¶ 6, 8-12. This concern is well-supported by the history of safety problems these facilities have had, as documented in EPA's rulemaking record. *See, e.g.*, RMP Data (data on accidents, deaths, injuries, and other harm caused by releases from covered facilities from 2004 to 2013); *see also* Moench Decl. ¶ 11; Nixon Decl. ¶ 6. In some cases, Movants' members have personally experienced chemical disasters or near misses, such as fires, explosions, or extreme flaring to reduce pressure build-up, and have had to try to help their family members or neighbors escape, increasing their personal concern about the need to avoid similar future incidents and exposure and other resulting health and safety threats. *See, e.g*, Marquez Decl. ¶¶ 4, 6, 10-12; Kelley Decl. ¶¶ 8, 11; Nixon Decl. ¶¶ 5, 6. Movants and their members also experience other on-going harms,

and the ever-present threat of accidents and consequent health and safety concerns impair their ability to engage in and diminish their enjoyment of activities that are important to Movants' members' quality of life. *See, e.g.*, Fontenot Decl. ¶ 8; Hays Decl. ¶¶ 7-8, 10; Kelley Decl. ¶¶ 13-15, 18; Land Decl. ¶¶ 5-7; Marquez Decl. ¶ 15; Moench Decl. ¶¶ 8-10, 16, 18; Medina Decl. ¶ 6; Nixon Decl. ¶¶ 5, 8-9.

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. at 4597. EPA data, summarized above, show that, on average, there were over 225 incidents reported per year from 2004-2013, more than one every other day in neighborhoods and communities near chemical facilities that pose threats to Movants' members' health and well-being. RIA at 31 ex.3-8; *see also id.* at 87 ex.6-5 (listing average on and off-site impacts per year). Movants have members whose relatives attend school near chemical facilities, like millions of Americans. *See, e.g.*, Nixon Decl. ¶ 1.

EPA set the requirements in the Rule to reduce the likelihood of and the harm caused by accidental releases and chemical disasters, and EPA expects that "future damages would be prevented through implementation of this final rule." *See, e.g.*, 82 Fed. Reg. at 4597 ("implementation of this rule would result in a reduction of the frequency and magnitude of damages from releases").

Additionally, the Rule provides Movants, their members, and entities like first-responders who protect the well-being of Movants' members with access to information about the chemical hazards faced by members and measures in place and that could be taken to further reduce and prevent harm from toxic releases. Movants and their members seek to ensure that they too can readily access this information so they can use it to educate their members and the public and to assist their members and constituents concerned about chemical disasters in taking additional measures to prevent and strengthen protection from chemical disasters. *See, e.g.*, Hays Decl. ¶¶ 10-11; Kothari Decl. ¶¶ 10-11; Marquez Decl. ¶¶ 14, 18; Medina Decl. ¶ 8; Moench Decl. ¶ 24; Nelson Decl. ¶ 8; Nixon Decl. ¶ 14; Parras Decl. ¶ 14; Schaeffer Decl. ¶¶ 6-10; Williams Decl. ¶ 12.

Weakening, delaying, or removing provisions of the Final Rule would lessen the safeguards in place to protect Movants' members, would remove important procedural steps certain facilities must take under the Rule to strengthen protections from chemical disasters, and would also deny Movants and their members – and the first-responders who protect them – essential safety and emergency response information as described in the preamble. For these reasons Movants seek to intervene to prevent injury to their members that would occur if the Rule were vacated or undermined as a result of this litigation. *Cf., e.g.*, *Crossroads*, 788 F.3d at 317-18 (allowing intervention to prevent injury where "a

[petitioner] seeks relief, which, if granted, would injure the prospective intervenor"). To the extent this Court has required and continues to require respondent-intervenors to show Article III standing, this motion and the accompanying declarations illustrate that their interests at stake in this matter satisfy that 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 Crossroads*, 788 F.3d at 316, 319-20 (requiring Article III standing but not prudential).[4]

In sum, Movants have legally protected interests in defending the Final Rule, which includes prevention and preparedness requirements to help keep Movants' members safe and give them more peace of mind. Movants also have legally protected interests in defending the information-access provisions designed to give Movants' members more security and tools they can use to work in their communities to prevent and prepare for chemical disasters and to reduce the likelihood they and their families will face such events or experience as much harm if they do occur. *See Crossroads*, 788 F.3d at 317 ("Our cases have generally

[4] *But see McConnell v. FEC*, 540 U.S. 93, 233 (2003) ("It is clear … that the Federal Election Commission (FEC) has standing, and therefore we need not address the standing of the intervenor-defendants, whose position here is identical to the FEC's."), *overruled on other grounds by Citizens United v. FEC*, 130 S. Ct. 876 (2010); *Clinton v. City of New York*, 524 U.S. 417, 431-32 n.19 (1998) ("we need not consider whether the appellee unions also have standing to sue"); *Teva Pharm. USA, Inc. v. Sebelius*, 595 F.3d 1303, 1318 (D.C. Cir. 2010) (same).

found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."). Movants seek to intervene to oppose Petitioners' attempt to vacate, delay, or weaken this Rule, which, should Petitioners' succeed, would likely increase their exposure and other health and safety threats that chemical accidents and disasters cause to Movants and their members; increase the health and safety concerns of Movants' members; and decrease their respective access to information about these threats and resulting health impacts. Success for Petitioners would similarly undermine Movants' organizational interests in protecting their members' and constituents' health, well-being, and recreational and aesthetic interests by taking away benefits Movants have worked to achieve as a service to their members, and by denying their access to information they need to assist their members in addressing chemical hazards.

C. Movants' Interests May Not Be Adequately Protected.

Further, Movants' interests may not be adequately represented in the absence of intervention, and Movants cannot rely on EPA to protect Movants' interests. The adequacy of representation test is "not onerous." *Crossroads*, 788 F.3d at 321; *see also Dimond v. District of Columbia*, 792 F.2d 179, 192-93 (D.C. Cir. 1986) (movant need show only that representation "may be" inadequate) (citation omitted). In recognition of potentially divergent governmental and other

interests, this Court "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *see also United States v. Am. Tel. & Tel. Co*., 642 F.2d 1285, 1293 (D.C. Cir. 1980) (allowing intervention where "the United States does not face the identical harm that [movants] would suffer").

Potential inadequacy of representation is particularly clear where, as here, there has been an Administration change in the leadership of the agency defendant. *Cf. United States v. Mendoza*, 464 U.S. 154, 161 (1984) ("[P]olicy choices are made by one Administration, and often reevaluated by another Administration."). Further, it is hard to see how such potential inadequacy could not exist when, as is true here, a previous opponent of an agency action when it was under development becomes the head of the agency charged with defending that very action. *See, e.g.*, Comments of Scott Pruitt, EPA-HQ-OEM-2015-0725-0624. Further, since the Administration change, EPA has already stayed the Rule and is again proposing to further delay the effective date, in each instance, casting doubt on EPA's position regarding the Rule. *See supra* at 10-11. There is at least the potential for Movants to "have honest disagreements with EPA on legal and factual matters" related to the Rule. *Natural Res. Def. Council*, 561 F.2d at 912. Movants therefore need the ability to intervene to protect their interests, just as this Court has previously

allowed for some movants and other nonprofit environmental and community groups in other Clean Air Act cases.[5]

CONCLUSION

Therefore, Movants respectfully request leave to intervene as respondents in support of EPA and the Final Rule in case Nos. 17-1085, 17-1087, 17-1088, and any other related cases.

[5] *See, e.g.*, *Med. Waste Inst. & Energy Recovery Council v. EPA*, 645 F.3d 420 (D.C. Cir. 2011) (Sierra Club intervened in support of EPA); *Portland Cement Ass'n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011) (Sierra Club and other environmental groups); *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855 (D.C. Cir. 2001) (Sierra Club); Order, Am. Chem. Council v. EPA, No. 14-1083 (D.C. Cir. July 14, 2014), DN1502458 (Sierra Club and other groups); Order, Am. Petrol. Inst. v. EPA, No. 12-1405 (D.C. Cir. Apr. 3, 2013), DN1428767 (California Communities Against Toxics, Clean Air Council, Coalition For A Safe Environment, and Sierra Club).

DATED: April 12, 2017

Respectfully submitted,

/s/ *Gordon E. Sommers*
Gordon E. Sommers
Emma C. Cheuse
Earthjustice
1625 Massachusetts Ave., NW
Suite 702
Washington, DC 20036
(202) 667-4500
gsommers@earthjustice.org
echeuse@earthjustice.org

Counsel for 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

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Counsel hereby certifies, in accordance with Federal Rules of Appellate Procedure 32(g)(1) and 27(d)(2)(C), that the foregoing **Motion to Intervene in Support of Respondent U.S. Environmental Protection Agency Filed by 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** contains 4,809 words, as counted by counsel's word processing system, and thus complies with the 5,200 word limit.

Further, this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) & (a)(6) because this document has been prepared in a proportionally spaced typeface using **Microsoft Word 2010** using **size 14 Times New Roman** font.

DATED: April 12, 2017

/s/ *Gordon E. Sommers*
Gordon E. Sommers

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2017, I have served the foregoing **Motion to Intervene in Support of Respondent U.S. Environmental Protection Agency Filed by 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** on all registered counsel through the court's electronic filing system (ECF).

/s/ *Gordon E. Sommers*
Gordon E. Sommers