

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

MEDICAL WASTE INSTITUTE and)
ENERGY RECOVERY COUNCIL,)
Petitioners,)
v.) Case No. 09-1297
U.S. ENVIRONMENTAL)
PROTECTION AGENCY)
Respondent.)

**MOTION OF SIERRA CLUB AND NATURAL RESOURCES DEFENSE
COUNCIL TO INTERVENE ON BEHALF OF RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Rule 15(b) of this Court, Sierra Club and Natural Resources Defense Council (collectively, “Environmental Intervenors”) hereby move for leave to intervene as respondents in the above-captioned case. In support of their motion, Environmental Intervenors state as follows:

1. The present case seeks review of the final action (including the promulgation of regulations) taken by respondent (hereinafter “EPA” or “the agency”) at 74 Fed. Reg. 51,368 *et seq.* (October 6, 2009) and entitled “Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators” (“HMIWI Rule”). The HMIWI Rule limits emissions of highly toxic air pollutants—including mercury, lead,

cadmium, and dioxins—from hospital, medical, and infectious waste incinerators.

Id. at 51,369, 51,371, 51,397.

2. Petitioners are Medical Waste Institute and Energy Recovery Council (collectively, “Industry Petitioners”). Industry Petitioners represent companies that manage hospital, medical, and infectious waste incinerators.

3. Proposed Environmental Intervenor Sierra Club is a national non-profit organization of approximately 1.3 million members and supporters dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Proposed Environmental Intervenor Natural Resources Defense Council (“NRDC”) is a national nonprofit environmental organization with more than 400,000 members nationwide. NRDC uses law, science and the support of its members to ensure a safe and healthy environment for all living things. One of NRDC’s top priorities is to reduce emission of air pollutants.

4. Environmental Intervenors’ members live and recreate in communities where hospital, medical and infectious waste incinerators are located. Hanley Decl., at ¶¶ 3-6; Mabion Decl., at ¶¶ 3-7; Lopez Decl., at ¶¶ 7-8. If Industry Petitioners are successful in their challenge, EPA could be compelled to make its

regulations less stringent or otherwise less effective in reducing hazardous emissions from hospital, medical and infectious waste incinerators. Because that result would prolong and increase Environmental Intervenors' members' exposure to harmful pollution from such facilities and also prolong and increase the threat to the environment in which they live and recreate, Environmental Intervenors have an interest in intervening as a respondent in the present case. Fed. R. App. P.

15(d). The "grounds" for Environmental Intervenors' intervention are to oppose Industry Petitioners' attempt to weaken the challenged regulations. *Id.*

5. Environmental Intervenors' interests will not be adequately represented in the absence of intervention. Although the Sierra Club, NRDC, and EPA all oppose Industry Petitioners' challenge, the agency's interpretation of the factual and legal issues in this case is different than the interpretation of the proposed intervenors. Therefore, Environmental Intervenors cannot rely on EPA to make the arguments that they believe should be advanced.

6. Environmental Intervenors' views on the arguments advanced by Industry Petitioners will be of assistance to the Court. As citizens' organizations, Environmental Intervenors can offer a perspective different from that which the EPA is likely to provide.

7. Industry Petitioners filed their Petition for Review on December 7, 2009. Unless otherwise specified by statute, a motion to intervene in this case must be

filed within 30 days, or by January 6, 2010. Fed. R. App. P. 15(d). This motion meets that deadline. Further, Sierra Club and NRDC's participation as intervenors on behalf of EPA will not delay the proceedings or prejudice any party. The Court has not scheduled oral argument, and a briefing schedule has not yet been established. Environmental Intervenors stand ready to cooperate with the parties and the Court to ensure efficient and timely adjudication of the present case.

8. Counsel for Industry Petitioners has stated that they do not object to Environmental Intervenors' intervention. Counsel for respondent has stated that the agency takes no position on this motion.

DATED: January 6, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Motion for Leave to Intervene and Rule 26.1 Disclosure Statement, on respondents through the Court's electronic case filing (ECF) system:

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DATED: January 6, 2010

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