

No. 26-1296

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

SIERRA CLUB; CITY OF RIVER ROUGE, MI,

Intervenors - Plaintiffs - Appellees,

v.

EES COKE BATTERY, LLC; DTE ENERGY SERVICES, INC.;
DTE ENERGY COMPANY; DTE ENERGY RESOURCES, LLC,

Defendants - Appellants.

On Appeal from the United States District Court for the
Eastern District of Michigan, No. 2:22-cv-11191.
Hon. Gershwin A. Drain, judge presiding.

BRIEF OF APPELLEES SIERRA CLUB AND CITY OF RIVER ROUGE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 6 Cir. R. 26.1, Sierra Club certifies that it is not a subsidiary or affiliate of a publicly owned corporation and that there is not a publicly owned corporation, not party to the appeal, that has a financial interest in the outcome of the litigation.

The City of River Rouge is a political subdivision of the State of Michigan that is not required to make a disclosure under Federal Rule of Appellate Procedure 26.1 and 6 Cir. R. 26.1.

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iv
STATEMENT IN SUPPORT OF ORAL ARGUMENT	xi
INTRODUCTION	1
STATEMENT OF ISSUES	3
STATEMENT OF THE CASE.....	3
I. Legal Background.....	3
II. Factual Background	6
A. The Facility Emits SO ₂ in an Urban Area that Did Not Meet EPA’s SO ₂ Standards.	6
B. After DTE Sought and Obtained the Removal of a Permit Limit, the Facility’s SO ₂ Emissions Significantly Increased.	7
C. The Facility’s Increased SO ₂ and PM _{2.5} Pollution Reaches Neighboring Communities.	9
D. The Facility’s SO ₂ and PM _{2.5} Pollution Is Harmful.....	10
E. The Facility’s Pollution Harms Sierra Club Members and River Rouge Residents.	12
III. Procedural History	17
A. Sierra Club and River Rouge Intervened Because Their Members and Constituents Living Near the Facility Are Harmed by the Violations Alleged.....	17
B. The Case Proceeded to Trial to Determine Appropriate Relief.	18
C. The District Court Held All Defendants Liable and Ordered Relief to Neighboring Communities.	20
SUMMARY OF THE ARGUMENT	21
ARGUMENT	23
I. The District Court’s Award of Community Fund Relief Is Appropriate and Authorized by the Clean Air Act.	23

A.	Arguments Challenging Whether the District Court Had Authority to Order the Community Fund Relief Have Been Forfeited.	24
1.	DTE Forfeited Its Argument that the Community Fund Relief Exceeded the District Court’s Authority.....	25
2.	The Court Should Not Consider the Chamber’s Arguments Except to the Extent that They Challenge Sierra Club’s Standing.....	29
B.	The District Court Ordered Appropriate Relief to Redress Ongoing Harms to the Parties in the Nearest, Most Impacted Communities.....	30
1.	The Clean Air Act Authorizes the Community Fund Relief.	31
2.	The Community Fund Relief Is Tailored to the Violations and Designed to Remedy Harm in the Most Impacted Communities.	33
3.	The Clean Air Act Authorizes Courts to Award Relief to Citizen Plaintiffs.....	38
4.	Sierra Club and River Rouge Have Standing.	44
II.	The District Court Awarded Additional Appropriate Relief.....	52
A.	The District Court Appropriately Ordered DTE to Comply with the Clean Air Act.....	52
B.	The District Court Assessed an Appropriate Civil Penalty, Considering the Relevant Factors.....	54
III.	The District Court Correctly Determined Liability.	58
	CONCLUSION.....	63
	CERTIFICATE OF COMPLIANCE.....	64
	CERTIFICATE OF SERVICE	65
	ADDENDUM	66

TABLE OF AUTHORITIES

Cases

<i>Arbaugh v. Y&H Corp.</i> , 546 U.S. 500 (2006).....	24
<i>Armstrong v. City of Melvindale</i> , 432 F.3d 695 (6th Cir. 2006)	25
<i>Atl. States Legal Found. v. Buffalo Envelope</i> , 823 F. Supp. 1065 (W.D.N.Y. 1993).....	42
<i>In re Bayshore Ford Trucks Sales, Inc.</i> , 471 F.3d 1233 (11th Cir. 2006)	39
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020).....	60
<i>Burrage v. United States</i> , 571 U.S. 204 (2014).....	59
<i>Califano v. Yamasaki</i> , 442 U.S. 682 (1979).....	33
<i>Campaign Legal Ctr. v. Iowa Values</i> , 573 F. Supp. 3d 243 (D.D.C. 2021).....	42
<i>Capitol Records v. Alaujan</i> , 626 F. Supp. 2d 152 (D. Mass. 2009).....	42
<i>Chapman v. Tristar Prods., Inc.</i> , 940 F.3d 299 (6th Cir. 2019)	45
<i>Chesapeake Bay Found. v. Bethlehem Steel Corp.</i> , 652 F. Supp. 620 (D. Md. 1987).....	42
<i>Cochran v. Quest Software, Inc.</i> , 328 F.3d 1 (1st Cir. 2003).....	28
<i>Cockrun v. Berrien Cnty.</i> , 101 F.4th 416 (6th Cir. 2024)	25

<i>Davis v. Passman</i> , 442 U.S. 228 (1979).....	43
<i>Dimond v. District of Columbia</i> , 792 F.2d 179 (D.C. Cir. 1986).....	37
<i>Doe v. Trump</i> , 157 F.4th 36 (1st Cir. 2025), cert. denied, No. 25-899, 2026 WL 1871309 (U.S. June 30, 2026).....	27
<i>eBay Inc. v. MercExchange, LLC</i> , 547 U.S. 388 (2006).....	35, 52, 53
<i>Ellis v. Gallatin Steel Co.</i> , 390 F.3d 461 (6th Cir. 2004)	41
<i>Fort Bend Cnty. v. Davis</i> , 587 U.S. 541 (2019).....	26
<i>Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.</i> , 204 F.3d 149 (4th Cir. 2000)	48
<i>Friends of the Earth, Inc. v. Laidlaw Env’t Servs., Inc.</i> , 528 U.S. 167 (2000).....	passim
<i>In re Isaacs</i> , 895 F.3d 904 (6th Cir. 2018)	29
<i>Kitchen v. Whitmer</i> , 106 F.4th 525 (6th Cir. 2024)	25
<i>Ky. Res. Council, Inc. v. EPA</i> , 304 F. Supp. 2d 920 (W.D. Ky. 2004).....	6, 32, 40
<i>Lucas Cnty. Bd. of Comm’rs v. EPA</i> , 169 F.4th 689 (6th Cir. 2026)	39
<i>Lujan v. Defs. of Wildlife</i> , 504 U.S. 555 (1992).....	46, 50
<i>United States ex rel. Martin v. Hathaway</i> , 63 F.4th 1043 (6th Cir. 2023)	59

<i>Medina v. Planned Parenthood S. Atl.</i> , 606 U.S. 357 (2025).....	43
<i>Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n</i> , 453 U.S. 1 (1981).....	44
<i>Nat. Res. Def. Council v. Outboard Marine Corp.</i> , 692 F. Supp. 801 (N.D. Ill. 1988).....	42
<i>Nat’l Parks Conserv. Ass’n, Inc. v. Tenn. Valley Auth.</i> , 480 F.3d 410 (6th Cir. 2007)	54
<i>Nathan v. Great Lakes Water Auth.</i> , 992 F.3d 557 (6th Cir. 2021)	61
<i>New York v. EPA</i> , 413 F.3d 3 (D.C. Cir. 2005).....	61, 62
<i>Porter v. Warner Holding Co.</i> , 328 U.S. 395 (1946).....	32, 40
<i>Pub. Int. Rsch. Grp. of N.J., Inc. v. Powell Duffryn Terminals Inc.</i> , 913 F.2d 64 (3rd Cir. 1990)	33
<i>Rentrop v. Spectranetics Corp.</i> , 550 F.3d 1112 (Fed. Cir. 2008)	28
<i>Saginaw Chippewa Indian Tribe v. Blue Cross Blue Shield of Mich.</i> , 32 F.4th 548 (6th Cir. 2022)	59
<i>Scottsdale Ins. Co. v. Flowers</i> , 513 F.3d 546 (6th Cir. 2008)	28
<i>Sierra Club v. Cedar Point Oil Co. Inc.</i> , 73 F.3d 546 (5th Cir. 1996)	48
<i>Sierra Club v. EPA</i> , 793 F.3d 656 (6th Cir. 2015)	45, 46, 47
<i>Sierra Club v. Franklin Cnty. Power of Ill., LLC</i> , 546 F.3d 918 (7th Cir. 2008)	45, 48

<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016) (Thomas, J., concurring)	44
<i>Steel Co. v. Citizens for a Better Env't</i> , 523 U.S. 83 (1998) (Stevens, J., concurring)	44, 50
<i>Student Pub. Int. Rsch. Grp. of N.J. v. Monsanto Co.</i> , 600 F. Supp. 1474 (D.N.J. 1985)	42
<i>Tenn. Clean Water Network v. Tenn. Valley Auth.</i> , 905 F.3d 436 (6th Cir. 2018)	31
<i>Texas v. EPA</i> , 690 F.3d 670 (5th Cir. 2012)	61
<i>Thomas M. Cooley L. Sch. v. Kurzon Strauss, LLP</i> , 759 F.3d 522 (6th Cir. 2014)	24
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	43
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025)	<i>passim</i>
<i>U.S. Pub. Int. Rsch. Grp. v. Atl. Salmon of Me., LLC</i> , 339 F.3d 23 (1st Cir. 2003)	32, 40
<i>United States v. Allegheny Ludlum Corp.</i> , 366 F.3d 164 (3d Cir. 2004)	56
<i>United States v. Am. Elec. Power Serv. Corp.</i> , 137 F. Supp. 2d 1060 (S.D. Ohio 2001)	42
<i>United States v. Ameren Mo.</i> , 9 F.4th 989 (8th Cir. 2021)	31
<i>United States v. Anthony Dell'Aquila, Enterprises & Subsidiaries</i> , 150 F.3d 329 (3d Cir. 1998)	5
<i>United States v. City of Painesville</i> , 644 F.2d 1186 (6th Cir. 1981)	32, 35, 52

<i>United States v. Huntington Nat’l Bank</i> , 574 F.3d 329 (6th Cir. 2009)	28, 30
<i>United States v. Marshall</i> , 954 F.3d 823 (6th Cir. 2020)	26
<i>United States v. Michigan</i> , 131 F.4th 409 (6th Cir. 2025), <i>cert. denied sub nom. Sault Ste. Marie</i> <i>Tribe of Chippewa Indians v. Michigan</i> , 146 S. Ct. 1486 (2026)	26
<i>United States v. Mun. Auth. of Union Twp.</i> , 150 F.3d 259 (3d Cir. 1998)	55
<i>United States v. Nat’l Steel Corp.</i> , 782 F.2d 62 (6th Cir. 1986)	39
<i>United States v. Prod. Plated Plastics, Inc.</i> , 762 F. Supp. 722 (W.D. Mich. 1991)	35
<i>United States v. Smithfield Foods, Inc.</i> , 191 F.3d 516 (4th Cir. 1999)	56
<i>Weinberger v. Romeo-Barcelo</i> , 456 U.S. 305 (1982).....	52
<i>Wineries of the Old Mission Peninsula Ass’n v. Twp. of Peninsula</i> , 41 F.4th 767 (6th Cir. 2022)	37, 40

Statutes

42 U.S.C. § 7401(b)(1).....	3
42 U.S.C. § 7409(a)	4
42 U.S.C. § 7409(b)	4
42 U.S.C. § 7410(a)	4
42 U.S.C. § 7410(k)	4
42 U.S.C. § 7413(a)(1).....	5
42 U.S.C. § 7413(b)	<i>passim</i>

42 U.S.C. § 7475	4
42 U.S.C. § 7477	17
42 U.S.C. § 7604(a)	5, 38, 39, 40
42 U.S.C. § 7604(b)(1)(B)	5, 39, 43
42 U.S.C. § 7604(g)	41
42 U.S.C. § 7501(3)	5
42 U.S.C. § 7503(a)(2)	5

Rules and Regulations

40 C.F.R. § 50.2	4
40 C.F.R. § 50.4	4
40 C.F.R. § 50.5	4
40 C.F.R. § 50.7	4
78 Fed. Reg. 47191 (Aug. 5, 2013)	7
78 Fed. Reg. 53272 (Aug. 29, 2013)	7
78 Fed. Reg. 76064 (Dec. 16, 2013)	4
84 Fed. Reg. 9866 (Mar. 18, 2019)	4
89 Fed. Reg. 16202 (Mar. 6, 2024)	4
Fed. R. Civ. P. 24(a)(1)	17
Fed. R. Civ. P. 24(a)(2)	17
Fed. R. Civ. P. 24(b)	17
Mich. Admin. Code R. 336 pt. 3	4
Mich. Admin. Code R. 336 pt. 4	4
Mich. Admin. Code R. 336.1201(1)	62

Mich. Admin. Code R. 336.2810(3)	5
Mich. Admin. Code R. 336.2901(b)(ii)	62
Mich. Admin. Code R. 336.2901(hh)(i)(C)	59
Mich. Admin. Code R. 336.2901(t)	5, 59
Mich. Admin. Code R. 336.2902	5
Mich. Admin. Code R. 336.2902(1)	58
Mich. Admin. Code R. 336.2902(2)(a)	59
Mich. Admin. Code R. 336.2908(3)	5

STATEMENT IN SUPPORT OF ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a) and Sixth Circuit Rule 34(a), Appellees Sierra Club and City of River Rouge respectfully request oral argument. This appeal involves a large summary judgment and trial record. Oral argument would allow the Court to clarify its understanding of the facts and explore Sierra Club and River Rouge's arguments in greater detail.

INTRODUCTION

For over a decade, residents of Detroit’s 48217 zip code (“48217”) and the towns of Ecorse and River Rouge lived with unsafe levels of sulfur dioxide (“SO₂”) pollution that exceeded the health-based air quality standard. Under such circumstances, the Clean Air Act (the “Act”) requires industrial facilities, such as the coke oven battery (the “Facility”) operated by EES Coke Battery, LLC, DTE Energy Services, Inc., DTE Energy Resources, LLC, and DTE Energy Company (collectively, “DTE”),¹ to undergo the stringent New Source Review (“NSR”) process before making any change that may significantly increase air pollution. The purpose of this review is to ensure that the increase in pollution will not interfere with broader efforts to implement the health-based standard and protect surrounding communities by requiring the facility to adopt more effective pollution controls.

In 2014, DTE obtained an air quality permit authorizing the Facility to burn an unlimited amount of coke oven gas. While DTE estimated this change would only result in a minor increase in SO₂ pollution, it really increased pollution by over 500 tons per year—well above the threshold that triggers NSR. This made the change a “major modification,” but DTE to this day has still not installed the

¹ In this brief, “DTE” refers to all four Appellants collectively, “EES Coke” refers to the first Appellant and the “DTE Defendants” refers to the latter three Appellants.

pollution controls that the Act requires. Instead, the Facility became one of the state's largest emitters of SO₂, and residents were left to live with the severe health harms from its excess emissions.

DTE has offered ever-changing arguments as to why it should not be responsible for the significant increase in emissions from the Facility. The district court correctly concluded that DTE's 2014 permit caused an increase in SO₂ emissions above the major modification threshold that triggers NSR, and DTE was liable for having evaded that permitting process.

DTE, for the first time on appeal, argues that the district court exceeded its authority when it ordered DTE to spend \$20 million on projects focused on improving air quality and public health in nearby communities. This argument, along with additional arguments raised by proposed amici led by the Chamber of Commerce of the United States of America (the "Chamber"), were not presented below, despite Sierra Club and River Rouge having requested the community fund relief at numerous points before, during, and after trial; therefore DTE's and the Chamber's arguments have been forfeited and should not be considered here. Even if the Court does consider these arguments, it should affirm the community fund relief because the district court was well within its Clean Air Act authority to issue a tailored injunction to redress the significant health harms that nearby residents have suffered because of DTE's unlawful emissions. This Court should also affirm

the civil penalty and additional injunctive relief as being well within the district court's discretion based on the evidence presented at trial.

STATEMENT OF ISSUES

1. Did DTE forfeit, by failing to present or preserve below, its challenge to the district court's order requiring DTE to create and fund a community committee to determine public health and air quality improvement projects; and, if not, did the district court abuse its discretion in awarding this equitable relief?

2. Did the district court abuse its discretion in ordering DTE to come into compliance with the Act's NSR provisions?

3. Did the district court abuse its discretion in imposing a \$100 million civil penalty?

4. Did DTE violate the Act by making a major modification at the Facility that resulted in significantly increased emissions without getting an NSR permit?

STATEMENT OF THE CASE

I. Legal Background

Congress enacted the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare." 42 U.S.C. § 7401(b)(1). A key element of the Act is that it requires EPA to set health-based National Ambient Air Quality Standards ("NAAQS") for certain pollutants,

42 U.S.C. § 7409(a)–(b), including SO₂ and fine particulate matter (“PM_{2.5}”). 40 C.F.R. §§ 50.2, 50.4, 50.5, 50.7. EPA has found that these air pollutants pose serious threats to human health. *See* Review of the Primary NAAQS for Sulfur Oxides, 84 Fed. Reg. 9866, 9867, 9871–86 (Mar. 18, 2019) (even short-term SO₂ exposures cause respiratory effects, including asthma exacerbation); Reconsideration of the NAAQS for Particulate Matter, 89 Fed. Reg. 16202, 16203–04, 16251 (Mar. 6, 2024) (PM_{2.5} exposures result in death and cardiovascular effects; likely result in respiratory harms, nervous system effects, and cancer; and disproportionately harm Black populations).

The Clean Air Act relies on states to implement these standards. Among other things, EPA-approved state implementation plans (“SIPs”) must include processes for issuing permits that ensure that pollution sources meet applicable emissions limits. 42 U.S.C. § 7410(a), (k); *see, e.g.*, Mich. Admin. Code R. 336 pts. 3–4. EPA has approved Michigan’s SIP. 78 Fed. Reg. 76064 (Dec. 16, 2013).

Nearly fifty years ago, Congress added the NSR program to the Act, which requires any source that is new or undergoing a major modification to get a permit and apply state-of-the-art pollution controls. 42 U.S.C. § 7475. States implement NSR through their SIPs. Under Michigan’s SIP, a major modification is “[a]ny physical change in or change in the method of operation of a major stationary source that would result in” a “significant emissions increase” and a “significant

net emissions increase” of certain regulated pollutants, including SO₂ and PM_{2.5}. Mich. Admin. Code R. 336.2901(t). Facilities undergoing a major modification must meet emissions limits (to be achieved with pollution controls), which are determined based on whether the area is designated as in attainment with applicable NAAQS. Mich. Admin. Code R. 336.2902; 42 U.S.C. §§ 7501(3), 7503(a)(2). Michigan’s SIP imposes a continuing obligation to comply with those emissions limits. Mich. Admin. Code R. 336.2810(3), 336.2908(3).

SIPs are part of federal law and are enforceable against any owner or operator by the United States on behalf of EPA. 42 U.S.C. § 7413(a)(1); *see also id.* § 7411(a)(5) (broadly defining “owner or operator”). Any person harmed by violations of the Act may also sue the owner or operator. *Id.* § 7604(a); *see also id.* § 7602(e) (broadly defining “person” to include, e.g., associations and municipalities). Where EPA or a state has commenced and is diligently prosecuting an enforcement action regarding violations that a person could otherwise pursue, the Act provides the person with a statutory right of intervention. *Id.* § 7604(b)(1)(B).

The Act is a strict liability statute. *United States v. Anthony Dell’Aquila, Enterprises and Subsidiaries*, 150 F.3d 329, 332 (3d Cir. 1998). It provides for a broad range of remedies, including restraining violations, requiring compliance, imposing civil penalties, or awarding any other appropriate relief. 42 U.S.C.

§ 7413(b); *see also* *Ky. Res. Council, Inc. v. EPA*, 304 F. Supp. 2d 920, 929 (W.D. Ky. 2004) (“The Act does not set any limitation on the type of relief that the Court may require to enforce a violation.”).

II. Factual Background²

A. The Facility Emits SO₂ in an Urban Area that Did Not Meet EPA’s SO₂ Standards.

The Facility is in River Rouge, Michigan, which borders Ecorse and 48217. *See* Answer, RE.118, PageID#4076. It is in an African American community that has many children, seniors, and people with chronic health conditions or asthma, who are particularly vulnerable to pollution. Transcript, RE.387, PageID#27020, 27024, 27031.

The Facility emits SO₂, which is a precursor to PM_{2.5} pollution. Answer, RE.118, PageID#4076, 4079; *see also* Transcript, RE.379, PageID#26382 (explaining SO₂ undergoes atmospheric chemical reactions that convert it into particulate pollution). For all times relevant to the case, the area where it is located was designated as “nonattainment” for SO₂—meaning the area is burdened by SO₂ above the NAAQS—and in “attainment” for PM_{2.5}. Answer, RE.118,

² In addition to the facts set out below, Sierra Club and River Rouge adopt and incorporate the “Factual Background” in the United States’ brief. *See* U.S. Br. at 10–18.

PageID#4093; Final Pretrial Order, RE.372, PageID#25715; 78 Fed. Reg. 47191 (Aug. 5, 2013); 78 Fed. Reg. 53272 (Aug. 29, 2013).

B. After DTE Sought and Obtained the Removal of a Permit Limit, the Facility's SO₂ Emissions Significantly Increased.

EES Coke owns and operates the Facility. Answer, RE.118, PageID#4084.

EES Coke has no employees of its own and is under the corporate structure of the three DTE Defendants. *See* Final Pretrial Order, RE.372, PageID#25714, 25721–22; Trial Order, RE.410, PageID#28616–23.

The Facility heats coal at high temperatures in ovens to produce coke for use in steelmaking. 2014 Permit App., RE.168-9, PageID#9419–20. The ovens are powered by “underfire combustion,” in which DTE historically used two fuel types: coke oven gas and blast furnace gas. *See* U.S. Br. at 10–11. Coke oven gas is the cheaper of the two fuel types. *See id.* at 11–12. And it is the dirtier of the two, producing more SO₂ emissions. Operational Data, RE.261-3, PageID#17134–36 (showing fuel types’ average sulfur content). In 2012, DTE decided to permanently stop burning blast furnace gas because it was damaging the Facility’s ovens. 2014 Permit App., RE.168-9, PageID#9421.

In 2014, upon the request of DTE and with its assurance that doing so would not result in a significant increase in emissions, the State of Michigan’s environmental agency (now known as “EGLE”) amended the Facility’s Clean Air

Act permit to remove a limit on how much coke oven gas could be burned at the underfire. Answer, RE.118, PageID#4077.

But removing the limit did significantly increase SO₂ emissions, and the Facility failed to obtain a permit for the increased emissions or install the necessary pollution controls. As compared to before the limit was removed, the Facility increased its total SO₂ emissions by about 1,000 tons per year—with about 500 tons per year caused by the underfire over its prior limit—starting in 2018. Summary Judgment Order, RE.331, PageID#24344–45; *see also* Transcript, RE.383, PageID#26711; Transcript, RE.384, PageID#26821. This emissions increase has made the Facility one of Michigan’s largest SO₂ pollution sources. Transcript, RE.383, PageID#26709 (discussing U.S. Illustrative Exhibit PDX-06, RE.403-6, PageID#28111–13).

The increased emissions have not and will not stop until the Facility installs and operates pollution controls that achieve the NSR requirements. Transcript, RE.384, PageID#26807. As EPA Region 5 engineer Virginia Galinsky testified, the necessary pollution control is full desulfurization, which would reduce the Facility’s SO₂ emissions by about 95 percent. *Id.*, PageID#26794, 26801. All other coke oven batteries that have undergone NSR have successfully installed and operated desulfurization. Transcript, RE.383, PageID#26722–24.

By avoiding the costs of desulfurization, DTE realized an economic benefit, Transcript, RE.377, PageID#26223–28, which United States’ expert Daniel Leistra-Jones calculated as between \$46.4 million and \$99.1 million. Trial Order, RE.410, PageID#28632 (citing Transcript, RE.395, PageID#27781–88).

C. The Facility’s Increased SO₂ and PM_{2.5} Pollution Reaches Neighboring Communities.

United States’ expert Lyle Chinkin modeled the impacts of the Facility’s illegal pollution using two air quality models (AERMOD and CAMx) and provided unrebutted testimony that the district court relied on. Trial Order, RE.410, PageID#28647–48.

Mr. Chinkin used AERMOD to compare the Facility’s actual SO₂ emissions with a scenario in which its combustion stack and flare SO₂ emissions were reduced by 95 percent—with the difference representing the “excess SO₂ emissions” that the Facility would have been required to reduce if it had complied with the Clean Air Act. Transcript, RE.378, PageID#26351, 26354; Transcript, RE.379, PageID#26368. Mr. Chinkin’s analysis showed that these excess SO₂ emissions reached the neighboring communities of River Rouge and 48217 in concentrations of approximately 11 to 18 parts per billion (“ppb”). PX-0989, App.118; *see also* Transcript, RE.388, PageID#27077–78 (describing River Rouge and 48217 as “dark orange, the lighter orange, and then a little bit of yellow,” corresponding to 14–18 ppb, 12–14 ppb, and 11–12 ppb, respectively). For every

location modeled within several miles, SO₂ concentrations from the excess emissions were at least 4.3 ppb, which is greater than EPA's significance level of 3 ppb. Transcript, RE.379, PageID#26371–72. These are “extremely large impacts from one source,” with significant impacts at nearby schools, hospitals, and parks. *Id.*, PageID#26377–80 (discussing PX-0989, App.118, and U.S. Illustrative Exhibit, PDX-03, RE.403-4, PageID#28070).

Mr. Chinkin also used CAMx to analyze the impacts on ambient PM_{2.5} concentrations from conversion of the Facility's excess SO₂ emissions in the atmosphere. Transcript, RE.379, PageID#26382–99; *see also* PX-0990, App.119. This modeling showed that the PM_{2.5} formed from the Facility's excess SO₂ emissions spreads across state lines, reaching as far west as Missouri and to the eastern seaboard from North Carolina to Maine. Transcript, RE.379, PageID#26410–11 (discussing PX-0996). The highest of these PM_{2.5} concentrations were in the Detroit area, including River Rouge, Ecorse, and 48217. *See, e.g.*, PX-0996, App.120. Mr. Chinkin described the PM_{2.5} concentrations from the Facility's excess SO₂ emissions as “a very large impact from a single source.” Transcript, RE.379, PageID#26399. The Facility impacts people with its excess emissions “every day that it operates.” *Id.*, PageID#26410.

D. The Facility's SO₂ and PM_{2.5} Pollution Is Harmful.

United States' expert Dr. Joel Schwartz, “a leading scientist on the health

effects of air pollution,” provided testimony about the health effects of SO₂ and PM_{2.5}, which the district court relied on. Trial Order, RE.410, PageID#28648; *see also* Transcript, RE.380, PageID#26481–93.

Dr. Schwartz’s testimony established that even very brief exposures to SO₂ can cause increased risks for asthma attacks, as well as other respiratory effects and the exacerbation of respiratory diseases. Transcript, RE.382, PageID#26590–91. PM_{2.5} exposure can cause numerous adverse health effects, including asthma attacks, heart attacks, strokes, increased blood pressure, and increased risk of cancer, incidence of asthma, Alzheimer’s disease, and early deaths. Transcript, RE.380, PageID#26497.

As Dr. Schwartz testified, there is no documented safe level of PM_{2.5}, and “any increase in PM_{2.5} increases the risk of dying, the risk of having a heart attack, the risk of having a stroke, the risk of winding up in the hospital with pneumonia.” Transcript, RE.382, PageID#26544–46.

Dr. Schwartz quantified some of the impacts of the PM_{2.5} that formed from the Facility’s illegal SO₂ emissions by using the CAMx results and EPA’s modeling tool BenMAP. Transcript, RE.382, PageID#26598–600. Just in the United States in 2019, there were approximately 26 additional deaths due to the Facility’s excess emissions, *id.*, PageID#26604–05, as well as approximately 8,000 additional days when people had significant respiratory symptoms, 14.5 new cases

of asthma, and 4.85 new cases of Alzheimer's disease, *id.*, PageID#26607–08.

These health effects do not end when exposure to pollution concludes. For example, people with new cases of asthma and Alzheimer's disease are burdened with those conditions for the rest of their lives. *See id.*, PageID#26608.

E. The Facility's Pollution Harms Sierra Club Members and River Rouge Residents.

Sierra Club is a membership organization with approximately 17,000 members in Michigan, about 7,000 of whom are in Wayne County (which includes Detroit, Ecorse, and River Rouge). Transcript, RE.388, PageID#27079. As Sierra Club's Michigan Chapter Director testified, its mission is for all people to be able to explore, enjoy, and protect the outdoors. *Id.*, PageID#27075. In Detroit, Sierra Club advocates and litigates so that people can enjoy their parks and neighborhoods and have a healthier community. *Id.*, PageID#27075–77.

Three Sierra Club members provided trial testimony, which the district court relied on, about the impacts of the Facility's illegal pollution: Ms. Theresa Landrum, Dr. Dolores Leonard, and Ms. Vicki Dobbins. *See* Trial Order, RE.410, PageID#28645.

Ms. Theresa Landrum has lived in 48217 within approximately three miles of the Facility for 71 years. Transcript, RE.387, PageID#26995, 26999. She is retired and previously worked as a state prison guard and a master mechanic. *Id.*, PageID#26996. Now she is part of several organizations that promote a healthy

environment or monitor air quality in her community, including Sierra Club. *Id.*, PageID#26996–97, 27006; *see also id.*, PageID#27020 (describing how environmental justice is “a necessity” for her community).

Ms. Landrum describes the Facility as “a big giant black monster” that she sees flaring. *Id.*, PageID#26998–99. When she is near it, she notices that the air is dusty and pungent, and she has difficulty breathing, coughs, feels her chest tighten, sneezes, and gets serious headaches and eye irritation. *Id.*, PageID#26999–27000, 27002.

Ms. Landrum knows that the Facility emits SO₂ and understands that SO₂ exposure can cause adverse health effects. *Id.*, PageID#27000; *see also id.*, PageID#26996–99, 27001–02, 27021–22 (describing the basis for her understanding of air quality in her community and the health effects of pollutants). At trial, she noted that she lives in an area designated as nonattainment for SO₂. *Id.*, PageID#27011; *see also id.*, PageID#27021 (observing that this designation has been in effect for so long, many older children have never breathed clean air).

Ms. Landrum is concerned about air pollution—and specifically, the Facility’s pollution—in her community, *id.*, PageID#26996, 27001, which she describes as “close-knit” and “loving,” with a large population of children and others sensitive to air pollution health risks, *id.*, PageID#27020, 27024–25.

Because of pollution and its health effects, Ms. Landrum has reduced her outdoor activities such as bike-riding, running, and speedwalking. *Id.*, PageID#27000–02. She also has taken steps to reduce her exposure to air pollution at home, such as installing an air purifying system, investing in air conditioning and better furnace air filters, and keeping her windows closed. *Id.*, PageID#27001–02. She believes that others in her community would benefit from home air purification systems but lack the financial means to purchase their own. *Id.*, PageID#27003–04.

Dr. Dolores Leonard has lived in 48217 since 1957 and joined Sierra Club because of things happening in her community that she “felt were not right.” *Id.*, PageID#27028–29. She is concerned about air pollution, especially the health impacts for seniors, who comprise a large share of her community. *Id.*, PageID#27030; *see also id.* PageID#27031, 27037 (describing the basis of her understanding of air pollution and PM_{2.5} health effects).

Dr. Leonard no longer goes in the direction of the Facility because of the odor and the feeling she gets in her chest when nearby. *Id.*, PageID#27034. Due to concerns about air pollution and her respiratory symptoms, she has given up her vegetable garden and cannot spend as long in her flower garden—and while she used to garden for an eight-hour stretch, now she can only spend a half-hour or an hour before going inside because of chest pain and trouble breathing. *Id.*,

PageID#27038–40. She also no longer leaves her windows open at home. *Id.*, PageID#27037, 27040.

Due to her concerns about air pollution, the quality of Dr. Leonard’s time spent with relatives and grandkids is diminished; she does not feel comfortable sitting outside with them, so she sits inside her car or the garage and watches them. *Id.*, PageID#27038–39. As she testified: “It’s not quality time. It’s not, come give grandma a hug.” *Id.*, PageID#27055.

Ms. Vicki Dobbins has been a Sierra Club member since 2015 and has lived in River Rouge, about 1.5 to 2 miles from the Facility, since 1945. Transcript, RE.388, PageID#27061–62.

Ms. Dobbins is concerned about air pollution because she believes it is associated with high rates of cancer, asthma, bronchitis, and emphysema. *Id.*, PageID#27062. She is specifically concerned about the Facility’s air pollution. *Id.* Because of her concerns, Ms. Dobbins keeps her windows closed at home and no longer bikes in her neighborhood. *Id.*, PageID#27062–63. Instead, she takes her bike to places where she “think[s] the air is a little cleaner.” *Id.*, PageID#27063.

The Sierra Club members and their community would benefit from the Facility reducing its air pollution. *See* Transcript, RE.387, PageID#27005. If there were less air pollution in their neighborhoods from the Facility: Ms. Landrum would be more likely to open her windows or bike in her neighborhood, *id.*,

PageID#27003; Dr. Leonard would spend more time gardening and visiting with her grandkids outside, *id.*, PageID#27039; and Ms. Dobbins would ride her bike in her neighborhood and leave her windows open at home, Transcript, RE.388, PageID#27064.

Sierra Club witnesses testified that they want immediate action by DTE to reduce and remedy its excess pollution, such as, in Ms. Landrum's words, "installing better technology to control the pollution that they have emitted in our air constantly," "render[ing] the services [to] better the air quality in our area," and funding projects for the community impacted by poor air. Transcript, RE.387, PageID#27004–05, 27018. Ms. Landrum testified that community members impacted by poor air should have a say as to how funds are directed. *Id.*, PageID#27004; *see also* Transcript, RE.388, PageID#27085, 27091–92 (naming funding for local projects as a remedy and describing some projects). Dr. Leonard has worked with companies that violated air quality laws to develop community projects to mitigate pollution issues, and she found such projects to be "effective and helpful" ways to address violations and improve relations between industry and residents. Transcript, RE.387, PageID#27040–41.

III. Procedural History

A. Sierra Club and River Rouge Intervened Because Their Members and Constituents Living Near the Facility Are Harmed by the Violations Alleged.

In June 2022, the United States, on behalf of EPA, filed suit under the Clean Air Act, 42 U.S.C. §§ 7413(b), 7477, against EES Coke. Complaint, RE.1. The United States alleged that EES Coke undertook a major modification to the Facility resulting in a significant increase in SO₂ and PM_{2.5} emissions without first obtaining the necessary NSR permits.

Sierra Club promptly filed a motion to intervene and attached the declarations of Ms. Landrum, Dr. Leonard, and Ms. Dobbins. Mot. to Intervene, RE.12; Declarations, RE.12-3–12-5. Sierra Club argued for intervention as a matter of right, pursuant to Federal Rules of Civil Procedure 24(a)(1) and (a)(2), or permissive intervention pursuant to Rule 24(b). Mot. to Intervene, RE.12. Sierra Club explained that one reason the United States was unlikely to adequately represent its interests—part of the Rule 24(a)(2) standard—was that Sierra Club may have a greater interest in relief “that directly benefits the community surrounding EES Coke.” *Id.*, PageID#561. Sierra Club also noted its long history of working to protect and improve air quality in Michigan, including by joining a 2020 settlement that required DTE to fund at least \$2 million of mitigation projects to improve air quality and public health in nearby areas. *Id.*, PageID#545.

River Rouge also moved to intervene. Mot. to Intervene, RE.14. It argued that the United States has a responsibility to a broader public than the City's constituents and noted that "the degree of remediation and mandatory containment measures necessary to protect the health, safety and welfare of River Rouge residents may differ greatly from those found to be satisfactory" for the public at large. *Id.*, PageID#623. The district court granted the motions to intervene. Order, RE.38.

The United States, Sierra Club, and River Rouge later amended their complaints to add the three DTE Defendants. *See* Amended Complaints, RE.91, 98, 99.

B. The Case Proceeded to Trial to Determine Appropriate Relief.

In August 2025, the district court granted summary judgment as to liability against EES Coke, holding that the 2014 permit change caused a significant emissions increase that should have triggered NSR review. Order, RE.331. A bench trial was held the following month on two issues: whether the DTE Defendants were also liable as operators of the facility, and what relief the district court should order to remedy the Clean Air Act violations. Before, during, and after trial, Sierra Club was clear about the relief it sought.

Before trial, the parties submitted pretrial briefs. Briefs, RE.351, 354, 356. Consistent with its posture throughout the case, Sierra Club described the relief it

sought, including: 1) a requirement that the Facility come into compliance with the Act and install pollution controls; 2) a civil penalty; and 3) a requirement that DTE remedy the harms caused by the excess pollution by funding “projects focused on environmental quality and public health that are selected by residents in the neighboring communities and that benefit those communities.” Pretrial Brief, RE.354, PageID#25325; *see also id.*, PageID#25319 (“[P]ublic health and environmental harms accumulated over years of violations at the [Facility] can only be remediated through mitigation projects that address the environment in the vicinity of the facility.”). Sierra Club described the types of environmental projects it sought, including: air purifiers for households surrounding the Facility; support for a community green space designed to absorb pollutants; and “an environmental or public health benefits committee for representatives of [DTE], local governments, and local residents to recommend additional projects for funding.” *Id.*, PageID#25321–22.

The parties also submitted a joint final pretrial order, which the court entered. Final Pretrial Order, RE.372. The joint submission notes that the United States, Sierra Club, and River Rouge sought a court order requiring Clean Air Act compliance, additional measures to redress the severe harm from the violations, and a sizable civil penalty. *Id.*, PageID#25693–96. The joint submission also notes Sierra Club’s position that its “members’ injuries are redressable by relief such as

an order that reduces excess emissions at the Facility, a penalty that deters future noncompliance with the Clean Air Act, and mitigation *projects that directly benefit the communities neighboring the Facility.*” *Id.*, PageID#25697 (emphasis added). Although DTE argued against each form of relief and Sierra Club’s standing, it made no suggestion that Sierra Club sought relief that improperly benefited non-parties. *Id.*, PageID#25703–12; *see also* DTE Pretrial Brief, RE.355-1, PageID#25365–95 (making no mention of Sierra Club requests for relief). The United States took no position on Sierra Club’s standing or relief sought. *See* Final Pretrial Order, RE.372; U.S. Pretrial Brief, RE.351.

C. The District Court Held All Defendants Liable and Ordered Relief to Neighboring Communities.

During trial in September 2025, Sierra Club reiterated the relief it sought during its opening statement. Transcript, RE.374, PageID#26044–45. It did so again during its presentation of four witnesses, including Ms. Landrum, Dr. Leonard, and Ms. Dobbins. *See, e.g.*, Transcript, RE.387, PageID#27004–05, 27018, 27040–41; Transcript, RE.388, PageID#27085. Sierra Club summarized its requests for relief during closing. Transcript, RE.396, PageID#27873–77. During its closing statement, DTE suggested a willingness to spend money on a civil penalty and mitigation, albeit in a more modest amount than the Plaintiffs sought. *Id.*, PageID#27883. Sierra Club and River Rouge’s joint post-trial proposed findings of fact and conclusions of law again requested all three forms of relief: an

injunction requiring a permit and pollution controls; equitable relief to redress ongoing harms to local residents; and a significant civil penalty. Post-trial Filing, RE.407, PageID#28494–99.

The district court issued its findings of fact and conclusions of law in February 2026. Trial Order, RE.410. It held that DTE was also liable for EES Coke’s Clean Air Act violations and ordered three forms of relief: an injunction requiring that DTE apply for a major modification permit to come into compliance with the Act; a civil penalty of approximately \$100 million; and equitable relief to redress harms to local residents through funding \$20 million of air quality improvement projects selected by a committee composed in part of community members and a DTE representative and following consultation with Sierra Club (the “community fund”).³ *Id.*, PageID#28609, 28653. The court also concluded that Sierra Club established standing to seek relief distinct from that sought by the United States. *Id.*, PageID#28649–52.

SUMMARY OF THE ARGUMENT

This Court should affirm the district court’s judgment.

I. The district court acted within its discretion in awarding equitable relief in the form of funding projects to improve air quality in the communities

³ The deadline for this portion of relief was in June 2026. Judgment, RE.412, PageID#28661. Sierra Club has provided input on Committee membership, and conversations have begun between DTE and potential members.

nearest the Facility and most harmed by its ongoing unlawful pollution.

A. This Court need not even reach the issue of whether the district court abused its discretion in ordering the community fund relief. DTE forfeited this argument by failing to present it below. The Chamber's arguments challenging this relief are doubly forfeited, as they seek to raise—as potential amici—issues that were not presented below or in DTE's brief here.

B. To the extent this Court reaches DTE's argument that the scope of the community fund relief should be narrowed, the Clean Air Act plainly authorizes its full scope, and the district court did not abuse its discretion. The community fund relief is narrowly tailored to the evidence of ongoing harm to residents of River Rouge and two other local communities that was presented at trial by the United States and Sierra Club. The district court appropriately exercised its discretion under 42 U.S.C. § 7413(b) to provide complete relief to redress these harms.

Similarly, if this Court reaches the Chamber's non-jurisdictional arguments, which it should not, the Act's provision for intervention in government enforcement actions allows intervenors like Sierra Club and River Rouge to seek relief not otherwise sought by the government. This presents no constitutional problem, as every court to consider similar challenges has held.

The Chamber's arguments against Sierra Club's standing are also unavailing. Both Sierra Club and River Rouge have standing here, based on their members and residents who continue to be harmed by DTE's ongoing unlawful pollution.

II. The district court was well within its discretion to require DTE to both (A) apply for the permit required by the Clean Air Act for the Facility's major modification, and (B) pay a civil penalty based on the economic benefit that DTE derived from its illegal conduct and the Act's other statutory penalty factors.

III. The district court's underlying liability determinations were correct. The operational change based on the permit's removal of the underfire coke oven gas limit resulted in significant emissions increases that require an NSR permit for that major modification. But to date, it has not obtained the permit or installed the requisite control technology to rein in its pollution. Further, as set out in the United States' brief, the claims are timely and the three DTE Defendants are liable as operators under the Act.

ARGUMENT

I. The District Court's Award of Community Fund Relief Is Appropriate and Authorized by the Clean Air Act.

After presiding over a two-week trial in which it heard testimony from a variety of experts and residents, the district court ordered equitable relief requiring DTE to fund at least \$20 million for projects aimed at maximizing public health and air quality improvements in 48217, River Rouge, and Ecorse—the areas most

impacted by DTE’s violations. Despite Sierra Club requesting this community fund relief at numerous points before, during, and after trial, DTE never argued that the relief would exceed the district court’s authority under the Clean Air Act. While DTE attempts to raise such arguments on appeal, they have been forfeited. So, too, have the additional statutory and constitutional arguments raised by the Chamber, because they were never presented below and improperly introduce new issues beyond those DTE raised. Even if these arguments were properly raised, the district court acted well within its Clean Air Act authority to issue appropriate relief that was designed to redress the harm to the local community proven at trial.

A. Arguments Challenging Whether the District Court Had Authority to Order the Community Fund Relief Have Been Forfeited.

DTE and the Chamber each seek to raise new issues in this appeal that were not passed upon by the district court. Unless an issue is jurisdictional, it must have been preserved through “timely and reasoned presentation” to the district court to avoid forfeiture on appeal. *Thomas M. Cooley L. Sch. v. Kurzon Strauss, LLP*, 759 F.3d 522, 528 (6th Cir. 2014) (quoting *Dice Corp. v. Bold Techs.*, 556 Fed. Appx. 378, 384 (6th Cir. 2014)). Such presentation must generally be made “prior to the close of trial on the merits.” *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 504 (2006). “It is well-settled that this court’s ‘function is to review the case presented to the district court, rather than a better case fashioned after an unfavorable order.’”

Armstrong v. City of Melvindale, 432 F.3d 695, 700 (6th Cir. 2006) (alterations adopted) (quoting *Barner v. Pilkington N. Am., Inc.*, 399 F.3d 745, 749 (6th Cir. 2005)). Limiting issues considered on appeal to those presented below helps to “ease ‘appellate review by having the district court first consider the issue,’” and it helps to “ensure ‘fairness to litigants by preventing surprise issues from appearing on appeal.’” *Kitchen v. Whitmer*, 106 F.4th 525, 536–37 (6th Cir. 2024) (quoting *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 552 (6th Cir. 2008)).

This Court only considers a forfeited argument if necessary to avoid “a plain miscarriage of justice,” and such discretion is “rarely exercised.” *Cockrun v. Berrien Cnty.*, 101 F.4th 416, 420 (6th Cir. 2024) (citing *Scottsdale Ins.*, 513 F.3d at 552).

Applying these standards to DTE’s and the Chamber’s arguments challenging the community fund relief, it becomes clear that—except for the Chamber questioning Sierra Club’s standing—DTE and the Chamber attempt to raise non-jurisdictional issues that were not timely presented to the district court below. These arguments were forfeited and should not be considered by this Court.

1. DTE Forfeited Its Argument that the Community Fund Relief Exceeded the District Court’s Authority.

DTE argues that “the district court exceeded its authority” in awarding the injunctive relief requested by Sierra Club and River Rouge of funding \$20 million in community projects chosen by a committee. DTE Br. at 67–68 (citing *Trump v.*

CASA, Inc., 606 U.S. 831, 841 (2025)). This argument is forfeited because it is not jurisdictional and because DTE failed to timely present or preserve it below.

DTE’s argument that the community fund relief exceeded the district court’s authority is not jurisdictional and is therefore subject to forfeiture because it is about “statutory limit[s] on [a court’s] power” rather than “statutory limit[s] on subject matter jurisdiction.” *United States v. Marshall*, 954 F.3d 823, 826 (6th Cir. 2020); *see also Fort Bend Cnty. v. Davis*, 587 U.S. 541, 543 (2019) (distinguishing between “jurisdictional” limits on a court’s authority over claims or parties and “mandatory” prerequisites to a claim that can be forfeited if not timely challenged). DTE’s argument relies on *CASA*, which held that federal courts lack statutory authority to issue universal injunctions under the Judiciary Act. 606 U.S. at 847. DTE does *not* challenge whether the district court had subject matter jurisdiction over Sierra Club’s and River Rouge’s claims for relief under the Clean Air Act. Rather, as DTE itself concedes, even if its argument were successful, it would at most require this Court to order a narrower scope of injunctive relief or a remand. DTE Br. at 68. This type of non-jurisdictional challenge to a district court’s authority to award particular relief is subject to forfeiture. *See, e.g., United States v. Michigan*, 131 F.4th 409, 422–23 (6th Cir. 2025) (holding that Tribal Nation forfeited argument challenging district court’s authority to order injunctive relief), *cert. denied sub nom. Sault Ste. Marie Tribe of Chippewa Indians v. Michigan*, 146

S. Ct. 1486 (2026); *see also Doe v. Trump*, 157 F.4th 36, 81–82 (1st Cir. 2025), *cert. denied*, No. 25-899, 2026 WL 1871309 (U.S. June 30, 2026) (holding that United States waived *CASA* challenge to breadth of injunctive relief by failing to raise it below).

DTE failed to timely present or preserve its *CASA* argument below. It should have been aware of the *CASA* decision before trial: the Supreme Court decided *CASA* in June 2025, the trial did not commence until September 2025, and post-trial submissions were made in December 2025. It was also well aware of Sierra Club’s request that the district court require DTE to fund community projects through a committee, which was detailed in the joint pretrial order (RE.372, PageID#25697), Sierra Club’s pretrial brief (RE.354, PageID#25318–22), opening statement (RE.374, Page ID#26045–46), closing statement (RE.396, PageID#27873–77), and proposed findings of fact and conclusions of law (RE.407, PageID#28494–99). Yet DTE failed to make its *CASA* argument at any point prior to judgment, such as in its closing statement (RE.396, PageID#27878–943) or proposed findings of fact and conclusions of law (RE.408, PageID#28562–66).⁴

⁴ DTE’s counsel did make a brief, general allusion to Sierra Club’s ability to seek distinct relief in its closing statement. Transcript, RE.396, PageID#27932 (“Sierra Club is not permitted to relief that exceeds that of the Government.”). This refers to DTE’s argument below that Sierra Club lacks standing to seek different relief than the United States. *See* DTE Post-trial Filing, RE.408, PageID#28565 (“Sierra Club therefore lacks standing and cannot obtain relief beyond that to which Plaintiff is entitled.”). This standing argument was the only argument raised below

DTE first raised its *CASA* argument with the district court in their motion to stay the relief pending appeal. Motion, RE.421, PageID#28757–59. However, this attempt came too late to timely preserve the argument, especially given that the district court denied the stay motion without needing to pass upon the new argument. Order, RE.432, PageID#28859–67. Presenting an argument to the district court for the first time in a post-judgment motion does not cure its forfeiture if the district court never passes upon it. *See, e.g., Scottsdale Ins.*, 513 F.3d at 553 (“[W]e have found issues to be waived when they are raised for the first time in motions requesting reconsideration or in replies to responses.”); *Cochran v. Quest Software, Inc.*, 328 F.3d 1, 11 (1st Cir. 2003) (“Litigation is not a game of hopscotch. It is generally accepted that a party may not, on a motion for reconsideration, advance a new argument that could (and should) have been presented prior to the district court’s original ruling.”).

DTE failed to preserve its *CASA* argument below, despite ample opportunity to do so. *See, e.g., Rentrop v. Spectranetics Corp.*, 550 F.3d 1112, 1117 (Fed. Cir. 2008) (“[W]hen there is a relevant change in the law before entry of final

in opposition to Sierra Club’s requests for relief, and the district court correctly rejected it. *See* Trial Order, RE.410, PageID#28649–52; *see also infra* Argument, Section I.B.4. This single brief statement falls far short of adequately preserving the *CASA* argument for appeal. *See, e.g., United States v. Huntington Nat’l Bank*, 574 F.3d 329, 332 (6th Cir. 2009) (“To preserve the argument, then, the litigant not only must identify the issue but also must provide some minimal level of argumentation in support of it.”).

judgment, a party generally must notify the district court; if the party fails to do so, it waives arguments on appeal that are based on that change in the law.”). The district court did not have an opportunity to pass upon this argument prior to judgment, and its appearance at this late stage of the case is a surprise to Sierra Club and River Rouge. This Court should not consider this forfeited argument.

2. The Court Should Not Consider the Chamber’s Arguments Except to the Extent that They Challenge Sierra Club’s Standing.

The Chamber’s arguments challenging the community fund relief are subject to two layers of forfeiture: it raises issues that were not presented below *and* that DTE failed to raise in its brief here. It is well established that, “[w]hile an amicus may offer assistance in resolving issues properly before a court, it may not raise additional issues or arguments not raised by the parties.” *In re Isaacs*, 895 F.3d 904, 917 (6th Cir. 2018) (quoting *Cellnet Commc’ns, Inc. v. FCC*, 149 F.3d 429, 443 (6th Cir. 1998)). “To the extent that the amicus raises issues or make[s] arguments that exceed those properly raised by the parties,” this Court “may not consider such issues.” *Id.*

The Chamber’s arguments are distinct from those raised in DTE’s brief, and they were also not presented in the district court below. The Chamber argues that the Clean Air Act does not authorize Sierra Club to seek injunctive relief beyond

what is sought by the United States. Chamber Br. at 8–13.⁵ It further argues that such a request raises Article II concerns that implicate the doctrine of constitutional avoidance. *Id.* at 14–18. Finally, the Chamber argues that the community fund relief exceeded the district court’s Article III authority. *Id.* at 18–23.

None of these arguments were raised in DTE’s brief. Nor were any preserved below, except to the extent that the Article III argument questions Sierra Club’s standing, which would be a jurisdictional argument in any event. Sierra Club and River Rouge respond further concerning their standing in Section I.B.4 below. Other than confirming that the district court correctly held that Sierra Club has standing, this Court should not entertain the doubly-forfeited arguments that the Chamber seeks to add to this case.

B. The District Court Ordered Appropriate Relief to Redress Ongoing Harms to the Parties in the Nearest, Most Impacted Communities.

Arguments challenging the district court’s authority to order the community fund relief have been forfeited by DTE’s failure to raise them below. Even so, the Clean Air Act authorizes this award of equitable relief, and it was well within the

⁵ As discussed above, the single sentence in DTE’s closing argument alluding to Sierra Club’s ability to seek different relief than the Government was insufficient to preserve this argument below. *See supra* note 4. Counsel did not make any reference at all to any statutory limit in the Clean Air Act on Sierra Club’s ability to seek relief, let alone provide the “minimal level of argumentation” necessary to preserve the issue for appeal. *Huntington Nat’l Bank*, 574 F.3d at 332.

district court’s discretion. *See Tenn. Clean Water Network v. Tenn. Valley Auth.*, 905 F.3d 436, 442 (6th Cir. 2018) (“[T]he scope of injunctive relief is reviewed for abuse of discretion.” (citation omitted)). The injunction was narrowly tailored to providing complete relief to the parties before it—which included the United States, River Rouge, and Sierra Club—based on the evidence of ongoing harm to the local community that both the United States and Sierra Club presented at trial. Sierra Club and River Rouge participated in this case pursuant to the Clean Air Act’s long-established provision for intervention in governmental enforcement actions, which does not raise any constitutional concerns, and both Sierra Club and River Rouge have standing to seek different relief than the United States.

1. The Clean Air Act Authorizes the Community Fund Relief.

The district court was well within its discretion to award the community fund relief to redress the still-ongoing harms from DTE’s air pollution in the communities where Sierra Club’s testifying members live (including River Rouge).

The Clean Air Act broadly authorizes courts to “to order [a defendant] to take appropriate actions that remedy, mitigate and offset harms to the public and the environment.” *United States v. Ameren Mo.*, 9 F.4th 989, 1009 (8th Cir. 2021) (quoting *United States v. Cinergy Corp.*, 582 F. Supp. 2d 1055, 1060 (S.D. Ind. 2008)). The district court had jurisdiction pursuant to 42 U.S.C. § 7413(b), which authorizes courts to restrain violations, require compliance, assess civil penalties,

and “award any other appropriate relief.” When equitable powers are invoked like this, the Supreme Court has held that “all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction.” *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). The district court’s broad, equitable powers “assume an even broader and more flexible character” when matters of public interest are involved. *Id.*; *see also United States v. City of Painesville*, 644 F.2d 1186, 1193 (6th Cir. 1981) (“In enacting the Clean Air Act, Congress made a determination that the public interest required that substantial measures be taken to combat the deleterious effects of air pollution.”). The power to exercise that jurisdiction resides with the district court “to do equity and to mould each decree to the necessities of the particular case.” *Porter*, 328 U.S. at 398 (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944)).⁶ Courts have held that the Act “does not set any limitation on the type of relief that the Court may require to enforce a violation.” *Ky. Res. Council, Inc. v. EPA*, 304 F. Supp. 2d 920, 929 (W.D. Ky. 2004).

Relief for a citizen plaintiff may go beyond ordering compliance with the statute or permit. *U.S. Pub. Int. Rsch. Grp. v. Atl. Salmon of Me., LLC*, 339 F.3d 23, 31 (1st Cir. 2003). In a case interpreting nearly identical language under the Clean

⁶ *See also Porter*, 328 U.S. at 398 (“Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court’s jurisdiction in equity, the full scope of that [equitable] jurisdiction is to be recognized and applied.”).

Water Act, the Third Circuit has held that “a court may fashion injunctive relief requiring a defendant to pay monies into a remedial fund, if there is a nexus between the harm and the remedy.” *Pub. Int. Rsch. Grp. of N.J., Inc. v. Powell Duffryn Terminals Inc.*, 913 F.2d 64, 82 (3rd Cir. 1990). Here, the Clean Air Act provides similarly broad authority, and it authorized the district court to award the community fund relief as an equitable remedy.

2. The Community Fund Relief Is Tailored to the Violations and Designed to Remedy Harm in the Most Impacted Communities.

The district court ordered the community fund relief based on detailed evidence from air quality and public health experts, as well as local residents, showing that communities in a specific geographic area adjacent to the Facility have been severely harmed by DTE’s unlawful pollution. Trial Order, RE.410, PageID#28653–54. DTE is required to fund \$20 million for projects chosen by a community committee to redress those harms. *Id.*

The community fund relief is appropriately tailored to the evidence of harm that DTE’s excess pollution has caused and is continuing to cause. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (“[T]he scope of injunctive relief is dictated by the extent of the violation established.”). The evidence before the district court included testimony from:

- Mr. Lyle Chinkin, an air modeling expert who testified about the local impacts of the Facility's excess air pollution;
- Dr. Joel Schwartz, a public health expert who testified about the health impacts of the pollution;
- Ms. Elayne Coleman, Sierra Club's Michigan Chapter Director, who testified about the relief sought by the organization's members; and
- Sierra Club members and local residents who testified about their lived experiences breathing polluted air, experiencing health effects like coughing, and curtailing activities in their homes and neighborhoods because of the pollution.

See supra Statement of the Case, Section II.

Based on this evidence, the district court found that the Facility's excess SO₂ and PM_{2.5} pollution—which would not have occurred but for the Clean Air Act violations—had especially significant impacts in Ecorse, River Rouge, and 48217. Trial Order, RE.410, PageID#28647–48. The district court found that those pollutants cause serious adverse health outcomes, such as asthma attacks and early deaths. *Id.*, PageID#28648. After hearing from credible Sierra Club witnesses who lived in the communities adjacent to the Facility and experienced respiratory effects, *id.*, PageID#28645–47, the district court found that Sierra Club members

faced “substantial hardship as a result of the Facility’s excess SO₂ emissions,” *id.*, PageID#28655.⁷

Relying on this testimony and “the circumstances of this case,” the district court found that injunctive relief aimed at directly redressing the ongoing harm to Sierra Club members and the communities adjacent to the Facility was appropriate. *Id.*, PageID#28644–48, 28653–55. Noting that the balancing of injunctive relief factors favored the relief,⁸ the district court concluded, “the public will benefit from [DTE] forming the Community Quality Action Committee and funding community air quality improvement projects.” *Id.*, PageID#28655. The Committee is to be comprised of representatives from DTE, an academic institution, local

⁷ See also Transcript, RE.388, PageID#27075–79 (unrefuted testimony that Sierra Club is concerned with air quality in the community and has thousands of members in Wayne County).

⁸ As the district court recognized, it did not need to conduct this balancing. Ordinarily, a party seeking injunctive relief must satisfy the four-part test set forth in *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006), by demonstrating: “(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.” Trial Order, RE.410, PageID#28642. However, as the district court recognized, *id.*, PageID#28642–43, 28654, when the injunction is sought pursuant to a federal statute such as the Clean Air Act, an injunction may issue without applying the traditional equity factors. See, e.g., *United States v. Prod. Plated Plastics, Inc.*, 762 F. Supp. 722, 728 (W.D. Mich. 1991), *opinion adopted*, 955 F.2d 45 (6th Cir. 1992); see also *City of Painesville*, 644 F.2d at 1193. Nonetheless, the district court concluded that even if the *eBay* factors governed, the community fund relief would still be appropriate. Trial Order, RE.410, PageID#28655.

environmental organizations, and local communities, and will “consider and select projects with a goal of maximizing public health and air quality improvements in Ecorse, River Rouge, and 48217.” Judgment, RE.412, PageID#28661–62. The district court also specified that Sierra Club would play a consulting role in selecting Committee members. *Id.*, PageID#28661. The community fund relief was thus designed to directly redress the ongoing harms to Sierra Club members and the three communities adjacent to the Facility that were established at trial.

DTE’s argument that the community fund relief exceeded the district court’s authority because it may benefit residents who are not Sierra Club members, *see* DTE Br. at 67–68, is without merit. This geographically and substantively limited relief is not analogous to the nationwide “universal” injunction preventing the government from enforcing a policy against non-parties that the Supreme Court found impermissible in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). There, the Supreme Court emphasized that the Judiciary Act does not authorize federal courts to award injunctive relief “broader than necessary to provide complete relief to each plaintiff with standing to sue.” *Id.* at 860–61.⁹

The community fund relief, designed to directly benefit the local communities (including River Rouge) that are most directly harmed by DTE’s

⁹ *CASA* expressly declined to reach the question of courts’ authority to award relief under other statutes, such as the Administrative Procedure Act. 606 U.S. at 847 n.10.

illegal pollution, does not run afoul of this principle. The parties here include not only Sierra Club, representing the particular interests of its members who live in River Rouge, Ecorse and 48217 and were personally harmed by this pollution (*see infra* Argument, Section 4) but also two governmental bodies: River Rouge and the United States, representing the public interest of their citizens. *See, e.g., Wineries of the Old Mission Peninsula Ass’n v. Twp. of Peninsula*, 41 F.4th 767, 775 (6th Cir. 2022) (noting that a government plaintiff represents everyone residing within its jurisdictional boundaries); *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (noting that a government “is charged by law with representing the public interest of its citizens”).

Sierra Club and River Rouge intervened partly because they represent more specific interests than the United States, particularly when it comes to relief (*see supra* Statement of the Case, Section III.A), and the community fund relief was requested both by Sierra Club and River Rouge. *See* Post-trial filing, RE.407, PageID#28494–99. However, the community fund was also based partly on evidence of harm to local communities presented by the United States, and the district court ordered this relief in response to this evidence. Trial Order, RE.410, PageID#28644–48, 28653. DTE ignores the district court’s reliance on testimony from the United States’ experts, and River Rouge’s participation in the case, in mischaracterizing the order as “targeted at non-parties.” DTE Br. at 67. The court

exercised appropriate discretion in awarding the community fund relief under 42 U.S.C. § 7413(b), based on its consideration of the circumstances of this case and the parties before it, which included not just Sierra Club and River Rouge but also the United States.

3. The Clean Air Act Authorizes Courts to Award Relief to Citizen Plaintiffs.

The Court need not reach the questions—raised solely by the Chamber—of whether the Clean Air Act allows the district court to award the community fund relief or poses a constitutional problem. *See supra* Argument, Section I.A.2. These issues were neither presented below nor raised in DTE’s brief here. The Chamber improperly attempts to inject them into the case via a proposed amicus brief. Nonetheless, the Act authorizes this type of equitable relief, and nothing in the Constitution prevents citizen plaintiffs from seeking relief not requested by the government.

a. The Act does not bar the distinct equitable relief requested by Sierra Club and River Rouge.

The Chamber argues that when the government initiates an enforcement action under 42 U.S.C. § 7413(b), a plaintiff cannot intervene and seek relief that is neither authorized by 42 U.S.C. § 7604(a) nor sought by the government. Chamber Br. at 10–11. But this case was not brought pursuant to Section 7604(a). The United States filed under Section 7413(b) and Sierra Club and River Rouge

intervened pursuant to Section 7604(b)(1)(B). This Court thus treats it as a Section 7413 case. *See United States v. Nat’l Steel Corp.*, 782 F.2d 62, 64 (6th Cir. 1986) (rejecting intervenor’s argument for attorney’s fees, which may be sought in Section 7604(a) cases, in case initiated under Section 7413). The relief that the district court could award was dictated by Section 7413(b)—the provision under which this case was initiated—which is broad and allows “any other appropriate relief.” *See also* Trial Order, RE.410, PageID#28612.

Principles of intervention support the notion that different plaintiffs can seek different relief. The Act provides for citizen plaintiffs to intervene as of right in government enforcement actions without limitation.¹⁰ 42 U.S.C. § 7604(b)(1)(B); *see also In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1246 (11th Cir. 2006) (“Once a court grants intervention, whether of right or by permission, the ‘intervenor is treated as if [it] were an original party and has equal standing with the original parties.’” (citation omitted)). And this Court recognizes that citizen groups can have different objectives than the government—suggesting that this is the very reason they are allowed to intervene. *See Lucas Cnty. Bd. of Comm’rs v.*

¹⁰ Where limits are applied, they are for purposes of efficiency. Here, for example, the district court provided intervenors with a shorter page limit for their filings. Order, RE.38, PageID#2642. Moreover, the district court held that Sierra Club would need to show standing if it sought separate relief, Trial Order, RE.410, PageID#28649 (citing *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 304 (6th Cir. 2019)), and both DTE and the United States have accepted that premise throughout the case, never raising the issue the Chamber presents.

EPA, 169 F.4th 689, 698 (6th Cir. 2026) (noting in a Clean Water Act case, “[t]ime and again, in considering whether the presumption of adequate representation applies, we have looked to the parties’ objective within the scope of the relevant litigation, not their overarching goals or interests”); *Wineries*, 41 F.4th at 774–75 (noting that “overlapping interests do not equal convergent ones”). Thus, that Sierra Club and River Rouge sought relief that would directly redress ongoing harms to their members and residents, and the government did not, proves the point of intervention.

Even if the Court accepts the premise that Section 7604(a) governs the available relief in this case, the Chamber’s suggestion that its language constrains the court’s equitable discretion has no basis. “The comprehensiveness of [the court’s] equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command.” *Atl. Salmon*, 339 F.3d at 31 (citation omitted); *see also Porter*, 328 U.S. at 398 (describing courts’ equitable discretion to mold relief). A district court’s equitable discretion remains broad under the Act. *See Ky. Res. Council*, 304 F. Supp. 2d at 929 (interpreting Section 7604(a)).¹¹

¹¹ The Chamber’s further suggestion that the community fund relief is actually a civil penalty award is baseless. Sierra Club and River Rouge fully support—and sought—the separate civil penalty award. *See, e.g.,* Post-trial Filing, RE.407, PageID#28499. They requested that the community fund be ordered as a separate form of equitable relief, and the district court expressly described it as such in its order. Trial Order, RE.410, PageID#28653–55. Requiring DTE to spend money on relief (such as it will also have to do when applying for a permit to comply with the

Further, there is no statutory or precedential basis to suggest that citizen plaintiffs intervening in government enforcement actions cannot seek separate relief in parallel. The Chamber argues that the Act bars an intervening plaintiff from seeking relief that the government “chose to forgo.” Chamber Br. at 12–13 (citing *Ellis v. Gallatin Steel Co.*, 390 F.3d 461 (6th Cir. 2004)). However, they cite only one authority—this Court’s decision in *Ellis*—where the government had conclusively resolved violations through a consent decree *before* the citizens sought recourse, in a *separate* suit, for the same violations. 390 F.3d at 472–76. That is not the situation presented here; the violations had neither ended nor were resolved in a consent decree or judgment before Sierra Club and River Rouge timely intervened and requested additional relief. Indeed, in *Ellis*, this Court acknowledged that intervenors had an “opportunity to fully litigate” the issues in that Section 7413 case, so they were subsequently barred by res judicata. 390 F.3d at 473. There as here, the intervenors were harmed private plaintiffs who sought different relief under the Act than the government. The district court’s decision here is thus fully consistent with *Ellis*.

Act, Motion to Stay, RE.421, PageID#28762) in no way converts that equitable remedy into a civil penalty. Accordingly, both because the community fund relief is not a civil penalty and because the relief was ordered pursuant to 42 U.S.C. § 7413(b), any limits in 42 U.S.C. § 7604(g) do not apply.

The Chamber’s statement that the government “chose to forgo” the community fund relief is also misleading. Here, each plaintiff sought relief—and no plaintiff argued against the relief sought by another party. Nor is there any conflict between the forms of relief ordered.

b. An award of equitable relief to citizen intervenors does not raise constitutional questions.

Awarding relief to citizen intervenors in a Clean Air Act suit does not pose a constitutional problem. The Chamber argues that the district court’s award of equitable relief that the United States did not seek—*or object to*—presents an Article II problem because citizen suits themselves overstep the role of the Executive Branch. Every court that has addressed Article II challenges to similar private rights of action has rejected them, both in the context of environmental citizen suits¹² and elsewhere.¹³

¹² See, e.g., *United States v. Am. Elec. Power Serv. Corp.*, 137 F. Supp. 2d 1060, 1065 (S.D. Ohio 2001) (Clean Air Act); *Atl. States Legal Found. v. Buffalo Envelope*, 823 F. Supp. 1065, 1074–76 (W.D.N.Y. 1993) (Emergency Planning and Community Right-to-Know Act); *Nat. Res. Def. Council v. Outboard Marine Corp.*, 692 F. Supp. 801, 815–17 (N.D. Ill. 1988) (Clean Water Act); *Chesapeake Bay Found. v. Bethlehem Steel Corp.*, 652 F. Supp. 620, 623–26 (D. Md. 1987) (Clean Water Act); *Student Pub. Int. Rsch. Grp. of N.J. v. Monsanto Co.*, 600 F. Supp. 1474, 1478–79 (D.N.J. 1985) (Clean Water Act).

¹³ See, e.g., *Capitol Records v. Alaujan*, 626 F. Supp. 2d 152, 154 (D. Mass. 2009) (Copyright Act); *Campaign Legal Ctr. v. Iowa Values*, 573 F. Supp. 3d 243, 256 (D.D.C. 2021) (Federal Election Campaign Act).

Congress can allow “private parties to enforce the law through civil litigation.” *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 367 (2025). Here, Congress allows private parties to intervene and enforce the law alongside the federal government in a single suit. While a “regime where Congress could freely authorize *unharm*ed plaintiffs to sue defendants who violate federal law” might raise Article II concerns, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 429 (2021), “it is entirely appropriate for Congress, in creating [statutory] rights and obligations, to determine in addition, who may enforce them and in what manner,” *Davis v. Passman*, 442 U.S. 228, 241 (1979). Here, the Clean Air Act authorizes plaintiffs to seek relief for their particular harms—and Sierra Club readily met the standing requirements. *See infra* Argument, Section I.B.4.

The Act’s provision for citizen suits and intervention in government actions thus does not infringe on Article II because it authorizes private parties to seek redress on their own behalf, not on behalf of the government. That citizens may “intervene as a matter of right” where the government has brought suit, 42 U.S.C. § 7604(b)(1)(B), reflects that harmed citizens assert an interest distinct from that of the government.

Plaintiff-intervenors like Sierra Club and River Rouge, unlike the government, do not vindicate some general public interest in environmental enforcement, but instead seek to address a concrete harm they are experiencing.

Citizen suit “provisions apply only to persons who can claim some sort of injury.” *Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n*, 453 U.S. 1, 16–17 (1981); *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 129 (1998) (Stevens, J., concurring) (reasoning that a citizen suit provision does not impinge on Executive Branch power when the plaintiff alleges “a particularized injury” beyond harm to the general public interest); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 347 (2016) (Thomas, J., concurring) (noting that separation-of-powers concerns are “not implicated” when private plaintiffs seek to redress harm they experienced).

Congress provided citizens a right to intervene in Clean Air Act enforcement suits, and Sierra Club established that it was vindicating the interests of its harmed members. *See* Trial Order, RE.410, PageID#28649–52. Sierra Club’s intervention and participation in this case alongside the United States raises no constitutional question.

4. Sierra Club and River Rouge Have Standing.

An organization has Article III associational standing if at least one member would otherwise have standing, the litigation is germane to the organization’s purpose, and neither the claims nor the relief requested requires an individual member’s participation. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs., Inc.*, 528 U.S. 167, 181 (2000). For standing, a member must show injuries fairly traceable to the challenged action that will likely be redressed by favorable relief. *Id.* at 180–

81; *Sierra Club v. Franklin Cnty. Power of Ill., LLC*, 546 F.3d 918, 925 (7th Cir. 2008) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). It is well settled that an organization may sue on behalf of its members to seek relief under the Clean Air Act. *See Sierra Club v. EPA*, 793 F.3d 656, 661 (6th Cir. 2015); *see also Laidlaw*, 528 U.S. at 180–81 (Clean Water Act case).

This Court requires intervenors to demonstrate standing only where they seek different relief from the plaintiff or may wish to appeal the outcome of the suit. *Chapman v. Tristar Products, Inc.*, 940 F.3d 299, 304 (6th Cir. 2019); *see also* Summary Judgment Order, RE.331, PageID#24363–64. From Sierra Club’s motion to intervene all the way through its post-trial briefing, it repeatedly demonstrated standing. *See, e.g.*, Declarations, RE.12-3–12-5; Post-trial Filing, RE.407, PageID#28489–94. Following trial, the district court made robust findings of fact and conclusions of law that “Sierra Club has standing to seek equitable relief.” Trial Order, RE.410, PageID#28644–52.

DTE does not challenge Sierra Club’s standing and has never challenged River Rouge’s standing. The Chamber injects the issue into the appeal, but questions only the redressability portion of Sierra Club’s standing for one form of

relief (and does not challenge River Rouge’s standing).¹⁴ As standing is jurisdictional, Sierra Club and River Rouge briefly address that redressability argument and other aspects of standing.

Ample evidence and case law support the district court’s conclusion that Sierra Club has standing. There is no question that the interests at stake in this litigation are germane to Sierra Club’s purpose, which includes advocacy for cleaner air so that all people can enjoy their parks and neighborhoods and have a healthier community. Transcript, RE.388, PageID#27075–77; Trial Order, RE.410, PageID#28652. Neither the claims nor the relief sought by Sierra Club require its individual members to participate in the litigation. *See Sierra Club*, 793 F.3d at 661 n.1. And at least one Sierra Club member satisfies the standing requirements of having suffered an injury that is fairly traceable to the challenged action and that can likely be redressed by favorable relief. *Lujan*, 504 U.S. at 560–61.

The three Sierra Club members who testified at trial would have standing. First, they suffered injuries. Recreational injuries from “reduced outdoor activities” and “potential physical injury in the form of respiratory symptoms” are both, independently, “judicially cognizable form[s] of injury” in Clean Air Act suits.

¹⁴ Indeed, the Chamber appears to agree that the district court’s findings would be sufficient for Sierra Club’s standing to seek the other form of equitable relief that the district court ordered (requiring DTE to obtain NSR permits to reduce emissions). Chamber Br. at 19–20.

Sierra Club, 793 F.3d at 663; *see also Laidlaw*, 528 U.S. at 183. The testifying members suffer potential physical injuries. *See, e.g.*, Transcript, RE.387, PageID#27000, 27002 (when near the Facility, Ms. Landrum has difficulty breathing, coughs, feels her chest tighten, sneezes, and gets serious headaches and eye irritation); *id.*, PageID#27038–40 (at home near the Facility, just a half hour of outdoor gardening causes Dr. Leonard chest pain and difficulty breathing). Sierra Club members also suffer recreational injuries. They have reduced their enjoyment of outdoor activities and changed their routines due to concerns about air pollution, including the Facility’s emissions. *Id.*, PageID#27000–02 (Ms. Landrum bikes, runs, and speedwalks less; keeps her windows closed; and has invested in improving her home’s indoor air quality); *id.*, PageID#27034, 27037–40, 27055 (Dr. Leonard has changed what roads she travels on, cannot spend as long gardening, and spends less quality time with relatives); Transcript, RE.388, PageID.27062–64 (Ms. Dobbins keeps her windows closed and stopped bike-riding in her neighborhood).

Second, the members’ injuries are fairly traceable to DTE’s excess emissions. The Facility contributes pollution to the air the members breathe in their neighborhoods and homes, as demonstrated by their proximity (Transcript, RE.387, PageID#26995, 26999, 27028; Transcript, RE.388, PageID#27061–62) and an air modeler’s testimony (Transcript, RE.379, PageID#26371–72, 26377–80;

PX-0996, App.120; PX-0989, App.118). This is sufficient for traceability for an environmental citizen suit plaintiff. *Franklin Cnty.*, 546 F.3d at 925; *see also Sierra Club v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 558 (5th Cir. 1996) (holding that where there are multiple pollution sources in an area, injuries need not be traced to a single facility); *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161 (4th Cir. 2000) (recognizing that the “‘fairly traceable’ standard is ‘not equivalent to a requirement of tort causation’” (citation omitted)). Moreover, the symptoms and health concerns that the members described in testimony (e.g., difficulty breathing) are consistent with the effects of DTE’s pollution, as a public health expert testified. Transcript, RE.382, PageID#26590–91.

Third, the members’ injuries are redressable by each form of relief the district court ordered, *see* Post-trial Filing, RE.407, PageID#28493–94, including community fund relief that will, as the district court noted, “serve to mitigate the health and recreational effects of Defendants’ SO₂ and PM_{2.5} emissions in their communities,” Trial Order, RE.410, PageID#28651. Plus, as with civil penalties, requiring DTE to spend money on environmental and health projects provides redress by deterring future violations. *Id.*; *cf. Laidlaw*, 528 U.S. at 185–86.

The Chamber’s arguments to the contrary about redressability do not meaningfully engage with the trial testimony, district court’s findings, or relevant case law. First, the Chamber mischaracterizes the facts and opinion in this case. It

focuses on whether some of the examples of projects the Committee will administer, such as air purifiers to improve indoor air quality, would redress outdoor recreational injuries. Chamber Br. at 20. But Sierra Club witnesses described more than outdoor recreational injuries. They described indoor injuries, *see, e.g.*, Transcript, RE.387, PageID#27001–02, 27037, 27040 (keeping windows closed to reduce exposure); Transcript, RE.388, PageID#27062–63 (same). They described injuries from concern for others’ health. *See, e.g.*, Transcript, RE.387, PageID#27020, 27030–31 (testifying about concerns for children and seniors in the members’ close-knit community). And they identified potential community fund projects that the Chamber ignores. *See, e.g.*, Transcript, RE.388, PageID#27091–92 (describing as an example of a project an outdoor space designed to provide some relief from air pollution).¹⁵

Second, the Chamber’s case citations are not relevant, let alone dispositive, for their position on redressability. For example, it cites a putative class action seeking relief from a defendant that the named class representative did not have standing to sue. Chamber Br. at 21 (citing *Fox v. Saginaw Cnty.*, 67 F.4th 284, 294 (6th Cir. 2023), which rejects the juridical link doctrine, not at issue in this case).

¹⁵ The Chamber also appears to suggest that the money in the community fund will go to Sierra Club. Chamber Br. at 20. No money will go to Sierra Club; the money will go directly toward funding projects to improve health and air quality for its members. Judgment, RE.412, PageID#28662.

This case is irrelevant. Here, Sierra Club was injured by the conduct of and sought relief from each of the named defendants—and all of the relief sought would redress its harms. The Chamber also inappropriately cites a case distinguishing an as-applied challenge to a state statute from a facial challenge, *id.* at 22 (citing *L.W. ex rel. Williams v. Skrmetti*, 83 F.4th 460, 490 (6th Cir. 2023)), as well as a case where the plaintiff sought relief that was unavailable pursuant to their cause of action, *id.* at 21 (citing *Glennsborough Homeowners Ass’n v. U.S. Postal Serv.*, 21 F.4th 410, 417 (6th Cir. 2021)). Further, any suggestions from *Steel Co.* or *Lujan* that citizen plaintiffs cannot seek redress for environmental violations, Chamber Br. at 21–22, were put to rest by the Supreme Court’s later—seminal—opinion in *Laidlaw*.

Third, to the extent the Chamber attempts to shoehorn DTE’s *CASA*-based argument into the standing context, that case is a statutory opinion regarding the Judiciary Act of 1789, not an Article III jurisdictional argument. *See* 606 U.S. at 838 n.2.

The relief here redresses Sierra Club’s injury. The district court ordered DTE to create a Committee, in consultation with Sierra Club, to select projects “with a goal of maximizing public health and air quality improvements” in the places where the witnesses live and testified about their injuries from DTE’s air pollution. Trial Order, RE.410, PageID#28654. This tracks the members’ own words about

what would redress their injuries. For example, one member said that actions DTE could take to remedy their violations included rendering services that “would better the air quality in our area,” and funding projects for the impacted communities. Transcript, RE.387, PageID#27004–05, 27018. She testified that community members impacted by poor air should have a say as to how funds are directed. *Id.*, PageID#27004. Another member testified about her experience working with companies that violated air quality laws to develop community projects to mitigate pollution issues—projects that she found to be “effective and helpful” ways to address violations and improve relations between industry and residents. *Id.*, PageID.27040–41.

River Rouge’s standing is well supported by the record and has never been challenged. The Facility is physically located within its borders, and River Rouge intervened to protect concrete municipal interests in the health, safety, welfare, environmental conditions, and quality of life of its residents—interests distinct from the broader public interests represented by the United States. *See* Mot. to Intervene, RE.14, PageID#621. River Rouge jointly requested the community fund relief, and the evidence established direct local harm. A River Rouge resident, Ms. Dobbins, testified at trial and met the requirements of Article III standing. *See* Trial Order, RE.410, PageID#28650–51. Additionally, modeling evidence identified

River Rouge as among the locations experiencing the most significant impacts. *See supra* Statement of the Case, Section II.C.

Both Sierra Club and River Rouge have standing, and the Court should affirm the award of community fund relief.

II. The District Court Awarded Additional Appropriate Relief.

The district court also acted well within its discretion by both requiring DTE to apply for a proper Clean Air Act permit authorizing the Facility’s major modification and issuing a civil penalty based on credible trial evidence and full consideration of the Act’s penalty factors to ensure DTE does not financially benefit from its unlawful conduct.

A. The District Court Appropriately Ordered DTE to Comply with the Clean Air Act.

The district court appropriately granted injunctive relief—requested by the United States, Sierra Club, and River Rouge—requiring DTE to come into compliance with the Clean Air Act. Trial Order, RE.410, PageID#28640–44; *see also Weinberger v. Romeo-Barcelo*, 456 U.S. 305, 320 (1982) (finding a court should order relief “necessary to secure prompt compliance with” an environmental law); *City of Painesville*, 644 F.2d at 1194 (“By enacting the Clean Air Act, Congress established a high priority for the control of air pollution.”).¹⁶

¹⁶ As with the community fund relief (*see supra* note 8), the district court found that balancing under traditional equity factors (as articulated in *eBay*) was not

The district court ordered DTE to apply to EGLE for the major modification permit necessary to address the Facility's ongoing NSR violations within 250 days of the judgment. Trial Order, RE.410, PageID#28640–42. This is the permit that DTE should have obtained prior to significantly increasing emissions at the Facility in 2018, and it should require DTE to install and operate full desulfurization to reduce SO₂ emissions by 90% or more. *Id.* Without the district court's order in place, there would be no firm deadline for DTE to come into compliance with the Clean Air Act at the Facility.¹⁷

The only argument challenging this relief that DTE raises on appeal is the claim that the relief is barred by the concurrent-remedy doctrine. DTE Br. at 66–67. This argument fails because, as DTE acknowledges, this doctrine would bar the

required for injunctive relief compelling Clean Air Act compliance, and that the court need only find that DTE “violated the statute and there is some cognizable danger of recurrent violation.” Trial Order, RE.410, PageID#28642–44. The court further found that even if *eBay* did govern, the injunctive relief would still be appropriate. *Id.*, PageID#28644.

¹⁷ The court declined to impose its own emissions limitations on the Facility or any other specific requirements to reduce excess emissions, in anticipation that EGLE would set these limitations in a major modification permit. Trial Order, RE.410, PageID#28641–42. Until EGLE issues such a permit and new air pollution control technology begins operating, the Facility will likely continue emitting excess SO₂ in violation of the Act. *Id.*, PageID#28644. DTE has represented that even after EGLE issues a permit (which could take at least several months), it could take an additional two to three years for new pollution control equipment to be designed, procured, installed, and brought online. Smith Decl., RE.421-1, PageID#28769–70. Thus, even pursuant to the district court's injunctive relief, DTE may not be required to reduce its excess emissions at the Facility until 2029 or 2030.

injunctive relief only if the plaintiffs' civil penalty claim is time-barred under the applicable statute of limitations. *Id.* However, as the United States explains, the civil penalty claim here is timely under any reasonable theory of when the claim accrued, *see* U.S. Br. at 53–62, making the concurrent-remedy doctrine inapplicable. *See Nat'l Parks Conserv. Ass'n, Inc. v. Tenn. Valley Auth.*, 480 F.3d 410, 419–20 (6th Cir. 2007) (“Because we conclude that the plaintiffs’ claims for civil penalties are timely . . . we need not address the district court’s application of the concurrent-remedy rule.”). In addition, even if there was a statute of limitations issue with the civil penalty claim (which there is not), because the United States is the lead plaintiff seeking this relief in its enforcement capacity, the concurrent-remedy doctrine does not apply. *See* U.S. Br. at 75–76 (citing *Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666, 676 (10th Cir. 2016); *United States v. Banks*, 115 F.3d 916, 919 (11th Cir. 1997)).

Accordingly, this Court should affirm the injunctive relief requiring DTE to come into Clean Air Act compliance as a lawful and appropriate exercise of the district court’s discretion.

B. The District Court Assessed an Appropriate Civil Penalty, Considering the Relevant Factors.

The district court also appropriately assessed a \$100 million civil penalty for DTE’s NSR violations. Trial Order, RE.410, PageID#28634–38. The court found that the statutory maximum penalty was over \$304 million. *Id.*, PageID#28632. It

then decided to make a “bottom-up” penalty calculation, starting with \$70 million as a “rational benchmark” for DTE’s economic benefit of noncompliance based on the range of estimates provided by the United States’ witness. *Id.*, PageID#28635–37. The court then adjusted upward and downward based on application of the other Clean Air Act penalty factors. *Id.*, PageID#28635–38.

Nothing in the district court’s analysis supports DTE’s argument that it unlawfully focused on economic benefit to the exclusion of other statutory factors, or that it treated economic benefit as a “‘floor’ beneath which the penalty could not go” or a “mandatory minimum.” DTE Br. at 62–63. Moreover, as the United States explains, the court’s bottom-up approach *benefited* DTE as it could have determined a much higher penalty if it had instead made a “top-down” calculation using the \$304 million maximum as the starting point. U.S. Br. at 72–73. The court’s approach was well within its discretion and consistent with the majority of courts. *Id.* at 72–75.

The court’s use of a 1.5-times multiplier for economic benefit, to level the economic playing field and deter future violations, was another conservative approach that benefited DTE. *See* Trial Order, RE.410, PageID#28637–38. Other courts have assessed a penalty of two to three times economic benefit to ensure that it has an adequate deterrent effect and that defendants do not profit from their wrongdoing. *See, e.g., United States v. Mun. Auth. of Union Twp.*, 150 F.3d 259,

265–69 (3d Cir. 1998) (affirming penalty of two times economic benefit); *United States v. Smithfield Foods, Inc.*, 191 F.3d 516, 528–29 (4th Cir. 1999) (three times); *see also United States v. Allegheny Ludlum Corp.*, 366 F.3d 164, 178 n.6 (3d Cir. 2004) (finding that district court was “well within its discretion” to use bottom-up approach to calculating penalty based on doubling economic benefit). The district court’s approach here is conservative under these precedents.

Nor did the district court fail to consider DTE’s purported good faith or the seriousness of the violations, as DTE suggests. *See* DTE Br. at 64–66. The court made clear that it *did* consider all seven statutory factors, but it found that other than a \$5-million downward adjustment for DTE’s modest efforts to comply with its state-issued permit, no further adjustments were warranted. Trial Order, RE.410, PageID#28638. The court noted that after receiving EPA’s Notice of Violation in 2020, DTE took no steps to curtail the Facility’s excess SO₂ emissions or seek the legally-required NSR permits. *Id.* This finding undercuts DTE’s assertion that it “believed it was doing everything by the book” so penalizing it would not have a deterrent effect. DTE Br. at 64. Once notified by EPA that it was violating federal law, DTE could have accepted responsibility and taken steps to come into compliance, but it failed to do so and still has not done so. *See* U.S. Br. at 74–75 (noting that DTE’s argument only applied to the 2014 permit and not to DTE’s

actions after receiving the 2020 Notice of Violation). The court did not abuse its discretion in considering this in connection with whether DTE acted in good faith.

Finally, DTE’s suggestions that its (still-ongoing) Clean Air Act violations “merely shifted emissions from one side of the street to the other,” have not caused “net harm,” and are therefore not serious, DTE Br. at 65, are contradicted by the district court’s liability ruling and substantial record evidence. The court correctly rejected DTE’s misleading claims that the retirement of a nearby U.S. Steel plant—which DTE had incorrectly predicted would purchase more coke oven gas than it did from the Facility, *see* U.S. Br. at 16–17—somehow excuses DTE from liability for the actual emissions increases at the Facility. *See id.* at 35–36 (citing Trial Order, RE.410, PageID#24346). As the court found, substantial trial evidence showed that the Facility’s excess emissions harmed nearby communities, increasing the risk of numerous adverse health effects and causing reasonable concerns of harm among Sierra Club members living near the Facility. Trial Order, RE.410, PageID#28644–52. The court plainly assessed these violations as serious, as evidenced by its granting additional injunctive relief to Sierra Club to further redress these harms, and its decision not to adjust the civil penalty further downward was well within its discretion.

III. The District Court Correctly Determined Liability.

At summary judgment, the district court correctly determined that the removal of the Facility's limit on how much coke oven gas could be burned at underfire resulted in a major modification requiring an NSR permit.¹⁸ DTE does not dispute that the Facility's SO₂ emissions increased well beyond the major modification threshold. Instead, it disputes both the test for causation and the cause of the increase in pollution. DTE both blames U.S. Steel for the emissions increase (arguing that losing U.S. Steel as a coke oven gas customer was the real cause) *and* tries to take credit for any decrease in U.S. Steel's emissions due to the idling of their blast furnaces (arguing that its civil penalty should have been lower because pollution from the U.S. Steel's nearby facility decreased). DTE Br. at 22, 38. But the proper focus of the Clean Air Act, and of the district court, was on whether the 2014 permit was a but-for cause of the Facility's SO₂ emissions increase above the major modification threshold when compared to baseline actual emissions. The answer to this question is plainly yes.

Michigan's federally enforceable air quality rules mirror the Clean Air Act in requiring that a facility undertaking a major modification get an NSR permit and install pollution controls. Mich. Admin. Code R. 336.2902(1). Defining a major

¹⁸ In addition to the arguments presented here, Sierra Club and River Rouge adopt Argument Sections I and II.A of the United States' brief by reference.

modification as “[a]ny physical change in or change in the method of operation . . . that would result in both . . . [a] significant emissions increase” and a “significant net emissions increase.” Mich. Admin. Code R. 336.2901(t); *see also* Mich. Admin. Code R. 336.2902(2)(a) (referencing this definition and noting that NSR applies to any project causing a significant emissions increase and significant net emissions increase). An SO₂ emissions increase is significant if it exceeds 40 tons per year. Mich. Admin. Code R. 336.2901(hh)(i)(C).

DTE, citing *Burrage v. United States*, 571 U.S. 204, 210 (2014), now asserts that the causation standard described in Michigan’s regulations requires both but-for and proximate causation. DTE Br. at 24. But DTE never raised its proximate cause argument in summary judgment briefing; this argument has been forfeited (and would fail even if not). U.S. Br. at 48–49.

When the text of a regulation is clear, as it is here, courts begin and end their interpretation with its plain language. *Saginaw Chippewa Indian Tribe v. Blue Cross Blue Shield of Mich.*, 32 F.4th 548, 557 (6th Cir. 2022). The phrase “result in,” which the relevant regulation uses, Mich. Admin. Code R. 336.2901(t), requires but-for causation only, not proximate causation. *Burrage*, 571 U.S. at 212 (“Where there is no textual or contextual indication to the contrary, courts regularly read phrases like ‘results from’ to require but-for causality.”); *United States ex rel.*

Martin v. Hathaway, 63 F.4th 1043, 1052 (6th Cir. 2023) (“The ordinary meaning of ‘resulting from’ is but-for causation.”).

The relevant question here is whether removal of the permit limit on the amount of coke oven gas the Facility could burn at underfire, in isolation, caused an SO₂ emissions increase above the 40 tons per year major modification threshold when compared to historical operations and emissions levels. *See Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020) (“[A] but-for test directs us to change one thing at a time and see if the outcome changes.”). The district court answered this question affirmatively. Summary Judgment Order, RE.331, PageID#24343. For multiple twelve-month periods after the permit change, the removal of the limit caused hundreds of tons of increased SO₂ emissions at the Facility, according to DTE’s own undisputed data as presented in an EPA expert’s declaration. *Id.*, PageID#25343–45.

DTE never contested this evidence below and does not do so now. Instead, it argues that even though the 2014 permit change led to SO₂ emissions above the major modification threshold, U.S. Steel’s decision to purchase less coke oven gas from the Facility was “a more *immediate* proximate cause of the emissions increase.” DTE Br. at 37. This is not a valid defense for but-for causation, a “sweeping standard” that recognizes that “[o]ften, events have multiple but-for causes.” *Bostock*, 590 U.S. at 656. DTE’s arguments that some other event also

caused SO₂ emissions to significantly increase are irrelevant when assessing but-for causation. *See Nathan v. Great Lakes Water Auth.*, 992 F.3d 557, 567 (6th Cir. 2021) (where a but-for cause is established, a defendant cannot avoid liability by citing some other factor that may have contributed to the outcome).

DTE also takes issue with how the district court assessed but-for causation, arguing that when post-project pollution is compared to the pre-project baseline period, an unspecified amount of hypothetical emissions that never occurred should be included in the baseline emissions. DTE Br. at 32–33. DTE wishes to include an unspecified amount of increased emissions from the Facility’s flare due to the loss of U.S. Steel as a customer for coke oven gas in its “baseline actual emissions,” even though they occurred after the 2014 permit. However, the Act and Michigan’s regulations require baseline actual emissions to be grounded in *actual* emissions, not hypothetical ones that never occurred during the baseline period. Mich. PSD Workbook, RE.159-10, PageID#5871; *see also New York v. EPA*, 413 F.3d 3, 40 (D.C. Cir. 2005) (“If Congress had intended for ‘increases’ in emissions to be measured in terms of potential or allowable emissions, it would have added a reference to ‘potential to emit’ or ‘emissions limitations.’”).

The purpose of the Act’s NSR program is to improve air quality to achieve NAAQS in areas failing to meet such standards (or maintain them in areas that are meeting the standards). *Texas v. EPA*, 690 F.3d 670, 675 (5th Cir. 2012). DTE

cannot sweep its significant emissions increase under the rug by hypothesizing that the Facility could have emitted more pollution in the past (it could not, *see* U.S. Br. at 40–48), which would have made its post-project emissions increase less severe.

DTE claims this is unfair because it restricts a facility to maintaining its production at current capacity even if some independent business factor influenced the increase, DTE Br. at 33, but this concern is already accounted for in Michigan’s rules. To account for business fluctuations, permit applicants are allowed to utilize a ten-year look-back period so that the baseline emissions reflect the facility’s entire business cycle. Mich. Admin. Code R. 336.2901(b)(ii); *New York v. EPA*, 413 at 25.

DTE further argues that U.S. Steel’s decision to stop purchasing coke oven gas was a more immediate proximate cause of its emissions increase. DTE Br. at 37. Regardless of any other SO₂ emissions increases at the Facility, the undisputed evidence establishes that the 2014 permit caused increased emissions of at least 40 tons per year. Galinsky Decl., RE.168-5, PageID#9357. DTE is responsible for this emissions increase. When it learned that U.S. Steel would no longer purchase the amount of coke oven gas it had anticipated in its 2014 permit application, it was required to either find a new purchaser or submit another permit application with revised emissions projections to account for the increase in coke oven gas being sent to the Facility’s flare. Mich. Admin. Code R. 336.1201(1) (requiring a person

to obtain a permit to install before modifying any process at a facility that may increase pollution). DTE did neither. DTE's failure to obtain a proper NSR permit, which would have required it to significantly limit the Facility's SO₂ pollution, is its responsibility alone.

CONCLUSION

This Court should affirm the district court's judgment.

Dated: September 18, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of the Court's order, ECF No. 25, because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b)(1), it contains 14,881 words.

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word for Microsoft 365 in 14-point Times New Roman.

Dated: September 18, 2026

/s/ Thomas Cmar

*Counsel for Intervenor-Plaintiff -
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CERTIFICATE OF SERVICE

I certify that on September 18, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Thomas Cmar

ADDENDUM

Designation of Relevant Lower Court Documents

Pursuant to 6 Cir. R. 28(a)(1) and 30(g)(1), Sierra Club and City of River Rouge provide the following Designation of Relevant Lower Court Documents:

Dist. Court Record Entry	Description	PageID Range
1	United States' Complaint	1–22
12	Sierra Club's Motion to Intervene	533–565
12-3–12-5	Sierra Club's Motion to Intervene Declarations	591–600
14	River Rouge's Motion to Intervene	609–625
38	Order Granting Motions to Intervene	2641–2643
91	United States' Amended Complaint	3811–3834
98	Sierra Club's Amended Complaint	3862–3902
99	River Rouge's Amended Complaint	3903–3926
118	Answer to Sierra Club's Amended Complaint	4075–4130
159-10	Exhibit: Michigan PSD Workbook Excerpt	5854–5884
168-5	Galinsky Declaration	9335–9365
168-9	2014 Permit Application	9410–9629
261-3	Exhibit: Operational Data Tables	17133–17142
331	Summary Judgment Opinion & Order	24325–24365
351	United States' Pretrial Brief	25205–25225
354	Sierra Club's Pretrial Brief	25309–25326
355-1	DTE's Pretrial Brief (redacted)	25364–25397
356	DTE's Pretrial Brief (sealed)	<i>(sealed 1–33)</i>
372	Joint Final Pretrial Order	25688–25819
374	Trial Transcript	26020–26083

377	Trial Transcript	26184–26282
378	Trial Transcript	26283–26362
379	Trial Transcript	26363–26459
380	Trial Transcript	26460–26518
382	Trial Transcript	26532–26657
383	Trial Transcript	26658–26734
384	Trial Transcript	26735–26832
387	Trial Transcript	26988–27056
388	Trial Transcript	27057–27164
395	Trial Transcript	27736–27813
396	Trial Transcript	27814–27965
403-4	United States’ Illustrative Exhibit PDX-04	28059–28084
403-6	United States’ Illustrative Exhibit PDX-06	28107–28116
407	Sierra Club & River Rouge’s Proposed Findings of Fact & Conclusions of Law	28478–28501
408	DTE’s Proposed Findings of Fact & Conclusions of Law	28502–28568
410	Findings of Fact & Conclusions of Law	28605–28656
412	Final Judgment	28659–28663
418	Notice of Appeal	28718–28720
421	DTE’s Motion to Stay	28730–28765
421-1	DTE’s Motion to Stay – Smith Declaration	28766–28772
432	Order Denying Motion to Stay	28854–28868