

No. \_\_\_\_\_

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

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IN RE SIERRA CLUB,

Petitioner.

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**PETITION FOR WRIT OF MANDAMUS**

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Dated: August 3, 2026

/s/ Kathleen L. Riley

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## INTRODUCTION & RELIEF SOUGHT

In 2009, this Court ordered a remand of the U.S. Environmental Protection Agency's ("EPA") air toxics standards for hazardous waste combustors because EPA admitted the standards fail to meet the Clean Air Act's minimum stringency requirements and "must be reconsidered." EPA Motion for Partial Voluntary Remand, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Aug. 29, 2008), attached as Ex. 1; Order, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Nov. 3, 2008), attached as Ex. 2; *see also* EPA Motion for Voluntary Remand, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. June 12, 2009), attached as Ex. 3; Order, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Aug. 14, 2009), attached as Ex. 4. More than sixteen years later, EPA has not responded to this Court's remand.

EPA's failure to bring its air toxics standards into compliance with the Act's minimum stringency requirements prolongs and exacerbates Petitioner's members' exposure to hazardous waste combustors' toxic air emissions, as well as the resulting harms to their health and welfare. Sierra Club therefore petitions this Court to issue a writ of mandamus directing EPA to finally respond to the Court's remand and bring its air toxic standards for hazardous waste combustors into compliance with the Act with a proposed rule due within one year of the Court's order and a final rule due one year later. Sierra Club additionally requests that this

Court retain jurisdiction and require EPA to submit status updates every 90 days until the rulemaking is complete.

### **ISSUE PRESENTED**

Whether mandamus should issue where EPA has failed for more than sixteen years to respond to this Court’s order remanding the hazardous waste combustor standards for EPA to bring them into compliance with the Clean Air Act’s minimum stringency requirements.

### **STATEMENT OF JURISDICTION**

This Court has authority under the All Writs Act, 28 U.S.C. § 1651(a), to issue a writ of mandamus “to require compliance with [its] previously issued orders” and “to compel unreasonably delayed agency activity.” *In re Ctr. for Biological Diversity*, 53 F.4th 665, 670 (D.C. Cir. 2022). Here, EPA has failed to respond to this Court’s remand for more than sixteen years.

### **STANDING**

As in the prior challenges to EPA’s air toxics standards for hazardous waste combustors, Petitioner Sierra Club has standing. *See Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855 (D.C. Cir. 2001); *see also Sierra Club v. EPA*, No. 05-1441 (and consolidated cases) (D.C. Cir.). Sierra Club’s members are harmed by the toxic air pollution emitted by hazardous waste combustors that EPA has failed to lawfully regulate. Sierra Club’s members would benefit from a writ of mandamus

setting a deadline by which EPA must finally bring the standards into compliance with the Clean Air Act’s minimum stringency requirements. *See* Decls., attached as Exs. 10-12; *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Petitioners satisfy the remaining requirements of associational standing because the interests they seek to protect are germane to their organizational purposes and neither the claim asserted nor the relief requested requires participation of their members. *See Hearth, Patio & Barbeque Ass’n v. EPA*, 11 F.4th 791, 802 (D.C. Cir 2021).

### **FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED**

Hazardous waste combustors are incinerators, boilers, cement kilns, and other facilities that burn hazardous waste. 91 Fed. Reg. 33484, 33488 (June 3, 2026). Hazardous waste is solid waste that may “cause, or significantly contribute to an increase in mortality or ... serious irreversible or incapacitating reversible, illness; or [] pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.” *See* 42 U.S.C. § 6903(5). Today, there are approximately 163 hazardous waste combustors in this country that burn approximately 2.5 million tons of hazardous waste each year. 91 Fed. Reg. at 33518, 33488.

Burning hazardous waste results in hazardous air pollution, such as dioxins, mercury, heavy metals, and polychlorinated biphenyls, or PCBs, that cause or

contribute to cancer and other serious health and environmental harms. *See, e.g.*, 42 U.S.C. § 7412(b); EPA, Risk Assessment at 5-8, EPA-HQ-OAR-2004-0022-0723 (May 2025); EPA, Memo at 1, EPA-HQ-OAR-2004-0022-0769 (May 2026) (finalizing May 2025 Risk Assessment). Hazardous waste combustors in the United States emit nearly 10,000 tons of hazardous air pollution each year. EPA, Risk Assessment at Table 3.1-1, EPA-HQ-OAR-2004-0022-0723 (May 2025).

Given the significant health risks presented by emissions of hazardous air pollutants, Congress directed EPA to set emission standards that meet objective stringency requirements. Section 112(d) of the Act directs that standards must limit each hazardous air pollutant emitted by the “maximum” degree that is “achievable,” considering cost and other factors, and that such standards must be no less stringent than the emission levels achieved by the best performing sources—i.e., the sources with the lowest emission levels—regardless of cost. 42 U.S.C. § 7412(d)(3). Standards were due “as expeditiously as practicable” but “not later than” November 15, 2000. 42 U.S.C. § 7412(e)(1)-(1)(E).

This Court has addressed EPA’s obligations under section 112(d)(3)’s minimum stringency, or “floor,” requirements repeatedly, including when vacating EPA’s first emission standards for hazardous waste combustors set in 1999. *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 861-62, 871-72 (D.C. Cir. 2001), attached as Ex. 5. This Court also confirmed the plain meaning of the Act’s



minimum stringency requirements in *Sierra Club v. EPA*, the “Brick MACT” decision. *Sierra Club v. EPA*, 479 F.3d 875, 876-879 (D.C. Cir. 2007), attached as Ex. 6 (“Because most of the standards violate the Clean Air Act as interpreted by this Court in [*Cement Kiln*], ... we vacate the standards in their entirety and remand for further proceeding consistent with this opinion.”). The floor “‘shall not be less stringent than’ what the best-performing sources ‘achieve[.]’” *Cement Kiln*, 255 F.3d at 861 (quoting 42 U.S.C. § 7412(d)(3)); *see also Sierra Club*, 479 F.3d at 880.

After this Court’s vacatur of the 1999 standards, EPA set new standards for hazardous waste combustors in 2005. 70 Fed. Reg. 59402 (Oct. 12, 2005), attached as Ex. 7. Following the Brick MACT decision, however, EPA admitted that parts of the 2005 standards too did not comply with the Clean Air Act’s minimum stringency requirements and “must be reconsidered.” EPA Motion for Partial Voluntary Remand, Ex. 1, at 2; *see also* 72 Fed. Reg. 54875, 54875 (Sept. 27, 2007), attached as Ex. 8 (identifying standards which are “not” consistent with the Act and caselaw, “and need to be reexamined”). In a subsequent 2008 reconsideration rulemaking, EPA concluded even more of the standards “should be re-examined and not defended in litigation.” 73 Fed. Reg. 64068, 64088-90 (Oct. 28, 2008), attached as Ex. 9; *id.* at 64086 (“EPA has further narrowed the number of standards it intends to defend.”). EPA accordingly sought and this Court ordered

remand of the 2005 standards and 2008 rule “for further consideration ... in their entirety.” 2009 Remand Order, Ex. 4, at 1; *see also* 2008 Partial Remand Order, Ex. 2, at 1-2; EPA Motion for Voluntary Remand, Ex. 3, at 1-2, 4 (“request[ing] the remaining standards be remanded as well.”).

Now, more than sixteen years later, EPA has not responded to this Court’s remand, and the Agency’s air toxics standards for hazardous waste combustors still do not comply with the Clean Air Act’s minimum stringency requirements. The continued operation of hazardous waste combustors under these flawed standards has exposed, and continues to expose, people living near these facilities to excess hazardous air pollution. Under lawful emission standards, this excess pollution would have been prevented or reduced more than 16 years ago—and indeed, more than 25 years ago, when lawful emissions standards were initially due. 42 U.S.C. § 7412(e)(1)(E).

Moreover, in a recent rulemaking to review and revise the standards for hazardous waste combustors,<sup>1</sup> EPA expressly declined to comply with the Court’s remand:

In the notices and court filings cited ... , the EPA explained that the Agency would seek a remand to reconsider certain standards based on new information which arose after the period for public comment. The EPA subsequently sought and received a remand of all HWC []

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<sup>1</sup> EPA only undertook this review rulemaking after compelled to do so by separate court order. *Blue Ridge Env’t Def. League v. Regan*, No. 22-cv-3134, 2024 WL 5093495, at \*10 (D.D.C. Dec. 12, 2024).

standards in 2009. This final rule does not respond to that remand, which the EPA intends to address at a later date.

EPA, Response to Comments at 11, EPA-HQ-OAR-2004-0022-0773 (May 2026) (citation modified); *see also* 91 Fed. Reg. at 33485 (executive summary).

Thus, more than sixteen years after this Court ordered remand because EPA admitted its standards for hazardous waste combustors violated the Clean Air Act’s minimum stringency requirements, EPA still has not responded to this Court’s remand or provided any insight into EPA’s progress or the prospective timing of any response.

### **STANDARD OF REVIEW**

This Court will order mandamus relief when there is a violation of a “clear duty,” the petitioner “has no other adequate means to attain the relief it desires,” and “the agency’s delay is so egregious as to warrant mandamus.” *See In re Ctr. for Biological Diversity*, 53 F.4th at 670 (citation modified). This Circuit has identified six factors in determining whether the agency’s delay warrants mandamus relief, but when an agency ignores a court order, “a lesser showing is necessary to justify mandamus.” *Id.* at 670-671 (citing *In re Core Commc’ns, Inc.*, 531 F.3d 849, 855-56 (D.C. Cir. 2008)); *see also id.* at 670 (citing *Telecomms. Rsch. & Action Ctr. (TRAC) v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (establishing six factor test)). In such cases, the agency’s failure to heed the Court’s remand is

“‘[d]ecisive.’” *Id.* at 671 (quoting *In re People’s Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012)).

## **REASONS WHY THE WRIT SHOULD ISSUE**

### **I. EPA HAS A CLEAR DUTY TO ACT.**

EPA has a “clear duty” to comply with this Court’s remand. *Id.* at 670. Remand orders “implicitly include[] the understanding that the [agency will] respond ... in a timely manner.” *Potomac Elec. Power Co. v. Interstate Com. Comm’n*, 702 F.2d 1026, 1034 (D.C. Cir. 1983). This Court remanded the standards for further consideration after EPA admitted the standards contravened the Clean Air Act and “must be reconsidered.” *See* EPA Motion for Partial Voluntary Remand, Ex. 1, at 2; EPA Motion for Voluntary Remand, Ex. 3, at 1-2, 4 (“request[ing] the remaining standards be remanded as well.”); 2009 Remand Order, Ex. 4. Far from timely responding, EPA has not responded or offered any indication of its progress in the more than sixteen years since.

### **II. NO ADEQUATE ALTERNATIVE REMEDY EXISTS.**

Mandamus is Sierra Club’s only means of obtaining a deadline for EPA to finally respond to this Court’s 2009 remand. *See In re Ctr. for Biological Diversity*, 53 F.4th at 671 (“[A] writ of mandamus is the only way to compel EPA to perform its clear duties in this case.”). The remand or vacatur available as relief in a challenge to EPA’s 2026 review rule is not an adequate alternative to the court-

ordered deadline sought here for EPA to respond to the remand of its 2005 standards and 2008 rule. As EPA itself states, the 2026 review rule “does not respond to [the Court’s] remand” of the 2005 standards and 2008 rule, “which the EPA intends to address at a later date.” EPA, Response to Comments at 11, EPA-HQ-OAR-2004-0022-0773 (May 2026); 91 Fed. Reg. at 33485 (executive summary); 42 U.S.C. § 7607(b) (limiting review to final action).

### III. EPA’S DELAY WARRANTS MANDAMUS.

EPA’s failure to heed this Court’s remand is “[d]ecisive” and warrants mandamus relief. *See In re Ctr. for Biological Diversity*, 53 F.4th at 671 (citation modified). “When an agency ignores a court order,” it “nullifie[s]” the order and “thwart[s] [the Court’s] jurisdiction by withholding a reviewable decision.” *See id.* at 670 (citation modified); *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004). Mandamus ensures that EPA cannot prevent this Court from securing compliance with its remand by simply withholding its response to that remand indefinitely.

Nonetheless, an analysis under the factors identified in *TRAC*, 750 F.2d at 80, results in the same conclusion: mandamus is warranted. This Court has found that years-long noncompliance flouts the “rule of reason”—the ““first and most important”” factor in assessing the unreasonableness of an agency’s delay. *In re Ctr. for Biological Diversity*, 53 F.4th at 671 (quoting *TRAC*, 750 F.2d at 80). “[A]

reasonable time for agency action is typically counted in weeks or months, not years.” *In re Am. Rivers & Idaho Rivers United*, 372 F.3d at 419.

Second, the Congressionally mandated “timetable” and “indication of the speed” for standard setting reinforces the unreasonable duration of EPA’s delay. *See TRAC*, 750 F.2d at 80. Congress established a statutory scheme requiring EPA to set numerous standards in as little as one to two years and set a clear deadline for lawful standards for hazardous waste combustors of “not later than” November 15, 2000—nearly 26 years ago. 42 U.S.C. § 7412(c) (list of source categories for regulation due “not later than” November 15, 1991); *id.* § 7412(e)(1)(A)-(C) (standards for “not less than” 40 categories due “not later than” November 15, 1992; for additional categories “not later than” November 15, 1994); *id.* § 7412(e)(1)(E) (standards for all categories due “not later than” November 15, 2000). Sixteen years of delay in complying with this Court’s remand thus far exceeds Congress’s direction and intent.

The “overlap[ping]” third and fifth factors weigh strongly in favor of mandamus because delay is “less tolerable when human health and welfare” is at stake. *See In re Ctr. for Biological Diversity*, 53 F.4th at 671 (citation modified); *see also TRAC*, 750 F.2d at 80. Congress requires that emission standards meet certain minimum stringency requirements in order to protect public health. *See* 42 U.S.C. §§ 7412(d), 7401; *see also Cement Kiln*, 255 F.3d at 861-62, 871-72; *Sierra*

*Club*, 479 F.3d at 877-879. Now, more than a quarter century after the date by which Congress commanded EPA to issue lawful air toxics standards for hazardous waste combustors—and more than sixteen years after this Court granted remand—the public continues to face toxic air pollution in excess of the limits Congress directed. *See* 42 U.S.C. § 7412(e)(1)-(1)(E); 2009 Remand Order, Ex. 4; 2008 Partial Remand Order, Ex. 2.

As to the fourth factor, EPA’s 16-year delay cannot be justified by supposed “higher or competing prior[ities].” *See TRAC*, 750 F.2d at 80. This Court has “made clear ... that ‘[h]owever many priorities the agency may have, and however modest its personnel and budgetary resources may be, there is a limit to how long it may use these justifications to excuse inaction in the face of’” a duty to act. *Am. Hospital Ass’n v. Burnwell*, 812 F.3d 183, 191 (D.C. Cir. 2016) (quoting *In re United Mine Workers of America International Union*, 190 F.3d 545, 554 (D.C. Cir. 1999)); *see also In re Pub. Emps. for Env’t Resp.*, 957 F.3d 267, 275 (D.C. Cir. 2020) ((noting that “[n]either a lack of sufficient funds nor administrative complexity, in and of themselves, justify extensive delay”) (citation modified)). Particularly now when EPA is prioritizing discretionary, deregulatory

rulemakings,<sup>2</sup> EPA’s competing priorities cannot justify flouting this Court’s order for more than sixteen years.

Finally, though the Court need not find bad faith, EPA’s “utter indifference” to its congressional deadline—and to this Court’s remand order—particularly warrants mandamus relief. *See In re Barr Lab’ys, Inc.*, 930 F.2d 72, 76 (D.C. Cir. 1991); *see also TRAC*, 750 F.2d at 80 (sixth factor). More than sixteen years have elapsed since this Court ordered remand, and EPA has neither responded nor articulated any timeline at all for its response. Indeed, the need for mandamus relief is especially clear here where, even when compelled to conduct a rulemaking to review and revise the standards for hazardous waste combustors, EPA still declined to respond to this Court’s remand. *Blue Ridge Env’t Def. League*, 2024 WL 5093495, at \*10 (setting deadline for review rulemaking); 91 Fed. Reg. at 33485 (executive summary); EPA, Response to Comments at 11, EPA-HQ-OAR-

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<sup>2</sup> *See, e.g.*, 91 Fed. Reg. 26958 (May 13, 2026) (proposing revisions to air permitting); 91 Fed. Reg. 13543 (Mar. 20, 2026) (proposing amendments to incinerator standards); 91 Fed. Reg. 12700 (Mar. 17, 2026) (proposing to revise standards for sterilization facilities); 90 Fed. Reg. 47677 (Oct. 2, 2025) (soliciting information to support upcoming proposal to amend Regional Haze Rule); 90 Fed. Reg. 44591 (Sept. 16, 2025) (proposing to amend Greenhouse Gas Reporting Program requirements); EPA, *EPA Launches Biggest Deregulatory Action in U.S. History* (Mar. 12, 2025), available at <https://www.epa.gov/newsreleases/epa-launches-biggest-deregulatory-action-us-history> (announcing 31 deregulatory actions EPA “will undertake”).



2004-0022-0773 (May 2026) (“This final rule does not respond to that remand, which the EPA intends to address at a later date.”).

#### IV. A TWO-YEAR DEADLINE WITH STATUS REPORTS IS APPROPRIATE.

“EPA’s history of delay and missed deadlines with respect to its statutory obligations ... indicates that a court-imposed schedule is necessary here.” *Env’t. Def. Fund v. EPA*, 852 F.2d 1316, 1331 (D.C. Cir. 1988). Given that Congress’s statutory scheme requires EPA to set numerous standards in as little as one to two years, and in consideration of the serious harm caused by hazardous waste combustors’ emissions, a two-year deadline is imminently reasonable. *See* 42 U.S.C. § 7412(c) (list of source categories for regulation due “not later than” November 15, 1991); *id.* § 7412(e)(1)(A)-(C) (standards for “not less than” 40 categories due “not later than” November 15, 1992; for additional categories “not later than” November 15, 1994). Accordingly, Petitioner requests the Court set deadlines for a proposed rule within one year of the Court’s order and a final rule one year later, with status reports due every 90 days until the rulemaking is complete. *See, e.g., In re Idaho Conservation League*, 811 F.3d 502, 516 (D.C. Cir. 2016) (per curium) (requiring status reports).

## CONCLUSION

For more than sixteen years, EPA has flouted its obligation to respond to this Court's remand of the air toxics standards for hazardous waste combustors—a remand EPA itself sought because it agreed the standards contravene the Clean Air Act. Petitioner respectfully asks the Court to issue a writ of mandamus directing EPA to respond to this Court's remand with a proposed rule due within one year of the Court's order and a final rule due one year later. Petitioner additionally requests that this Court retain jurisdiction and require EPA to submit status updates every 90 days until the rulemaking is complete.

Dated: August 3, 2026

Respectfully submitted,

/s/ Kathleen L. Riley

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*Counsel for Petitioner Sierra Club*

## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 21(d), Petitioner Sierra Club submits this certificate as to parties, ruling, and related cases.

### **I. Parties.**

Petitioner is Sierra Club. Respondents are the U.S. Environmental Protection Agency (“EPA”) and Lee Zeldin, Administrator of the EPA. There are no intervenors or *amici*.

### **II. Ruling Under Review**

This action seeks to enforce this Court’s previous remand orders in *Sierra Club v. EPA*, No. 05-1441 (and consolidated cases) (D.C. Cir. Nov. 3, 2008, and Aug. 14, 2009), attached to this Petition as Exhibits 2 and 4. At issue in that case is the “National Emission Standards for Hazardous Air Pollutants: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II),” 70 Fed. Reg. 59,402 (Oct. 12, 2005), and the “National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors: Reconsideration,” 73 Fed. Reg. 64,068 (October 28, 2008).

### **III. Related Case**

*Sierra Club v. EPA*, No. 05-1441 (and consolidated cases) (D.C. Cir.).

DATED: August 3, 2026

Respectfully submitted,

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## **DISCLOSURE STATEMENT**

Pursuant to D.C. Circuit Rule 21(d), Petitioner Sierra Club states that it is an environmental non-profit organization without any parent corporation and that no publicly held corporation has a ten percent or greater ownership interest in them.

DATED: August 3, 2026

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I certify that the forgoing Petition for Mandamus was printed in a proportionally spaced font of 14 points and that, according to the word-count provided by Microsoft Word, it contains 3,082 words in compliance with Federal Rule of Appellate Procedure 21(d).

Respectfully submitted,

/s/ Kathleen L. Riley  
Kathleen L. Riley

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Petition for Mandamus and accompanying Exhibits** have been served by United States first-class mail on August 3, 2026, upon the following:

Administrator Lee Zeldin  
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Respectfully submitted,

/s/ Kathleen L. Riley  
Kathleen L. Riley

August 3, 2026

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BY FIRST CLASS MAIL AND EMAIL

Re: Petition for Reconsideration of the Risk and Technology Review of the National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors, 91 Fed. Reg. 33,484 (June 3, 2026), Docket No. EPA-HQ-OAR-2004-0022

Dear Administrator Zeldin:

This is a petition under Clean Air Act (“CAA” or “the Act”) § 307(d)(7)(B), 42 U.S.C. § 7607(d)(7)(B). The parties submitting this petition are Sierra Club, Missouri Coalition for the Environment, Air Alliance Houston, Kentucky Resources Council, Utah Physicians for a Healthy Environment, and California Communities Against Toxics. Petitioners request that you convene reconsideration proceedings under § 307(d)(7)(B) to reconsider certain aspects of the final action taken at 91 Fed. Reg. 33484 (June 3, 2026) (“Final Rule”) and titled “National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review,” for the reasons given below.

## **FACTUAL AND LEGAL BACKGROUND**

### **I. The Hazardous Waste Combustors Source Category**

Hazardous Waste Combustors (“HWC”) are units that combust hazardous waste, including incinerators, cement kilns, lightweight aggregate kilns, boilers, and hydrochloric acid (“HCl”) production furnaces. 91 Fed. Reg. at 33488. There are 92 HWC facilities, covering 163 units that collectively emit about 10,000 tons of hazardous air pollutants (“HAP”) each year.<sup>1</sup>

The HAP that HWC facilities emit, including dioxins and furans, mercury, hydrochloric acid, polychlorinated biphenyls (“PCB”), and polycyclic aromatic hydrocarbons (“PAH”), are associated with serious adverse health effects.<sup>2</sup> EPA estimates that 85 of the HAP that HWC emit

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<sup>1</sup> U.S. EPA, Residual Risk Assessment for the Hazardous Waste Combustors Source Category in Support of the 2025 Risk and Technology Review Proposed Rule (“RRA”), at 5, [EPA-HQ-OAR-2004-0022-0723](#) (May 2025).

<sup>2</sup> 91 Fed. Reg. at 33488.



are “known, probable, or possible carcinogens.”<sup>3</sup> Many are also persistent and bioaccumulative, including lead, mercury, arsenic, and dioxins.<sup>4</sup>

Individuals living nearest HWC facilities (within 5km) are both disproportionately Black and Hispanic/Latino, disproportionately living below the poverty line, and disproportionately children.<sup>5</sup> Thus, the adequate regulation of this source category is a matter of justice for many communities across the country.

## **II. EPA’s Statutory Obligations to Set and Revise HWC Emission Standards**

To regulate toxic air pollution, section 112(b) of the Clean Air Act lists more than 180 pollutants as “hazardous,” and section 112(c) directs EPA to list each category of sources that emits any of these pollutants. 42 U.S.C. § 7412(b), (c). Section 112(d) then directs EPA to set standards for each category that reflect the maximum degree of reduction in emissions achievable considering cost and other factors. *Id.* § 7412(d)(2)-(3). Section 112(d) also directs that such standards may not be less stringent than the emission levels actually achieved by the best performing source or sources in the category—i.e., those with the lowest emission levels. *Id.* Initial standards for all source categories of hazardous air pollutants were due “as expeditiously as practicable” but “not later than” November 15, 2000. *Id.* § 7412(e)(1)-(1)(E).

After EPA promulgates emission standards for a source category, the Act directs EPA to “review, and revise as necessary” those standards at least every eight years. *Id.* § 7412(d)(6). This includes making any changes that are “necessary” to bring standards into full compliance with the Clean Air Act, such as setting limits on uncontrolled emissions. *See La. Env’t Action Network v. EPA*, 955 F.3d 1088, 1096 (D.C. Cir. 2020). It also includes “taking into account” and strengthening existing standards to reflect “developments” in pollution controls, practices, and technologies. 42 U.S.C. § 7412(d)(6).

EPA must also assess the remaining, or residual, health and environmental risk within eight years of setting standards under section 112(d). *Id.* § 7412(f)(2). Based on this residual risk assessment, EPA must set emission standards that eliminate all unacceptable risk and provide an “ample margin of safety to protect public health.” *Id.* Emission standards that provide an “ample margin of safety” are standards that provide a protective buffer, or protection beyond what is needed to eliminate unacceptable risk. *See Sierra Club v. EPA*, 895 F.3d 1, 13 (D.C. Cir. 2018).

## **III. EPA’s Failure To Respond to the D.C. Circuit’s Remand**

Despite the Act’s requirement that standards be in place “not later than” November 15, 2000, EPA has failed to lawfully regulate HWC facilities pursuant to section 112 of the Clean Air Act for the more than twenty-five years since. In 2001, the D.C. Circuit vacated EPA’s first attempt at standards.<sup>6</sup> The Agency then promulgated new standards in 2005, but after acknowledging they

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<sup>3</sup> RRA at 35.

<sup>4</sup> *Id.* at 36.

<sup>5</sup> National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors Malfunction and Electronic Reporting Amendments, 89 Fed. Reg. 59867, 59874 tbl. 2 (July 24, 2024).

<sup>6</sup> *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855 (D.C. Cir. 2001).

too were unlawful, obtained a remand from the D.C. Circuit.<sup>7</sup> In a subsequent 2008 reconsideration rulemaking, EPA concluded even more of the standards “should be re-examined and not defended in litigation.”<sup>8</sup> EPA accordingly sought and the D.C. Circuit ordered remand of the 2005 standards and 2008 rule “for further consideration . . . in their entirety.”<sup>9</sup> Over sixteen years later, EPA has not responded to the D.C. Circuit’s remand.<sup>10</sup>

EPA delayed so long in responding to the Court’s remand orders that it also missed its separate deadline to review and revise the remanded standards. *See* 42 U.S.C. § 7412(d)(6), (f)(2). So, in 2022, Sierra Club and other environmental, public health, and community organizations brought suit in federal district court to compel EPA to complete the overdue review.<sup>11</sup> The district court set a deadline for EPA to complete the overdue review by May 29, 2026.<sup>12</sup> EPA’s final rule, promulgated only in response to a deadline suit, marks the first revision to the standards in over seventeen years and expressly declines to respond to the D.C. Circuit’s remand.<sup>13</sup>

#### **IV. 2025 Proposed HWC Rule**

EPA published a Proposed Rule on November 10, 2025,<sup>14</sup> which included proposed standards under sections 112(d)(2)–(3) for previously unregulated pollutants. *See La. Env’t Action Network*, 955 F.3d at 1096. Environmental and community groups, including Petitioners, filed comments on the proposal, arguing (among other things) that EPA failed to respond to its voluntary remand from the D.C. Circuit, failed to set emission standards consistent with section 112 of the Act, and improperly exempted area sources from Title V permitting requirements.<sup>15</sup>

Most relevant to this petition, the Proposed Rule contained emission standards for cement kilns including (1) work practice standards regulating HF and (2) a new source limit of 1.8 ppmv for HCN.<sup>16</sup> First, EPA explained that roughly 30% of its emission testing data found HF above the detection limit and found it appropriate to set a work practice standard under section

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<sup>7</sup> Motion for Partial Voluntary Remand, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Aug. 29, 2008); Order, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Nov. 3, 2008); *see also* NESHAP: National Emission Standards for Hazardous Air Pollutants: Standards for Hazardous Waste Combustors, 72 Fed. Reg. 54875, 54875 (Sep. 27, 2007).

<sup>8</sup> 73 Fed. Reg. 64068, 64088–90 (Oct. 28, 2008); *id.* at 64086 (“EPA has further narrowed the number of standards it intends to defend.”).

<sup>9</sup> Motion for Voluntary Remand, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. June 12, 2009); Order, *Sierra Club v. EPA*, No. 05-1441 (D.C. Cir. Aug. 14, 2009).

<sup>10</sup> EPA, Response to Comments at 11, [EPA-HQ-OAR-2004-0022-0773](#) (May 2026) (“This final rule does not respond to that remand, which the EPA intends to address at a later date.”).

<sup>11</sup> *See* Complaint, *Blue Ridge Env’t Def. League v. EPA*, No. 22-cv-3134 (Oct. 14, 2022).

<sup>12</sup> *Blue Ridge Env’t Def. League v. Regan*, No. 22-cv-3143, 2024 WL 5093495 (D.D.C. Dec. 12, 2024); Order, *Blue Ridge*, No. 22-cv-3134, at 4 (D.D.C. Dec. 12, 2024) (extending deadline to May 29, 2026).

<sup>13</sup> EPA, Response to Comments at 11, [EPA-HQ-OAR-2004-0022-0773](#) (May 2026) (citation modified).

<sup>14</sup> National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors: Residual Risk and Technology Review; Withdrawal of Proposed Revisions to Standards for Periods of Malfunction, 90 Fed. Reg. 50814 (Nov. 10, 2025).

<sup>15</sup> Comments of Air Alliance Houston et al. (Dec. 26, 2025), [EPA-HQ-OAR-2004-0022-0744](#).

<sup>16</sup> 90 Fed. Reg. at 50837.

112(h)(1).<sup>17</sup> Second, the Agency proposed a limit of 1.8 ppmv under section 112(d)(3) based on the best controlled similar source—a long wet-process cement kiln.<sup>18</sup>

## **V. 2026 Final HWC Rule**

EPA published the Final Rule on June 3, 2026, with significant changes to the above-described proposed standards. First, in response to information provided during the public comment period, EPA concluded that “HF was not measurably present in cement kiln emissions.”<sup>19</sup> Therefore, the Agency declined to finalize any standards at all for cement kilns’ emissions of HF.<sup>20</sup>

Second, in response to industry comments and a “follow-up conversation” with industry representatives after the proposal, EPA asserted that new long wet-process kilns were unlikely to be built in the future.<sup>21</sup> Thus, it decided the best controlled long wet-process kiln was not a similar source on which to base the standards for new cement kilns. Instead, EPA set a standard more than three times higher, 5.5 ppmv, on the basis of a dry kiln.<sup>22</sup>

### **STANDARD FOR RECONSIDERATION**

EPA must grant reconsideration where a petitioner demonstrates that (1) it was “impracticable” to raise their objection during the public comment period, including where the grounds for objection arose after the period for public comment; and (2) their objection is “of central relevance to the outcome of the rule.” 42 U.S.C. § 7607(d)(7)(B). Objections are “of central relevance” where they speak to the “legality” of the final rule, providing “substantial support for the argument that the regulation should be revised.” *Chesapeake Climate Action Network v. EPA*, 952 F.3d 310, 322 (D.C. Cir. 2020) (“CCAN”).

### **GROUND S FOR RECONSIDERATION**

#### **I. EPA Must Grant Reconsideration on its Decision to Set No Emission Standards for HF from Cement Kilns**

##### **a. Petitioners Were Unable to Raise Their Objection in Comments**

As noted above, EPA proposed to set work practice standards to control measurable HF emissions from cement kilns.<sup>23</sup> The Agency based its decision on data it received in response to its January 2024 emissions testing request, which recorded HF above the detection limit in roughly 30% of test runs.<sup>24</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 91 Fed. Reg. at 33501.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 90 Fed. Reg. at 50837.

<sup>24</sup> *Id.*

In the Final Rule, EPA unexpectedly changed course and decided not to finalize any emission standards for HF from cement kilns. In support of this position, EPA announced that it received new information during the comment period showing that “the long period of time necessary for HF to purge from the sample system when there is no measurable HF in the sample stream caused” the values above detection limit.<sup>25</sup>

Because EPA did not provide the public with an opportunity to comment on its refusal to set limits for HF, the new information on which this refusal is purportedly based, or the agency’s arguments regarding the validity of HF test data, it was “impracticable” under section 307(d)(7)(B) to raise the following objections. The grounds for the below objections arose after the period for public comment, when EPA unveiled its new rationale with the Final Rule.

**b. Objection: EPA’s Decision to Abandon Emission Standards for HF from Cement Kilns in the Final Rule is Arbitrary and Unlawful**

EPA’s decision to abandon the proposed HF emission standards is unlawful and arbitrary for four independent reasons. First, EPA’s decision is contrary to the Act’s requirement to regulate all HAP emitted by a source category.<sup>26</sup> EPA’s 2023 questionnaire found that all cement kilns surveyed burn fluorinated waste—as much as 43 tons of fluorinated waste per year.<sup>27</sup> And, EPA’s January 2024 emissions testing request, which collected HF data from just four cement kilns, found measurable HF emissions in every test run.<sup>28</sup> Therefore, the best information available to the Agency shows that the hazardous waste-burning cement kilns emit HF and their HF emissions must therefore be regulated under section 112.

EPA’s obligation to regulate HF from cement kilns is unaffected by whether the measurements it collected were below the detection limit. Indeed, not a single test run recorded zero HF emissions.<sup>29</sup> In light of this data, and the fact that “all cement kilns burn at least some fluorine-containing material,”<sup>30</sup> including fluorinated waste,<sup>31</sup> EPA’s conclusion that the source category does not emit HF is contrary to the evidence and fails to properly consider all relevant information.

Second, EPA’s decision to exclude all test runs that measured spikes in HF emissions is arbitrary and capricious, because HF emission spikes mirror reasonably foreseeable real-world conditions. Because all cement kilns burn fluorine-containing material, including fluorinated

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<sup>25</sup> 91 Fed. Reg. at 33501.

<sup>26</sup> *La. Env’t Action Network*, 955 F.3d at 1096.

<sup>27</sup> HWC NESHAP 2023 Section 114 Questionnaire Memorandum, [EPA-HQ-OAR-2004-0022-0651](#), attach. 2 (July 24, 2024) (Ash Grove).

<sup>28</sup> See EPA, Access Databases for Ash Grove Foreman, Ash Grove Chanute, Holcim Holly Hills, and Holcim Pauldine, Tbl. “tblOtherMethodRunData”, [EPA-HQ-OAR-2004-0022-0724](#) (Nov. 10, 2025) (attachments 3, 4, 14, and 15), available at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-industry-information-collection-request>.

<sup>29</sup> *Id.*

<sup>30</sup> 90 Fed. Reg. at 50837.

<sup>31</sup> HWC NESHAP 2023 Section 114 Questionnaire Memorandum, *supra*.

waste, the source category has the potential to emit a variable amount of HF emissions depending on the fluorination of the material fed to the kiln.

EPA, however, failed to consider the potential for variations between the feedstreams used during testing and the material fed to cement kilns during real-world operations, thereby ignoring an important aspect of the problem.<sup>32</sup> Indeed, EPA's conclusion that cement kilns do not emit HF is not only at odds with the fact that all test runs *did* record HF emissions, but it also relies on the unrealistic assumption that the feedstreams used by four cement kilns during testing adequately represent all real world conditions for all 14 operating cement kilns. To account for emission spikes that are likely to occur under real-world conditions, the Agency must set standards for HF emissions—and indeed, must set numeric emission limits for HF emissions from HWCs.

Third, even assuming EPA is correct that test data above the detection limit should be excluded, that does not excuse the Agency from regulating HF. The D.C. Circuit has held that a lack of data is not a sufficient justification for failing to set standards, as the Clean Air Act both requires and empowers EPA to collect the data it needs.<sup>33</sup> Here, EPA's conclusion that some of its dataset on HF emissions is unreliable does not excuse the Agency from fulfilling its obligations under the Act to regulate each HAP that a source category emits. To comply with the Act, EPA must set emission standards for HF and may update those standards if warranted on the basis of further testing.

Moreover, when faced with the purported realization that some of the test data may be invalid, EPA failed to consider alternatives aside from declining to regulate HF entirely.<sup>34</sup> In light of the fact that all test runs recorded HF emissions, and all cement kilns burn fluorine-containing material, EPA should have considered finalizing emission standards for HF and updating those standards if further testing supported that a revision was warranted. This alternative would ensure that EPA is compliant with the Clean Air Act while the Agency works to clarify uncertainty surrounding the available data. EPA's failure to consider this reasonably obvious alternative approach is arbitrary and capricious.

Fourth, and finally, EPA has failed to adequately establish that the detection limits it relies upon accurately reflect the lowest level at which HF can be measured. Although EPA has specified procedures for calculating the detection limit, it has not provided a detection limit specific to cement kilns' HF emissions. As a result, facility owners and operators have an incentive to choose less sensitive testing approaches, both to avoid the expense of testing and to avoid more stringent regulation. The fact that the two different cement kiln companies that submitted testing reported two different detection limits illustrates that the Agency has failed to

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<sup>32</sup> *Motor Vehicles Mfr. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (D.C. Cir. 1983) (agency is "arbitrary and capricious" for failing to consider "an important aspect of the problem").

<sup>33</sup> *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 644 (D.C. Cir. 2016).

<sup>34</sup> *See, e.g., City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (agency must evaluate "significant and viable" alternatives) (citation modified).

establish an objective detection limit independent of industry's chosen testing approach.<sup>35</sup> Because EPA's reliance upon the industry-provided detection limits is arbitrary, so too is its conclusion that cement kilns emitting below those limits do not emit measurable amounts of HF.

**c. The Objections are of Central Relevance to EPA's Rulemaking**

Petitioners' objections are of "central relevance," 42 U.S.C. § 7607(d)(7)(B), because they undermine the legality of EPA's failure to set emission standards for HF and provide "substantial support for the argument that the regulation should be revised." *CCAN*, 952 F.3d at 322. These objections deal with EPA's failure to follow statutory requirements and its decision to ignore relevant information and alternatives. Because EPA's new rationales are unlawful and arbitrary, EPA must reconsider the Final Rule and set emission standards for HF under section 112.

**II. EPA Must Grant Reconsideration on its Failure to Set Emission Standards for New Cement Kilns Based on the Best Performing Source**

**a. Petitioners Were Unable to Raise Their Objections in Comments**

As noted above, EPA proposed a new source emission standard of 1.8 ppmv for HCN from cement kilns based on the best controlled kiln in the source category. In the Final Rule, however, EPA reversed course based on new information. Citing comments and a "follow-up conversation" with industry representatives, EPA concluded that industry was likely to discontinue building the type of kiln with the best HCN emissions performance. Therefore, EPA decided that a different type of kiln with higher emissions was the best controlled similar source and set the new source emission standard at 5.5 ppmv. *See supra* at pp. 3-4.

Because EPA did not provide the public with an opportunity to comment on this new information or rationale, it was "impracticable" under section 307(d)(7)(B) to raise the following objections. The grounds for the below objections arose after the period for public comment, when EPA unveiled its new rationale with the Final Rule.

**b. Objection: EPA's Failure to Set Emission Standards for New Cement Kilns Based on the Best Controlled Similar Source is Arbitrary and Capricious**

In the Final Rule, EPA asserts that long wet-process kilns are not the "best controlled similar source" for new cement kilns under section 112(d)(3) of the Clean Air Act. As the D.C. Circuit has already made plain, the best-performing sources are "those with the lowest emissions."<sup>36</sup> Here, EPA chose not to base floors on the best-controlled similar source because the kiln it identified as best is a long wet-process kiln and EPA claims to "reasonably believe[]" that long wet-process kilns will not be constructed in the future. Thus, EPA now argues that the

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<sup>35</sup> EPA, Representative Detection Limit (RDL) for Hydrogen Fluoride for Hazardous Waste Combustion Sources at 3, tbl. 1, [EPA-HQ-OAR-2004-0022-0712](#) (May 29, 2025) (method detection limit of 0.1 ppmvw for the Ash Grove facilities and 0.2 ppmvw for the Holcim Holly Hill facilities).

<sup>36</sup> *Sierra Club v. EPA*, 479 F.3d 875, 879 (D.C. Cir. 2007).

best controlled similar source under § 112(d)(3) must be “similar” to some currently nonexistent source that EPA thinks might be built in the future.

Under section 112(d)(3) of the Clean Air Act, however, EPA must determine the emissions level actually achieved in practice by the best controlled similar source in the category. Notably absent from section 112(d)(3), and the caselaw applying it, is any support for the notion that the relevant source must be “similar” to a hypothetical source that does not even exist but that might be built in the future. Section 112(d)(3) refers without any qualification to the “best controlled similar source.” That the best controlled source among hazardous waste burning cement plants happens to be a long wet-process kiln, and that EPA believes such kilns will not be built in the future, does not make it any less “similar” to the kilns that actually exist in this category or subcategory now. Nor is there any dispute it is the best controlled; EPA has already identified it as the kiln with the lowest emissions.<sup>37</sup>

Indeed, EPA’s interpretation is directly contrary to section 112(d)(3)’s mandate that emission standards for new sources “shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source.”<sup>38</sup> Under the Agency’s reading of the statute, a brand new long wet-process kiln would be permitted to achieve a worse level of HCN emissions than are already being achieved by an existing long wet-process kiln constructed at least 60 years ago.<sup>39</sup> EPA’s speculation that long wet-process kilns will not be built in the future neither alters that reality nor diminishes the unlawfulness of setting a new source floor that does not reflect the best similar source’s emission levels.

EPA attempts to get around this straightforward conclusion by pointing to a purported low likelihood that industry will construct a new long wet-process kiln, but that argument is irrelevant. The statute directs EPA to ensure that its standards for new sources are not less stringent than the emission levels achieved by the “best controlled similar source” not the best source similar to those EPA expects to be built in the future.<sup>40</sup> Indeed, EPA’s claim that it can set weaker standards based on what it believes to be achievable for sources built in the future is, in function, just another way of elevating EPA’s views about achievability over the statutory mandate for floors reflecting the relevant best sources’ performance. The D.C. Circuit has rejected such maneuvers as flatly unlawful.<sup>41</sup>

In addition, EPA’s interpretation frustrates the overall purpose of section 112(d)(3)—to hold source categories to the standard set by the best performers—and is arbitrary and capricious.<sup>42</sup> Under the Agency’s reading of the statute, new sources could operate with less effective emissions control than the best performing existing source, thereby allowing the industry’s overall emissions performance to backslide over time. Under EPA’s final standard, future new cement kilns would be permitted to control less HCN than the level of control

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<sup>37</sup> *See id.*

<sup>38</sup> 42 U.S.C. § 7412(d)(3).

<sup>39</sup> 91 Fed. Reg. at 33501 (noting newest long wet-process kilns were constructed in 1965).

<sup>40</sup> 42 U.S.C. § 7412(d)(3); *Sierra Club*, 479 F.3d at 878.

<sup>41</sup> *Sierra Club*, 479 F.3d at 880-881 (citing *Cement Kiln*, 255 F.3d at 861).

<sup>42</sup> *See, e.g., U.S. Sugar Corp. v. EPA*, 113 F.4th 984, 993 (D.C. Cir. 2024) (explaining that all new sources “must meet an exacting standard pegged to the cleanest similar model on the market”).

currently achieved by the best performing existing long wet-process kilns. If cement kilns constructed over 50 years ago are able to achieve a standard of 1.8 ppmv, it is patently unreasonable and contrary to the purpose of section 112(d)(3) for EPA to set the standard for new sources several times higher.<sup>43</sup>

Moreover, EPA's determination of the best controlled similar source rests entirely on industry claims that there is a low likelihood that new long wet-process kilns will be built, based on difficulties controlling criteria pollution and energy efficiency.<sup>44</sup> According to industry these difficulties meant that under the Proposed Rule, new and modified hazardous waste cement kilns would be faced with a "choice between HCN noncompliance and NSPS noncompliance."<sup>45</sup> But industry concern that a standard is not achievable by all sources does not influence what the best-controlled kilns have actually achieved. In *Sierra Club*, the D.C. Circuit held that EPA unlawfully excluded certain kilns using "non-DLA" technology from its pool of best performing sources.<sup>46</sup> There, the Court explicitly rejected EPA's rationale that it could consider whether the standard achieved by the best performers was "technically feasible" for all sources.<sup>47</sup> EPA's decision in the Final Rule is functionally identical to that in *Sierra Club*, as it is excluding the best controlled kiln not because it does not achieve the best emissions performance, but because industry has claimed that all new and modified kilns could not achieve the same level of performance.

In short, EPA's decision to exclude long wet-process kilns from its pool of best performers and set the HCN emissions standard based on the best performing dry kiln is contrary to section 112(d)(3) and is arbitrary and capricious.

### **c. The Objections are of Central Relevance to EPA's Rulemaking**

Petitioners' objections are of "central relevance," 42 U.S.C. § 7607(d)(7)(B), because they undermine the legality of EPA's decision not to set HCN emission standards for new cement kilns based on the best controlled similar source and provide "substantial support for the argument that the regulation should be revised." *CCAN*, 952 F.3d at 322. Because EPA's new rationales are unlawful and arbitrary, EPA must reconsider the Final Rule and set HCN emission standards for cement kilns based on the best controlled similar source.

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We appreciate your consideration of the issues raised in this petition and urge you to fulfill your responsibility to protect public health. Please contact the undersigned counsel if you have any questions or you would like additional information.

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<sup>43</sup> *See id.*

<sup>44</sup> 91 Fed. Reg. at 33501.

<sup>45</sup> Cement Kiln Recycling Coalition, Meeting with EPA, [EPA-HQ-OAR-2004-0022-0763](#), attach. 1 (March 6, 2026).

<sup>46</sup> *Sierra Club*, 479 at 880.

<sup>47</sup> *Id.* (citation modified).



Sincerely,

/s/ Kevin Breiner

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

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ENVIRONMENT, AIR ALLIANCE  
HOUSTON, KENTUCKY  
RESOURCES COUNCIL, UTAH  
PHYSICIANS FOR A HEALTHY  
ENVIRONMENT, and CALIFORNIA  
COMMUNITIES AGAINST TOXICS,

*Petitioners,*

v.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY and  
LEE ZELDIN, Administrator, U.S.  
Environmental Protection Agency,

*Respondents.*

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No. \_\_\_\_\_

**PETITION FOR REVIEW**

Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, Sierra Club, Missouri Coalition for the Environment, Air Alliance Houston, Kentucky Resources Council, Utah Physicians for a Healthy Environment, and California Communities Against Toxics (“Petitioners”) hereby petition this Court for review of the final action taken by Respondents U.S. Environmental Protection Agency and Administrator Lee Zeldin, published at 91 Fed. Reg. 33484 (June 3, 2026) and

titled “National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors: Residual Risk and Technology Review” (attached).

DATED: August 3, 2026

Respectfully submitted,

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Alliance Houston, Kentucky Resources  
Council, Utah Physicians for a Healthy  
Environment, and California Communities  
Against Toxics*

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

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SIERRA CLUB, MISSOURI )  
COALITION FOR THE )  
ENVIRONMENT, AIR ALLIANCE )  
HOUSTON, KENTUCKY )  
RESOURCES COUNCIL, UTAH )  
PHYSICIANS FOR A HEALTHY )  
ENVIRONMENT, and CALIFORNIA )  
COMMUNITIES AGAINST TOXICS, )

*Petitioners,*

v.

U.S. ENVIRONMENTAL )  
PROTECTION AGENCY and )  
LEE ZELDIN, Administrator, U.S. )  
Environmental Protection Agency, )

*Respondents.*

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No. \_\_\_\_\_

**RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Federal Rules of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Sierra Club, Missouri Coalition for the Environment, Air Alliance Houston, Kentucky Resources Council, Utah Physicians for a Healthy Environment, and California Communities Against Toxics (“Petitioners”) make the following disclosures:

Petitioners are nonprofit environmental and public health organizations. Petitioners do not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in any of them.

DATED: August 3, 2026

Respectfully submitted,

/s/ Kathleen L. Riley

Kathleen L. Riley

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Petition for Review** have been served by United States first-class mail on August 3, 2026, upon the following:

Administrator Lee Zeldin  
U.S. Environmental Protection Agency  
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Todd Blanche  
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Respectfully submitted,

/s/ Kathleen L. Riley  
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