IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STYRENE INFORMATION AND RESEARCH CENTER, INC., *et al.*,	)	
Plaintiffs,	)	
v.	)	
KATHLEEN SEBELIUS, Secretary of Health and Human Services, *et al.*,	)	Civil Action No. 11-1079 (RBW)
Defendants, and	)	
UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION; ENVIRONMENTAL DEFENSE FUND; PETER ORRIS;	)	
Proposed Intervenor-Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE OF UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION; ENVIRONMENTAL DEFENSE FUND; AND PETER ORRIS

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Environmental Defense Fund, and Peter Orris (collectively, "Movants") respectfully submit this memorandum in support of their motion to intervene as party defendants in Civil Action No. 11-11079. In this case, plaintiffs Styrene Information and Research Center, Inc. ("SIRC") and Dart Container Corporation (collectively,

"Plaintiffs") seek to enjoin the National Toxicology Program ("NTP") from listing styrene as "reasonably anticipated to be a carcinogen" in the 12th Report on Carcinogens "RoC".

INTRODUCTION AND BACKGROUND

This is the latest attempt to challenge the objective, scientifically rigorous decision of the NTP to list a chemical on the RoC, which contains a list of substances known or reasonably anticipated to be human carcinogens. Each of the prior three challenges, brought by companies with a vested interest in continuing to profit from a listed carcinogen, has failed.[1] This challenge to the NTP's conclusions regarding styrene fares no better.

In 1978, Congress directed the Secretary of Health and Human Services ("HHS") to publish a list of chemicals known or reasonably anticipated to be human carcinogens. Pub. L. No. 95-622, 92 Stat. 3412 (1978) (RoC provision codified at 42 U.S.C. § 241(b)(4)). Congress was concerned that many cancers have environmental causes and that increasing public awareness of those causes could help prevent cancer. Congress therefore set up a system for HHS to synthesize opinion on cancer hazard identification, compile a list of carcinogens, and make that list available to the public. 42 U.S.C § 241(b)(4); *see* Declaration of Lynn R. Goldman (May 17, 2012) ("Goldman Decl.") ¶ 8; Declaration of Andrew Maguire (May 15, 2012) ("Maguire Decl.") ¶¶ 3-6.

NTP, which is part of HHS, follows a rigorous process for reviewing the scientific literature on a chemical and deciding whether the chemical meets the criteria for listing on the

[1] *See Tozzi v. U.S. Dep't of Health & Human Servs.*, 271 F.3d 301 (D.C. Cir. 2001) (rejecting challenge to upgrading the status of dioxin on the RoC); *Fertilizer Inst. v. U.S. Dep't of Health & Human Servs.*, 355 F.Supp.2d 123 (D.D.C. 2004) (rejecting challenge to listing of sulfuric acid mists as known carcinogens on the RoC); *Synthetic Organic Chem. Mfrs. Ass'n v. U.*S. *Dep't of Health & Human Servs.*, 720 F.Supp. 1244 (W.D.La. 1989) (rejecting challenge to listing several substances on the RoC).

RoC. For more than seven years, NTP considered the evidence regarding styrene. In 2004, NTP decided to review the evidence on styrene to determine whether it might merit listing on the RoC. 69 Fed. Reg. 28940 (May 19, 2004). In 2008, NTP convened a panel of outside experts to review a draft document on styrene and determine whether styrene meets the criteria for listing on the ROC. All of the experts on the panel recommended including styrene on the RoC.[2] Based on the expert panel's comments, NTP released a draft background document on styrene. 73 Fed. Reg. 29139 (May 20, 2008).

NTP then asked two separate, internal government groups of experts to review whether styrene meets the criteria for listing on the RoC. Both of these expert panels – the Interagency Scientific Review Group and the National Institutes of Environmental Health/National Toxicology Program Scientific Review Group – recommended that styrene be listed as reasonably anticipated to be a human carcinogen. Based on public comments and the comments of the three expert panels, in December 2008, NTP released a draft substance profile to be included in the RoC. 73 Fed. Reg. 78364 (December 22, 2008). The following year, another outside group of experts reviewed the draft substance profile for styrene.

After seven years of reviewing the scientific evidence, convening multiple panels of medical and scientific experts, and soliciting public comment, NTP concluded that styrene is reasonably anticipated to be a human carcinogen. 76 Fed. Reg. 36923 (June 23, 2011). The trade association representing the interests of companies making or using styrene sued.

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[2] Of the 10 experts on the panel, 8 voted to list styrene as reasonably anticipated to be a human carcinogen, and 2 voted to list styrene as known to be a human carcinogen. There was not a single expert on the panel who thought styrene did not meet the criteria for listing on the RoC. National Toxicology Program, Styrene Expert Panel Report, Part B: Recommendation for Listing Status for "Styrene", and Scientific Justification for the Recommendation 2 (2008), available at http://ntp.niehs.nih.gov/files/Styrene_Panel_report_B_final_Rdtd.pdf

Dissatisfied with an outcome that resulted from following the evidence, Plaintiffs now seek to overturn the decision to list styrene and enjoin NTP from listing styrene on the RoC in the future.

Proposed intervenors have significant interests threatened by Plaintiffs' action. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("USW") represents thousands of workers exposed to styrene in the workplace, including workers exposed to styrene in plants that manufacture tires and synthetic rubber. Plaintiffs' action, which would result in removing styrene from the RoC, would impair the ability of the union to provide information to its workers on protecting themselves from styrene exposure and would impair the union's ability to bargain with employers to reduce hazards from styrene exposure. Additionally, Plaintiffs' action threatens to deprive USW members of information to which they are legally entitled and which could help protect them from the risks of exposure to styrene.

The Environmental Defense Fund ("EDF") would be injured by removing styrene from the RoC since EDF staff regularly rely on the RoC to inform the public of the risks of chemicals, to prepare reports on the risks of chemicals, and to work with companies to prevent or minimize the use of harmful chemicals. Moreover, individual EDF members have relied on the RoC, and in particular the listing of styrene, to help them minimize their personal risks of developing cancer and as a vital source in their professional research on chemicals. Similarly, proposed intervenor Dr. Peter Orris has relied on the RoC throughout his more than 30 years of practicing internal and occupational medicine. Removal of styrene from the RoC would impair his ability to provide sound, scientifically rigorous advice on the cancer risks from styrene and how to prevent or minimize exposure to styrene in the workplace.

To protect these interests, USW, EDF, and Dr. Peter Orris seek to intervene as defendants in support of the decision of HHS to list styrene on the 12th RoC.

MOVANTS

USW is the authorized collective bargaining agent for approximately 850,000 workers in North America. USW represents the majority of unionized workers in the rubber, chemical, and general manufacturing industries. More than 22,000 USW members work in tire and synthetic rubber plants in the United States. These USW members are exposed to styrene in the workplace through various routes of exposure, including: exposure to styrene in the manufacture of styrene-butadiene synthetic rubber, exposure to unreacted styrene monomer, and exposure to styrene in the manufacture of end use products. USW's Department of Health, Safety and Environment relies on the RoC, including the listing of styrene in the 12th RoC, when it bargains with employers on workplace safety issues and when it communicates with and advises its members on workplace health and safety. USW members rely on information from the RoC for authoritative information about the carcinogenicity of chemicals.

EDF is a non-profit organization dedicated to using sound science and market-based strategies to protect human health and preserve natural systems. EDF has over 350,000 members in the United States and employs more than 300 scientists, economists, engineers, and other professionals to solve environmental problems in a scientifically sound and cost-effective way. Through its Health Program, EDF implements programs to increase transparency surrounding chemicals and to minimize the health and environmental risks of chemicals. Since the first RoC was published, EDF has relied on the RoC to carry out its health program activities. EDF continues to use the RoC, including the listing of styrene in the 12th RoC, to communicate information on carcinogens to its members and to the public, to partner with companies to reduce

exposure to carcinogens, and to assist policymakers in designing policies to minimize cancer risks. EDF members have personal and professional concerns about exposure to carcinogens and rely on listings in the RoC for authoritative information about the carcinogenicity of chemicals.

Dr. Peter Orris is a Professor and Chief of the Occupational and Environmental Health Service at the University Of Illinois Hospital and Health Sciences System. He has practiced occupational medicine for more than 30 years. During the course of his medical career, Dr. Orris has provided advice to individual patients, corporations, and unions on workplace health and safety issues. In particular, Dr. Orris has advised workplaces on the hazards of styrene. In the course of providing medical advice, Dr. Orris has regularly relied on the RoC as a balanced, peer-reviewed assessment of the state of knowledge on carcinogens.

ARGUMENT

I. MOVANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.

The Federal Rules of Civil Procedure provide that:

> On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

FED. R. CIV. P. 24(a). The court should grant a motion to intervene as of right if: (1) the motion is timely; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that disposing of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) the applicant's interest may not be adequately represented by the existing parties. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (quoting *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998)). This Court has found that a party moving to

intervene as of right must demonstrate that it has standing under Article III of the United States Consistution and that the court must address standing before considering the factors for evaluating their intervention as of right. *Cnty. of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 43 (D.D.C.2007). As demonstrated below, Movants readily satisfy the test for standing and the factors for intervention as of right.

A. Movants Have Standing to Intervene as Defendants.

Movants satisfy Article III and prudential standing requirements. Constitutional standing requires a party to show that it: (1) has suffered an injury in fact, which is concrete and particularized and actual or imminent; (2) there is a causal connection between the injury and the challenged action; and (3) the injury is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

An organization may establish standing based on the injuries it suffers directly, the injuries suffered by its members, or both. *Equal Rights Ctr. v. Post Props. Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011). Where an organization asserts standing on behalf of its members, the association "must demonstrate that at least one member would have standing under Article III to sue in his or her own right, that the interests it seeks to protect are germane to its purposes, and that neither the claim asserted nor the relief requested requires that an individual member participate in the lawsuit." *Natural Res. Def. Council v. EPA*, 489 F.3d 1364, 1370 (D.C. Cir. 2007) (citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 342-43 (1977)).

An organization may also establish standing based on the injuries it suffers directly. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). An organization establishes standing on its own behalf when it shows that the defendant's conduct or, here, the plaintiff's conduct, "prompts an organization to 'increase [ ] the resources [it] must devote to programs independent of its suit.'" *Equal Rights Ctr.*, 633 F.3d at 1138. An organization has standing on

its own behalf when "the defendant's actions 'perceptibly impaired' the plaintiff organization's programs by making its 'overall task more difficult.'" *Id*. at 1139 (quoting *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp*., 28 F.3d 1268, 1276 (D.C. Cir. 1994)).

1. USW has standing.

USW is the authorized collective bargaining agent for roughly 850,000 workers. Declaration of Michael Wright (May 17, 2012) ("Wright Decl.") ¶ 5. More than 22,000 USW workers are employed in 32 plants that manufacture tires, synthetic rubber, and other products using styrene. *Id*. ¶ 10. USW members work in plants that use styrene to produce styrene butadiene synthetic rubber and plants that use styrene-butadiene rubber to make tires. *Id*. USW satisfies the standing requirements to intervene as a defendant in order to protect the interests of the union itself and the union's members.

a. USW has standing based on the direct injuries it would suffer as an organization if Plaintiffs prevail.

Plaintiffs' action threatens USW with informational injuries sufficient to confer standing on USW. *Cf. Am. Soc'y for the Prevention of Cruelty to Animals v. Feld Entm't, Inc*., 659 F.3d 13, 22 (D.C. Cir. 2011) ("[A] denial of access to information can work an injury in fact for standing purposes, at least where a statute. . . requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.") (internal quotation marks omitted). Statutes that explicitly create a right to information requiring that information be shared with the public have been recognized as conferring a cognizable informational interest. *See Am. Farm Bureau v. U.S. Envtl. Prot. Agency*, 121 F.Supp.2d 84, 98-99 (D.D.C. 2000). In requiring the Secretary of HHS to publish the RoC, 42 U.S.C. § 241(b)(4)(A), Congress intended to provide information on carcinogens to members of the public, so that individuals can understand and reduce their risk of developing cancer. The law

that added the provision requiring the RoC, Pub. L. No. 95-622, 92 Stat. 3412 (1978), also added several other provisions requiring the federal government to provide the public with information on how to detect, prevent, and treat cancer. *See id.* (the Director of the National Cancer Institute shall establish programs "for the dissemination of information to the general public concerning the early detection and treatment of cancer"; the Director of the National Cancer Institute shall "disseminate . . . [to] the general public scientific and other information respecting the cause, prevention, diagnosis, and treatment of cancer."). Indeed, the legislative history indicates that Congress added these provisions out of concern that many cancers are preventable and that the public should have information that would help individuals reduce their exposure to carcinogens and thereby prevent some cancers. H.R. Rep. No. 95-1192, at 2 (1978). The text of the law authorizing the RoC demonstrates its informational purpose. Pursuant to 42 U.S.C. § 241 (a)(1), the Secretary is authorized not only to conduct research but explicitly to "make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities…." *Id.* The subsection authorizing the RoC provides, "The Secretary *shall publish* a biennial report" and sets forth a detailed list of what the report must contain. 42 U.S.C. § 241 (b)(4) (emphasis added).

The listing of styrene and the accompanying information on styrene is useful to USW as an authoritative source on workplace risks that USW relies on in order to advocate for safer working conditions for its members and in order to provide authoritative information about health hazards to its members. Wright Decl. ¶¶ 6, 8. Significantly, federal labor law requires collective bargaining agents to bargain on terms and conditions of employment, including occupational health and safety. *See* 29 U.S.C. 158 (d); *Nat'l LaborRelations Bd. v. Am. Nat'l Can Co., Foster-Forbes Glass Div.*, 924 F.2d 518, 524 (4th Cir. 1991) ("Information sought by a

union concerning health and safety conditions is presumptively relevant because these are mandatory bargaining subjects."); *Oil, Chem. & Atomic Workers Local Union No. 6-418, AFL-CIO v. Nat'l LaborRelations Bd.,* 711 F.2d 348, 360 (D.C. Cir. 1983) ("Employee health and safety indisputably are mandatory subjects of collective-bargaining . . ."). As the authorized collective bargaining agent for workers who handle styrene in the workplace, USW must negotiate with employers on any workplace safety issues related to exposure to styrene. Wright Decl. ¶ 4. USW's role as the authorized bargaining agent for workers on health and safety issues confers a legally protected informational interest in the styrene listing. *Cf. Bldg. and Const. Trades Dept., AFL-CIO v. Allbaugh*, 172 F.Supp.2d 67, 75 (D.D.C. 2001), rev'd on other grounds, 295 F.3d 28 (DD.C. Cir. 2002) (national labor organization with a history of negotiating on subject matter of litigation made showing that "injury sometime in the reasonably foreseeable future seems fairly probable…") (citation omitted). When bargaining with employers, USW relies on the RoC, which is seen as authoritative, and will continue to rely on the RoC in the future. Wright Decl. ¶ 4.

Moreover, in its educational work, in responding to informational requests from the locals, and in its advocacy, USW's Department of Health, Safety and Environment relies on the RoC for information about whether chemicals are carcinogenic. *Id.* ¶ 8.

Plaintiffs seek to permanently enjoin the listing of styrene on the RoC. Plaintiffs' Complaint for Declaratory and Injunctive Relief ("Pls. Compl.") 25. If the court were to grant Plaintiffs' request, USW would be deprived of helpful information to which it is legally entitled under the statute. As the D.C. Circuit has explained, the deprivation of such information constitutes injury in fact. *Cf. Am. Soc'y for the Prevention of Cruelty to Animals,* 659 F.3d at 22.

If USW were deprived of the listing of styrene on the RoC, USW would have to expend additional time and resources convincing employers of the risks of occupational exposure to styrene. Deprived of the listing of styrene on the RoC, USW would also have to spend additional time and resources securing safer working conditions for its members who are exposed to styrene in the workplace. Wright Decl. ¶ 13.

The injuries suffered by USW would be directly traceable to Plaintiffs' action, since Plaintiffs have requested a declaration that the listing of styrene on the RoC is arbitrary and capricious and have asked the court to permanently enjoin the listing of styrene on the RoC. Pls. Compl. 25. USW's injuries would be redressed by a favorable decision, since, if the court denies the relief requested by Plaintiffs, the listing of styrene on the RoC will remain in place and USW will continue to be able to rely upon it in its bargaining, worker education, and other activities related to workplace safety issues.

b. USW has standing based on the injuries of its members who are exposed to styrene in the workplace.

USW has associational standing based on the interests of its members in this action because its members would have standing to intervene as defendants in their own right. The USW is the legally authorized collective bargaining agent for its workers, and more than 22,000 USW workers are employed in 32 plants that manufacture tires, synthetic rubber, and other products using styrene. Wright Decl. ¶ 10. USW members work in plants that use styrene to produce styrene butadiene synthetic rubber and in plants that use styrene-butadiene rubber to make tires. *Id*. Workers at styrene butadiene rubber plants have been found to be at significantly elevated risk of specific types of cancer, and these risks are reported in the styrene listing. National Toxicology Program, Report on Carcinogens 384 (12th ed. 2011).

If Plaintiffs were to prevail, and styrene was removed from the RoC, USW workers would lose access to an authoritative government report on the cancer risks of occupational exposure to styrene. USW workers are entitled to this information pursuant to the statute requiring publication of the RoC, 42 U.S.C. § 241(b)(4)(A), and because styrene meets the legal requirement for inclusion in the RoC. The styrene listing on the RoC provides information to USW members that helps them to understand and prevent workplace hazards, and to make choices about their workplace exposure. Wright Decl. ¶ 13. USW members would suffer an informational injury if Plaintiffs were to succeed: withdrawal of the styrene listing would deprive USW members of information to which they are entitled and which informs their decision-making.

Additionally, as a result of the listing of styrene on the RoC, USW members have a legal right to receive certain information on the presence of styrene in the workplace, and to receive instructions on how to minimize exposure to styrene and safely handle styrene. Pursuant to Occupational Safety and Health ("OSHA") regulations, the RoC shall be treated as establishing that a chemical listed therein is a carcinogen for hazard communication purposes. 29 C.F.R. § 1910.1200(d)(4)(i). For each hazardous chemical present in the workplace, an employer must communicate the hazards of the chemical to workers through labels, material safety data sheets, employee information and training, and other means. *Id*. § 1910.1200(e)(1). Each container of a hazardous chemical must identify the hazardous chemical and contain appropriate warnings. *Id*. § 1910.1200(f). Additionally, "employers shall provide employees with effective information and training on hazardous chemicals." *Id*. § 1910.1200(h)(1). Such training must include "measures employees can take to protect themselves from these hazards." *Id*. § 1910.1200(h)(3)(iii).

If Plaintiffs were to prevail, and styrene were removed from the RoC, these legal requirements to provide information on styrene to USW workers would no longer apply. USW workers would therefore be deprived of information to which they are legally entitled under OSHA regulations. The information that USW workers must receive, according to OSHA regulations, helps USW members to understand and protect themselves from workplace hazards of styrene exposure. Wright Decl. ¶ 13. Since withdrawal of the styrene listing would deprive USW members of information to which they are entitled under the OSHA regulations, and since such information is helpful to them, USW members would suffer an informational injury were Plaintiffs to succeed.

These injuries would be directly caused by Plaintiffs prevailing in this action, since Plaintiffs seek to have styrene removed from the RoC and seek an injunction barring listing of styrene on the RoC in the future. Pls. Compl. 25. The injuries of USW members could be redressed by the court denying Plaintiffs' requested relief. Having established injury in fact, causation, and redressability, USW members have satisfied the standing requirements to intervene as defendants in their own right.

The interests of USW members are germane to the USW's organizational purposes. USW has committed to the health and safety of its members. Wright Decl. ¶ 5. Moreover, as the legally authorized agent for its members in collective bargaining, the USW is required by federal law to advocate for its members' health and safety when bargaining with employers. *Id*. ¶ 6. Accordingly, the interests of USW members in this action – receiving information they can use to protect their health from harmful styrene exposures in the workplace – are germane to the purposes of the USW.

The participation of individual USW members is not necessary in this action. The court can protect the interests of USW members by denying Plaintiffs' requested relief without individual USW members participating as defendants. Having met the requirements for associational standing, USW has standing based on the interests of its members.

2. EDF has standing.

EDF has previously been granted leave to intervene to defend listing a chemical on the RoC. *Synthetic Organic Chem. Mfrs. Ass'n v. U.S. Dep't of Health & Human Servs.*, 720 F. Supp. 1244, 1247 (W.D. La. 1989). For the reasons explained below, EDF should be granted leave to intervene as of right in this case as well. EDF possesses standing because of both the injuries that would be sustained directly by the organization and also because of injuries that would be sustained by its members were Plaintiffs to prevail.

a. EDF has standing because of injuries that would be sustained directly by the organization.

Part of the mission of EDF is to formulate market-based solutions to environmental and health challenges and to allow science and economics to guide the search for practical, lasting solutions to the most serious environmental problems. Declaration of John Stith (May 17, 2012) ("Stith Decl.) ¶ 4; Declaration of Richard Denison (May 17, 2012) ("Denison Decl.") ¶ 2, Maguire Decl. ¶ 1. One of the main goals of EDF's health program "is to improve availability and transparency with respect to information about chemicals." Maguire Decl. ¶ 8; *see also* Denison Decl. ¶ 3 . To achieve this mission, EDF communicates the best available, most authoritative science to the public and consumers so that individuals and corporations can make informed decisions, and to government agencies in order to formulate sound public policy. Maguire Decl. ¶ 9; Denison Decl. ¶ 3. EDF has relied upon, and continues to rely upon, the RoC as an authoritative source of information on carcinogens. EDF has used the RoC in its activities

by transmitting information in the RoC to the public, such as through an online scorecard EDF developed on the health risks from chemicals, and by using information in the RoC to develop EDFs program priorities. Denison Decl. ¶¶ 5-9.

In particular, EDF staff has relied on the listing of styrene in the 12th RoC as an authoritative statement of the cancer risks from exposure to styrene. EDF staff has relied on the listing to communicate to the public the cancer risks from styrene exposure, as described in the 12th RoC.[3]

If Plaintiffs were to prevail, and the court were to order the withdrawal of the listing of styrene in the RoC, EDF would have to expend additional time and organizational resources countering the misimpression that the RoC is not based on sound science. Maguire Decl. ¶ 12; Denison Decl. ¶ 17. Removing styrene from the RoC would directly undermine the mission of EDF to increase transparency about chemicals and would directly harm EDF's activities transmitting sound science to the public and policymakers.

Additionally, if Plaintiffs succeed in removing the listing of styrene, EDF would have to expend additional resources persuading the public, companies, and policymakers of the known risks posed by styrene. Denison Decl. ¶ 17. Since EDF has already communicated the findings on styrene in the 12th RoC to the public,[4] and conveyed that it believes the listing is supported by sound science, withdrawal of the listing would require EDF to devote additional program resources to convincing the public of the science behind the cancer risks from styrene exposure. These harms constitute injury in fact to EDF as an organization.

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[3] *See* Richard Denison, ACC Resorts to Smear Tactics to Defend Its Cash Cows, Formaldehyed and Styrene, EDF Chemicals and Nanomaterials Blog (June 13, 2011), http://blogs.edf.org/nanotechnology/2011/06/13/acc-resorts-to-smear-tactics-to-defend-its-cash-cows-formaldehyde-and-styrene/#more-1476.

[4] *See supra* note 3.

EDF's injuries would be caused by the plaintiff succeeding in this action and would be redressed by a decision favorable to EDF. Plaintiffs request that this court declare the listing of styrene in the 12th RoC to be arbitrary and capricious, to vacate the listing, and permanently enjoin the government from listing styrene on the RoC. Pls. Compl. 25. If the court were to grant such relief, EDF would suffer the injuries explained above. Conversely, if EDF were to prevail, and the court were to deny Plaintiffs' requested relief, these injuries would be redressed. As a result, EDF has demonstrated injury in fact, causation, and redressability, and satisfies Article III standing requirements.

b. EDF has associational standing.

EDF also has associational standing based on the standing of its members, including Andrew Maguire and Dr. Lynn Goldman. EDF is a membership organization with more than 350,000 members in the United States. Stith Decl. ¶¶ 3, 7. Seventy-two EDF members live within a short distance of three of the top five styrene-releasing facilities in the U.S. identified by the U.S. Environmental Protection Agency using data reported under the Toxics Release Inventory established by the Emergency Planning and Community Right-to-Know Act (EPCRA). These facilities are located in Grand Forks, North Dakota; Channelview, Texas; and Ottawa, Illinois. Stith Decl. ¶ 8. These members have a direct interest in access to authoritative information about health risks associated with styrene and their informational interest would be harmed by the de-listing of styrene from the RoC.

i. EDF has associational standing based on its member, Andrew Maguire, who would have standing in his own right.

EDF member Andrew Maguire would have standing in his own right based on informational injuries that would be sustained if Plaintiffs were to prevail. *Cf. Am. Soc'y for the Prevention of Cruelty to Animals*, 659 F.3d at 22. Plaintiffs seek to deprive Mr. Maguire of this

useful information in the styrene listing, which would cause Mr. Maguire, an EDF member, imminent harm. Pls. Compl. 25. The listing of styrene in the 12th RoC provides the government's authoritative opinion regarding cancer risks from, and routes of exposure to, styrene, information that is useful to Mr. Maguire in his efforts to minimize his personal exposure to styrene and other carcinogens. Maguire Decl. ¶ 7. As the Vice President for Health at EDF, Mr. McGuire also has a strong and direct interest in ensuring the transparency and availability of science to inform public and private policy-makers. Maguire Decl. ¶ 8. Indeed, Plaintiffs' unwarranted request to de-list styrene threatens the credibility of authoritative information on which Mr. Maguire's program relies. Maguire Decl. ¶ 12. Mr. Maguire's injury is fairly traceable to Plaintiffs' action, which seeks a declaration that listing styrene on the 12th RoC was arbitrary and capricious, and which also seeks a permanent injunction enjoining such listing. Pls. Compl. 25. The injury would be redressed by this court ruling against Plaintiffs. For these reasons, Andrew Maguire would have standing to intervene as a defendant in his own right.

The interests of Mr. Maguire are germane to EDF's organizational purposes. As described above, EDF strives to enhance public understanding of environmental issues, including information about the toxicity of chemicals. Denison Decl. ¶ 3. EDF strives to increase transparency about chemicals, and EDF has been involved in drafting some of the landmark right to know statutes, such as California's Proposition 65. Denison Decl. ¶¶ 3-4. EDF communicates sound science to the public to ensure that market decisions are based on accurate information regarding the health and environmental impacts of chemicals. *Id.* ¶¶ 2-3. The interests of EDF members such as Mr. Maguire are therefore germane to EDF's purposes.

It is not necessary for an individual EDF member to participate in the lawsuit. The participation of EDF members as individual parties is not necessary in order for this court to reject Plaintiffs' requested relief, sustain the listing decision, and prevent the threatened harm to Mr. Maguire and EDF. For these reasons, EDF has associational standing.

ii. EDF has associational standing based on its member, Lynn Goldman, who would have standing in her own right.

EDF also has associational standing because its member, Dr. Lynn Goldman, would have standing in her own right, the interests of Dr. Goldman are germane to EDF's purposes, and the participation of Dr. Goldman in this lawsuit is not necessary. *Cf. Natural Res. Def. Council*, 489 F.3d at 1370.

First, EDF member Dr. Lynn Goldman would have standing in her own right based on informational injuries that would be sustained if Plaintiffs prevailed. *Cf. Am. Soc'y for the Prevention of Cruelty to Animals,* 659 F.3d at 22 ("[A] denial of access to information can work an injury in fact for standing purposes, at least where a statute. . . requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.") (internal quotation marks omitted). As described previously, Congress requires publication of the RoC, 42 U.S.C. § 241(b)(4)(A), and both the structure of the Act and its legislative history indicate that Congress intended publication of the RoC to inform the public generally about cancer risks and to spur further research on cancer.

The RoC generally, and the listing of styrene in the 12th RoC in particular, is useful to Dr. Goldman. In her previous positions as EPA Assistant Administrator, Dr. Goldman used the RoC for reviews of chemicals. Goldman Decl. ¶ 15. Similarly, in her prior position as Section Chief of the California Department of Health Services, Dr. Goldman used the RoC as an authoritative source when she needed to provide information to the public on the cancer risks of

chemicals. *Id*. ¶¶ 13-14. Additionally, Dr. Goldman has regularly cited to the RoC in her research as an epidemiologist and public health specialist. *Id*. ¶ 19. Individuals such as Dr. Goldman, who relies on the RoC in conducting research and engaging in policy activities, have a cognizable interest in agency action that would diminish their ability to conduct research and engage in professional activities. *See, e.g., Ctr. for Biological Diversity v. Brennan*, 571 F.Supp.2d 1105, 1121 (N.D.Cal. 2007) (recognizing a cognizable interest where environmental organizations alleged that defendants' failure to produce required reports interfered with research and observation of species) (relying on *Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1172 (9th Cir. 2002)(desire to study plant and animal species is a cognizable interest)).

Dr. Goldman continues to rely on the RoC to conduct her epidemiological and public health research and professional activities, and she will continue to rely on the RoC in the future. For all these reasons, publication of the RoC, including the listing of styrene in the 12th RoC, is useful to Dr. Goldman as an epidemiologist and public health researcher. The unwarranted withdrawal of styrene from the RoC would deprive Dr. Goldman of the information on styrene to which she is entitled, causing her a cognizable informational injury. Moreover, granting Plaintiffs' requested relief in this case would harm Dr. Goldman's ability to rely on the RoC when conducting her epidemiological research and other professional public health activities. Goldman Decl. ¶¶ 19-21.

Having satisfied the injury in fact requirement, Dr. Goldman also meets Article III causation and redressability requirements. Harm to Dr. Goldman's interests would occur if the court granted the relief requested by Plaintiffs, who seek an order that listing styrene on the 12th RoC was arbitrary and capricious and also seek an injunction barring listing of styrene on the RoC. Pls. Compl. 25. These harms would be redressed if the court declines to grant the relief

requested by Plaintiffs. For all these reasons, EDF member Dr. Goldman would have standing to intervene as a defendant in her own right.

Second, the interests of Dr. Goldman are germane to EDF's organizational purposes. Dr. Goldman's interest in this case stems from the epidemiological and public health work she conducts in reliance on the RoC generally and the listing of styrene in the 12th RoC in particular. EDF's Health Program seeks to protect human health by increasing transparency about chemicals and minimizing health risks from chemicals. Using and fostering sound science on environmental health is a core goal and strategy of EDF's health program. *See* Maguire Decl. ¶ 12. As a result, Dr. Goldman's interest in using the RoC to conduct research on carcinogens such as styrene so as to inform the public of health risks is germane to EDF's purpose of using sound science to protect human health from hazardous chemicals such as styrene.

Third, as explained previously, it is not necessary for an individual EDF member to participate in the lawsuit. The participation of EDF members as individual parties is not necessary in order for this court to reject Plaintiffs' requested relief, sustain the listing decision, and prevent the threatened harm to Dr. Goldman and EDF. For these reasons, EDF has associational standing.

3. Peter Orris has standing.

Dr. Peter Orris also has standing based on informational injuries he will sustain if Plaintiffs prevail. *Cf. Am. Soc'y for the Prevention of Cruelty to Animals,* 659 F.3d at 22.

The RoC generally and its listing of styrene specifically are valuable resources to Dr. Orris. As an occupational doctor treating patients at Stroger Hospital of Cook County, the University of Illinois Hospital and Medical Center, and Rush University Medical Center, Dr. Orris uses the RoC to treat patients, including determining the cause of his patients' cancer. Declaration of Peter Orris (May 17, 2012) ("Orris Decl.") ¶¶ 3, 7. He has also relied upon the

RoC to provide advice in workers' compensation determinations. As a consultant to the U.S. EPA Region 5, Illinois Department of Public Health, local communities, corporations, and unions, Dr. Orris uses the RoC to provide advice on workplace toxins such as styrene. *Id.* ¶ 5. For example, he has relied upon the RoC to provide advice on potential firefighter exposures to carcinogens. *Id.* As a professor at Northwestern University, he relies on the RoC to train and teach students. *Id.* ¶ 6. Dr. Orris uses the RoC because it is up-to-date, balanced, peer-reviewed, and is "good evidence." *Id.* ¶4.

Dr. Orris relies on the RoC to conduct his work, and he will continue to do so in the future. The RoC, including the 12th RoC's listing of styrene, plays an important role in Dr. Orris's function as a physician, consultant, and professor. Withdrawal of styrene from the RoC would deprive Dr. Orris of the information on styrene to which he is entitled, causing him a cognizable informational injury. Dr. Orris would be harmed by being unable to use the styrene listing to advise his patients, teach and train his students, and advise companies and agencies, even though he is likely to face inquiries about styrene exposure. *Id.* ¶¶ 3-8. The unwarranted delisting of styrene would further harm Dr. Orris because it would render the RoC an incomplete database, making it a less valuable resource for evaluating cancer risks. *Id.* ¶ 9. It would also interfere with the scientific validity of peer-reviewed material concerning styrene. *Id.*

While Dr. Orris' injury is directly caused by Plaintiffs' action, his injury can be redressed by the Court, thus satisfying the standing requirements. Harm to Dr. Orris's interests would occur if the Court granted the relief requested by Plaintiffs, who seek an order that listing styrene on the 12th RoC was arbitrary and capricious, and also seek an injunction barring the listing of styrene on the RoC. Pls. Compl. 25. These harms would be redressed if the Court declines to

grant the relief requested by Plaintiffs and upholds the styrene listing. For all these reasons, Dr. Orris has standing to intervene as a defendant.

B. Movants' Motion to Intervene Is Timely.

In determining whether the intervention motion is timely, the Court should consider "all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *United States v. British Am. Tobacco Australia Serv*., Ltd., 437 F.3d 1235, 1238 (D.C. Cir. 2006) (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)).

This motion is timely. Summary judgment briefing begins Friday, May 18, when Plaintiffs' dispositive motion is due. Minute Order, Dkt. 38 (May 4, 2012). Since the briefing of dispositive motions has not concluded, the court has not yet entered judgment. Given that the "major substantive issues in this case have not yet been argued or resolved," the motion to intervene should be considered timely. *See Admiral Ins. Co. v. Nat'l Cas. Co.*, 137 F.R.D. 176, 177 (D.D.C. 1991).

Courts in this Circuit have found a motion to intervene to be timely when filed at later stages of litigation. Most relevantly, the court considered a motion to be timely filed when it was filed more than one month after the plaintiff filed a summary judgment motion. *Hardin v. Jackson*, 600 F.Supp.2d 13, 16 (D.D.C. 2009).

While the complaint was filed on June 10, 2011, there has been little activity in this case since September 26, 2011, when Plaintiffs filed a motion to complete the administrative record and compel responses to their discovery requests. Dkt. 27. Between September 2011 and this month, the federal government has been completing the administrative record. Movants'

participation during the completion of the administrative record was not necessary for the government to compile the record or for Movants to protect their interests.

If granted intervention, Movants would abide by the briefing schedule established by the Court. Movants would file their combined cross-motion for summary judgment and their opposition to Plaintiffs' motion for summary judgment on June 22, at the same time the federal defendants file their cross motion and opposition. Plaintiffs would then have the time allotted by the Court's briefing schedule to submit a reply. As a result, intervention by Movants would not prejudice the existing parties.

C. Movants Have Significant Interests Related to the Subject of This Action.

By satisfying the requirements of standing, a party can demonstrate that a legally protected interest exists. *Jones v. Prince George's Cnty., Md.*, 348 F.3d, 1014, 1018-19 (D.C. Cir. 2003); *see also Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) (the party seeking intervention "need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a)") (citations omitted). Given that Movants' interest is sufficient to confer standing, it is also sufficient to warrant intervention.

Courts have frequently granted environmental groups intervention to oppose industry challenges to government actions. *See, e.g., Rocky Mountain Farmers Union v. Goldstene,* No. 09-2234 (E.D. Cal. Sept. 17, 2010) (granting EDF intervention in its effort to oppose industry challenges to California's Low Carbon Fuel Standard), attached as Exhibit A*; see also Am. Petroleum Inst. v. Johnson*, 541 F.Supp.2d 165 (D.D.C. 2008); *Bldg. Indus. Ass'n v. Babbitt*, 979 F.Supp. 893, 896 (D.D.C. 1997) *Cal. Forestry Ass'n v. Thomas*, 936 F. Supp. 13, 15 (D.D.C. 1996); *Synthetic Organic Chem. Mfrs. Ass'n v. U.S. Dep't of Health & Human Servs.*, 720

F.Supp. 1244, 1247 (W.D. La. 1989) (EDF participated as defendant-intervenor in support of federal defendant in an action challenging the RoC). Accordingly, Movants have legally protected interests in the instant case.

The legally protected interests of Movants in the subject matter of this case are plainly sufficient to meet the test under Rule 24(a), which requires the intervenor to have "a significantly protectable interest." *Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981) (quotation omitted). As the D.C. Circuit has explained, "the 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Id*. at 1324 (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Proposed intervenors "need only an 'interest' in the litigation – not a 'cause of action' or 'permission to sue.'" *Friends of Animals v. Kempthorne*, 452 F.Supp.2d 64, 69 (D.D.C. 2006) (quoting *Jones*, 348 F.3d at 1018).

As discussed above, USW has protectable interests both in its own name and on behalf of its members. USW represents workers exposed to styrene in the workplace. Declaration of Wright Decl. ¶¶ 1-2. One of the core missions of the union is to protect the health and safety of its member workers and, as the legally authorized collective-bargaining agent for its member workers, USW is required by federal law to bargain with employers regarding workplace health and safety. USW relies on the RoC, and will continue to rely on the RoC in the future, to inform how it bargains with employers to protect its members from harmful exposures to chemicals such as styrene. *Id*. ¶¶ 12-13.

Additionally, USW members have a protectable interest in the listing of styrene as reasonably anticipated to be a human carcinogen. *See* 29 C.F.R. § 1910.1200(d)-(h). Indeed, in their complaint, Plaintiffs acknowledge that listing styrene on the RoC triggers legal

requirements for employers to "include labels and other forms of warning, material safety data sheets, and employee information and training" for styrene. Pls. Compl. ¶ 67(a). These legal requirements provide critical health and safety information to workers, many of whom may be exposed to styrene at the workplace, and provide USW's members with a protectable interest in this action.

EDF and its members also have concrete and particularized interests in continued access to the information contained in the styrene listing in the RoC. EDF staff rely on the Report on Carcinogens as an authoritative source to develop and implement EDF's health program activities. Denison Decl. ¶ 5. Since the publication of the first RoC, EDF staff have used the RoC, along with other information on the health risks of chemicals, in reports and other data access tools, such as a chemical scorecard. *Id*. ¶¶ 6, 8. In the late 1980s, EDF sought and was granted leave to intervene in support of HHS in a case brought by chemical manufacturers, sellers, and trade associations for producers of chlorobenzenes to challenge the classification of chemicals listed as reasonably anticipated to be carcinogens in the Fifth RoC. *Synthetic Organic Chem. Mfrs. Ass'n v. U.S. Dep't of Health & Human Servs*., 720 F.Supp. 1244, 1247 (W.D. La. 1989). Moreover, EDF staff regularly transmit information contained in the RoC to the public and to companies with whom they work to ensure that market decisions are based on sound science, and to policymakers, to ensure that policy decisions on chemicals such as styrene are grounded in the best science. Denison Decl. ¶ 8. The effectiveness of EDF's activities outlined above depends on the credibility of the RoC as an objective, authoritative source. *Id*. ¶ 17; Maguire Decl. ¶ 12.

EDF's members have cognizable interests in continued access to the information contained in the styrene listing on the RoC. EDF members, such as Andrew Maguire, rely on the

RoC as an authoritative source on the cancer risks from chemicals such as styrene. Maguire Decl. ¶ 7. Mr. Maguire uses information in the RoC on styrene and other chemicals to guide which products he purchases and how he uses products so as to minimize his cancer risk. *Id*.

EDF members also have protected interests in relying on the RoC to conduct research and formulate policy initiatives addressing the cancer risks of styrene and other chemicals. EDF member and Board Member Lynn Goldman is a pediatrician, epidemiologist, and Dean of the School of Public Health and Health Services at George Washington University. Goldman Decl. ¶ 1. Dr. Goldman regularly consults the RoC in her professional research, and will continue to rely on the RoC, including the styrene listing in the 12th RoC. *Id*. ¶¶ 19-21. Individuals have a cognizable interest in agency action that would diminish their ability to conduct research and engage in professional activities. *See, e.g., Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1172 (9th Cir. 2002); *Ctr. for Biological Diversity v. Brennan*, 571 F. Supp.2d 1105, 1121 (N.D. Cal. 2007).

Dr. Peter Orris has a protectable interest in using the RoC, including the listing of styrene in the 12th RoC, to provide medical advice. During the course of his medical career, Dr. Orris has provided advice to individual patients, corporations, and unions on workplace health and safety issues. Orris Decl. ¶ 5 . In the course of providing medical advice, Dr. Orris has regularly relied on the RoC as a balanced, peer-reviewed assessment of the state of knowledge on carcinogens. *Id*. ¶ 4.

D. Movants' Interests May Be Impaired If Plaintiffs Prevail in This Action.

Movants seek intervention to oppose Plaintiffs' action to set aside and permanently enjoin the listing of styrene on the RoC as reasonably anticipated to be a human carcinogen. *See* Pls. Compl. 24-25. Movants satisfy the requirement that "disposing of the action may as a practical matter impair or impede the applicant's ability to protect its interest." Fed. R. Civ. P. 24(a). In

determining whether Movants have satisfied this requirement, the court should "look[] to the practical consequences of denying intervention . . ." *Fund for Animals,* 322 F.3d at 735.

Granting Plaintiffs' requested relief, by declaring the styrene listing to be unlawful and enjoining the listing, would impair USW's interest in using the RoC to improve the health and safety of its member workers exposed to styrene. If styrene were no longer listed on the RoC, USW would no longer have access to the RoC as a source of authoritative information on the risks from, and the routes of exposure to, styrene. Wright Decl. ¶ 13. This would impair the ability of USW to use the best science in its collective-bargaining to improve workplace safety. *Id*. Additionally, withdrawing the listing of styrene would mean that a federal agency has no longer given its authoritative conclusion regarding the cancer risk from styrene.

As explained above, once styrene was listed on the RoC, OSHA regulations require employers that handle styrene in the workplace to provide certain information and training to employees on how to minimize exposure to and safely handle styrene. *See* 29 C.F.R. § 1910.1200(d)-(f), (h). Plaintiffs now request that this court order HHS to withdraw the listing and additionally request a permanent injunction enjoining HSS from listing styrene on the RoC in the future. Pls. Compl. 24-25. If these requests are granted, the union and its members will no longer be legally entitled to receive vital information on how to work safely around styrene. Plaintiffs' success in this action would lead directly to a loss of information and training provided to the union and its members under OSHA regulations, 29 C.F.R. § 1910.1200(d)-(f), (h), which would in turn place the workers at greater risk of harm from workplace exposure to styrene.

Both the organizational interests of EDF and the interests of its members would be impaired if Plaintiffs were to succeed in setting aside the listing of styrene and enjoining HHS from listing styrene in the future. As an organization, EDF strives to enhance public

understanding of environmental issues using credible, authoritative sources of information. EDF staff, such as senior scientist Richard Denison, rely on authoritative documents such as the RoC to develop reports on the cancer risks of chemicals, to transmit information to the public on cancer risks, and to inform their work with companies to avoid or minimize the use of carcinogens. Denison Decl. ¶¶ 5-11, 16.

Removing styrene from the RoC would impair the ability of Dr. Denison and other EDF staff to transmit information in the styrene listing to the public, the market, and policymakers in the public and private sectors. *Id.* ¶ 17. Moreover, removing styrene from the RoC would create misperception that there is large uncertainty about the cancer risks from styrene, thereby impeding EDF's efforts to reduce styrene exposure. *Id*. Finally, granting Plaintiffs' unwarranted requested relief would improperly cast doubt on the scientific credibility of the RoC, which would undermine EDF's reliance on the RoC in educating the public, companies, and policymakers on the cancer and health risks of chemicals. *Id*.

Additionally, if Plaintiffs were to succeed in this action, and styrene were no longer listed in the RoC, the informational interests of EDF members would be impaired, impeding their ability to make informed choices about health risks and, also, to utilize authoritative sources in their research and professional activities.. EDF members, such as Andrew Maguire, would no longer have access to information in the listing that can assist them in making informed decisions about how to minimize their exposure to harmful levels of styrene. Maguire Decl. ¶ 7. Plaintiffs' success in this action would impair EDF member Lynn Goldman's interest in using the RoC, including the listing of styrene in the RoC, to conduct epidemiological and public health research. Goldman Decl. ¶ 21.

Plaintiffs' action also threatens to impair the interests of Dr. Peter Orris in relying on the RoC to provide occupational medicine advice. Dr. Orris has relied on and expects to continue to rely on the RoC in the course of providing medical advice to individual patients, advising companies on workplace safety, and in training medical residents. Orris Decl. ¶ 5. Dr. Orris relies specifically on the RoC because he regards it as a well-balanced, up-to-date assessment of the state of knowledge on carcinogens. *Id.* ¶ 4. Plaintiffs' action seeks to deprive Dr. Orris of the source – the RoC – that he relies on in providing medical advice.

After the disposition of this action, it will be difficult or impossible for Movants to protect their interests if Plaintiffs prevail. If the court finds for Plaintiffs on certain claims, and either remands or vacates the listing, Movants would be unable to litigate to defend the listing decision in a separate action. If Movants are not granted intervention in this case, they would have no legal recourse for challenging the remand or vacatur of the decision to list styrene in the RoC. Thus, as a practical matter, the resolution of this action without their participation will impair Movants' ability to protect their interests.

E. The Existing Parties May Not Adequately Represent Movants' Interests.

Finally, a movant seeking intervention of right must show that its interests may not be adequately represented by the existing parties in the litigation. This requirement is "not onerous." *Fund for Animals*, 322 F.3d at 735 (quoting *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *see also Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)); *Cnty. of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36 (D.D.C.2007). A movant need only show that representation by the existing parties "may be" inadequate – not that representation will in fact be inadequate. *Fund for Animals*, 322 F.3d at 735 ("Ordinarily [a movant] should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee [.]")(quoting *Am. Tel. & Tel. Co.*, 642 F.2d at 1293).

As this Court has explained, the D.C. Circuit has often found that the government does not adequately represent intervenors because "government entities are usually charged with 'representing the interests of the American people,' whereas aspiring intervenors, …, are dedicated to representing their personal interests or the interests of their members or members businesses." *Macdonald*, 244 F.R.D. at 48 (quoting *Fund for Animals*, 322 F.3d at 736). Indeed, Movants have different interests than the existing parties in this litigation. The federal defendants, as agencies of the federal government, represent the broad interests of the United States whereas Movants are concerned with how the instant action will impact their health and safety and their ability to rely on authoritative information in carrying out their missions and their individual professional responsibilities. Although Movants and the federal defendants have a common interest in upholding the listing of styrene, that shared interest does not guarantee adequate representation of the interests of Movants and their members.

USW and its members are concerned primarily with how the styrene listing that is the subject of this action will impact workers' health and safety. USW has an interest in using the listing of styrene in the RoC in collective bargaining with employers on workplace safety issues and to advise its members on workplace safety. Wright Decl. ¶ 8-9. USW members have an interest in receiving the information and training on how to handle styrene safely; OSHA regulations require employers to provide this information to certain employees once a chemical is listed on the RoC. 29 C.F.R. § 1910.1200(d)-(f), (h). The defendant agencies are not charged with the obligation to advise and train workers on how to work safely around styrene – the relevant statutory obligation of the federal defendants is to determine whether styrene is a carcinogen.

EDF has distinct interests from government defendants. EDF's interest is in continuing its collaborations with companies to reduce exposure to styrene and other harmful chemicals and to publicize to its members and to decision-makers information relevant to understanding and minimizing cancer risks from styrene and other chemicals. To conduct this work, EDF depends critically on authoritative documents such as the RoC. Denison Decl. ¶¶ 5, 6, 8-9; Maguire Decl. ¶ 12. EDF thus has informational interests in the styrene listing, which it relies upon in its work publicizing information on cancer risks and working with the market and policymakers to minimize cancer risks.

Dr. Peter Orris has an interest in this case in being able to continue to rely on the RoC in providing medical advice. The federal defendants are charged with evaluating the science on carcinogens – not with providing medical advice to patients or advising companies on how to handle carcinogens in the workplace. Accordingly, the federal defendants do not represent the narrower and particular interests Dr. Orris has in continued reliance on the listing of styrene in the 12th RoC.

Since Movants have met all four requirements of Rule 24(a), the Court should grant their motion to intervene as of right as intervenor defendants.

II. IN THE ALTERNATIVE, THE COURT SHOULD GRANT MOVANTS PERMISSIVE INTERVENTION.

If this Court denies intervention as of right, Movants request that the Court grant leave to intervene under Rule 24(b). Permissive intervention is appropriate if a movant's timely claim or defense "shares a question of law or fact in common with the underlying action and if the intervention will not unduly delay or prejudice the rights of the original parties." *Acree v. Republic of Iraq*, 370 F.3d 41, 49 (D.C. Cir. 2004) (citing Fed. R. Civ. P. 24(b)).

Movants' defense shares questions of law and fact with the underlying action, given that Movants seek to oppose Plaintiffs' requested relief and press arguments in support of the defendants' listing of styrene on the RoC. Movants do not bring new claims and intend only to oppose the claims brought by Plaintiffs. Additionally, Movants' intervention will not unduly delay or prejudice this action. Briefing of the parties' dispositive motions for summary judgment is just beginning, as Plaintiffs must file their motion for summary judgment by Friday, May 18. If granted intervention, Movants would abide by the briefing schedule proposed by the parties and approved by this Court.

Additionally, Movants' specialized experience would assist the Court in understanding the materials in the administrative record relied upon by the agency. EDF staff includes a former Congressman, Andrew Maguire, who drafted the legislative language creating the Report on Carcinogens in 1978. Maguire Decl. ¶ 2. EDF member Lynn Goldman is a former EPA Assistant Administrator, a member of the National Academy of Sciences Board on Environmental Studies and Toxicology, and an epidemiologist. Goldman Decl. ¶¶ 1-3. As a former member of the National Toxicology Program Board of Scientific Counselors, Dr. Goldman is familiar with the RoC listing process and has participated in designing and improving the listing process. *Id*. ¶ 12. Richard Denison, a senior staff scientist at EDF, is a member of the National Academy of Sciences' Board on Environmental Studies and Toxicology, which is charged with overseeing studies relating to environmental impacts on human health. Denison Decl. ¶ 13. As a member of the Board, Dr. Denison has become familiar with the process for listing chemicals on the RoC, and the process used to list styrene in the 12th RoC. *Id*.

The specialized experience of EDF, which could assist the Court in understanding the process of listing a carcinogen on the RoC and in understanding the complex scientific information in the administrative record, weighs in favor of granting permissive intervention. *See Humane Soc'y of the United States v. Clark*, 109 F.R.D. 518, 521 (D.D.C. 1985) (in a complex case alleging that the government illegally opened National Wildlife Refuges to hunting, the court granted permissive intervention to hunters' organizations because they would provide a useful perspective not otherwise represented and would contribute to development of the legal issues in the case). For these reasons, the court should grant Movants permissive intervention.

CONCLUSION

For all of the above reasons, Movants respectfully request that this Court grant them intervention as of right or, in the alternative, permissive intervention.

DATED: May 18, 2012.

Respectfully submitted,

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Exhibit A

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ROCKY MOUNTAIN FARMERS UNION, et al.,

Plaintiffs,

v.

JAMES N. GOLDSTENE,

Defendant,

NATURAL RESOURCES DEFENSE COUNCIL, INC., SIERRA CLUB, AND CONSERVATION LAW FOUNDATION,

Defendant-Intervenors,

1:09-cv-02234-LJO-DLB

ORDER GRANTING ENVIRONMENTAL DEFENSE FUND LEAVE TO INTERVENE

Date: September 17, 2010
Time: 09:00 am
Judge: Hon. Dennis L. Beck

ORDER

The Court having reviewed a Stipulation between all parties, and finding good cause to grant the motion of Environmental Defense Fund to intervene:

IT IS HEREBY ORDERED that Applicant Environmental Defense Fund is granted leave to intervene in this action under the following condition:

a. Applicant shall coordinate their positions in this action with Defendant, and shall file motions and/or briefs only if the Defendant refuses to make an argument that Applicant considers relevant.

DATED: 15 September 2010

/s/ Dennis L. Beck

Honorable Dennis Beck