IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA Plaintiff, v. EES COKE BATTERY, LLC Defendant.	Case No. 2:22-cv-11191-GAD-CI **MOTION TO INTERVENE**

MOTION OF SIERRA CLUB TO INTERVENE AS PLAINTIFF

Pursuant to Federal Rule of Civil Procedure 24 and Section 304(b)(1)(B) of the Clean Air Act, 42 U.S.C. § 7604(b)(1)(B), proposed Intervenor-Plaintiff Sierra Club respectfully moves to intervene in the above-captioned proceeding. A copy of Sierra Club's proposed complaint is attached hereto as Exhibit A. For the reasons set forth in the accompanying memorandum, the Court should grant Sierra Club intervention as of right or, in the alternative, permissive intervention, so that Sierra Club can fully participate in this Clean Air Act action.

Pursuant to Local Rule 7.1(a), the undersigned counsel met with counsel for Defendant EES Coke on September 6, 2022 to request concurrence in the motion,

and concurrence was not obtained. Counsel for Sierra Club also met with counsel for Plaintiff United States, and the United States has no objection to this motion.

Respectfully submitted,

s/Deborah Musiker
Deborah Musiker (IL 6231166)
(also known as: Debbie Chizewer)
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
312-800-8307
dchizewer@earthjustice.org

Mary Rock (IL 6332240)
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
312-800-8336
mrock@earthjustice.org

Nick Leonard (P79283)
Great Lakes Environmental Law Center
4444 Second Ave.
Detroit, MI 48201
313-782-3372
nicholas.leonard@glelc.org

Shannon Fisk (IL 6269746)
Earthjustice
48 Wall Street
15th Fl.
New York, NY 10005
215-327-9922
sfisk@earthjustice.org

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA Plaintiff, v. EES COKE BATTERY, LLC Defendant.	Case No. 2:22-cv-11191-GAD-CI **BRIEF IN SUPPORT OF MOTION TO INTERVENE**

BRIEF IN SUPPORT OF SIERRA CLUB'S MOTION TO INTERVENE AS PLAINTIFF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

CONCISE STATEMENT OF THE ISSUE PRESENTED

Should Sierra Club be allowed to intervene as a matter of right, pursuant to Federal Rule of Civil Procedure 24(a)(1), as plaintiff in this proceeding, where its motion is being filed early in the litigation and before any discovery, and where Section 304(b)(1)(B) of the Clean Air Act provides a statutory right of intervention to any person where the United States Environmental Protection Agency or the state has commenced and is diligently prosecuting an enforcement action regarding violations that citizens could otherwise pursue under Section 304(a)(1); or in the alternative, should Sierra Club be granted intervention as of right pursuant to Rule 24(a)(2) where Sierra Club has a legally cognizable interest in the enforcement of the Clean Air Act violations at issue in this proceeding, and Sierra Club's interests may not be adequately represented by any of the parties to the proceeding; or in the alternative, should Sierra Club be granted permissive intervention pursuant to Rule 24(b)?

CONTROLLING OR MOST APPROPRIATE AUTHORITY FOR THE RELIEF SOUGHT

Sierra Club seeks to intervene as plaintiff in this proceeding pursuant to Federal Rule of Civil Procedure 24. The controlling and most appropriate authority for the requested statutory intervention as of right pursuant to Rule 24(a)(1) is 42 U.S.C. § 7604(b)(1)(B). The controlling and most appropriate authority for the alternatively requested intervention as of right pursuant to Rule 24(a)(2) is *Grutter v. Bollinger*, 188 F.3d 394 (6th Cir. 1999), and *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240 (6th Cir. 1997). Additional authorities supporting the relief requested are set forth in the text of this brief and are identified in the Table of Authorities.

BRIEF IN SUPPORT OF SIERRA CLUB'S MOTION TO INTERVENE AS PLAINTIFF

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24(a) and (b) and Section 304(b)(1)(B) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7604(b)(1)(B), proposed Intervenor-Plaintiff Sierra Club respectfully moves to intervene in the above-captioned proceeding, alleging violations of the CAA. Sierra Club seeks to ensure that its interests are protected and that appropriate remedies are pursued and implemented to address CAA violations.

The United States Attorney General, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") filed a complaint alleging violations of the CAA's Prevention of Significant Deterioration ("PSD") provisions, 42 U.S.C. §§ 7470-7492, nonattainment New Source Review ("Nonattainment NSR") provisions, 42 U.S.C. §§ 7501-7515, and Michigan's State Implementation Plan ("SIP") at EES Coke Battery, LLC's ("EES Coke") facility in River Rouge, Michigan. Section 304(b)(1)(B) of the CAA provides a statutory right of intervention to any person where the EPA or the state has commenced and is diligently prosecuting an enforcement action regarding violations that citizens could otherwise pursue under Section 304(a)(1). 42 U.S.C. § 7604(b)(1)(B). Because the CAA establishes a statutory right to intervene and the present motion was timely filed, intervention must be granted. *See* Fed. R. Civ. P.

24(a)(1). In the alternative, the Court should grant Sierra Club's intervention as of right pursuant to Rule 24(a)(2) or permissive intervention under Rule 24(b).

II. FACTUAL BACKGROUND

Sierra Club is a public interest, non-profit environmental organization, with members who live, work, or recreate near EES Coke's River Rouge coke oven facility and who are adversely impacted by illegal air pollution from the facility. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has approximately 750,000 members, including more than 21,000 members in Michigan and more than 6,500 members in the Sierra Club's Southeast Michigan Group that includes Wayne County. Individual members of the Sierra Club have suffered or may suffer injury to their environmental, recreational, aesthetic, and/or economic interests as a result of EES Coke's activities. Sierra Club members live in Wayne County near EES Coke's River Rouge facility, and they observe and experience the adverse effects of air pollution from that facility, including health problems, difficulty breathing, and limitations on their ability to enjoy outdoor activities like running, speed walking, biking, and gardening. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard.

Sierra Club and its members have a long history of working to protect and improve air quality and to ensure compliance with and enforcement of the

requirements of CAA at facilities in Michigan. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. For example, Sierra Club intervened in a CAA Nonattainment NSR enforcement action against DTE Energy's Monroe coal-fired power plant and participated in the litigation through its settlement in 2020. That settlement resulted in, among other things, a requirement that DTE fund at least $2 million in mitigation projects to improve air quality and public health in River Rouge, the 48217 area within Detroit, and the neighboring city of Ecorse. Sierra Club has also brought a federal lawsuit against the EPA for inadequately regulating coke ovens and failing to protect communities from carcinogenic emissions from coke ovens. In Michigan, the Sierra Club also litigates in Michigan Public Service Commission dockets, where the Sierra Club focuses on expeditiously retiring coal plants—including DTE's River Rouge coal plant that formerly operated about a mile from EES Coke's facility—and replacing them with clean energy. Additionally, Sierra Club advocates in multiple EPA regulatory dockets for stringent state and federal implementation plans for the Wayne County sulfur dioxide ("SO_2") nonattainment area, has opposed the EPA's proposal to prematurely lift the nonattainment designation for the Southeast Michigan ozone nonattainment area, and has challenged the air permit for DTE Energy's new gas-fired power plant in St. Clair County. Moreover, individual Sierra Club members participate actively in

community organizations to improve air quality, attend community meetings and events to speak up about air quality, and participate in state-wide environmental justice efforts. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard.

On June 1, 2022, pursuant to its authority under Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b), 7607, the U.S. Department of Justice, on behalf of the EPA, filed suit against EES Coke alleging violations of the CAA's PSD and NSR requirements at the coke oven facility. Specifically, the United States' complaint alleges that EES Coke undertook a major modification to its coke oven facility without first obtaining the necessary Nonattainment NSR or PSD permits for the modification and operation of the facility and resulting SO_2 and particulate matter emissions ("$PM_{2.5}$"). Dkt No. 1. Sierra Club now seeks intervention regarding the alleged PSD and NSR violations so that it can fully represent its members' interests and its organizational interests in this proceeding.

III. ARGUMENT

Federal Rule of Civil Procedure 24 provides various pathways for parties to intervene in a pending case upon a timely motion, and at least three paths are applicable here. First, Sierra Club meets the requirements for intervention as of right under Rule 24(a)(1) because the CAA provides an unconditional right to intervene. Second, Rule 24(a)(2) provides for Sierra Club to intervene as of right

because it "claims an interest relating to the property or transaction that is the subject of the action," and disposing of the action may impair or impede its abilities to protect its interests. Fed. R. Civ. P. 24(a)(2). Third, Sierra Club satisfies the permissive intervention standard of Rule 24(b)(1)(B) because its claim shares common questions of law or fact with the pending action. *Purnell v. City of Akron*, 925 F.2d 941, 950-51 (6th Cir. 1991)

Regardless of the path by which intervention is sought, "Rule 24 should be broadly construed in favor of potential intervenors," *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (internal quotations omitted), as a lawsuit often "will have implications on those not named as parties," *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997) (internal quotations and alterations omitted). Moreover, a party seeking intervention "need not have the same standing necessary to initiate a lawsuit in order to intervene in an existing district court suit where the plaintiff has standing." *Providence Baptist Church v. Hillandale Committee, Ltd*. 425 F.3d 309, 315 (6th Cir. 2005) (quoting *Associated Builders & Contractors v. Perry*, 16 F.3d 688, 690 (6th Cir. 1994)).

Sierra Club and its members are adversely affected by the unlawful pollution from EES Coke's facility, and they have promptly moved to intervene to ensure the CAA is enforced and that appropriate remedies are pursued and implemented.

A. Intervention Must Be Granted Pursuant to Rule 24(a)(1) and Section 304(b)(1)(B) of the Clean Air Act.

Sierra Club meets the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(1) and section 304(b)(1)(B) of the CAA. Rule 24(a)(1) provides that, "[o]n timely motion, the court must permit anyone to intervene who . . . is given an unconditional right to intervene by a federal statute." Fed. R. Civ. P. 24(a)(1). Here, such unconditional right is provided by Section 304(b)(1)(B) of the CAA, which provides that where "the Administrator [of the U.S. EPA] or [a] State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order . . . any person may intervene as a matter of right." 42 U.S.C. § 7604(b)(1)(B); *see Del. Valley Citizens' Council for Clean Air v. Pennsylvania*, 674 F.2d 970, 973 (3d Cir. 1982) (noting that the "citizen suit provision of the Clean Air Act provides a right to intervene to enforce the law").

Sierra Club must be granted intervention. The CAA confers an unconditional right to intervene in this action, and Sierra Club's motion is timely.

1. The Clean Air Act Grants Sierra Club the Right to Intervene.

Section 304(b)(1)(B) of the CAA confers an unconditional right for Sierra Club to intervene in this case. That provision states that no citizen suit may be commenced for CAA violations where the EPA or State "has commenced and is diligently prosecuting a civil action in a court" to require compliance with CAA

standards, limitations, or orders, "*but in any such action in a court of the United States any person may intervene as a matter of right*." 42 U.S.C. § 7604(b)(1)(B) (emphasis added). Thus, the CAA confers a right for any person to intervene to enforce violations of emissions standards or limits under the CAA. *See Del. Valley Citizens' Council for Clean Air*, 674 F.2d at 973 (noting that the "citizen suit provision of the Clean Air Act provides a right to intervene to enforce the law"); *United States v. Blue Lake Power, LLC*, 215 F. Supp. 3d 838, 841-42 (N.D. Cal. 2015) (granting intervention as of right under the CAA); *U.S. v. Duke Energy Corp.*, 171 F. Supp. 2d 560, 565 (M.D.N.C. 2001) (granting intervention as of right on the basis of 42 U.S.C. § 7604(b)(1)(B) where the plaintiff and the intervenor-plaintiffs alleged that the defendant failed to obtain permits to modify its facility as required by the CAA's PSD provisions); *see also Ohio v. Callaway*, 497 F.2d 1235, 1242 (6th Cir. 1974) (explaining that a similar provision of the Clean Water Act "confers upon all applicants an unconditional right to intervene under rule 24(a)(1)").

Sierra Club is a person as defined by the CAA, 42 U.S.C. § 7602(e), and this is an action to require compliance with a standard, limitation, or order of the CAA, *see* Dkt. No. 1 at ¶¶ 9, 19-48, 64-75. The excess pollution resulting from EES Coke's failure to satisfy PSD and NSR requirements at its coke oven facility have adversely impacted and will continue to adversely impact the Sierra Club and their

members' experiences living, working, and recreating in the River Rouge, the 48217 zip code in Southwest Detroit, and surrounding communities, where EES Coke's violations affect the ambient air quality. They have reduced or ceased outdoor activities they used to enjoy in their neighborhood, such as running, speed walking, gardening, and bicycling due to concerns about pollution in their neighborhood from industrial sources, including EES Coke. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. Members also keep their windows closed at home and rely on air conditioners due to concerns about the air pollution, and some members have undertaken home improvements such as installing a central air conditioning system, air filters, and new windows to try to reduce the amount of pollution entering their homes. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. They suffer from asthma and are concerned for their health. *See, e.g.*, Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. Sierra Club members want to see EES Coke held accountable for its unlawful contributions to air pollution. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard.

Accordingly, the requirements of Section 304(b)(1)(B) are met, and Sierra Club has an unconditional right to intervene.

2. Sierra Club's Motion to Intervene is Timely.

Sierra Club's motion to intervene satisfies the timeliness requirement for intervention. Timeliness is determined by examining "all relevant circumstances" of the case. *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). In determining whether a motion to intervene is timely, a court considers the following circumstances: the point to which the suit has progressed; the purpose for which intervention is sought; the length of time preceding the motion for intervention during which the proposed intervenor knew or reasonably should have known of their interests in the case; the prejudice to the original parties due to any failure by the proposed intervenor to promptly to move to intervention; and any unusual circumstances militating for or against intervention. *Velsicol Chem. Corp. v. Enenco, Inc.*, 9 F.3d 524, 531 (6th Cir. 1993). Where an intervention motion is filed shortly after the complaint while the case is "obviously in its initial stage," the motion is "timely as a matter of law." *Michigan State AFL-CIO*, 103 F.3d at 1245; *see also League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 576, 577 (6th Cir. 2018) (recognizing that a motion to intervene filed while the district court's decision on a motion to dismiss was pending was timely); *Public Interest Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799 (E.D. Mich. 2020) (granting intervention as of right where motion to intervene was filed 60 days after the initiation of the lawsuit, when the suit had barely progressed into the early

stages of discovery, and "before the Court even convened a scheduling conference or issued a scheduling order").

The present motion is "timely as a matter of law." *Id*. The United States filed its complaint in this action on June 1, 2022, which is approximately three months before the present motion is being filed. Discovery has yet to commence. There have been no scheduling orders, and this motion is being filed approximately three weeks before the first scheduling conference, which has been established for September 27, 2022. The United States recently filed a motion for summary judgment, but briefing is just beginning for that motion. Even if the motion were granted on liability, Sierra Club's local members have a strong interest in the remedies for the adverse impacts they have suffered.

In short, Sierra Club filed its motion to intervene while the case is in its initial stage and granting their motion would cause no prejudice or delay to any of the original parties.

B. Alternatively, Intervention Must Be Granted Pursuant to Rule 24(a)(2).

Sierra Club also meets the requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). Upon timely motion, Rule 24(a)(2) provides that anyone shall be permitted to intervene

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter

> impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Fed. R. Civ. P. 24(a)(2). Rule 24(a)(2) contemplates a "rather expansive notion of the interest sufficient to invoke intervention of right," *Michigan State AFL-CIO*, 103 F.3d at 1245, and does not require a potential intervenor to have a specific legal or equitable interest to be entitled to intervene. *Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999).

The Sixth Circuit considers four elements in evaluating a motion to intervene as of right: "(1) timeliness of the application to intervene, (2) the applicant['s] substantial legal interest in the case, (3) impairment of the applicant's ability to protect that interest in the absence of intervention, and (4) inadequate representation of that interest by parties already before the court." *Michigan State AFL-CIO*, 103 F.3d at 1245; *see also Grutter*, 188 F.3d at 397-98. In assessing these factors, a court should keep in mind that Rule 24 is to be "broadly construed in favor of potential intervenors." *Stupak-Thrall*, 226 F.3d at 472; *Purnell*, 925 F.2d at 950. Because, as explained above, Sierra Club's motion is timely, and Sierra Club meets the remaining three parts of the test for intervention, the Court should grant this motion.

3. Sierra Club Has Legally Protected Interests in the Subject Matter of This Action.

Sierra Club has legally protected interests that are or may be harmed by EES Coke's CAA violations. While a proposed intervenor must demonstrate a legally protected interest in the proceeding, the Sixth Circuit "subscribes to a rather expansive notion of the interest sufficient to invoke intervention of right" under Rule 24(a). *Grutter*, 188 F.3d at 398; *see also Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union v. Blackwell*, 467 F.3d 999, 1007 (6th Cir. 2006). An intervenor need not demonstrate Article III standing and is not required to possess a "specific legal or equitable interest" in the proceeding. *Grutter*, 188 F.3d at 398; *Michigan State AFL-CIO*, 103 F.3d at 1245. In addition, "'interest' is to be construed liberally," *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987), and "close cases should be resolved in favor of recognizing an interest under Rule 24(a)." *Michigan State AFL-CIO*, 103 F.3d at 1247. This liberal standard for demonstrating an adequate interest under Rule 24 is consistent with the "basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972).

Sierra Club and its members have a clear interest in this action. Members of Sierra Club live, work, or recreate near EES Coke's River Rouge coke oven facility and are adversely impacted by the excess pollution resulting from EES

Coke's failure to satisfy PSD and NSR requirements at the facility. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. These members are concerned for their and their families' health, and some members have asthma and worry about pollution from industrial sources, including EES Coke, exacerbating their symptoms. *See, e.g.*, Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. They have reduced or ceased outdoor activities they used to enjoy in their neighborhood, such as running, speed walking, gardening, and bicycling. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. Members also keep their windows closed at home and rely on air conditioners due to concerns about the air pollution, and some members have undertaken home improvements such as installing a central air conditioning system, air filters, and new windows to try to reduce the amount of pollution entering their homes. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard. These interests, which are sufficient to give rise to the injury requisite for Article III standing, *see Friends of the Earth v. Laidlaw Envtl. Servs. (TOC)*, 528 U.S. 167 (2000); *Natural Res. Def. Council v. EPA*, 749 F.3d 1055, 1062 (D.C. Cir. 2014); *Sierra Club v. Franklin County Power of Illinois*, *LLC*, 546 F.3d 918, 925-26 (7th Cir. 2008), are more than sufficient to demonstrate Sierra Club's legally protected

interest in this proceeding. *Providence Baptist Church,* 425 F.3d at 315 (proposed intervenor need not demonstrate standing in order to have legally protected interest justifying intervention).

Additionally, Sierra Club has an organizational interest in protecting and improving air quality and enforcing the CAA. As the Sixth Circuit Court of Appeals has recognized, an organization has a right to intervene to ensure that a law is properly enforced, particularly where the proposed intervenor had a demonstrated and long-standing interest in that law. *Grutter*, 188 F.3d at 398-99; *Michigan State AFL-CIO,* 103 F.3d at 1245-47.

Sierra Club's – and its members' – longstanding involvement in enforcing the CAA and protecting and improving air quality supports intervention. The Sierra Club's volunteer membership and staff work across the country on legislative and legal advocacy aimed at reducing air pollution. Sierra Club uses the citizen suit provision of the Clean Air Act to enforce the NSR provisions of the CAA that are at issue in this case. Sierra Club members advocate for clean air at community meetings and as part of state and local organizations. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard.

The present suit, which involves an effort to substantially reduce pollution from EES Coke's facility through enforcement of the CAA's NSR provisions,

plainly implicates Sierra Club's interests in protecting air quality, public health, and enforcing the CAA. As such, Sierra Club easily satisfies the protectable interest prong of the Rule 24(a)(2) intervention standard.

4. Absent Intervention, Sierra Club's Interests Will Be Significantly Impaired.

Disposition of this action in the absence of Sierra Club's participation may, as a practical matter, impair or impede their ability to protect its members' unique interests in this matter.

Rule 24(a)'s "impairment" requirement concerns whether, as a practical matter, the denial of intervention will impede the prospective intervenor's ability to protect its interests in the subject of the action. As the Advisory Committee Notes for the 1966 amendments to Rule 24(a) explain, "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." In keeping with this direction, the Sixth Circuit has held that the burden for demonstrating impairment is "minimal" and that the proposed intervenor need show only that impairment of its interest is "possible if intervention is denied." *Grutter*, 188 F.3d at 399; *Michigan State AFL-CIO*, 103 F.3d at 1247.

This proceeding undoubtedly has the potential to impair Sierra Club's interests. The Court's ruling in this case will determine whether EES Coke will have to reduce its emission of harmful air pollutants from its coke oven facility and

otherwise mitigate the impacts of such pollution, and thus will directly impact the interests of Sierra Club's members against being subjected to air pollution and health harms associated with the emissions of sulfur dioxide and particulate matter. Moreover, Sierra Club and its members bring decades of knowledge of air pollution in Southeast Michigan, as well as experience in working to enforce the CAA, to this case. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins. Sierra Club is in a special position to contribute to the disposition of the government's claims.

Also, Sierra Club's interests could be harmed by the stare decisis effect of the judgment of this Court. *Michigan State AFL-CIO*, 103 F.3d at 1247; *Jansen*, 904 F.2d at 342. An unfavorable ruling in this suit could impair the ability of Sierra Club to enforce NSR requirements against other polluting facilities in Michigan and throughout the country. Such possible precedential effect is sufficient to show impairment of the Sierra Club's interests. *Michigan State AFL-CIO*, 103 F.3d at 1247 (finding impairment where precedential effect of district court ruling could hinder proposed intervenors' ability to litigate the validity of Michigan campaign finance laws in current and future challenges).

5. Sierra Club's Interests Are Unlikely To Be Adequately Represented By The Existing Parties.

Sierra Club's interests are unlikely to be adequately represented by the existing parties. Sierra Club represents different interests than the United States, in

that it has members who live near EES Coke and who want to ensure that the resolution of this litigation addresses their specific air quality and public health concerns and advances the community's interests.

The burden of demonstrating that a potential intervenor's interests may not be adequately represented by existing parties to the litigation is "minimal," as the proposed intervenor need not show that the representation of its interests "will in fact be inadequate," but only that such representation "*may* be inadequate," *Ne. Ohio Coal. for Homeless*, 467 F.3d at 1008 (emphasis in original); *see also Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972), or that "there is a *potential* for inadequate representation," *Grutter*, 188 F.3d at 400 (emphasis in original). Representation may be inadequate where the interests of the party seeking intervention and those of the existing parties are "different," even if they are not entirely adverse. *Purnell*, 925 F.2d at 950. Even where the proposed intervenor and an existing party have the same general goal in the litigation, inadequate representation can be found if the intervenor may seek to raise arguments that the existing party would not. *Grutter*, 188 F.3d at 400-01; *Michigan State AFL-CIO*, 103 F.3d at 1247.

Several courts, including the Sixth Circuit, have found that because the government is required to represent the interests of the public in general, a governmental party is often not able to adequately represent the specific interests

of an environmental or other type of advocacy group. *See, e.g.*, *Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula, Michigan*, 41 F.4th 767, 774-75 (6th Cir. 2022); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-37 (D.C. Cir. 2003); *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1255-56 (10th Cir. 2001); *Coal. of Arizona/New Mexico Ctys. for Stable Econ. Growth v. Dep't of Interior*, 100 F.3d 837, 845 (10th Cir. 1996*); Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996); *Conservation Law Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Hazardous Waste Treatment Council v. South Carolina*, 945 F.2d 776, 780-81 (4th Cir. 1991). In analyzing this prong of the intervention standard, the Sixth Circuit has rejected the suggestion that representation should be presumed adequate when a governmental agency is a defendant in a case challenging the validity of a law or government action. *Stupak-Thrall*, 226 F.3d at 479; *Grutter*, 188 F.3d at 397-98.

These standards for satisfying the inadequate representation prong of the intervention test are met here. Although Sierra Club and the United States are both seeking to enforce the requirements of the CAA, Sierra Club has different overall interests than the United States, especially when it comes to relief. The United States is required to represent all of the interests of the country including economic and fiscal interests that the government might balance against the environmental interests that Sierra Club seeks to represent. *See Fund for Animals*, 322 F.3d at

736-37 (that a federal agency would "take account" of an intervenor's efforts "does not mean giving them the kind of primacy [the intervenor] would"); *Hazardous Waste Treatment Council*, 945 F.2d at 780 (discussing the ways that a state enforcement agency's interests differ from an environmental group's interests). Sierra Club is a non-profit organization specifically dedicated to protecting the environment and human health, and it advances the goals of its members who, in this matter, are focused on the effects that this litigation will have on their health, the air they breathe, their ability to keep the windows open at their houses, and their ability to enjoy recreating in their neighborhoods. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Dolores Leonard; *see also Wineries of the Old Mission Peninsula Ass'n*, 41 F.4th at 775. If this case proceeds to settlement, the United States may have a greater interest in civil penalties to be paid to the U.S. Treasury, in contrast to Sierra Club, which may have a greater interest in mitigation that directly benefits the community surrounding EES Coke. For example, the Sierra Club intervened in another CAA enforcement action filed by the United States in this Court, and in addition to one consent decree that resolved all of the United States' claims, Sierra Club and defendants entered into an additional agreement regarding mitigation to

resolve the intervenor's claims.[1] In addition, the government is subject to changes inherent in electoral politics, from which Sierra Club is immune. As a result, with regards to the Rule 24 intervention standard, the United States may not be able to adequately represent Sierra Club's environmental interests during the litigation (or possible settlement) of this case.

Each element of the Rule 24(a)(2) intervention test is satisfied, and Sierra Club must be allowed to intervene.

C. Alternatively, Intervention Should Be Granted Pursuant to Rule 24(b).

Sierra Club meets all the requirements for intervention as a matter of right and should therefore be allowed to participate fully in this action. Alternatively, because Sierra Club also meets the requirements of Rule 24(b)(1)(B), the Court should grant permissive intervention.

Under Rule 24(b)(1)(B), "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." The Sixth Circuit has held that permissive intervention may be granted in the Court's discretion if the motion is timely and the proposed intervenor presents a claim or defense that has a question of law or fact in common with the main action. *Purnell*, 925 F.2d at 950-51. In exercising its

[1] See United States & Sierra Club v. DTE Energy & Detroit Edison Company, 2:10-cv-12101, Consent Decree (July 22, 2020).

discretion, the Court must consider whether the proposed intervention would unduly delay or prejudice adjudication of the case. *Id*.; *see also Michigan State AFL-CIO*, 103 F.3d at 1248.

Sierra Club satisfies the standards for permissive intervention. First, this motion to intervene is timely, as explained in Section III.A.2 above. Second, the common issues of law and fact standard is satisfied here because Sierra Club is alleging the same PSD and NSR violations at EES Coke's facility as are alleged in the complaint filed by the United States. Sierra Club has amply demonstrated an interest in public health and the environment near the facility that may be impaired by unlawful pollution from EES Coke's violations of the CAA.[2] Third, there is no evidence that Sierra Club's intervention would unduly delay or prejudice adjudication of the rights of the original parties. Sierra Club is filing this motion promptly and will comply with all deadlines the Court may set for discovery, briefing, and oral argument. Accordingly, the Court should grant the Sierra Club permissive intervention.

[2] Sierra Club's interest, and its members' interest, in this suit are "distinct" from the interests of the United States as governments must necessarily contemplate a broad range of goals, whereas the interests of individuals, non-profits, and community groups are more sharply defined. *See Hazardous Waste Treatment Council*, 945 F.2d at776, 780-81.

IV. CONCLUSION

For the foregoing reasons, the Court should grant Sierra Club intervention as a matter of right. Alternatively, the Court should allow Sierra Club to permissively intervene in this proceeding.

Respectfully submitted,

s/Deborah Musiker
Deborah Musiker (IL 6231166)
(also known as: Debbie Chizewer)
Earthjustice
311 S. Wacker Drive Suite 1400
Chicago, IL 60606
312-800-8307
dchizewer@earthjustice.org

Mary Rock (IL 6332240)
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
312-800-8336
mrock@earthjustice.org

Nick Leonard (P79283)
Great Lakes Environmental Law Center
4444 Second Ave.
Detroit, MI 48201
313-782-3372
nicholas.leonard@glelc.org

Shannon Fisk (IL 6269746)
Earthjustice
48 Wall Street 15th Fl.
New York, NY 10005
215-327-9922
sfisk@earthjustice.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION OF SIERRA CLUB TO INTERVENE AS PLAINTIFF** and **BRIEF IN SUPPORT OF MOTION OF SIERRA CLUB TO INTERVENE AS PLAINTIFF** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Samantha Morgan Ricci
U.S. Department of Justice
Environment & Natural Resources Div.
150 M Street NW Ste 5.1402
Washington, DC 20002
202-514-3856
samantha.ricci@usdoj.gov

Thomas Benson
U.S. Department of Justice
Environment & Natural Resource Div.
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044
202-514-5261
Thomas.Benson@usdoj.gov

Eugene Edward Mathews, III
McGuireWoods LLP
800 East Canal Street
Gateway Plaza
Richmond, VA 23219
804-775-1313
Fax: 804-698-2108
mmathews@mcguirewoods.com

Jocelyn M Mallette
McGuireWoods LLP
501 Fayetteville Street, Suite 500
Raleigh, NC 27603
919-755-6681
jmallette@mcguirewoods.com

Makram B Jaber
McGuireWoods LLP
888 16th Street NW
Black Lives Matter Plaza
Suite 500
Washington, DC 20006
202-857-2416
mjaber@mcguirewoods.com

Dated: September 7, 2022

s/ Deborah Musiker
Deborah Musiker

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

INDEX OF EXHIBITS

Exhibit	Description
A	Proposed Complaint in Intervention
B	Declaration of Theresa Landrum
C	Declaration of Vicki Dobbins
D	Declaration of Dolores Leonard

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA Plaintiff, and SIERRA CLUB Intervenor-Plaintiff, v. EES COKE BATTERY, LLC Defendant.	Case No. 2:22-cv-11191-GAD-CI **PROPOSED COMPLAINT IN INTERVENTION**

INTRODUCTION

1. EES Coke Battery, LLC ("Defendant" or "EES Coke") operates a battery of 85 ovens at a facility in River Rouge, Michigan ("Coke Oven Battery") that emits sulfur dioxide pollution ("SO_2"). Located on Zug Island and near residential neighborhoods, the operation results in thousands of tons of SO_2 emissions per year—about 3,600 tons of SO_2 in 2021 alone. The Coke Oven Battery is one of the largest sources of SO_2 pollution in Michigan. According to the

Michigan Air Emissions Reporting System, the Coke Oven Battery was the fifth largest sulfur dioxide polluter in Michigan as of 2020.

2. In 1990, EES Coke accepted a limit in its state permit that restricted its operations and pollution. It did so to avoid triggering New Source Review, a program under the Clean Air Act ("CAA" or the "Act") that can require stringent pollution controls.

3. In 2014, EES Coke asked the State of Michigan to remove the limit, stating that doing so would not result in a significant increase in emissions. On November 21, 2014, the Michigan Department of Environmental Quality—now known as the Michigan Department of Environment, Great Lakes, and Energy—granted EES Coke's request by issuing Permit to Install 50-08C.

4. But removing the permit limit did increase SO_2 emissions. After the permit was changed, Defendant's pollution increased by more than 1,000 tons of SO_2 per year in several different years, including 2018, 2019, and 2021—an increase that would not have been possible with the old permit limit.

5. This increase in SO_2 pollution should have triggered New Source Review, but Defendant failed to obtain the required permits and failed to install and operate the required pollution controls.

6. As a result, the Coke Oven Battery emitted thousands of additional tons of SO_2 into the air and is continuing to do so.

7. SO_2 is harmful in its own right and can combine with other elements in the air to form tiny particulate matter. These pollutants cause harm to human health and the environment once emitted into the air, including premature death, heart attacks, respiratory problems, and adverse environmental effects. Even brief exposures to SO_2 or particulate matter with an aerodynamic diameter of 2.5 microns or less ("$PM_{2.5}$") can be harmful; respiratory effects such as asthma exacerbation are causally related to short-term SO_2 or $PM_{2.5}$ exposures, particularly in children with asthma or in people with asthma who are exercising.

8. According to the Michigan Department of Health and Human Services, the age-adjusted hospitalization rate for the years 2016 to 2019 for the 48218 zip code, which is where EES Coke is located, is 17.2 per 100,000 people. This is nearly triple the statewide asthma hospitalization rate of 6.3 per 100,000 people.

9. Intervenor-Plaintiff Sierra Club brings this complaint against EES Coke pursuant to Section 304(b)(1)(B) of the Act, 42 U.S.C. §§ 7604(b)(1)(B), for injunctive relief and the assessment of civil penalties for violations of: (a) the Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. §§ 7470-7492; (b) the nonattainment New Source Review ("Nonattainment NSR") provisions of the Act, 42 U.S.C. §§ 7501-7515; and (c) the State Implementation Plan ("SIP") adopted by the State of Michigan and approved by the United States

Environmental Protection Agency ("EPA") pursuant to 42 U.S.C. § 7410. *See* 42 U.S.C. §§ 7413(b) and 7477.

JURISDICTION AND VENUE

10. This Court has jurisdiction of the subject matter of this action. 42 U.S.C. §§ 7413(b) and 7477; 28 U.S.C. §§ 1331, 1345, and 1355.

11. This Court has jurisdiction over the Plaintiff Sierra Club's claims pursuant to 42 U.S.C. § 7604(b)(1)(B).

12. Venue is proper in this District because the violations occurred and are occurring in this District, the facilities at issue are operated by Defendant in this District, and Defendant resides in this District. 42 U.S.C. § 7413(b); 28 U.S.C. §§ 1391(b) and (c), and 1395(a).

13. Plaintiff Sierra Club brings this Complaint pursuant to 42 U.S.C. § 7604(b)(1)(B), which provides Plaintiff Sierra Club a right of intervention when the EPA or a State has commenced an enforcement action under the Act for claims that could otherwise be brought under 42 U.S.C. § 7604(a)(1).

NOTICES

14. EPA issued Defendant a Notice and Finding of Violation on September 16, 2020. EPA provided a copy of this Notice to the State of Michigan, as required by 42 U.S.C. § 7413(a)(1).

15. On June 1, 2022, the United States ("Government Plaintiff") brought

a civil action against EES Coke Battery, LLC alleging numerous violations of the Act. *See generally,* Complaint, *United States v. EES Coke Battery, LLC,* Case No. 2:22-cv-11191-GAD-CI, Dkt. No. 1 (hereinafter "Gov't Complaint").

PARTIES

16. Defendant EES Coke is a Michigan corporation with its principal place of business at One Energy Plaza, Detroit, Michigan. The ultimate parent company of EES Coke is DTE Energy Co., a Michigan corporation.

17. EES Coke owns and operates the Coke Oven Battery and is a "person" within the meaning of the Act. 42 U.S.C. § 7602(e).

18. The Government Plaintiff in this action is the United States of America, by authority of the Attorney General of the United States, acting at the request of the EPA Administrator.

19. The Intervenor-Plaintiff in this action is the Sierra Club.

20. Sierra Club is a public interest, non-profit environmental organization, with members who live, work, or recreate near EES Coke's River Rouge coke oven facility and who are adversely impacted by illegal air pollution from the facility. Sierra Club's mission is to preserve, protect, and enhance the natural environment. Sierra Club has approximately 750,000 members, including more than 21,000 members in Michigan and more than 6,500 members in the Sierra Club's local Southeast Michigan Group, which includes Wayne County. Individual

members of the Sierra Club have suffered or may suffer injury to their environmental, recreational, aesthetic, and/or economic interests as a result of EES Coke's activities. Sierra Club members living in Wayne County near EES Coke's River Rouge facility observe and experience the adverse effects of air pollution, including health problems, difficulty breathing, and limitations on their ability to enjoy outdoor activities like running, speed walking, biking, and gardening. *See* Ex. B, Declaration of Theresa Landrum; Ex. C, Declaration of Vicki Dobbins; Ex. D, Declaration of Delores Leonard. Members' use and enjoyment of the air in their neighborhoods is impaired by pollution in excess of legal limitations and the impact of that air pollution on public health and visibility. The Coke Oven Battery emits SO_2 and other pollutants that exacerbate air pollution in the areas around and downwind of the plant.

21. This pollution harms the health, recreational, and aesthetic interests of the Sierra Club's members as more fully described in the standing declarations provided in Exhibits B-D. In summary, these harms include that Sierra Club members have reduced or ceased outdoor activities they used to enjoy in their neighborhood, such as running, speed walking, gardening, and bicycling due to concerns about pollution in their neighborhood from industrial sources, including EES Coke. Members also keep their windows closed at home and rely on air conditioners due to concerns about the air pollution, and some members have

undertaken home improvements such as installing a central air conditioning system, air filters, and new windows to try to reduce the amount of pollution entering their homes. They suffer from asthma and are concerned for their health. Sierra Club members want to see EES Coke held accountable for its unlawful contributions to air pollution.

STATUTORY FRAMEWORK

22. Congress enacted the CAA "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

23. As described below, the Act and its regulations include both a PSD program for areas in attainment with air quality standards and a Nonattainment NSR program for areas out of attainment with air quality standards. Together, these programs are referred to as New Source Review or NSR.

24. The Act requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for "criteria pollutants," including SO_2 and particulate matter, those for which air quality criteria have been issued pursuant to 42 U.S.C. § 7408. *See* 42 U.S.C. § 7409. The primary NAAQS are to be adequate to protect the public health with an adequate margin of safety, and the secondary NAAQS are to be adequate to protect the public welfare from any

known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

25. The Act requires each state to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. 42 U.S.C. § 7407(d). An area that meets the NAAQS for a particular pollutant is an "attainment" area. An area that does not meet the NAAQS is a "nonattainment" area.

26. The Coke Oven Battery is located in Wayne County, Michigan. At all times relevant to this Complaint, the portion of Wayne County where the Coke Oven Battery is located was classified as nonattainment for SO_2 and as in attainment for $PM_{2.5}$. *See* 78 Fed. Reg. 47,191 (Aug. 5, 2013); 78 Fed. Reg. 53,272 (Aug. 29, 2013).

27. Each state must adopt and submit to EPA for approval a SIP that provides for the attainment, maintenance, and enforcement of the NAAQS. 42 U.S.C. § 7410. Each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution. 42 U.S.C. § 7410(a)(2).

28. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration of air quality in areas

designated as in attainment with the NAAQS. These requirements are designed to protect public health and welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to here as the "PSD program."

29. The PSD program applies in this case because the Coke Oven Battery is located in an area designated as attainment for $PM_{2.5}$.

30. Each state must adopt and submit to EPA for approval a SIP that includes, among other things, regulations to prevent the significant deterioration of air quality under 42 U.S.C. §§ 7471-7475. *See* 42 U.S.C. § 7410.

31. Upon EPA approval, state SIP requirements are federally enforceable. *See* 42 U.S.C. § 7413(a), (b); 40 C.F.R. § 52.23.

32. On March 25, 2010, EPA fully approved Michigan's PSD SIP provisions. 75 Fed. Reg. 14,352. The Michigan PSD SIP provisions are codified at Michigan Admin. Code R. 336.2801 *et. seq*.

33. As relevant here, the PSD program requires that certain types of sources obtain PSD permits and install stringent pollution controls when they are modified. 42 U.S.C. § 7475(a); Mich. Admin. Code R. 336.2802(3).

34. Under the Michigan SIP, the triggering modification is known as a "major modification" and defined as "any [p]hysical change in or change in method of operation of a major stationary source that would result in" a significant emissions increase and a significant net emissions increase of a regulated pollutant. Mich. Admin. Code R. 336.2801(aa); *see also* 42 U.S.C. § 7411(a)(4). The relaxation or removal of a permit term limiting pollution is a change that can trigger PSD if a significant emissions increase and significant net emissions increase of a regulated pollutant would result. Mich. Admin. Code R. 336.2801(aa), 336.2818(2).

35. A "significant emissions increase" occurs when the difference between "baseline actual emissions" before the change, as defined by Mich. Admin. Code R. 336.2801(b), and "projected actual emissions" for the period after the change, as defined by Mich. Admin. Code R. 336.2801(ll), exceeds the significance threshold for the pollutant at issue. Mich. Admin. Code R. 336.2801(rr). A "net emissions increase" is the difference between the emissions increase calculated as required by Mich. Admin. Code R. 336.2802(4) and any other increases or decreases allowed in the netting process under Mich. Admin. Code R. 336.2801(ee). Such an increase is "significant" if it exceeds the significance threshold for the pollutant at issue. Mich. Admin. Code R. 336.2801(qq). An increase of 40 tons per year of SO_2 or more is a significant increase of SO_2 and a significant increase of $PM_{2.5}$. Mich.

Admin. Code R. 336.2801(qq)(C), (F).

36. Because SO_2 can convert to $PM_{2.5}$ once in the atmosphere, it is regulated as a "precursor" to $PM_{2.5}$. 73 Fed. Reg. 28,321, 28,327-28 (May 16, 2008). Thus, a significant net emissions increase of SO_2 can require New Source Review compliance for $PM_{2.5}$. Mich. Admin. Code R. 336.2818.

37. A source with a major modification in an attainment or unclassifiable area must install and operate Best Available Control Technology ("BACT") and defined in 42 U.S.C. § 7479(3) and Mich. Admin. Code R. 336.2801(f). 42 U.S.C. § 7475(a)(4); Mich. Admin. Code R. 336.2802(3), 336.2810. Such sources have an ongoing obligation to operate BACT. Mich. Admin. Code R. 336.2810(3).

38. The relevant law defines BACT, in pertinent part, as "an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility . . . ." Section 169(3) of the Act, 42 U.S.C. § 7479(3); Mich. Admin. Code Rule 336.2801(f).

39. Part D of Title I of the CAA, 42 U.S.C. §§ 7501-7515, sets forth provisions for New Source Review requirements for areas designated as nonattainment for purposes of meeting the NAAQS standards. The Nonattainment

NSR program is intended to reduce emissions of air pollutants in areas that have not met the NAAQS so that the areas make progress towards meeting the NAAQS. These provisions are referred to here as "Nonattainment NSR."

40. The Nonattainment NSR program applies in this case because the Coke Oven Battery is located in an area designated as nonattainment for SO_2.

41. A state is required to adopt Nonattainment NSR SIP rules that include provisions that require that all permits for the construction and operation of modified major stationary sources within nonattainment areas conform to the requirements of 42 U.S.C. § 7503. *See* 42 U.S.C. § 7502(c)(5). The Act sets forth a series of requirements for the issuance of permits for major modifications to major stationary sources within nonattainment areas. 42 U.S.C. § 7503.

42. On December 16, 2013, EPA approved Mich. Admin. Code R. 336.2901 to 336.2908 ("Part 19") as part of the federally enforceable SIP for Michigan, titled, "New Source Review for Major Sources Impacting Nonattainment Areas." 78 Fed. Reg. 76064. These provisions are federally enforceable. 42 U.S.C. § 7413(a), (b); 40 C.F.R. § 52.23.

43. Like the PSD program, the Nonattainment NSR program requires that certain types of sources obtain permits and install stringent pollution controls when they are modified. 42 U.S.C. § 7503, Mich. Admin. Code R. 336.2908.

44. Under the Michigan SIP, the relevant modification is known as a

"major modification" and is defined as any physical change or change in the method of operation that would result in both a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant from a major stationary source. Mich. Admin. Code R. 336.2901(t). The relaxation or removal of a permit term limiting pollution is a change that can trigger Nonattainment NSR if a significant emissions increase and significant net emissions increase of a regulated pollutant would result. Mich. Admin. Code R. 336.2901(t), 336.2902(5)(b).

45. "Net emissions increase" means the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular change at a stationary source; and (b) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable as calculated under the applicable rules. A net emissions increase is significant if it is significant for that pollutant. Mich. Admin. Code R. 336.2901(w). An increase of 40 tons per year or more of SO_2 is a "significant" emissions increase. Mich. Admin. Code R. 336.2901(gg).

46. A "major modification" occurs where actual emissions data after the completion of the change shows a significant emissions increase and a significant net emissions increase. Mich. Admin. Code R. 336.2902(2)(b).

47. Among other requirements, a source that performs a major

modification must install and operate pollution controls to comply with the Lowest Achievable Emissions Rate ("LAER"). Mich. Admin. Code R. 336.2908(3). Such sources have an ongoing obligation to comply with LAER. Mich. Admin. Code R. 336.2908(3).

48. The relevant law defines LAER, in pertinent part, as "the most stringent emissions limitation which is contained in [any SIP] for such class or category of sources, unless . . . the proposed source demonstrates that such limitations are not achievable, or . . . which is achieved in practice by such class or category of source, whichever is more stringent." 42 U.S.C. § 7501(3); Mich. Admin. Code R. 336.2901(r).

49. The Michigan SIP requires sources to assess NSR applicability before undergoing a physical or operational change, and maintain and report certain information where there is a "reasonable possibility" that a change may qualify as a major modification. Mich. Admin. Code R. 336.2818(3). Under the Michigan SIP, the requirements differ for PSD and Nonattainment NSR, both of which apply to EES Coke.

50. Under Michigan's PSD program, a "reasonable possibility" exists where the projected actual emissions increase—though below the significance level for immediately triggering NSR—is at least 50% of the significance level. Mich. Admin. Code R. 336.2818(3)(f). In that case, the source must preserve the

emissions calculations it performed before embarking on the change and, in some cases, report any actual increases after the change.

51. Under Michigan's Nonattainment NSR program, a reasonable possibility exists whenever a source is required to obtain a permit to install under the Michigan SIP and does not qualify for an exemption. Mich. Admin. Code R. 336.2902(6)(f). When the Nonattainment NSR reasonable possibility provision applies, the source must (i) preserve its pre-change emissions analysis and (ii) submit a report to the state should actual emissions after the change exceed the baseline emissions by a significant amount and differ from the source's preconstruction pre-change projection. Mich. Admin. Code R. 336.2902(6)(e). Any post-change report is due 60 days after the year of increased emissions ends. *Id*.

ENFORCEMENT PROVISIONS

52. The Act provides that the EPA Administrator may bring a civil action whenever, on the basis of any information available, the Administrator finds that any person has violated or is in violation of any other requirement or prohibition of, *inter alia*, the PSD, Nonattainment NSR, or Title V requirements of the Act, or any rule or permit issued thereunder; or the provisions of any approved SIP or any permit issued thereunder. 42 U.S.C. § 7413(a), (c); *see also* 40 C.F.R. § 52.23.

53. The Act authorizes EPA to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per

day for each violation, a figure that has been updated for inflation over time. 42 U.S.C. § 7413(b). As relevant here, the maximum penalty is $37,500 per day per violation for violations occurring through November 2, 2015, and $109,024 for violations occurring after November 2, 2015. *See* Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701; 40 C.F.R. § 19.4; 87 Fed. Reg. 1676, 1679 (Jan. 12, 2022).

54. In addition, the Act authorizes EPA to initiate an action for injunctive relief as necessary to prevent the construction, modification, or operation of a major emitting facility which does not conform to the PSD requirements in Part C of Title I of the Act.

GENERAL ALLEGATIONS

The Coke Oven Battery

55. The Coke Oven Battery is a collection of 85 ovens located on Zug Island in River Rouge, Michigan. The ovens use coal and other raw materials to produce metallurgical coke, a raw material for making steel. Through this coking process, the ovens also produce coke oven gas, a volatile gas that can be used as a fuel and produces SO_2 and other air pollution when burned.

56. The Coke Oven Battery can send the coke oven gas to other facilities to use as fuel, burn the gas to power its own operations, or burn it at a flare at the facility. When used to power its own operations, the process is called "underfire

combustion."

57. At the time of the modification and emissions increases alleged herein, EES Coke was the owner and operator of the Coke Oven Battery.

58. At all times relevant to this Complaint, the Coke Oven Battery has had the potential to emit more than 100 tons per year of pollutants subject to regulation under the Act, including SO_2 and $PM_{2.5}$.

59. In 2021, the Coke Oven Battery emitted 3,608 tons of SO_2.

60. At all times relevant to this Complaint, the Coke Oven Battery has been a coke oven battery as that term is used in 42 U.S.C. § 7479(1).

61. At all times relevant to this complaint, the Coke Oven Battery was a "major emitting facility" and a "major stationary source," within the meaning of the Act and the Michigan SIP for SO_2 and $PM_{2.5}$.

Permitting History

62. In the late 1980s, the owner of the Coke Oven Battery decided to rebuild the battery. The owner told Michigan that doing so would not increase pollution and so would not require a New Source Review permit. Michigan issued a permit in 1990 that included certain limits to ensure that New Source Review was not triggered.

63. As revised, that permit remained in place when EES Coke sought to change it in 2014. One of those proposed changes is particularly relevant here:

EES Coke sought to remove the limit on underfire combustion of coke oven gas which had been in place since the 1990 permit for rebuilding the battery. In seeking the change, EES Coke predicted its future pollution levels and told the state that there would not be a significant emissions increase of SO_2 or $PM_{2.5}$.

64. In seeking to revise the permit, EES Coke submitted information concerning its baseline and projected emissions for SO_2 in order to determine New Source Review applicability. After review by the State, EES Coke proposed and the final permit reflects that the "baseline" SO_2 emissions were 2,039 tons per year and the projected future SO_2 emissions were 3,117 tons per year. While the projection was for a 1,078 ton per year increase, EES Coke claimed that virtually all of the increase could be excluded under the rules. The company asserted that there would not be a significant net emissions increase and thus there was no major modification. Michigan issued the permit removing the coke oven gas underfire limit, as EES Coke requested, among other changes.

Pollution Data

65. However, since the removal of the limits, the Coke Oven Battery has emitted more pollution than before the change, including in 2017, 2018, 2019, and 2021, and more than EES Coke predicted in its submission to the State. At EPA's request, EES Coke provided emissions data for the Coke Oven Battery.

66. The data provided by EES Coke shows that annual SO_2 emissions

surpassed 3,600 tons in 2021—over 500 tons more than the maximum amount EES Coke had projected it would emit. In addition, the data shows that SO_2 emissions from underfire combustion went from 1,271 tons per year before the permit modification to nearly 2,000 tons per year afterward—well more pollution than EES Coke could have emitted before the permit change.

FIRST CLAIM FOR RELIEF

(Major Modification under PSD and Nonattainment NSR)

67. Paragraphs 1 through 66 are realleged and incorporated herein by reference.

68. In 2014, Defendant sought and obtained the removal of the permit limit on the amount of coke oven gas that can be burned as underfire combustion at the Coke Oven Battery. Such a removal of a permit limit is a "change in the method of operation" and can be a "major modification," as defined in the Michigan SIP, if it results in a pollution increase. This change in the method of operation resulted in a significant emissions increase and a significant net emissions increase of SO_2 from the Coke Oven Battery by allowing Defendant to burn more coke oven gas as underfire combustion than would have been allowed with the prior permit. Because SO_2 is regulated as a precursor to fine particulate matter, the significant emissions increase also constitutes a major modification for $PM_{2.5}$.

69. Defendant did not comply with the Nonattainment NSR or PSD

requirements in the Act and the Michigan SIP with respect to the major modification and subsequent operations at the Coke Oven Battery for SO_2 and $PM_{2.5}$. Among other things, Defendant:

a. undertook the major modification without first obtaining Nonattainment NSR (for SO_2) or PSD (for $PM_{2.5}$) permit(s) for the construction and operation of the modified facility;

b. undertook the major modification without undergoing LAER or BACT determinations for SO_2 and $PM_{2.5}$ in connection with the major modification;

c. undertook the major modification without installing LAER or BACT for control of SO_2 emissions as a direct pollutant and as a precursor to $PM_{2.5}$;

d. failed to operate LAER or BACT for control of SO_2 emissions pursuant to a LAER or BACT determination;

e. failed to operate in compliance with LAER or BACT emission limitations; and

f. operated the unit after undergoing an unpermitted major modification for SO_2 and $PM_{2.5}$.

70. Defendant has violated and continues to violate the Nonattainment NSR and PSD provisions of the Michigan SIP. Unless restrained by an order of this

Court, these violations will continue.

71. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), and Section 167 of the Act, 42 U.S.C. § 7477, the violations set forth above subject Defendant to injunctive relief and a civil penalty of up to $109,024 per day.

SECOND CLAIM FOR RELIEF

(Reasonable Possibility Emissions Reporting)

72. Paragraphs 1 through 71 are realleged and incorporated herein by reference.

73. Defendant sought and obtained a permit to install in 2014 that included the removal of the permit limit on the amount of coke oven gas limit that can be burned as underfire combustion at the Coke Oven Battery.

74. Because a permit to install was required, there was a "reasonable possibility," as used in the Michigan SIP's Nonattainment NSR provisions, that the underlying change was a major modification. Mich. Admin. Code R. 336.2902(6)(f). In such circumstances, the Michigan SIP requires, *inter alia*, that sources submit a post-change report to the State if actual emissions after the change exceed the baseline emissions by a significant amount and differ from the source's pre-change projection. Mich. Admin. Code R. 336.2902(6)(e).

75. Based on data collected by Defendant, the Coke Oven Battery post-change emissions have exceeded the baseline emissions level by a significant

amount and differed from Defendant's pre-change projection in the 2014 permitting process.

76. Defendant did not submit any post-change reports to the State, as required by Mich. Admin. Code R. 336.2902(6)(e), until after the United States' September 16, 2020 notice of violation. On November 20, 2020, Defendant sent a letter to the State providing reports for calendar years 2018 and 2019. For both years, actual emissions exceeded the baseline emissions by a significant amount and differed from the pre-change projection. *See* Mich. Admin. Code R. 336.2902(6)(e). The reports for calendar years 2018 and 2019 were provided at least eight months after the regulations required. *See id*.

77. Defendant has violated the Michigan SIP.

78. As provided in Section 113(b) of the Act, 42 U.S.C. § 7413(b), the violation set forth above subject Defendant to a civil penalty of up to $109,024 per day.

PRAYER FOR RELIEF

WHEREFORE, based upon all the allegations set forth above, Sierra Club requests that this Court:

1. Declare the Defendant to have violated and to be in continuing violation of the Clean Air Act;

2. Permanently enjoin Defendant from operating the Coke Oven Battery,

including the construction of future modifications, except in accordance with the Clean Air Act and any applicable regulatory requirements;

3. Order Defendant to apply for New Source Review permit(s) under Parts C and/or D of Title I of the Clean Air Act, as appropriate, that conform with the permitting requirements in effect at the time of the 2014 permitting action, for each pollutant in violation of the New Source Review requirements of the Clean Air Act;

4. Order Defendant to install and operate best available control technology and/or comply with the lowest achievable emissions rate, as appropriate, at the Coke Oven Battery, for each pollutant in violation of the New Source Review requirements of the Clean Air Act;

5. Order Defendant to take other appropriate actions to remedy, mitigate, and offset the harm to public health and the environment caused by the violations of the Clean Air Act alleged above;

6. Assess a civil penalty against Defendant of up to $109,024 per day per violation;

7. To the maximum extent permitted by the Clean Air Act, order that such civil penalties be used in one or more beneficial mitigation projects to enhance the public health and environment for the benefit of the Citizen Plaintiff's members living nearby the Coke Oven Battery, as provided by 42 U.S.C. §

7604(g)(2);

8. Order Defendant to pay reasonable attorneys' fees and costs (including expert witness fees), as provided by 42 U.S.C. § 7604(d), and;

9. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

s/Deborah Musiker
Deborah Musiker (IL 6231166)
(also known as: Debbie Chizewer)
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
312-800-8307
dchizewer@earthjustice.org

Mary Rock (IL 6332240)
Earthjustice
311 S. Wacker Drive
Suite 1400
Chicago, IL 60606
312-800-8336
mrock@earthjustice.org

Nick Leonard (P79283)
Great Lakes Environmental Law Center
4444 Second Ave.
Detroit, MI 48201
313-782-3372
nicholas.leonard@glelc.org

Shannon Fisk (IL 6269746)
Earthjustice
48 Wall Street
15th Fl.
New York, NY 10005
215-327-9922
sfisk@earthjustice.org

DECLARATION OF THERESA LANDRUM

I, Theresa Landrum, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The statements below are based on my personal knowledge.
2. I am a member of the Sierra Club. I am a member because the Sierra Club works to improve air quality in my community by holding polluters accountable for violating air quality laws and regulations.
3. I have lived in my current home on South Liddesdale Street in Southwest Detroit in the 48217 zip code for my entire life. I currently reside at my home on South Liddesdale Street with my sister.
4. I am aware that EES Coke, LLC operates a coke oven battery ("Plant") on Zug Island in River Rouge, Michigan. I have observed the coke oven gas flares operating at the Plant.
5. I am aware that the Plant is a source of sulfur dioxide pollution.
6. I am aware that the United States Environmental Protection Agency ("EPA") has designated a portion of Southern Wayne County as a "nonattainment area" for sulfur dioxide. I understand that this area was designated as a nonattainment area because it has levels of sulfur dioxide pollution that exceed National Ambient Air Quality Standards.
7. I am aware that the sulfur dioxide nonattainment area includes both the Plant and my home on South Liddesdale Street.
8. I am aware that on June 1, 2022, the United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency, brought a civil action under the Clean Air Act against EES Coke, LLC.
9. I am concerned about air quality in my community and surrounding areas.

10. I am either a member, director, or active participant in a number of organizations that seek to improve air quality, including: Sierra Club; the Michigan Environmental Justice Coalition; Southwest Detroit Environmental Vision; the Original United Citizens of Southwest Detroit; and Community Action to Promote Healthy Environments.
11. I have been appointed and am currently serving as a member of the Michigan Advisory Council on Environmental Justice, which advises the Michigan Department of Environment, Great Lakes, and Energy on environmental justice issues in Michigan.
12. Through my extensive work to improve air quality in the metropolitan-Detroit and Wayne County area, I am aware that sulfur dioxide pollution can harm the respiratory system and make breathing difficult. I am also aware that the sulfur dioxide can contribute to the formation of fine particulate pollution, which can cause a range of respiratory and cardiovascular health problems.
13. I have been diagnosed with chronic sinusitis. Due to this condition, I experience vertigo and extreme headaches. My doctor informed me that air pollution in my neighborhood may be a contributing factor to my chronic sinusitis.
14. I have been diagnosed with cancer. I have undergone surgery and chemotherapy to treat my cancer.
15. I have been diagnosed with diabetes. To manage my diabetes, I have been instructed by my doctor to maintain a healthy diet, monitor my blood sugar, and exercise regularly.
16. I regularly experience difficulty breathing when exercising and performing everyday functions around my home, such as going up and down my household steps.
17. I enjoy spending time outdoors and my doctor has urged me to exercise in order to manage my diabetes. However, I believe that air pollution is one of the key contributors

to my health issues, including my sinusitis and my breathing difficulties. I also suspect that air pollution was a main contributor to my cancer. Because of these concerns, I am very hesitant to exercise outdoors in my community. I believe air emissions from the Plant are a significant contributor to the air pollution in my neighborhood.

18. While I used to run and go speed walking in my neighborhood for exercise, I do not do those activities anymore due to my health issues and concerns regarding air pollution.

19. I have made a number of improvements to my home to reduce indoor air pollution, including installing a central air conditioning system so that I do not have to open my windows in the summer, putting hypoallergenic covers on my mattress and pillows, and installing high-efficiency air filters in my furnace.

20. I am concerned about the impacts that sulfur dioxide and fine particulate emissions from the Plant have had and will have on my health.

21. I believe that EES Coke, LLC must be held accountable for any violation of the Clean Air Act, particularly a violation pertaining to sulfur dioxide emissions given that the Plant is located in a sulfur dioxide non-attainment area.

22. I support Sierra Club's lawsuit to enforce the Clean Air Act and to ensure that EES Coke, LLC is following the laws and regulations intended to protect public health, including my own and my family's.

23. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 04 day of 09, 2022.

Theresa L. Landrum

THERESA LANDRUM

DECLARATION OF VICKI DOBBINS

I, Vicki Dobbins, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The statements below are based on my personal knowledge.
2. I am a member of the Sierra Club. I am a member because the Sierra Club addresses environmental issues that I care about, including clean air in my community.
3. As a child, I lived on Campbell Street in River Rouge with my family. As an adult, I lived in Detroit for approximately thirty years. I moved back to my childhood home on Campbell Street in River Rouge in 1999 and it is my current residence.
4. I am aware that EES Coke LLC operates a coke oven battery ("Plant") on Zug Island in River Rouge, Michigan. I have observed the coke oven gas flares operating at the Plant.
5. I am aware that the Plant is a source of sulfur dioxide pollution.
6. I am aware that the United States Environmental Protection Agency ("EPA") has designated a portion of Southern Wayne County as a "nonattainment area" for sulfur dioxide. I understand that this area was designated as a nonattainment area because it has levels of sulfur dioxide pollution that exceed National Ambient Air Quality Standards.
7. I am aware that the sulfur dioxide nonattainment area includes both the Plant and my home on Campbell Street.
8. I am aware that on June 1, 2022, the United States of America, acting at the request of the Administration of the United States Environmental Protection Agency, brought a civil action under the Clean Air Act against EES Coke.
9. I have routinely expressed my concerns about air quality and its public health impact in interviews with journalists, including in article in the New York Times. I also regularly

attend a variety of community meetings and events to express my concerns regarding air quality and its public health impact.

10. Through my extensive work to improve air quality in the metropolitan-Detroit and Wayne County area, I am aware that sulfur dioxide pollution can harm the respiratory system and make breathing difficult. I am also aware that the sulfur dioxide can contribute to the formation of fine particulate pollution, which can cause a range of respiratory and cardiovascular health problems.

11. Soon after moving to River Rouge as an adult, I was diagnosed with asthma. I use an inhaler to treat my asthma symptoms. I believe air pollution, including sulfur dioxide and fine particulate matter, aggravate my asthma. I believe the emissions from the Coke Oven Battery is a significant contributor to the air pollution that triggers my asthma symptoms.

12. I enjoy spending time outdoors, including biking. Due to air pollution in my neighborhood and the threat of asthma attacks, I generally travel to areas outside of my community to ride my bike.

13. I have made a number of improvements to my home to reduce indoor air pollution, including installing new windows and using an air conditioner rather than opening windows during periods of warm weather.

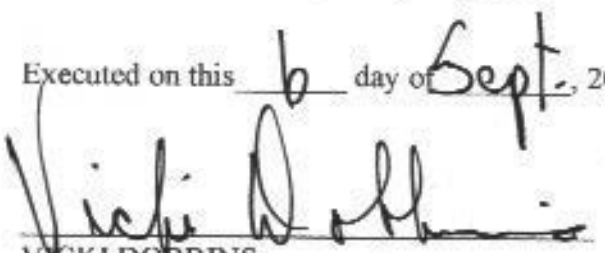
14. I am concerned about the impacts that sulfur dioxide and fine particulate emissions from the Plant have had and will have on my health.

15. I believe that EES Coke, LLC must be held accountable for any violation of the Clean Air Act, particularly a violation pertaining to sulfur dioxide emissions given that the Plant is located in a sulfur dioxide non-attainment area.

16. I support Sierra Club's lawsuit to enforce the Clean Air Act and to ensure that EES Coke, LLC is following the laws and regulations intended to protect public health, including my own and my family's.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 6 day of Sept., 2022.



VICKI DOBBINS

DECLARATION OF DOLORES LEONARD

I, Dolores Leonard, hereby declare as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The statements below are based on my personal knowledge.

2. I am a member of the Sierra Club and have been a member since 2003. I am a member because the Sierra Club addresses environmental issues that I care about, including clean air in my community.

3. I have lived in my current home on South Bassett Street in Southwest Detroit in the 48217 zip code since 1957. I currently reside at my home on South Bassett Street.

4. I am aware that EES Coke LLC operates a coke oven battery ("Plant") on Zug Island in River Rouge, Michigan.

5. I have observed the coke oven gas flares operating at the Plant.

6. I am aware that the Plant is a source of sulfur dioxide pollution.

7. I am aware that the United States Environmental Protection Agency ("EPA") has designated a portion of Southern Wayne County as a "nonattainment area" for sulfur dioxide. I understand that this area was designated as a nonattainment area because it has levels of sulfur dioxide pollution that exceed National Ambient Air Quality Standards.

8. I am aware that the sulfur dioxide nonattainment area includes both the Plant and my home on South Bassett Street.

9. I am aware that on June 1, 2022, the United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency, brought a civil action under the Clean Air Act against EES Coke.

10. I am concerned about air quality in my community and throughout the metropolitan-Detroit and Wayne County area.

11. I am either a member, coordinator, or active participant in a number of organizations that seek to improve air quality, including the Sierra Club. In the past, I have also been a member of the Original United Citizens of Southwest Detroit.

12. I have routinely reported my concerns regarding air quality to the Michigan Department of Environment, Great Lakes, and Energy. I chose to report these concerns because a significant number of children in my neighborhood have been diagnosed with asthma and because many senior citizens suffer from respiratory conditions, hypertension, and cardiac conditions that may be caused by environmental and air pollution.

13. Through my extensive work to improve air quality in the metropolitan-Detroit and Wayne County area, I am aware that sulfur dioxide pollution can harm the respiratory system and make breathing difficult. I am also aware that the sulfur dioxide can contribute to the formation of fine particulate pollution, which can cause a range of respiratory and cardiovascular health problems.

14. I have been diagnosed with asthma, which, from time to time, causes me to experience shortness of breath and tightness in my chest. To manage my asthma, I take medication daily and use an inhaler as needed.

15. I generally try to avoid spending time outside in my community due to my concerns about air pollution. Before I go outside in my community, I generally check air quality information. If the air quality is poor, I will either not leave the home or limit my time outside of my home to essential activities. I rarely sit in my backyard because I have experienced difficulty breathing when experienced difficulty breathing when doing so. I do not exercise outdoors in my community due to concerns about air quality and the impact it will have on my health. When I do exercise, I do so indoors. While I enjoy gardening, I do it less often than I used to and limit myself to gardening during the middle of the day because I seem to be able to breathe easier during this time.

16. I try to avoid travelling on Jefferson Avenue because of the prevalence of industrial sources of air pollution, including EES Coke LLC, on or nearby that road.

17. When I am at home, I keep my windows and doors shut due to concerns about air pollution. In the past, I have experienced significant difficulty breathing when I kept my windows open at night. While I do not like using my central air conditioning system because it exacerbates my arthritis symptoms, I must use it because I am concerned about opening my windows and doors as my chest becomes compacted and it becomes difficult to breathe.

18. I believe that EES Coke, LLC must be held accountable for any violation of the Clean Air Act, particularly a violation pertaining to sulfur dioxide emissions given that the Plant is located in a sulfur dioxide non-attainment area.

19. I support Sierra Club's lawsuit to enforce the Clean Air Act and to ensure that EES Coke, LLC is following the laws and regulations intended to protect public health, including my own and my family's.

20. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of September, 2022.

Dolores Leonard

DOLORES LEONARD, ED.D., NBCC, LPC