

ORAL ARGUMENT NOT YET SCHEDULED

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

WHITE STALLION ENERGY
CENTER, LLC, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 12-1100
(and consolidated case
Nos. 12-1101 and 12-1102)

**MOTION OF AMERICAN ACADEMY OF PEDIATRICS, AMERICAN
LUNG ASSOCIATION, AMERICAN NURSES ASSOCIATION,
AMERICAN PUBLIC HEALTH ASSOCIATION, CHESAPEAKE BAY
FOUNDATION, CITIZENS FOR PENNSYLVANIA'S FUTURE, CLEAN
AIR COUNCIL, CONSERVATION LAW FOUNDATION, ENVIRONMENT
AMERICA, ENVIRONMENTAL DEFENSE FUND, IZAAK WALTON
LEAGUE OF AMERICA, NATURAL RESOURCES COUNCIL OF MAINE,
NATURAL RESOURCES DEFENSE COUNCIL, OHIO
ENVIRONMENTAL COUNCIL, PHYSICIANS FOR SOCIAL
RESPONSIBILITY, SIERRA CLUB, AND WATERKEEPER ALLIANCE
TO INTERVENE ON BEHALF OF RESPONDENT**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Rule 15(b) of
this Court, American Academy of Pediatrics, American Lung Association,
American Nurses Association, American Public Health Association, Chesapeake
Bay Foundation, Citizens for Pennsylvania's Future, Clean Air Council,

Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, Natural Resources Defense Council, Ohio Environmental Council, Physicians for Social Responsibility, Sierra Club, and Waterkeeper Alliance (the “Public Health and Environmental Groups”) respectfully move for leave to intervene in the above-captioned consolidated matter, in support of Respondent U.S. Environmental Protection Agency (“EPA” or “the Agency”). Counsel for EPA has stated that the Respondent takes no position on this motion. Counsel for petitioner White Stallion Energy Center, LLC (“White Stallion”) has indicated that White Stallion does not oppose the relief sought by this motion. Counsel for National Mining Association (“NMA”) states that NMA takes no position on this motion. Counsel for National Black Chamber of Commerce, and Institute For Liberty advises that those Petitioners do not oppose this motion.

BACKGROUND

The present cases seek review of the final rule promulgated by EPA titled “National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,” published at 77 Fed. Reg. 9304 (Feb. 16, 2012) (“Mercury and Air Toxics Standards” or “MATS Rule”). The Final MATS Rule limits emissions of highly toxic air pollutants, including mercury, arsenic, chromium, lead, hydrogen chloride, hydrogen fluoride

and hydrogen cyanide, from new and existing coal- and oil-fired electric utility steam generating units (“EGUs” or “power plants”).

A. Regulatory and Litigation History

Section 112 of the Clean Air Act establishes a detailed statutory scheme intended to reduce emissions of hazardous air pollutants (“HAPs”)—air pollutants which, even in small quantities, are “carcinogenic, mutagenic, teratogenic, neurotoxic,” cause “reproductive dysfunction,” or are otherwise “acutely or chronically toxic.” *See* 42 U.S.C. § 7412(b)(2). Section 112 directs EPA to establish emission limits for “all categories and subcategories of major sources and area sources” that emit hazardous air pollution. 42 U.S.C. §§ 7412(c),(d)(1)-(3),(e)(1).

Coal- and oil- fired power plants emit vast quantities of air toxics—they are, for example, responsible for approximately 50 percent of the nation’s air-borne mercury pollution, 77 percent of its emissions of toxic acid gases (such as hydrogen chloride and cyanide), and 62 percent of its air-borne arsenic pollution. *See* 76 Fed. Reg. 24,976, 24,983 (May 3, 2011). Nevertheless, Congress in 1990 deferred regulation of power plants pending the completion of a study of the public health hazards reasonably anticipated to result from power plants’ toxic air emissions. Congress directed the EPA Administrator to determine whether regulation of EGUs under section 112 is “appropriate and necessary” after considering the results of that study. 42 U.S.C. § 7412(n)(1)(A). EPA completed the required study in 1998; that study, supported by related reports from the

National Academy of Sciences, concluded that fossil-fuel power plants, especially coal-fired plants, were a significant source of hazardous air pollutants and the most significant contributor to mercury pollution, which poses particularly serious neurotoxic risks. *See* 76 Fed. Reg. at 24, 983-84.

On December 20, 2000, EPA published its “Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units,” 65 Fed. Reg. 79,825 (Dec. 20, 2000) (“Listing Decision”). EPA determined that regulating “HAP emissions from coal- and oil-fired electric utility steam generating units under section 112 [of the Clean Air Act] is appropriate and necessary,” and “add[ed] coal and oil-fired electric utility steam generating units to the list of source categories under section 112(c) of the CAA.” 65 Fed. Reg. 79,825, 79,830 & 79,831. The Utility Air Regulatory Group (UARG) and Edison Electric Institute (EEI) challenged that decision in this Court. Several of the Public Health and Environmental Groups intervened to support the respondent EPA. The Court dismissed the petition on jurisdictional grounds. *Utility Air Regulatory Group v. EPA*, 2001 WL 936363, No. 01-1074 (D.C. Cir. July 26, 2001).

Because EPA added EGUs to the § 112(c) list on December 20, 2000, the agency’s § 112 rule for EGUs was due no later than December 20, 2002. 42 U.S.C. § 7412(c)(5). After EPA missed this deadline, several of the Public Health and Environmental Groups filed a deadline suit to compel the agency to perform its non-discretionary duty. *Izaak Walton League v. Leavitt*, D.D.C. No. 04-0694. Pursuant to a settlement agreement in that case, EPA was required to issue air toxics emission standards for coal- and oil-fired power plants by March 15, 2005.

Instead of doing so, however, EPA issued a “Delisting Rule” seeking to undo the 2000 Listing Decision. 70 Fed. Reg. 28,606 (Mar. 29, 2005). Several states, tribes, and non-governmental organizations, including several of the Public Health and Environmental Groups, challenged that action, and in 2008, this Circuit vacated both the Delisting Rule, and the companion Clean Air Mercury Rule (“CAMR”) which was based on the Delisting Rule, in their entirety. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008).

The vacatur of the Delisting Rule confirmed EPA’s ongoing obligation to finalize emission standards under section 112 of the Clean Air Act for coal- and oil-fired EGUs. *See New Jersey*, 517 F.3d at 583 (EGUs remain listed under § 112). Several of the Public Health and Environmental Groups filed suit in December 2008 seeking enforceable deadlines for EPA to fulfill its obligation. *American Nurses Assn. v. EPA*, DDC No. 08-2198. The parties settled that case, and a consent decree was entered by the court requiring the Agency to propose and finalize air toxics standards for coal- and oil-fired power plants by November 16, 2011. The Agency signed the Final MATS Rule on December 21, 2011. It was published on February 16, 2012. White Stallion, the National Mining Association, the National Black Chamber of Commerce and the Institute for Liberty filed petitions for review the same day; those petitions have been consolidated.

B. The Mercury and Air Toxics Rule

In the MATS Rule, EPA: confirms its finding that it is “appropriate and necessary” to regulate air toxics from new and existing coal- and oil-fired power

plants under section 112 of the Act; denies a petition submitted by the Utility Air Regulatory Group to delete coal- and oil-fired power plants from the list of categories to be regulated under section 112; promulgates “maximum achievable control technology” standards pursuant to section 112(d) (“MACT standards”), limiting mercury, filterable particulate matter (as a surrogate for non-mercury toxic metals), and hydrogen chloride (as a surrogate for acid gases), as well as two alternative standards, for EGUs fueled by coal and solid oil-derived fuel (i.e., petroleum coke); promulgates MACT standards limiting filterable particulate matter (as a surrogate for all toxic metals), hydrogen chloride, and hydrogen fluoride, as well one alternative standard, for EGUs fueled by liquid oil; and establishes a work-practice standard, under section 112(h) for dioxins, formaldehyde, and other organic air toxics generated by coal- and oil-fired plants.

“New” EGUs – *i.e.*, those for which construction or reconstruction commenced after EPA first proposed § 112 regulations for EGUs, 42 U.S.C. § 7412(a)(4) – must comply with the MATS rule by April 16, 2012 or upon startup, whichever is later, 40 C.F.R. § 63.9984(a). “Existing” EGUs – *i.e.*, all EGUs that are not “new” – have at least until April 16, 2015 to comply, 40 C.F.R. § 63.9984(b). *See* 42 U.S.C. § 7412(i)(3)(A). In addition, Clean Air Act § 112(i)(3)(B) grants permitting authorities discretion to provide an extra year, to April 16, 2016, for existing EGUs that need additional time to install controls, 42 U.S.C. § 7412(i)(3)(B). *See* 76 Fed. Reg. at 9,409-9410. The standards will, when fully implemented, reduce the power sector’s annual mercury emissions by 75 percent, its annual hydrogen chloride emissions by 88 percent, and its fine

particulate emissions by 19 percent. In addition, EPA projects that the MATS Rule will reduce sulfur dioxide—an air pollutant which causes respiratory and other harm—by 41 percent. 77 Fed. Reg. at 9424. These reductions will massively benefit public health and the environment. According to EPA, a significant percentage of the mercury emitted from coal-fired EGUs is deposited onto land or water bodies, where it transforms into methylmercury—a highly toxic form of mercury that accumulates in the aquatic food web. By eating contaminated fish, humans and wildlife are exposed to dangerous levels of methylmercury. 76 Fed. Reg. at 25,007. Women of childbearing age and young children are particularly endangered by the consumption of methylmercury. *Id.* These adverse health effects include neurological and developmental problems such as poor attention span and delayed language development, impaired memory and vision, problems processing information, and impaired fine motor coordination. 76 Fed. Reg. at 25,018. To date, all fifty states and one U.S. territory have advised against consuming freshwater and saltwater fish caught in some or all of the water bodies within the state because of mercury pollution in those waters.¹ The Rule will vastly reduce mercury poisoning suffered by children, especially poor and minority children who are disproportionately harmed by mercury pollution.

The other pollutants limited by the MATS Rule pose similarly severe dangers. Power plants' emissions of chromium and nickel significantly increase cancer risks in nearby communities. *See* 77 Fed. Reg. 9318-19. Acid gases can

¹http://water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/upload/nlfa_slides_2011.pdf

cause respiratory and a variety of other illnesses, and contribute to ecosystem acidification. 76 Fed. Reg. at 25,013. EPA estimates that the reductions in fine particulate matter brought about by the MATS Rule will prevent 4,200–11,000 premature deaths, 4,700 heart attacks, and 130,000 asthma attacks each year after the Rule is fully implemented. 76 Fed. Reg. at 9429.

STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene must provide “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d). This Court has noted that “in the intervention area 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.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (internal quotation marks removed) (reversing denial of intervention under Fed. R. Civ. P. 24(a)). The Public Health and Environmental Groups more than satisfy this test.

Petitioners

White Stallion Energy Center, the National Mining Association, the National Black Chamber of Commerce, and the Institute for Liberty (collectively “Petitioners”) are groups that seek to eliminate, weaken or delay the emission standards for EGUs. For example, the National Mining Association submitted comments contesting EPA’s determination that it is “appropriate and necessary” to regulate air toxics from coal- and oil-fired power plants, arguing that the law

permitted only far weaker limits, and instructing the Agency to withdraw and delay the standards. *See* The National Mining Association's Comments on EPA's Proposed National Emissions Standards for Hazardous Air Pollutants from Coal- and Oil- Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units 1-14 (available at <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2011-0044-4635>).

The Public Health and Environmental Groups

1. The American Academy of Pediatrics ("AAP") is a national nonprofit corporation organized and existing under the laws of Illinois. AAP's more than 60,000 members are pediatricians and pediatric sub-specialists and researchers. AAP's mission is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents and young adults. To promote its mission, AAP has actively participated in proceedings to strengthen and enforce regulations that affect public health standards throughout the United States. AAP has been a party to proceedings to promote, strengthen, and enforce health care standards that address the health, safety, and well-being of infants, children, adolescents, and young adults. AAP has members who are directly and adversely affected by hazardous air pollution from power plants.

2. The American Lung Association ("ALA") is a nonprofit corporation organized and existing under the laws of the state of Maine. ALA has chartered organizations covering all 50 states and the District of Columbia. ALA has a vision

of a world free of lung disease. Its mission is to save lives by preventing lung disease and promoting lung health. As scientific research has shown that air pollution is a major contributor to the worsening of lung disease, the ALA has conducted advocacy and litigation to promote full and timely implementation of the Clean Air Act for many years. The ALA also is committed to improving lung health and preventing lung disease through education. In furtherance of its mission, ALA has actively participated in proceedings to strengthen and enforce regulations that affect public health standards throughout the United States, including proceedings to enforce the Clean Air Act. ALA has been a party to proceedings to promote, strengthen, and enforce public health standards that address the health, safety, and well-being of children, adults, and people with lung disease. ALA has members who are directly and adversely affected by hazardous air pollution from power plants.

3. The American Nurses Association (“ANA”) is a nonprofit corporation organized and existing under the laws of the District of Columbia. ANA represents 3.1 million registered nurses, who also are members of its 54 constituent member associations, located throughout the United States. ANA and its members are dedicated to promoting the health, safety, and well-being of individuals and communities. To promote its associational goals and the goals of its members, ANA has actively participated in proceedings to strengthen and enforce regulations that affect public health and environmental standards throughout the United States. In particular, ANA has been a party to proceedings to promote, strengthen, and enforce health care standards that address the health, safety, and well-being of

infants, children, adolescents, and young adults, including as lead plaintiff in the lawsuit underlying the issuance of the MATS standards. ANA has members who are directly and adversely affected by hazardous air pollution from power plants.

4. The American Public Health Association (“APHA”) is a corporation organized and existing under the laws of Massachusetts. APHA is a national nonprofit corporation consisting of public health researchers, health service providers, administrators, teachers, and other health workers and public health advocates. APHA is the oldest organization of public health professionals in the world and the largest in the United States. APHA has close to 50,000 members throughout the United States. APHA has actively participated in proceedings to strengthen and enforce regulations that affect public health standards throughout the United States. APHA has been a party to proceedings to promote, strengthen, and enforce health care standards that address the health, safety, and well-being of infants, children, adolescents, and young adults. APHA has members who are directly and adversely affected by hazardous air pollution from power plants.

5. Chesapeake Bay Foundation (“CBF”), a corporation organized and existing under the laws of the State of Maryland, is a regional, nonprofit, nonpartisan, public interest advocacy organization with approximately 200,000 members living throughout the Chesapeake Bay region (Maryland, Pennsylvania, New York, Virginia, and West Virginia). CBF is the only independent organization dedicated solely to restoring and protecting the Chesapeake Bay and its tributary rivers. CBF’s goal is to improve water quality by reducing pollution emissions to the Chesapeake Bay, including reducing the atmospheric deposition of air toxics,

including mercury and nickel, from coal- and oil-fired EGUs. CBF owns facilities and operates educational and restoration programs that are adversely affected by the air toxics emitted by coal- and oil-fired EGUs.

6. Citizens for Pennsylvania's Future ("PennFuture") is a statewide public interest membership organized and existing under the laws of the Commonwealth of Pennsylvania that works to create a just future where nature, communities, and the economy thrive. PennFuture enforces environmental laws and advocates for the transformation of public policy, public opinion and the marketplace to restore and protect the environment and safeguard public health, while at the same time advancing effective solutions for the problems of pollution, sprawl, and global warming; mobilizing citizens; crafting compelling communications; and providing legal services and policy analysis. Limiting its members' exposure to toxic air pollution has been a major component of PennFuture's mission and work.

7. Clean Air Council ("CAC"), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, is a member-supported, nonprofit environmental organization dedicated to protecting everyone's right to breathe clean air. CAC works through public education, community advocacy and government oversight to ensure enforcement of environmental laws. Founded in 1967, CAC has expanded to nearly 7,000 members, many of whom live near or downwind from power plants expected to be affected by the MATS Rule.

8. Conservation Law Foundation ("CLF"), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, is a regional,

nonprofit, nonpartisan, member-supported environmental advocacy organization with approximately 3,350 members living in the six-state New England region. CLF's work in four program areas—Clean Energy & Climate Change, Clean Water & Healthy Forests, Healthy Oceans & Healthy Communities, and Environmental Justice—protects New England's people, natural resources, and communities.

9. Environment America ("EA"), a corporation organized and existing under the laws of the State of Colorado, is a federation of state-based, member-funded environmental advocacy organizations, with a combined membership of over 500,000 persons. EA's mission is to protect America's air, water, and open spaces. EA represents the interests of its state organizations and their members by bringing actions to enforce the federal environmental laws, including the Clean Air Act. EA has been an active voice seeking deep reductions in air pollutant emissions from the nation's power plants for over a decade, through its predecessor organization the U.S. Public Interest Research Group, and its state affiliate groups.

10. Environmental Defense Fund ("EDF"), a corporation organized and existing under the laws of the State of New York, protects and enhances the natural environment by linking science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems. Among other activities to advance this mission on behalf of its more than 300,000 members nationwide, EDF participates in litigation to enforce environmental laws, including air quality-related litigation under the Clean Air Act.

11. Izaak Walton League of America (“IWLA”), a corporation organized and existing under the laws of the State of Illinois, is a national not-for-profit membership organization, with 36,000 members, 20 state divisions and 270 local chapters. IWLA is dedicated to protecting our nation’s soil, air, woods, waters, and wildlife, to ensure a high quality of life for all people, now and in the future. IWLA has worked on clean air issues for over 25 years, representing its members’ concerns regarding, among other issues, mercury deposition and contamination from power plant air emissions.

12. Natural Resources Council of Maine (“NRCM”), a corporation organized and existing under the laws of the State of Maine, is a nonprofit membership organization dedicated to preserving the quality of the air, water, forests, and other natural resources of the state of Maine, for the benefit of present and future generations. NRCM has over 9,000 members and supporters in the state of Maine and beyond its borders. NRCM works through legislative and legal advocacy efforts to control toxic pollution, including mercury air emissions, from a broad range of sources.

13. Natural Resources Defense Council (“NRDC”), a corporation organized and existing under the laws of the State of New York, is a nonprofit membership organization of over 429,000 members nationwide. NRDC works to protect wildlife and wild places and to ensure a healthy environment for all life on earth, by actively participating in proceedings to strengthen and enforce the environmental laws of the United States.

14. The Ohio Environmental Council (“OEC”), is a nonprofit corporation organized and existing under the laws of the State of Ohio. OEC works on behalf of its more than 3,000 members statewide to inform, unite, and empower Ohio citizens to protect the environment and conserve Ohio’s natural resources. OEC’s work includes efforts through advocacy and litigation to reduce its members’ exposure to harmful pollution, including the hazardous air pollutants emitted by the many coal-fired power plants in and near Ohio.

15. Physicians for Social Responsibility is a national nonprofit corporation organized and existing under the laws of Massachusetts. PSR’s 50,000 members are medical and public health professionals and lay advocates dedicated to promoting peace, strengthening public health and child health, supporting environmental integrity, and articulating robust, non-nuclear national security policies. To promote its goals, PSR has actively participated in proceedings to strengthen and enforce regulations that affect public health standards throughout the United States, including proceedings to enforce the Clean Air Act. PSR has been a party to proceedings to promote, strengthen, and enforce public health standards that address the health, safety, and well-being of infants, children, adolescents, and young adults, including as a plaintiff in the lawsuit to compel the issuance of the MATS standards. PSR has members who are directly and adversely affected by hazardous air pollution from power plants.

16. Sierra Club (“the Club”) is a national nonprofit organization with approximately 1.4 million members working to protect and promote safe and healthy communities, to practice and promote the responsible use of the earth’s

ecosystems and resources, and to protect and restore the environment. Sierra Club has members who are directly and adversely impacted by emissions from EGUs.

17. Waterkeeper Alliance (“WKA”), a corporation organized and existing under the laws of the State of New York, is a nonprofit membership organization comprising 198 local member Waterkeeper organizations (“WKO”) worldwide, including 122 WKOs in the United States. WKA works nationally and locally with WKOs to ensure swimmable, drinkable, and fishable waters. WKA develops programs, policies, and initiatives in support of activities that will promote environmental justice and ecological and human health.

Grounds for Intervention

The Public Health and Environmental Groups have longstanding interests and involvement in advocacy, education, and litigation to reduce emissions of toxic air pollutants from EGUs to protect their members’ health, recreational, and aesthetic interests and to protect public health in affected local communities. The Groups have long sought to educate the public as to the risks associated with toxic pollution and advocated for the reduction or elimination of such pollution. *See, e.g.,* Hitt Decl. at ¶¶ 7-8; Alden Decl. at ¶¶ 4-6; Benjamin Decl. at ¶¶ 4-6; Connor Decl. at ¶¶ 3, 5-6; Garcia Decl. at ¶¶ 6-8; Thomasson Decl. at ¶¶ 5-8.

The Public Health and Environmental Groups have devoted substantial resources and effort to the regulations and court proceedings that resulted in the Mercury and Air Toxics Rule. *See supra* at 4-5, 9-16. Many of the Groups challenged EPA’s failure to perform its mandatory duty to issue national regulations for the air toxics emitted by this listed industry, which

action culminated in a court-ordered deadline for the promulgation of the MATS Rule. See Consent Decree at 3, *American Nurses Association v. Jackson*, No. 08-cv-02198 RMC (D.D.C. Apr. 15, 2010); see also Willcox Decl. ¶ 8; Theberge Decl. ¶ 13; Harwood Decl. ¶ 11; Garcia Decl. at ¶ 8; Thomasson Decl. at ¶ 7.

The Public Health and Environmental Groups supported EPA's listing of coal- and oil-fired power plants under section 112 of the Act—several of the Groups did so publicly, as well as through regulatory advocacy and by joining the Agency's defense of its listing. Several of the Groups also opposed EPA's "Delisting Rule"—again, before the public, the Agency, and this Circuit. Theberge Decl. ¶ 12; Alden Decl. at ¶ 5; Benjamin Decl. at ¶ 5; Garcia Decl. at ¶ 7; Thomasson Decl. at ¶ 6. And the Public Health and Environmental Groups submitted detailed comments on EPA's proposed MATS Rule. Comments of Environmental and Public Health Groups, "National Emission Standards for Hazardous Air Pollutant Emissions From Coal- and Oil-Fired Electric Utility Steam Generating Units And Standards Of Performance For Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," 76 Fed. Reg. 24976 (May 3, 2011) <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2011-0044-5715>.

The Public Health and Environmental Groups have a direct interest in the public health and environmental benefits that will result from the Rule as well. The Groups' members live, work and recreate in places where they are exposed to emissions from EGUs. See Whelan Decl. ¶¶ 2, 4, 8; Alden Decl. at ¶¶ 3, 13;

Benjamin Decl. at ¶¶ 2, 13; Connor Decl. at ¶¶ 4, 13; Garcia Decl. at ¶¶ 4-5, 11; Gooden Decl. at ¶¶ 4-8; Reinardy Decl. at ¶¶ 4-7; Thomasson Decl. at ¶¶ 2, 4, 14-15. Such members and their families are exposed to mercury pollution by eating fish that they catch in waters that are contaminated by mercury and other pollutants that are emitted by EGUs. *See, e.g.*, Robertson Decl. ¶¶ 8-12 (noting that but for concern about mercury contamination in fish in Pennsylvania rivers, streams and lakes where they fish, he would allow his 3 year old granddaughter to eat the freshwater fish they catch on fishing trips together, but because of concerns about contamination he does not); Alden Decl. at ¶¶ 3, 8, 13; Benjamin Decl. at ¶¶ 2, 8, 13; Connor Decl. at 4, 13; Garcia Decl. at ¶¶ 5-7; Gooden Decl. at ¶¶ 5, 7-8; Thomasson Decl. at ¶¶ 2, 10, 15. The Public Health and Environmental Groups' members are also exposed to emissions from EGUs by inhaling air toxics in the vicinity of power plants. Kinney Decl. ¶ 17, Whelan Decl. ¶¶ 2, 17-19 Alden Decl. at ¶¶ 3, 9-11, 13; Benjamin Decl. at ¶¶ 2, 9-11, 13; Connor Decl. at 4, 13; Garcia Decl. at ¶¶ 5, 11; Gooden Decl. at ¶¶ 6, 8; Thomasson Decl. at ¶¶ 2, 11-13, 15. Such exposure harms their health by introducing toxic metals and acid gases into their bodies and the bodies of their families, where these substances can cause a host of harms, including birth defects, neurological damage, respiratory disease, and cancer.

In addition, the Public Health and Environmental Groups' members' enjoyment of recreational activities including fishing, paddling, boating and hiking is diminished by air pollution and the contamination of the water bodies caused by EGU pollutant emissions where they engage in these activities. In some instances,

the Public Health and Environmental Groups' members are forced to curtail or refrain from activities in which they would like to engage, such as fishing, eating the fish they catch, teaching others to fish, and sharing the fish they catch with others. *See, e.g.* LeTourneau Decl. at ¶¶ 5-6; Malina Decl. at ¶¶ 8, 11, 13; Pannone Decl. at ¶¶ 6-9, 11-13; Wall Decl. at ¶¶ 8-10; Kinney Decl. ¶¶ 8-12, 15; Brooks Decl. ¶¶ 8-9, 13-14; Robertson Decl. ¶¶ 8-12; Gooden Decl. at ¶¶ 5-6; Reinardy at ¶¶ 5-6.

Public Health and Environmental Groups' members will benefit from the MATS Rule because it is the first ever national requirement for existing coal- and oil-fired EGUs to reduce their air toxic emissions. That benefit is sufficiently important to inspire the Public Health and Environmental Groups to seek intervention in Petitioners' challenge and to defend and preserve the MATS rule in order to avoid harm to their and their members' legally protected interests. For example, the MATS Rule sets the first ever national emission limits for mercury emissions from existing coal fired power plants, and therefore will reduce the amount of mercury that enters the environment where they live, work, and recreate. EPA predicts that the MATS Rule will reduce EGUs' mercury emissions by 20 tons per year. 77 Fed. Reg. at 9424. The Rule will also reduce emissions of hydrogen chloride by 40,000 tons per year, fine particulates by 52,000 tons per year, and sulfur dioxide by 1.4 million tons per year. *Id.* Those reductions will directly benefit the Groups and their members, reducing the risk to their health and improving their ability to enjoy the areas where they live, work, and recreate.

If Petitioners are successful in their challenge, the MATS Rule could be vacated or delayed, or EPA could be compelled to weaken the standards it contains to permit greater mercury and/or other toxic pollution. *See, e.g.*, Lange Decl. ¶ 14; Kinney Decl. ¶¶ 20-21; Willcox Decl. ¶ 9; Robertson Decl. ¶16; Theberge Decl. ¶ 14; Harwood Decl. ¶ 13; Alden Decl. at ¶¶ 12-13; Benjamin Decl. at ¶¶ 12-13; Connor Decl. at 8-13; Garcia Decl. at ¶¶ 10-11; Gooden Decl. at ¶¶ 10-11; Reinardy Decl. at ¶¶ 8-9; Thomasson Decl. at ¶¶ 14-15. Because such results would prolong and increase the Public Health and Environmental Groups' members' exposure to toxic air pollution from EGUs and also prolong and increase the threat to the environment in which they live and recreate, the Public Health and Environmental Groups have an interest in intervening as respondents in the present case. Fed. R. App. P. 15(d).

The “grounds” for the Public Health and Environmental Groups' intervention are to oppose Petitioners' attempts to eliminate, weaken or delay the MATS Rule. Fed. R. App. P. 15(d). The Public Health and Environmental Groups' interests in preventing the elimination or weakening of the MATS Rule, and thus protecting their members' health and ability to continue enjoying recreational and aesthetic activities and protecting their own and their members' interests in receiving access to information about emissions from the source category, will be prejudiced if they are not allowed to intervene.

The Public Health and Environmental Groups' interests would not be adequately represented in the absence of intervention. *Cf. Dimond v. Dist. of Colum.*, 792 F.2d 179, 192-93 (D.C. Cir. 1986). First, and significantly, it was only

after several of the Public Health and Environmental Groups sued the Agency to compel the agency to issue § 112 rules for EGUs, which the Clean Air Act required the agency to do no later than 2002, that the MATS Rule was promulgated by EPA. Second, the Agency's interpretation of the factual and legal issues in this case may differ from the interpretation of the Public Health and Environmental Groups, which advocated for EPA to take even stronger action than it did in the Final Rule. Without the Public Health and Environmental Groups' intervention, the Court will hear only EPA's arguments. Finally, this Court "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *see also NRDC v. Costle*, 561 F.2d 904, 913 (D.C. Cir. 1977). That is especially true here, where the Groups have disagreed with—and challenged in rulemaking comments and court proceedings—EPA's action and inaction under the Clean Air Act. *See, e.g.*, Comments of Environmental and Public Health Groups, "National Emission Standards for Hazardous Air Pollutant Emissions from Coal- and Oil-Fired Electric Utility Steam Generating Units And Standards Of Performance For Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," 76 Fed. Reg. 24976 (May 3, 2011) <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2011-0044-5715>; Hitt Decl. at ¶¶9-10; Alden Decl. at ¶¶ 5-6; Benjamin Decl. at ¶¶ 5-6; Connor Decl. at ¶ 6; Garcia Decl. at ¶¶ 7-8; Gooden Decl. at ¶9; Thomasson Decl. at ¶¶ 6-8. The Public Health and Environmental Groups cannot rely on EPA to

make all arguments that the Groups believe should be advanced to protect their and their members' interests.

The Public Health and Environmental Groups respectfully submit that their long experience with all aspects of this rulemaking and their specific views on the arguments advanced by Petitioners will be of assistance to the Court. A party seeking to intervene "may also be likely to serve as a vigorous and helpful supplement to EPA's defense." *NRDC*, 561 F.2d at 912-13. As nonprofit, medical, health, public health, and environmental citizens' groups with members living near sources in the regulated source category, the Public Health and Environmental Groups offer a perspective different from that which EPA is likely to provide. This Court has regularly allowed intervention by medical, health, and environmental organizations to support EPA in rulemakings opposed by industry groups under the Clean Air Act.²

The Public Health and Environmental Groups' participation as intervenors on behalf of EPA will not delay the proceedings or prejudice any party. The motion to intervene is being timely filed within the thirty-day period allowed under

² See, e.g., *Med. Waste Inst. v. EPA*, 645 F.3d 420 (D.C. Cir. 2011) (Sierra Club and NRDC appeared as intervenors in support of EPA); *Portland Cement Ass'n v. EPA*, 665 F.3d 177 (D.C. Cir. 2011) (same for Sierra Club, NRDC, and other environmental groups); *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855 (D.C. Cir. 2001) (same for Sierra Club); *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) (same for NRDC); *Virginia v. EPA*, 108 F.3d 1397 (D.C. Cir. 1997) (same for NRDC); cf. *U.S. v. Metro. St. Louis Sewer Dist.*, 883 F.2d 54, 56 (8th Cir. 1989) (reversing district court's denial of right to intervene to the MO Coalition in a Clean Water Act enforcement case brought by the United States and State of Missouri).

Federal Rule of Appellate Procedure 15(d). The Court has not yet scheduled oral argument or established a briefing schedule. The Public Health and Environmental Groups' participation will not undermine the efficient and timely adjudication of the present case.

In short, the Public Health and Environmental Groups have more than met the requirements for intervention: they have a demonstrated interest relating to the subject matter of this action that may be impaired by disposition in their absence, that interest is not adequately represented by the existing parties, and they have filed a timely motion. *See* Fed. R. App. P. 15(d). For all of the foregoing reasons, the Environmental Groups respectfully request leave to intervene in case No. 12-1100 and consolidated cases.

DATED: March 16, 2012

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2012 I have served the foregoing **Motion of American Academy of Pediatrics, American Lung Association, American Nurses Association, American Public Health Association, Chesapeake Bay Foundation, Citizens for Pennsylvania's Future, Clean Air Council, Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, Natural Resources Defense Council, Ohio Environmental Council, Physicians for Social Responsibility, Sierra Club, and Waterkeeper Alliance to Intervene on Behalf of Respondent** on all registered counsel through the Court's electronic filing system (ECF).

/s/ James S. Pew
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