

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

<p>AMERICAN CHEMISTRY COUNCIL, <i>et al.</i></p> <p>Petitioners,</p> <p>v.</p> <p>ENVIRONMENTAL PROTECTION AGENCY and LISA PEREZ JACKSON, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY</p> <p>Respondents.</p>	<p>Case No. 10-1167 Consolidated with 10-1168, 10-1169, 10-1170, 10-1173, 10-1174, 10-1175, 10-1176, 10-1177, 10-1178, 10-1179, 10-1180</p>
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**MOTION OF SIERRA CLUB, NATURAL RESOURCES DEFENSE
COUNCIL, ENVIRONMENTAL DEFENSE FUND, AND
CONSERVATION LAW FOUNDATION TO INTERVENE IN SUPPORT
OF RESPONDENT**

The Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Conservation Law Foundation (collectively “Movants”) respectfully move pursuant to Fed. R. App. P. 15(d) and D.C. Cir. Rule 15(b) to intervene in support of respondent U.S. Environmental Protection Agency (“EPA”) in the above captioned consolidated proceedings for judicial review of four long-standing EPA rules, promulgated in 1978, 1980, and 2002, that govern the Prevention of Significant

Deterioration (“PSD”) program, the Clean Air Act’s permitting program for new and modified pollution sources.¹

Petitioners and Respondents take no position on this motion.

INTRODUCTION

For more than thirty years, the Clean Air Act’s PSD program has required new and modified major sources of air pollutants to obtain preconstruction permits ensuring that they meet emission limits reflecting the best available pollution control technology (“BACT”). *See* 42 U.S.C. §§ 7470(1); 7475(a), 7479(3); *see also Alabama Power Co. v. Costle*, 636 F.2d 323,344-52 (D.C. Cir. 1980) (*per curiam*) (describing the history of the program). Each such source must meet BACT emissions limits for “each pollutant subject to regulation under [the Act].” 40 C.F.R. §§ 7475(a)(4); 7479(3).

In the petitions at issue here, various industry and business interests challenge the long-established rules underpinning the entire PSD program – rules promulgated as long as 32 years ago that have previously been subject to judicial review. Although the petitioners have not yet filed statements of the issues they intend to raise, they

¹ The rules are entitled *Prevention of Significant Deterioration and Nonattainment New Source Review: Final Rule and Proposed Rule*, 67 Fed. Reg. 80,186 (Dec. 31, 2002), *Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans*, 45 Fed. Reg. 52,676 (Aug. 7, 1980), *Part 51- Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Prevention of Significant Air Quality Deterioration*, 43 Fed. Reg. 26,380 (Jun. 19, 1978), and *Part 52-Approval and Promulgation of State Implementation Plans, 1977 Clean Air Act Amendments to Prevent Significant Deterioration; Final Rule*, 43 Fed. Reg. 26,288 (Jun. 19, 1978). Collectively, they are codified at 40 C.F.R Parts 51, 52, and 124.

have signaled in a motion to consolidate that they seek in this litigation to sharply limit the pollutants regulated under the PSD program, and to prevent application of PSD permitting to emissions of greenhouse gases.

Movants seek to intervene in support of respondent EPA.

BACKGROUND

A. Movant Environmental Organizations

Movants have invested decades of organizational effort and substantial resources in protecting and enforcing the PSD program to promote their associational goals, and to protect their hundreds of thousands of members' interests in clean air and climate mitigation.

Sierra Club, founded in 1892, is a national nonprofit environmental organization with approximately 622,000 members nationwide. Sierra Club has worked from the inception of the Clean Air Act to strengthen and implement its provisions. Sierra Club's national Climate Recovery Partnership is a major effort to promote a clean energy economy and protect communities and natural environments threatened by global warming.

The Natural Resources Defense Council ("NRDC") is a national nonprofit environmental organization with approximately 447,000 members nationwide. NRDC uses law, science, and the support of its members to ensure a safe and healthy environment for all living things. One of NRDC's top priorities is to reduce emission of the air pollutants that are causing global warming.

The Environmental Defense Fund (“EDF”) is a national nonprofit organization representing more than 329,000 members nationwide. Since 1967, EDF has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. Protecting public health and the environment from harmful airborne contaminants, including greenhouse gases, is a core organizational mission, and EDF regularly participates in regulatory and judicial proceedings on air pollution policy at the federal and state level.

The Conservation Law Foundation (“CLF”) is a nonprofit environmental organization based in New England and founded in 1966. CLF advocates on behalf of its members living throughout the country for environmental and public health protections, including through successful efforts to control greenhouse gases from cars, limit carbon dioxide and other air pollutant emissions from power plants, and drive the adoption of energy efficiency measures.

B. Petitioners Seek to Radically Alter the PSD Program

The PSD provisions of the Clean Air Act plainly apply to each new and modified major stationary source of air pollutants regulated under the Act. 42 U.S.C §§ 7475(a), 7479(1). For more than three decades, EPA’s regulations for the PSD program have conformed to this requirement. In their motion to consolidate, however, Petitioners contend the PSD rules should be triggered only by ‘criteria pollutants,’ the narrow class of pollutants for which EPA has promulgated national ambient air quality standards under Section 109 of the Act. *See, e.g.,* Petitioners’

Motion to Consolidate in Case No. 10-1168 at 4-5 (PSD permits “should be triggered only based on criteria pollutant emissions.”). Since the enactment of the PSD provisions in 1977, however, EPA has never limited the PSD requirement to sources of criteria pollutants subject to national ambient air quality standards and has always applied PSD to sources based on their emissions of pollutants regulated under other sections of the Act. Petitioners’ position would change the scope of the PSD program by eliminating PSD requirement for sources that emit non-criteria pollutants.

This cramped reading is contrary to the Clean Air Act, and was explicitly rejected in this Court’s landmark opinion in *Alabama Power*. 636 F.2d at 352-53, 405-07. EPA has repeatedly rejected industry invitations to adopt the narrow construction rejected in *Alabama Power*. See, e.g., 43 Fed. Reg. 26,388 at 26,397 (June 19, 1978) (stating that pollutants “subject to regulation” include, but are not limited to, criteria pollutants); 45 Fed. Reg. 52,676, 52,713 (Aug. 7, 1980) (again rejecting industry’s argument); 67 Fed. Reg. 80,196, 80,240 (Dec. 31, 2002) (once again); 75 Fed. Reg. 31,514, 31,560-561 (Stating that EPA has “applied PSD to non-[criteria] pollutants since the inception of the program 30 years ago”). Changing course on this point would severely weaken the program.

The Clean Air Act generally bars such stale challenges. See 42 U.S.C. § 7607(b)(1) (petitions must be filed within 60 days of final rulemaking or within 60

days of new grounds if based “solely” on those grounds²); *see also Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 592 (the “basic purpose” of Clean Air Act review provisions is “*prompt* pre-enforcement review of EPA’s actions) (emphasis added); *American Road & Transportation Builders Ass’n v. EPA*, 588 F.3d 1109, 1113 *et seq.* (D.C. Cir. 2009) (these restrictions are jurisdictional).

If Petitioners succeed, nonetheless, in relitigating the fundamentals of the PSD program, air quality across the country would be put at risk. Movants seek to intervene on Respondent EPA’s side to protect their interests in these rules.

GROUND FOR INTERVENTION

Movants should be permitted to intervene in these proceedings in order to support their organizational interests and the specific interests of their members in implementing the PSD program and applying it to mitigate the greenhouse gas pollution causing climate change. This motion was timely filed within thirty days of July 6, 2010, when the petitions for review were filed. Fed. R. App. P. 15(d); *Alabama Power Co. v. I.C.C.*, 852 F.2d 1361, 1367 (D.C. Cir. 1988).

A. Movants’ Organizational Interest in Preserving EPA’s PSD Program

² Petitioners have known for many months, if not years, that EPA would apply the PSD program to greenhouse gases. For example, in April 2010, more than sixty days prior to the petitions in this case, EPA made clear in a final rule on which comment was sought in 2009, and which was based on the Agency’s 2008 pronouncements, that BACT requirements would go into force in January 2011. 75 Fed. Reg. 17,004, 17,019 (Apr. 2, 2010).

Movants have a substantial interest in this proceeding to protect their organizational investments in the clean air and public health protections afforded by the Act's PSD program, and to ensure that those protections are not weakened. Movants have worked for years to ensure that the PSD program is effectively applied and enforced to protect their members from the adverse health and welfare impacts of air pollution, including greenhouse gas pollution.

Indeed, “[i]n 1972 the Sierra Club brought suit alleging the [Clean Air] Act required state plans to include measures to prevent the ‘significant deterioration’ of air quality,” sparking the creation of the program. *Alabama Power v. Costle*, 636 F.2d at 347; *see also Fri v. Sierra Club*, 412 U.S. 541 (1973) (affirming a D.C. Circuit ruling ordering the creation of the PSD program). Since then, Movants have worked actively to implement and strengthen the program, participating in dozens of notice and comment rulemaking proceedings and actively litigating to protect the public. *See, e.g., Alabama Power*, 636 F.2d at 342 (listing Sierra Club and EDF as parties); *Duquesne Light Co. v. EPA*, 698 F.2d 456 (D.C. Cir. 1983) (NRDC intervenes in case challenging PSD program); *New York v. EPA*, 415 F.3d 3 (D.C. Cir. 2005) (per curiam) (Sierra Club, NRDC, EDF, and other environmental groups petition in an action to strengthen the 2002 rule and defend it from industry challenges); *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561 (movant EDF's defense of longstanding agency interpretation of PSD program against industry challenge).

Movants have also advanced their organizational interests and the interests of their members by advocating in favor of regulation of greenhouse gases since EPA first requested public comment on a 1999 petition to EPA to regulate greenhouse gas emissions from motor vehicles. *See, e.g.*, EPA Document No. EPA-HQ-OAR-2001-0002-0026 (Comments of NRDC). Many of the Movants were prevailing parties in the *Massachusetts v. EPA* litigation. Movant Sierra Club then litigated *In re Desert Power Electric Cooperative*, 14 EAD __, PSD Appeal No. 07-03 (EAB 2007), a power plant PSD permitting case which has shaped EPA's approach to greenhouse gas PSD permitting. Movants have filed comments on, and advocated for, EPA's tailoring rule, which describes how the PSD program will apply to stationary sources. *See, e.g.*, EPA-HQ-OAR-2009-0517-5306.1 (Comments of Clean Air Task Force, EDF, NRDC, Sierra Club, *et al.*). Movants also mounted extensive public information and organizing campaigns to support EPA's rulemaking program. *See, e.g.*, Decl. of Yolanda Fortuna ¶ 5 (describing the Sierra Club's organizing efforts), Decl. of Timothy Harwood ¶¶ 10, 11 (describing CLF's efforts). More recently, the Movants have been granted leave by this Court to intervene on behalf of EPA in consolidated challenges to EPA's initial regulatory finding on greenhouse gases. *See* Case No. 09-1322, Order (May 5, 2010).

Movants' significant participation in proceedings related to EPA's greenhouse gas rulemaking effort, and to the PSD program generally, strongly favors their motion for leave to intervene. The Clean Air Act does not limit intervention by parties that

have participated extensively in the agency's decision. *See* 42 U.S.C. § 7607(b).

Further, this Court has regularly granted intervention to Movants in their previous efforts to oppose industry challenges to EPA actions under the Clean Air Act,³ and also to industry organizations seeking to support EPA actions.⁴

B. Movants' Members' Interests Will Be Harmed if Petitioners Succeed in Undermining the Clean Air Act's PSD Program

Movants' undertook their long history of engagement with the PSD Program's development and with greenhouse gas regulation to protect the significant interests of their hundreds of thousands of members in environmental and public health protections, particularly by supporting EPA regulations under the Clean Air Act, including regulations to limit a wide variety of dangerous air pollutants and curb the pollution responsible for global warming.⁵

³ *See, e.g., Coal. for Responsible Regulation v. EPA*, No. 09-1322 (D.C. Cir. filed Dec. 23, 2009) (EDF, NRDC, and Sierra Club intervened in support of EPA); *North Carolina v. EPA*, 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008) (EDF intervened in support of EPA); *Am. Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002) (EDF and other environmental organizations intervened in support of EPA); *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) (NRDC intervened in support of EPA).

⁴ *See, e.g., Natural Res. Def. Council v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009) (National Petrochemical and Refiners Association and other industry groups intervened in support of EPA); *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (industry groups intervened in support of EPA); *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) (chemical industry groups intervened in support of EPA).

⁵ Greenhouse gases cause climate change. The U.S. has already started to experience the impacts of climate change, including increases in air and water temperatures, reduced frost days, increased frequency and intensity of heavy downpours, a rise in sea level, and reduced snow cover, glaciers, and sea ice. EPA, *Climate Change Indicators in the United States* at 4-6 (2010); *see also* EPA, *Denial of the Petitions to*

Movants' members now benefit directly as a result of the PSD program's requirement that major sources must limit air pollution, and those direct benefits will be enhanced as the PSD program is applied to reduce greenhouse gas emissions. If Petitioners are successful, however, the PSD program, and the significant air quality improvement and climate change mitigation it offers Movants' members, will be jeopardized. For example, EPA has stated that BACT requirements will apply to the nation's largest polluters in 2011, eventually covering nearly 70% of national greenhouse gas emissions from major stationary sources. *See* 75 Fed. Reg. 31,540 tbl.V-1. Only by reducing emissions of greenhouse gases can the pace and severity of global warming be mitigated, and its worst consequences for public health, property, and the environment be avoided.⁶

Movants' members use, own, and enjoy property and natural resources which are harmed or are at risk of harm from global warming, and so will benefit if EPA can effectively address global warming pollution. *See, e.g.*, Decl. of Michael Moskow ¶ 12 ("I am aware that rising sea levels have resulted, and will continue to result in loss of coastal property and thus may threaten property such as my own on Martha's Vineyard [Massachusetts]."); Decl. of David Fine ¶ 3 ("I am concerned that future

Reconsider the Endangerment and Cause or Contribute Findings Under Section 202(a) of the Clean Air Act at 7 (July 29, 2010) (the science linking greenhouse gases to climate change is "robust, voluminous, and compelling").

⁶ *See Massachusetts*, 549 U.S. at 526 (explaining that a "reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere").

projected sea-level rise will adversely impact these beaches [near my home].”); Decl. of Denise Fort ¶ 3 (“Continued increases in GHG emissions will exacerbate the effects of climate change in New Mexico, resulting in less wildlife for me to view, lower flows in the summer months in rivers that I now use for recreation, loss of forests due to bark beetle infestation and forest fire, and fewer birds to view.”); Decl. of Sarah Gordon ¶ 4 (“Harm to nearby beaches would deprive me of recreational opportunities and likely affect the value of my home, which is linked to its beach-front location.”); Decl. of Frank Keim ¶ 10 (“I intend to continue hiking in the Brooks Range, and I am saddened and upset by the disappearance of these beautiful glaciers.”). Harms to Movants’ use and enjoyment of their property, as well as their interests in use and enjoyment of natural resources, are sufficient to establish injury. *See Massachusetts v. EPA*, 549 U.S. at 521-23 (finding particularized injury based on harm to Massachusetts’ coastal property).

The health and welfare interests of Movants’ members are protected by the PSD program, which has long limited sources’ emissions of a wide variety of unhealthful and environmentally damaging air pollutants regulated under the Act. *See* 42 U.S.C. §§7475(a), (d), 7476; *see also* Decl. of Michael Moskow ¶ 16; Decl. of Timothy Harwood ¶ 11 (describing interests of CLF’s members in healthier air and understanding of the efficacy of the PSD program in achieving that goal). Movants’ members also will secure immediate health benefits when EPA applies the PSD program to greenhouse gas emissions. The cleaner fuels, more effective control

technologies, and efficiency measures likely to be imposed as BACT for greenhouse gases would also have the effect of reducing emissions of pollutants like mercury, a neurotoxin which fouls rivers and streams, and sulfur dioxide and nitrogen oxides, which cause or worsen asthma and heart problems. *See* Decl. of Linda West ¶¶ 7, 9, 14-15 (“I understand that most methods for limiting CO₂ from power plants - for example with better efficiency - reduce other harmful pollutants.”); Decl. of Sarah Gordon ¶ 6. (“I live near two power plants, and I am concerned about the air pollution, including greenhouse gas emissions, that these power plants may be emitting into the air.”). Stabilizing the climate would also likely prevent an increase in wildfires, which are a major air pollution source. *See* Decl. of Sarah Gordon ¶ 5 (The air quality near my home is compromised during wildfires, which are expected to occur more frequently as a result of global warming. ... These problems are of particular concern to me because I have asthma and chronic obstructive pulmonary disease.).⁷

⁷ The relationship between higher summer temperatures and ozone production also is clear. 74 Fed. Reg. at 66,497, 66,525 n.28 (citation omitted). Measures taken to mitigate the greenhouse gas air pollution causing increased temperatures will also help mitigate ozone production. If Petitioners are successful in avoiding the requirement to reduce GHGs under the PSD program, however, Movants’ members’ current public health concerns related to higher levels of ozone formation will be exacerbated. Decl. of Michael Moskow ¶¶ 9-10 (“I understand that ... increased summer temperatures in New England caus[e] increased ozone production here. ... I am very concerned about the impacts that these increased concentrations of ground-level ozone may have on my health and the health of my children and grandchildren.”).

These health and environmental benefits and concerns establish Movants' "interest" both under Rule 15(d) and their standing to sue under Article III of the Constitution, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), whether or not standing is independently required of parties who, as here, seek to intervene in support of a respondent.⁸ For the same reasons, Movants fall squarely within the "zone of interests" protected or regulated by the relevant provisions of the Clean Air Act. *See Federal Election Comm'n v. Akins*, 524 U.S. 11, 20 (1998) (quoting *Association of Data Processing Service Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

The disposition of this case "may as a practical matter impair or impede" the Movants' interests. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)). Petitioners seek to undermine long-established rules that limit the amount of air pollution protection to which Movants' members are exposed in their communities and in places where they work and recreate. Movants have actively worked and litigated to defend and strengthen these rules for decades. Thus, disposition of the petitions may as a practical matter impair the interests of Movants and their members in protecting the quality of the air they breathe.

⁸ *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("Requiring standing of someone who seeks to intervene as a defendant runs into the doctrine that the standing inquiry is directed at those who invoke the court's jurisdiction.") (discussing district court intervention under Fed. R. Civ. P. 24, citing *Virginia v. Hicks*, 539 U.S. 113, 117-22 (2003)); *cf. Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731-32 (D.C. Cir. 2003) (overturning district court decision denying intervention in support of defendant under Fed. R. Civ. P. 24, and rejecting court's conclusion that proposed intervenor lacked Article III standing); *Rio Grande Pipeline Co. v. F.E.R.C.*, 178 F.3d 533, 538-39 (D.C. Cir. 1999) (discussing standing to intervene question).

Moreover, Petitioners seek to prevent EPA from assuring that the best available control technology is required to limit greenhouse gas emissions. If they succeed, the effect could be to forego BACT limits on greenhouse gas emissions in at least 550 new construction permits, and over 900 modification permits a year – and perhaps in all PSD permits. *See* 75 Fed. Reg. 31,540 tbl.V-1. Foregoing these controls would frustrate Movants’ efforts to protect public health and the environment and imperil the health, property, and aesthetic and recreational interests of Movants’ members.

C. Movants Bring an Important Perspective to this Action

This Court’s practice of granting intervention to private organizations – including environmental groups, trade organizations, and others – supporting agency actions in which they have an interest, see nn.3-4, *supra* (citing cases), reflects this recognition that private entities have a distinctive perspective that contributes to this Court’s careful consideration of challenges to important agency actions.

Movants’ status as private organizations with missions focusing solely and systematically on environmental and conservation objectives, and their extensive experience with the development and implementation of environmental protection programs, including the regulations at issue here, provide them with a unique and distinctive perspective on the issues at stake.

CONCLUSION

The Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Conservation Law Foundation should be granted leave to intervene in support of respondent.

Respectfully submitted,

/s/ Craig Holt Segall (for)

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Dated: August 5, 2010

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

AMERICAN CHEMISTRY COUNCIL, *et al.*

Petitioner,

v.

ENVIRONMENTAL PROTECTION
AGENCY and LISA PEREZ JACKSON,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY

Respondents.

Case No. 10-1167

Consolidated with 10-1168,
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10-1174, 10-1175, 10-1176,
10-1177, 10-1178, 10-1179,
10-1180

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rule 21.1, Movants Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Conservation Law Foundation provide the following corporate disclosure statement.

The above-named Movants are not-for-profit organizations focused on protection of the environment and conservation of natural resources. Movants do not have any outstanding shares or debt securities in the hands of the public nor any parent, subsidiary, or affiliates that have issued shares or debt securities to the public.

Respectfully submitted,

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Dated: August 5, 2010

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Motion of Sierra Club, Natural Resources Defense Council, Environmental Defense Fund, and Conservation Law Foundation to Intervene in Support of Respondent” and “Rule 26.1 Disclosure Statement” were today served electronically through the court’s CM/ECF system on all registered counsel.

/s/ Katie Schaefer

Dated: August 5, 2010

EXHIBIT A

Declarations of:

Sierra Club Yolanda Fortuna
Frank Keim
Linda West

Natural Resources Defense Council Sarah Gordon
Linda Lopez

Environmental Defense Fund James David Fine
Denise Fort
John Stith

Conservation Law Foundation Timothy Harwood
Michael B. Moskow

DECLARATION OF YOLANDA FORTUNA

I, Yolanda Fortuna, declare as follows:

1. I am the Director of Member Services at the Sierra Club. I have had this position for more than 20 years.
2. In that role, I manage all aspects of the Sierra Club's customer service functions related to members, including maintaining an accurate list of members and managing the organization's member databases.
3. The Sierra Club is a non-profit membership organization incorporated under the laws of the State of California.
4. Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.
5. The Sierra Club's Climate Recovery Partnership is a coordinated effort to use grassroots organizing, legal advocacy, and political strategies to reduce greenhouse gas emissions, promote a clean energy economy, and protect communities and natural environments threatened by global warming.
6. When an individual becomes a member of the Sierra Club, his or her current residential address is recorded in our membership database. The database entry reflecting the member's residential address is verified or updated as needed.

7. The Sierra Club currently has 622, 578 members in the United States. These members have a strong interest in protecting human health and the environment from air pollution, including greenhouse gas emissions from large stationary sources.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in San Francisco, California on July 30, 2010.

/s/ Yolanda Fortuna
Yolanda Fortuna

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

**DECLARATION OF FRANK KEIM IN SUPPORT OF
MOTION TO INTERVENE**

Under penalty of perjury, Frank Keim states as follows:

1. I am a resident of Fairbanks, Alaska, and have personal knowledge of the matters described herein. I submit this Declaration in support of Sierra Club's motion to intervene.
2. I am a professional anthropologist.
3. I have lived in Alaska since 1961.
4. I have been a member of Sierra Club since 1996.
5. From 1979-2000, I taught a number of subjects (including Social Sciences, Language Arts and Russian) in high schools in four villages in the Lower Yukon Delta: Hooper Bay, Scammon Bay, Emmonak and Marshall.
6. During my 21 years in the Lower Yukon Delta, I noticed that winters became progressively warmer. As a result, sea ice and river ice became thinner and thinner. The ice pack formed later and broke up earlier, as did the river ice on the Yukon River.
7. For the native Yupik people living and hunting in the Bering Sea, this change in sea ice conditions meant changes in hunting patterns, since the ice was important not only as a platform for hunting sea mammals but also as a prerequisite for the survival of the sea mammals themselves. This is because the

earlier break-up of the ice diminishes the amount of sunlight funneled through the ice tubules, which in turn reduces the spring algae blooms that provide food for plankton, the base of the food chain that the mammals depend on. It's hard to draw conclusions on the state of mind of the hunters involved, but suffice to say that the identity of most coastal Yupik males still revolves around hunting sea mammals and fishing.

8. The same holds true for those living, hunting and fishing on the Yukon River, although their lives revolve much more around fishing for salmon and other species of fish, such as white fish, shee fish, lamprey eels and burbot. For example, later formation of ice in the fall means that eels are now less accessible. Where people used to catch them through solid river ice in early November, now it is rare they can do this and they must resort to catching many fewer of them from the shore.

9. Both ocean and river temperatures have warmed to the point that runs of different species of salmon have diminished, so that commercial fishermen can no longer make enough money to tide them through the winter and now must depend much more upon government transfer payments. Sometimes complete closures on salmon fishing, even on subsistence harvests, have been declared, leaving people wondering what they are going to do with their summer and how they are going to feed themselves and their dogs over the winter. People in these villages are bewildered and disoriented by these changes. I, too, have been affected by this decrease in salmon because I enjoy fishing for (and eating)

these salmon, but now am frequently unable to do so because of the closures and the overall decline in the salmon runs.

10. I have hiked in the Brooks Range about 25 times, most recently last summer. Over the last 15 to 20 years, I have noticed a dramatic melting of alpine glaciers in the Brooks Range, specifically in the Arrigetch Peaks area near the upper Alatna River. I intend to continue hiking in the Brooks Range, and I am saddened and upset by the disappearance of these beautiful glaciers.

11. I have also hiked in the Alaska Range more than 100 times. The Canwell Glacier in the Alaska Range has also experienced dramatic meltback over the past 20 to 25 years. Even a dozen or so years ago, during summer one could access the medial moraine by easily crossing the terminal moraine. Now there is so much mud and sloughing off of surface material that it is impossible to do this. As a result, I can no longer reach the medial moraine, although I would like to continue to hike there.

12. Over the course of the last several years, I have observed that numerous pothole lakes in an area known as the Yukon Flats are drying up. The area contains numerous such lakes, often measuring about 100 yards in diameter. In the early 1980s all of the lakes were full of water. Based on my observations, I estimate that about 30% of the lakes are now completely dry. I am saddened and upset by the disappearance of these beautiful lakes.

13. Other effects of climate change that I have witnessed include the melting of permafrost on riverbanks, which leads to increased erosion, and a general change in the climate, including warmer and earlier springs, warmer falls and

winters. I am greatly concerned and worried by these sudden changes to the climate and the resulting environmental damage.

14. Reducing emissions of greenhouse gases, including carbon dioxide, from stationary sources like powerplants and factories would help protect the Arctic landscape. I am aware that industry challenges to the U.S. Environmental Protection Agency's long-standing New Source Review and Prevention of Significant Deterioration rules would prevent EPA from effectively reducing these emissions, allowing Arctic warming to continue or accelerate. I therefore support the Sierra Club's efforts to defend these rules, and their applicability to sources of greenhouse gases. I would be harmed if industry efforts were to succeed in imposing limits on EPA's existing authority.

Dated: July ³¹/₄, 2010.

A handwritten signature in black ink, appearing to read "Frank Keim", written over a horizontal line.

Frank Keim

DECLARATION OF LINDA WEST

I, Linda West declare as follows:

1. I currently reside at 2574 South 500 East, Vernal, Utah 84078, and have lived in or near Vernal for the past 32 years. I am 61 years old.

2. I am a life member of the Sierra Club and initially joined in the mid-1970s.

3. I was born and raised in southern California and moved to the Vernal area in 1976 to take a position with the National Park Service as a Park Interpreter for Dinosaur National Monument in Utah-Colorado. After a decade of giving presentations on the park's resources, I then worked for several years as the Publications Specialist for Dinosaur Nature Association before resigning in 1992. While now officially "retired," I do occasional freelance writing, illustration, and photography, and often engage in volunteer interpretive work for local entities such as the Utah Field House of Natural History State Park Museum and the Ashley National Forest.

4. My home is located about 30 miles northwest of Deseret Power Electric Cooperative's proposed 110 megawatt Bonanza coal-fired power plant. Dinosaur National Monument, where I often recreate and plan to continue to recreate, is about 20 miles east of my home. I also often recreate and plan to

continue to do so in the nearby portions of the Uinta Mountains, which are 10 to 20 miles north of my home.

5. I am opposed to the construction of the Bonanza plant. Through public documents, I am aware that if constructed, the proposed Bonanza coal-fired power plant would emit sulfur dioxide, nitrogen oxide, carbon monoxide, carbon dioxide, particulate matter, and mercury, among other air pollutants.

6. This pollution is in addition to what is already being released by the existing 500 megawatt Bonanza coal plant. I am extremely concerned about the cumulative detrimental public health and environmental effects of the proposed coal plant expansion. The new Bonanza plant would burn waste coal, which I understand is even more polluting than regular coal.

7. I am concerned that this air pollution will harm my health and wellbeing as well as my pets. I understand that many of these pollutants, such as particulate matter, are linked to heart disease, respiratory illnesses, and lung cancers. The Uinta Basin, in which Vernal is located, is subject to major winter inversions, and the brown haze is sometimes trapped in the Basin for days or weeks. I understand that the Bonanza plant's emissions would result in more pollution being concentrated in the Basin during inversions, worsening air quality, and associated health impacts.

8. Visibility in my community is already impaired due to emissions from existing coal plants, increased vehicle traffic, and a frenzy of natural gas

drilling operations. I am concerned that emissions from the proposed plant will further impair visibility, particularly during winter inversions.

9. I am also concerned about mercury emissions, which I am aware become concentrated in streams and lakes and bioaccumulate in the fish that inhabit these waterways. I enjoy occasionally fishing and eating the fish I catch. I have fished in the blue ribbon trout fishery segment of the Green River below Flaming Gorge Dam, as well as in streams and lakes in the region surrounding my house. I plan to continue this recreational activity in the future. If the proposed plant is allowed to operate, I would likely decrease the amount of fish I eat due to concerns about increased mercury levels in regional fish.

10. I am also extremely concerned about how the plant's CO₂ emissions will contribute to global climate change and I believe that Bonanza's air permit should impose controls and limits on CO₂ emissions. I am concerned about the impacts of climate change both on a global and local scale. I understand that climate change has potentially serious impacts on cultural and agricultural water supplies where I live, which is an arid region that heavily relies on mountain snow pack for its water resources. I am concerned that milder winters caused by climate change will decrease the amount of snow fall, and decrease water supplies in my region.

11. Moreover, I am aware that milder winters appear to be increasing mountain pine beetle populations, which are damaging the pine in the forests in

which I enjoy hiking and wildlife viewing. I have personally viewed pine trees killed by beetle infestations and I am concerned about further impacts from global warming.

12. I have followed the Sierra Club's challenge to the lack of carbon dioxide (CO₂) controls in Bonanza's PSD permit, which I understand resulted in the Environmental Appeals Board sending the permit back to the EPA to reconsider whether or not to impose CO₂ BACT limits.

13. I am aware that, on April 2, 2010, EPA published its Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs ("Johnson Memo Reconsideration"). I understand that based on the Johnson Memo Reconsideration and other regulatory actions, EPA will require major, stationary sources of greenhouse gases to obtain preconstruction permits that include emission limits based on Best Available Control Technology ("BACT") for their CO₂ emissions as of January 2, 2011.

14. I am concerned that if the Bonanza plant is built as proposed, without BACT limits for CO₂, it will significantly increase harmful global warming pollution. I am also concerned that other new, large stationary sources built without CO₂ BACT limits will substantially increase overall greenhouse gas emissions.

15. I have reviewed page 13 of the EPA's "Technical Support Document for the Advanced Notice of Proposed Rulemaking for Greenhouse Gases, Section VII., EPA-HQ-OAR-2008-0318-0081[1] (Jun.5, 2008)" where it states that all options for regulating greenhouse gases also affect emissions of other pollutants. I understand that most methods for limiting CO₂ from power plants - for example with better efficiency - reduce other harmful pollutants. If such methods were required for CO₂ on the Bonanza plant, they could also reduce other harmful pollutants.

16. I understand that several industry groups have challenged EPA's PSD permitting program. I believe these challenges, if successful, could allow Bonanza and plants like it to avoid installing BACT for CO₂. Failing to control emissions from these plants will bring harmful pollution to my region. I would be harmed, for all the reasons I have discussed, were the industry challenges to succeed.

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

Dated: August 4, 2010.

/s/ Linda West
Linda West

DECLARATION OF SARAH GORDON

I, Sarah Gordon, hereby declare as follows under penalty of perjury:

1. I am currently a member of the Natural Resources Defense Council (“NRDC”) and have been since 1997.
2. I support NRDC’s efforts to stop global warming and reduce its impacts. I believe that global warming poses a significant threat to the wellbeing of humans, wildlife, and the natural environment, and that we have a responsibility to maintain the environment to the best of our ability.
3. I live in Oceanside, California. My husband and I reside in a single-family home on a bluff overlooking the Pacific Ocean. We enjoy living near the ocean and walk on the beach almost every day. The natural beauty of this location, and its proximity to recreational opportunities, weighed heavily in our decision to live here.
4. I am concerned about the effects that global warming will have on my community and my lifestyle. It is well-known that global warming will cause a significant rise in sea levels, resulting in storm-surge damage and shoreline erosion. Harm to nearby beaches would deprive me of recreational opportunities and likely affect the value of my home, which is linked to its beach-front location. In neighboring communities, erosion has already caused damage to homes that, like mine, are situated on bluffs. Although my home is

not in immediate danger, erosion could pose a long-term threat if action is not taken to limit global warming.

5. Another factor in my decision to live near the ocean was the superior air quality produced by ocean winds. The air quality near my home is compromised during wildfires, which are expected to occur more frequently as a result of global warming. Recent wildfires in San Diego County severely affected the air quality near my home, causing me to smell smoke in the air and feel it in my lungs. I also observed ash settling on objects around my home. These problems are of particular concern to me because I have asthma and chronic obstructive pulmonary disease.

6. I live near two power plants, and I am concerned about the air pollution, including greenhouse gas emissions, that these power plants may be emitting into the air.

7. I believe that the regulation of greenhouse gas emissions from power plants and industrial sources will help prevent global warming, and avoid or lessen sea level rise and other problems associated with global warming. This will protect the economic value of my property and preserve the characteristics that led me to live here.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Oceanside, California on August 2, 2010.

/s/ Sarah Gordon
Sarah Gordon

DECLARATION OF LINDA LOPEZ

I, Linda Lopez, declare as follows:

1. I am the director of membership and public education at the Natural Resources Defense Council, Inc. (“NRDC”). I have been the director of membership and public education for 23 years.

2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.

3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code.

4. NRDC’s mission statement declares that “The Natural Resources Defense Council’s purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends.” The mission statement goes on to declare that NRDC works “to restore the integrity of the elements that sustain life – air, land, and water – and to defend endangered natural places.” NRDC’s mission includes the prevention and mitigation of global warming in order to protect and maintain NRDC’s members’ use and enjoyment of natural resources threatened by global warming.

5. Through its Climate Center, NRDC pursues federal and state policies to curb the pollution that is causing global warming, including emissions of carbon

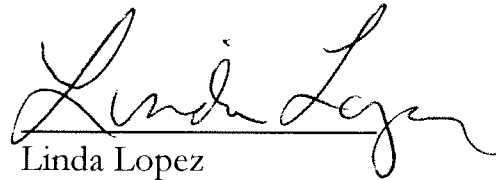
dioxide and other greenhouse gases from U.S. stationary sources, which are a major contributor to global warming pollution.

6. When an individual becomes a member of NRDC, his or her current residential address is recorded in NRDC's membership database. When a member renews his or her membership or otherwise makes a contribution to NRDC, the database entry reflecting the member's residential address is verified or updated.

7. NRDC currently has 447,000 members nationwide. There are NRDC members residing in each of the fifty United States and in the District of Columbia.

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

Dated August 2, 2010, New York, NY.


Linda Lopez

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

DECLARATION OF JAMES DAVID FINE

I, Jamie Fine, under penalties of perjury, declare as follows:

1. I respectfully submit this declaration on behalf of Environmental Defense Fund, a proposed Intervenor-Respondent in this case, in support of its standing. I am a member of Environmental Defense Fund (“EDF”) and have worked at EDF as an economist in the global warming program since 2007. Prior to working at EDF, I worked as an Assistant Professor of Environmental Science and Environmental Studies at the University of San Francisco, teaching courses in environmental economics, environmental science, and community engagement in environmental planning. I also have extensive experience working with environmental justice communities in urban air quality planning. I have a PhD from the Energy and Resources Group at the University of California at Berkeley. I reside at 3276 Logan Street, Oakland. I am a member of the board of the West Oakland Environmental Indicators Project, which works to achieve environmental justice in West Oakland.

2. I am concerned about combustion emissions from large stationary sources – both in terms of the greenhouse gas (“GHG”) emissions from these sources and the emissions of non-GHG pollutants. GHG emissions

from these sources cause global warming, and I understand the scientific evidence documenting the current and predicted impacts of global warming in the United States and in California. These include: elevated temperatures, reduced snowfall in the mountains, deteriorating air quality such as worsening ground-level ozone concentrations, increased storm intensities, increased wildfires, and extreme weather events such as drought and prolonged heat waves. Large stationary combustion sources also emit other harmful air pollutants subject to regulation under the Clean Air Act.

3. Continued increases in GHG emissions will exacerbate these already-occurring impacts and will adversely impact me, and my wife and children. For instance, I enjoy spending time with my family at nearby beaches, sometimes surfing at the beach in Pacifica. I am concerned that future projected sea-level rise will adversely impact these beaches. Likewise, in the winter, I enjoy snowboarding and sledding in the California mountains, and I take frequent trips to the Sugarbowl ski resort. I am concerned that decreases in snowpack will result in a reduction in the quality or seasonal duration of snowboarding in the near future. I'm deeply concerned about the adverse health impacts caused principally from increases in ambient concentrations of ground-level ozone and particulate matter due to global warming. This could potentially affect both my health

and that of my family by, among other things, increasing our risk of developing asthma and cancer. Finally, I am concerned that increased emissions of other pollutants subject to regulation under the Clean Air Act will worsen the health risks my family faces as I live close to several large stationary sources in east Oakland.

4. One important way California helps to address some of these air pollution issues and to ensure that its citizens breathe cleaner air is through its implementation of the Clean Air Act's Prevention of Significant Deterioration (PSD) program. PSD requires new large sources or sources making major modifications that significantly increase an air pollutant to install the best available control technology (BACT) for that air pollutant. California currently applies the PSD program to pollutants like SO₂, NO_x, and PM, and application of BACT for these pollutants often results in significant air pollution reductions. Based on EPA's Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs, ("Johnson Interpretation"), California will likewise apply PSD requirements to GHGs as of January 2, 2011.

5. I am aware of several challenges to long-standing EPA New Source Review Rule in the Court of Appeals for the D.C. Circuit. These challenged rules include: (1) Part 51 - Requirements for Preparation,

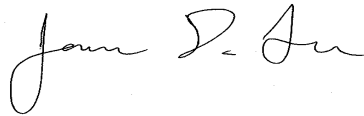
Adoption, and Submittal of Implementation Plans; Prevention of Significant Air Quality Deterioration, 43 Fed. Reg. 26,380-26,388 (Jun. 19, 1978); (2) Part 52 – Approval and Promulgation of State Implementation Plans, 1977 Clean Air Act Amendments to Prevent Significant Deterioration, 43 Fed. Reg. 26388 (Jun. 19, 1978); (3) Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Prevention of Significant Air Quality Deterioration, 45 Fed. Reg. 52,676 (Aug. 7, 1980); and (4) Prevention of Significant Deterioration and Nonattainment New Source Review, 67 Fed. Reg. 80186 (Dec. 31, 2002) (collectively “long-standing NSR rules”). I believe that Petitioners intend to challenge these rules on the grounds that the PSD program only applies to criteria pollutants, and not other pollutants subject to regulation under the Clean Air Act like greenhouse gases.

6. I believe that these long-standing NSR rules are critical to ensure that stationary sources are applying the best available pollution control technology to full range of harmful air pollutants regulated under the Clean Air Act. I am concerned that applying PSD to only criteria pollutants would mean large polluters, emitting harmful non-criteria pollutants would not be required to install the best available control technology for those pollutants. If PSD applies only to criteria pollutants, modifications to existing facilities

that could significantly decrease GHG emissions and other pollutants will not be made, causing continued emissions of these pollutants when they might otherwise have been reduced. Ultimately, I'm concerned that this failure will lead to significant increases in GHG emissions and exacerbate the effects of global warming that I'm already experiencing in California. I'm likewise concerned that failure to apply PSD to other non-criteria pollutants listed in the future under Title II and § 111 of the Clean Air Act would exacerbate the harmful effects of poor air quality in Oakland.

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

Signed on August 4, 2010.



Dr. James David Fine

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

DECLARATION OF DENISE FORT

I, Denise Fort, under penalties of perjury, declare as follows:

1. I am currently a member of Environmental Defense Fund, and I have been a member for several years. I reside in Santa Fe County, New Mexico. I have resided in New Mexico for more than 25 years and am a tenured faculty member at the University of New Mexico School of Law, with the title of Professor of Law. My area of expertise is environmental and natural resources law.

2. Because of my professional work as an environmental law professor, I am familiar with and deeply concerned about the pollution from large, stationary sources. These large sources emit both greenhouse gases (“GHGs”) and other pollutants subject to regulation under the Clean Air Act. Greenhouse gas emissions from these large stationary sources are a significant contributor to human-induced global warming. In New Mexico, the observed and predicted effects of global warming include: elevated temperatures, reduced snowfall in the mountains, deteriorating air quality such as worsening ground-level ozone concentrations, increased storm intensities, and extreme weather events such as drought and prolonged heat waves. Other harmful pollutants emitted from these large sources have

similarly deleterious effects, including causing numerous health problems like premature mortality and morbidity primarily associated with chronic bronchitis and asthma.

3. I'm concerned that continued increases in both GHG and non-GHG emissions would adversely affect me. For instance, I enjoy hiking, river sports, and bird watching in New Mexico. I hike at all elevations in the nearby Santa Fe and Carson National Forest, accompanied by my daughter and friends. We kayak on the Rio Grande and the Chama river. Bird watching happens everywhere, but especially in our backyard. I shop at the local Farmer's Market, eating crops that are grown in the region. Continued increases in GHG emissions will exacerbate the effects of climate change in New Mexico, resulting in less wildlife for me to view, lower flows in the summer months in rivers that I now use for recreation, loss of forests due to bark beetle infestation and forest fire, and fewer birds to view. I also am concerned that it will be much more difficult for farmers to grow crops in Northern New Mexico due to warming and an altered hydrologic regime. Moreover, pollution from large stationary sources affects the Rio Grande airshed, and I am concerned that increased emissions of other pollutants subject to regulation under the Clean Air Act will contribute to worsening air quality in the airshed.

4. The New Mexico Environment Department (NMED) helps to combat some of these pollution dangers through the permits it issues under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. NMED currently issues PSD permits for criteria pollutants like NO_x, SO_x, and PM, requiring new large sources or sources making major modifications that significantly increase emissions of an air pollutant to install best available control technology (BACT) measures addressing that air pollutant. BACT measures result in reductions in emissions of air pollutants. Based on EPA's Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs, ("Johnson Interpretation"), NMED will likewise apply PSD requirements to GHGs as of January 2, 2011.

5. I am aware of several challenges to long-standing EPA New Source Review Rule in the Court of Appeals for the D.C. Circuit. These challenged rules include: (1) Part 51 - Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Prevention of Significant Air Quality Deterioration, 43 Fed. Reg. 26,380-26,388 (Jun. 19, 1978); (2) Part 52 – Approval and Promulgation of State Implementation Plans, 1977 Clean Air Act Amendments to Prevent Significant Deterioration, 43 Fed. Reg. 26388 (Jun. 19, 1978); (3) Requirements for Preparation, Adoption,

and Submittal of Implementation Plans; Prevention of Significant Air Quality Deterioration, 45 Fed. Reg. 52,676 (Aug. 7, 1980); and (4) Prevention of Significant Deterioration and Nonattainment New Source Review, 67 Fed. Reg. 80186 (Dec. 31, 2002) (collectively “long-standing NSR rules”). I believe that Petitioners intend to challenge these rules on the grounds that the PSD program only applies to criteria pollutants, and not other pollutants subject to regulation under the Clean Air Act like greenhouse gases.

6. I believe that these long-standing NSR rules are critical to ensure that stationary sources are applying the best available pollution control technology to full range of harmful air pollutants regulated under the Clean Air Act. I am concerned that applying PSD to criteria pollutants only would mean large polluters, emitting harmful non-criteria pollutants would not be required to install the best available control technology for those pollutants. If PSD applies only to criteria pollutants, modifications to existing facilities that could significantly decrease GHG emissions and other pollutants will not be made, causing continued emissions of these pollutants when they might otherwise have been reduced. Ultimately, I’m concerned that this failure will lead to significant increases in GHG emissions and exacerbate the effects of global warming that I’m already experiencing in New Mexico.

I'm likewise concerned that failure to apply PSD to other non-criteria pollutants listed in the future under Title II and § 111 of the Clean Air Act would negatively impact air quality in the Rio Grande airshed.

7. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: August 4, 2010.



Denise Fort

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

DECLARATION OF JOHN STITH

I, John Stith, declare as follows:

1. I am a Senior Data Analyst at Environmental Defense Fund. I have had this position for more than four years.

2. My duties include maintaining an accurate list of members. My colleagues and I provide information to members, acknowledge gifts and volunteer actions and manage the organization's member databases.

3. Environmental Defense Fund is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

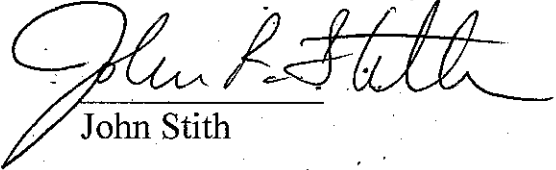
4. The purpose of Environmental Defense Fund is to use science, economics and law to protect and restore the quality of our air, water and other natural resources. Our logo is "Finding the Ways that Work". Environmental Defense Fund employs more than 150 scientists, economists, engineers, graduates of business schools and lawyers to help solve challenging environmental problems in a scientifically sound and cost-effective way.

5. Through its National Climate Campaign, Environmental Defense Fund is pursuing initiatives at the state, national and international levels designed to reduce emissions of greenhouse gases responsible for global warming from all major sources. EDF is pursuing similar initiatives to reduce emissions of other harmful pollutants from large stationary sources.

6. When an individual becomes a member of Environmental Defense Fund, his or her current residential address is recorded in our membership database. The database entry reflecting the member's residential address is verified or updated as needed.

7. Environmental Defense Fund currently has 329,467 members in the United States. These members likewise have a strong interest in protecting human health and the environment from air pollution.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Washington, D. C. on August 4, 2010.


John Stith

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

AMERICAN CHEMISTRY COUNCIL, *et al.*

Petitioner,

v.

ENVIRONMENTAL PROTECTION
AGENCY and LISA PEREZ JACKSON,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY

Respondents.

Case No. 10-1167
Consolidated with 10-1168,
10-1169, 10-1170, 10-1173,
10-1174, 10-1175, 10-1176,
10-1177, 10-1178, 10-1179,
10-1180

Suffolk County)
)
State of Massachusetts)

DECLARATION OF TIMOTHY HARWOOD

I, Timothy Harwood, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) years and suffer from no legal incapacity. I submit this declaration in support of the Motion for Intervention of Conservation Law Foundation, Inc. (“CLF”) in the above-referenced matter.

2. I am the Vice President for Development of CLF, a nonprofit, membership-supported corporation organized and existing under the laws of the State of Massachusetts. In that capacity, I am familiar with CLF's mission, which is to work to solve the most significant environmental challenges facing New England. CLF's staff rely on sound science and use the law to create and advocate for innovative strategies to conserve natural resources, protect public health, and promote vital communities in our region. Working to promote effective climate change policies, as well as enhanced local air quality, including reduced levels of ground-level ozone pollution in Massachusetts and other New England states, is a core element of CLF's mission.

3. I have been Vice President for Development for four (4) years. As Vice President for Development, I am ultimately responsible for CLF's membership efforts and collecting and updating data on CLF's members. My duties in this role include oversight and management of fundraising efforts and membership outreach including communication with members about CLF's mission and work through electronic mail and traditional publications. For this reason, I am directly aware of CLF's projects and initiatives.

4. Founded in 1966, CLF is the oldest regional environmental advocacy organization in the nation. CLF has offices in Maine, Massachusetts, New

Hampshire, Rhode Island, and Vermont. CLF's membership consists of approximately 3,365 individuals, residing in twenty-six (26) states, and the District of Columbia. While members of CLF reside throughout the United States, the largest numbers of members reside in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

5. I understand that at least eighty (80) of CLF's members have indicated to us that they are over sixty-five (65) years of age. In addition, CLF has approximately 1,623 members in New England that live in sixteen (16) counties that are in nonattainment of the primary and secondary national ambient air quality standards for ground-level ozone pollution established by the U.S. Environmental Protection Agency ("EPA").

6. I understand, based on my background and experience at CLF, that the scientific evidence shows that anthropogenic emissions of carbon dioxide ("CO₂") and other greenhouse gases ("GHGs") cause heat-trapping effects in the earth's atmosphere, elevated surface temperatures and other changes to the earth's climate. I further understand that the scientific evidence shows adverse public health effects are associated with this climate change, including increased risk of morbidity and mortality, particularly among elderly citizens or those whose health is compromised, as a result of increased temperatures and extreme heat events.

7. I understand, based on my background and experience at CLF that the largest stationary sources of GHGs, including existing coal- and oil-fired electricity generating units and other large fossil-fuel fired boilers, produce over a third of U.S. domestic CO₂ each year.

8. I understand, based on my background and experience at CLF, that one of the adverse impacts EPA has determined are caused by rising summer temperatures associated with anthropogenic GHG emissions is increased ground level ozone concentration, particularly in the New England region. I also know that continued exposure to even moderate ozone levels, and certainly to levels above the national standard for that pollutant, increases the risk of respiratory illnesses in outdoor children and the elderly, and even can lead to increased incidence of premature deaths. Certain Massachusetts and New England counties, including those where CLF's members reside, already have air quality violating the national standard for ground-level ozone. CLF members who are elderly and who live in areas with already elevated levels of ground-level ozone air pollution are thus particularly vulnerable to the direct public health impacts of GHG pollution. CLF and its members thus have vital interests in ensuring that effective policies are promptly put into place that lead to regulation of GHG emissions, in order to lessen the risks to public health and welfare associated with these emissions.

9. CLF members live and recreate in areas all over New England that are now, and will be in the future, adversely impacted by climate change, and so are at risk for the adverse public health effects due to climate change. CLF's members also include persons owning property and recreating in coastal areas that have already experienced sea level rise, and the accompanying erosion, direct loss of coastal property, and compromised wetland areas. As noted in paragraph 5. above, CLF's members also include elderly persons, and others living in areas where there already are high concentrations of ground-level ozone, and who therefore are now directly impacted by increased ozone levels resulting from unregulated emissions of the GHG methane.

10. My responsibilities at CLF include participating in the various ways in which CLF communicates with and educates its members about the climate change and public health effects of GHG air emissions. In particular, CLF communicates with its members and Board through email contacts, online and traditional publishing of reports, special events and direct mailings. I therefore can say that CLF's members are aware of the threats to public health and welfare posed by climate change and about CLF's work to promote effective governmental climate change policies. In particular, CLF's members are aware that, since 2008, EPA has been taking steps towards the regulation of GHG emissions from motor vehicles and large stationary sources of these air pollutants.

11. On behalf of our members, and in order to address the public health and environmental risks air pollution poses, CLF works to reduce GHG pollution, particulate matter, and other harmful air pollutants. In particular, CLF regularly participates in regulatory proceedings regarding power plants and other emission sources to advocate for effective air pollution controls. In pursuit of our members' vital interest in regulating harmful air pollution, including GHG pollution, CLF has participated in notice-and-comment rulemaking and adjudicated proceedings on stationary source air permitting under the Clean Air Act's Prevention of Significant Deterioration ("PSD") program, and also has intervened in industry challenges to EPA's finding that GHG pollution endangers the public health and welfare. CLF has also petitioned to intervene in defense of EPA's decision to include GHG emissions from biomass-powered facilities in its GHG regulations under the PSD program. I am, therefore, aware that EPA has been preparing for some time to regulate GHG pollution from large stationary sources under the PSD program and that EPA has declared that such regulations will apply in early 2011, when EPA's regulations of GHGs from motor vehicles take effect.

12. I am aware that the regulated industry interests persistently have challenged all of EPA's efforts to regulate GHG pollution under the Clean Air Act. I recently became aware that industry interests have now brought this lawsuit challenging rules EPA issued in 1978 to implement the stationary source air

permitting requirements under the Clean Air Act that will be used to regulate sources of GHGs.

13. For the foregoing reasons, CLF's participation in this litigation is directly related to its mission and purpose and to the vital interests of its members in ensuring that EPA exercises its regulatory authority under the Clean Air Act to combat climate change, including regulating emissions of those GHGs from stationary sources.

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

Executed on August 4, 2010.



Timothy Harwood

Vice President for Development
Conservation Law Foundation, Inc.
62 Summer Street
Boston, MA 02110-1016
(617) 350-0990

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

AMERICAN CHEMISTRY COUNCIL, *et al.*

Petitioner,

v.

ENVIRONMENTAL PROTECTION
AGENCY and LISA PEREZ JACKSON,
ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION
AGENCY

Respondents.

Case No. 10-1167
Consolidated with 10-1168,
10-1169, 10-1170, 10-1173,
10-1174, 10-1175, 10-1176,
10-1177, 10-1178, 10-1179,
10-1180

Middlesex County)
)
State of Massachusetts)

DECLARATION OF MICHAEL B. MOSKOW

I, Michael B. Moskow, hereby declare and state as follows:

1. This declaration is based on my personal knowledge. I am over the age of eighteen (18) and suffer from no legal incapacity. I submit this declaration in support of the Motion for Intervention by Conservation Law Foundation, Inc. (“CLF”) in the above- referenced matter.

2. I am seventy-six (76) years old. I live at 190 Dudley Road, Newton, Massachusetts 02459, which is located in Middlesex County. I have lived at this address for the last forty-eight (48) years and have lived in

Massachusetts, and specifically in Middlesex County, for the majority of my life.

3. I have raised four (4) children at 190 Dudley Road, Newton, Massachusetts. My children are between the ages of forty (40) and fifty (50). I also have ten (10) grandchildren between the ages of three (3) and eighteen (18). My children and grandchildren live in Concord, Massachusetts, Cohasset, Massachusetts, and Newton, Massachusetts.

4. Middlesex County, where I live, exceeds the national ambient air quality standards established by EPA for ground-level ozone. All of my children and grandchildren also reside in counties that exceed the national ambient air quality standards for ground-level ozone.

5. I have lived in Massachusetts for the majority of my life. In 1974, I acquired property, which I still own, in the town of Chilmark, Massachusetts. My property is located at 133 Quenames Road on Martha's Vineyard, and I deeply appreciate the natural beauty of this unique coastal ecosystem. My property is located within one (1) mile of the seashore at ten (10) feet above sea-level on a coastal outwash plain. My property overlooks land bounded by sand dunes and the shore. Because my property is low-lying, it is vulnerable to damage from storm surges.

6. I attended Harvard University as an undergraduate and received my

Masters in Business Administration from Columbia University. I am involved in the development of new and existing commercial real estate. As a result of my experience in commercial real estate development, I have knowledge of the value of coastal property in New England, and Massachusetts in particular. In addition, I am familiar with the financial consequences of damage to coastal property that could result from erosion and sea level rise caused by climate change.

7. I have been a member of CLF and a member of CLF's Board since 1988. I currently serve as the Chair of the Board of Trustees of CLF, Chair of the Board Overseers, and Chair of the Board of CLF Ventures. I have served in these positions for seven (7) years.

8. Based on my experience as a member of CLF's Board, I am familiar with the environmental issues that face Massachusetts, and more broadly New England, including the science documenting the existence of climate change, its causes, and its potential adverse impacts on public health and welfare and the environment. Specifically, I understand that human activities have resulted in elevated atmospheric concentrations of GHGs, including carbon dioxide, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and hexafluoride. These and other GHGs trap heat in the earth's atmosphere that would otherwise escape, and this "greenhouse effect" has the potential to cause a variety of climatic and environmental changes, including, but not limited to, increased temperatures, sea

level rise, melting of glaciers, increases in the frequency and intensity of extreme weather events, and negative impacts to forestry, including increased risks of wildfires. I understand that sea level rise already is documented in Massachusetts. I understand that GHG emissions have an immediate effect on the climate and, because of their long atmospheric lifetimes, will continue to have effects on the climate for years to come.

9. In addition, based on my work with CLF, I understand that the United States Environmental Protection Agency (“EPA”) has found that rising summertime temperatures exacerbate the formation of ground-level ozone. Manmade GHG pollution is responsible for this warming effect and therefore curbing GHG emissions will help in the control of ground-level ozone. Elevated ground-level ozone concentrations have various adverse impacts on public health and welfare, including risk of decreased pulmonary function and risk of increased respiratory symptoms (including inflammation and infection), which may result in increased school absences in younger children and increased emergency department visits and hospital admissions. I understand that adults over the age of sixty-five (65) appear to be at greater risk for instances of ozone-related mortality and hospitalizations, and that children under eighteen (18) years of age are particularly vulnerable to adverse health impacts from exposure to elevated concentrations of ground-level ozone. I also understand that vulnerability

to the health risks posed by elevated concentrations of ground-level ozone is understood to increase with outdoor activities that elevate respiratory rates, including in healthy adults and children.

10. I am very concerned about the impacts that these increased concentrations of ground-level ozone may have on my health and the health of my children and grandchildren. My concern about the impacts of climate change on ground-level ozone concentrations, and consequently my health, is heightened by the fact that I am seventy-six (76) years old and live in an area that already fails to meet the standards for ground-level ozone that EPA has determined to be protective of public health and welfare. In addition, I am concerned about the increased risks of respiratory illness and other negative health impacts to my children and grandchildren. My ten (10) grandchildren, all of who are under the age of 18, have been identified as a population whose health is particularly at risk from elevated concentrations of ground-level ozone. Moreover, each of my children and grandchildren live in areas that exceed the national ambient air quality standards for ground-level ozone. My children and grandchildren also regularly participate in outdoor activities, including jogging, scholastic sports, and hiking, and thus may have increased vulnerability to the adverse health impacts of elevated ground-level ozone concentrations.

11. In addition, I understand and am concerned about the adverse effects of climate change that are already occurring to the Massachusetts environment. During the time that I have lived in Massachusetts, I have participated and continue to participate in recreational activities throughout the state, including near my home on Martha's Vineyard and in other coastal areas in Massachusetts. I have observed changes in weather patterns; for instance, I believe that over the past fifteen (15) years, summer days in Massachusetts have been on average much warmer than before.

12. I am aware that rising sea levels have resulted, and will continue to result, in loss of coastal property and thus may threaten property like my own on Martha's Vineyard. I am also aware that climate change has been linked to increased extreme weather events, which also present a special threat to coastal property. Increased extreme weather events will likely cause damaging flooding and inundation of coastal property.

13. As a result of owning property within one mile of the coast on Martha's Vineyard, I have had the opportunity to observe changes to that coastal area. I have noticed that the sand dune near my property has receded considerably in the past fifteen (15) to twenty (20) years. The receding sand dune is alarming to me, as it is clearly a result of increased intensity of storm events, which I have observed during that time, and potentially attributable to the sea level rise

resulting from warmer global temperatures.

14. I am quite concerned that if actions are not taken to regulate the sources of GHGs, the adverse consequences of global warming, including heightened summer ozone levels, and rising sea level, will only worsen. This will adversely impact me directly, both because I live in a place where ozone levels already exceed the national standards, and because I own property on the coast of Massachusetts.

15. In my capacity as a CLF member and Board member, I am aware that EPA determined in December 2009, based on substantial scientific evidence, and after taking extensive public comment, that elevated atmospheric concentrations of six GHGs constitute air pollution that is anticipated to endanger public health and welfare in the United States, and that emissions of these GHGs from motor vehicles contribute to that dangerous air pollution. I understand that this determination directly responds to the Supreme Court's 2007 opinion from an appeal that was filed by CLF and other organizations in 2003, challenging EPA's denial of a petition to regulate GHGs from motor vehicles.

16. I am aware as well that EPA's recent determination was a necessary first step towards EPA's issuance of regulations for GHG emissions from new motor vehicles under the Clean Air Act. I am aware that EPA has now finalized

those motor vehicles rules, and also that EPA determined in April of this year that regulation of GHGs from stationary sources will begin in January 2011, on the date when the motor vehicle GHG rules become effective. At that point, new large stationary sources of GHGs will be required to hold permits that include limits on their GHG emissions, as well as on the other air pollutants they emit. I am aware that the permit program is long-standing as it applies to the other air pollutants emitted by large stationary sources including power plants, and that it has yielded significant reductions in these air pollutants since it was first implemented over 30 years ago. I believe its application to GHG pollution emissions can have a similar effect in reducing GHG emissions in sources to which it applies.

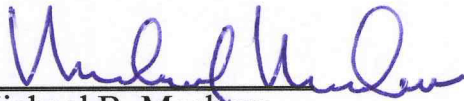
17. Because of my leadership role at CLF, I am aware that industry organizations have persistently challenged all of EPA's efforts to regulate GHG pollution under the Clean Air Act. I recently became aware that industry interests have now brought this lawsuit challenging the rules EPA issued beginning in 1978 to implement the stationary source air permitting requirements under the Clean Air Act that will be used to regulate sources of GHGs.

18. I strongly support CLF's intervention in this action because I support U.S. actions, including EPA actions, that move towards the prompt and effective regulation of GHG emissions from power plants and other industrial facilities. I

understand that those bringing this lawsuit seek to block EPA's efforts to use the Clean Air Act to regulate GHG emissions. This is unacceptable to me. I am concerned that without prompt action by EPA, emissions of these harmful air pollutants will continue. It is my strongly held position that U.S. failure to implement effective regulation of GHGs in the near future will lead only to additional, unnecessary, and preventable risks to public health and welfare.

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

Executed on August 4, 2010.



Michael B. Moskow
190 Dudley Road
Newton, Massachusetts 02459