

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF NORTH DAKOTA, et al.,)	
)	
<i>Petitioners,</i>)	
)	No. 24-1119
v.)	
)	consolidated with No. 24-1154
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, et al.)	
)	
<i>Respondents.</i>)	
)	

**ENVIRONMENTAL AND PUBLIC HEALTH ORGANIZATIONS’
UNOPPOSED MOTION TO INTERVENE IN SUPPORT OF
RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b), Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania’s Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club (collectively, “Movants”) hereby move to

intervene in support of Respondents U.S. Environmental Protection Agency (“EPA”) et al. in the above-captioned challenge to the “National Emissions Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review,” 89 Fed. Reg. 38,508 (May 7, 2024) (“MATS Update Rule”), as well as in all other petitions challenging the MATS Update Rule, except for any petitions that may be filed challenging the Rule as insufficiently stringent.

Respondents do not oppose this motion. State Petitioners and NACCO take no position on the motion.

Because Movants have a demonstrable interest in defending the MATS Update Rule, their motion is timely, and no existing party adequately represents their interests, the Court should grant the motion for intervention.

BACKGROUND

I. Statutory and Regulatory Background

Section 112 of the Clean Air Act requires EPA to regulate major sources of hazardous air pollutants (also known as air toxics), and to put in place standards that reflect the “maximum degree of reduction in emissions” determined to be achievable, “including a prohibition on such emissions where achievable.” 42 U.S.C. § 7412(d)(2). Within eight years after establishing initial standards, EPA must strengthen the standards if “required in order to provide an ample margin of

safety to protect public health,” or “to prevent . . . an adverse environmental effect,” considering cost and other relevant factors. *Id.* § 7412(f)(2)(A). EPA refers to this one-time review as the “residual risk review.”¹

In addition, within eight years and at least every eight years thereafter, EPA must “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section.” *Id.* § 7412(d)(6). EPA refers to this periodic review process as the “technology review.”²

In the Clean Air Act Amendments of 1990, Congress mandated that EPA regulate power plants’ emissions of hazardous air pollutants under section 112 if the agency found such regulation “appropriate and necessary” after conducting an analysis of the public health hazards reasonably anticipated to result from those emissions. *Id.* § 7412(n)(1)(A). EPA first made the required finding in 2000 and reaffirmed the finding and published initial section 112 standards for coal- and oil-fired power plants in 2012. *See* “NESHAP For 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-

¹ *Setting Emissions Standards for Major Sources of Toxic Air Pollutants*, EPA, <https://www.epa.gov/clean-air-act-overview/setting-emissions-standards-major-sources-toxic-air-pollutants>.

² EPA, *supra* note 1.

Commercial-Institutional Steam Generating Units,” 77 Fed. Reg. 9,304 (Feb. 16, 2012) (the “Mercury and Air Toxics Standards,” or “MATS”).

This Court remanded EPA’s “appropriate and necessary” finding to the agency after the Supreme Court ruled that the agency should have considered cost in making the finding. *Michigan v. EPA*, 576 U.S. 743 (2015); *White Stallion Energy Center v. EPA*, No. 12-1100 (and consolidated cases), 2015 U.S. App. LEXIS 21819 (D.C. Cir. Dec. 15, 2015) (remanding to EPA without vacatur). EPA reaffirmed the finding in 2016, briefly reversed position in 2020, and again reaffirmed the finding in 2023. “NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units – Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding,” 88 Fed. Reg. 13,956 (Mar. 6, 2023). That 2023 reaffirmation was not challenged in court during the sixty-day review period. *See* 42 U.S.C. § 7607(b)(1).

In 2020, EPA issued a final rule concluding that no changes were warranted pursuant to either the section 112(f)(2)(A) residual risk review or the section 112(d)(6) technology review. “NESHAP: Coal and Oil-Fired Electric Utility Steam Generating Units-Reconsideration of Supplemental Finding and Residual Risk and Technology Review,” 85 Fed. Reg. 31,286 (May 22, 2020). Many of the Movants

filed a petition for reconsideration with EPA³ and a petition for review in this Court challenging that action. Petition for Review, *Air Alliance Houston v. EPA*, No. 20-2168 (D.C. Cir. July 21, 2020).

After reconsidering the 2020 action, EPA published a proposed rule in 2023, 78 Fed. Reg. 24,854 (Apr. 24, 2023), and determined in the MATS Update Rule that revisions to improve and strengthen the Mercury and Air Toxics Standards were necessary.

II. Hazardous Air Pollutant Emissions from Power Plants Threaten Public Health and the Environment

Congress has defined hazardous air pollutants as “substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic” or which may threaten “adverse environmental consequences whether through ambient concentration, bioaccumulation, deposition, or otherwise.” 42 U.S.C. § 7412(b)(2). As this Court has recognized, these substances can cause cancer as well as “serious non-cancer health effects to various bodily organs and systems—including nerves, heart, lungs, liver, skin, and reproductive systems—and to fetal development” and can “affect people’s health

³ Petition for Reconsideration of Air Alliance Houston, et al. (July 21, 2020), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-4565>.

through multiple pathways (water, soil, food, air), are persistent (meaning that, once emitted, they linger in the environment), and bio-accumulative (such that small amounts inhaled or otherwise absorbed by bodily tissues build up over time, thereby intensifying associated health risks).” *La. Env’t Action Network v. EPA*, 955 F.3d 1088, 1092 (D.C. Cir. 2020).

Power plants are among the largest sources of emissions of many hazardous air pollutants, including mercury, arsenic, chromium, cobalt, nickel, lead, hydrogen chloride, beryllium, and cadmium in the United States.⁴ Exposure to these pollutants is associated with “irritation of the lung, skin, and mucus membranes; detrimental effects on the central nervous system; damage to the kidneys; alimentary effects such as nausea and vomiting; and cancer.”⁵

III. Movants Have Long Advocated for Strong Limits That Would Reduce Hazardous Air Pollutant Emissions from Power Plants

Movants have long advocated for strong emissions standards for hazardous air pollutants. This work has included engagement in administrative and judicial proceedings for EPA’s prior actions with respect to hazardous air pollutant emissions from power plants. In many cases, Movants submitted comments that

⁴ EPA, *Fact Sheet: EPA’s Final Rule to Strengthen and Update the Mercury and Air Toxics Standards for Power Plants* at 4, https://www.epa.gov/system/files/documents/2024-04/fact-sheet_mats-rtr-final_rule_2024.pdf.

⁵ *Id.*

were highly critical of EPA's proposed actions and/or challenged in court EPA's failure to fulfill its statutory duties.

For example, in 2005 when EPA attempted to undo its appropriate-and-necessary finding and delist power plants as a source category under section 112, "Revision of Dec. 2000 Regulatory Finding and Removal of Coal-and Oil-Fired Electric Utility Steam Generating Units from Section 112(c) List," 70 Fed. Reg. 15,994 (Mar. 29, 2005), many of the Movants filed petitions for review or intervened as petitioners to challenge that action. This Court granted those petitions for review and vacated the rule. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008).

In 2008, several Movants (Environmental Defense Fund, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club) filed suit to challenge EPA's failure to establish emissions standards for power plants under section 112(d) despite having listed them as a source category under section 112(c). Complaint for Declaratory and Injunctive Relief, *Am. Nurses Ass'n v. Johnson*, Civ. No. 1:08-cv-02198 (RMC) (D.D.C. Dec. 18, 2008). This suit resulted in a consent decree under which EPA agreed to promulgate final standards by November 16, 2011. *Am. Nurses Ass'n v. Jackson*, Civ. No. 1:08-cv-02198 (RMC), 2009 U.S. Dist. LEXIS 129473 (D.D.C. Oct. 22, 2009).

After EPA finally published the Mercury and Air Toxics Standards in 2012, most of the Movants intervened to defend the rule. *See* Final Brief of Public Health, Environmental, and Environmental Justice Group Respondent Intervenors, *White Stallion Energy Center, LLC v. EPA*, No. 12-1100 (and consolidated cases) (D.C. Cir. Apr. 8, 2013). Some Movants (Chesapeake Climate Action Network, Environmental Integrity Project, and Sierra Club) challenged the monitoring and compliance-assurance provisions of the 2012 rule as insufficiently protective. *See* Corrected Final Opening Brief of Environmental Petitioners, *White Stallion Energy Center, LLC v. EPA*, No. 12-1100 (and consolidated cases) (D.C. Cir. Apr. 17, 2013).⁶

After the Supreme Court ruled that EPA should have considered costs when making the appropriate-and-necessary finding, *Michigan v. EPA*, 576 U.S. 743 (2015), some Movants urged this Court to remand to EPA without vacatur, which

⁶ Later, some Movants (Chesapeake Climate Action Network, Clean Air Council, Downwinders at Risk, and Environmental Integrity Project) challenged EPA's denials of their petitions for reconsideration of the 2012 rule's limit on particulate matter, as a surrogate for non-mercury metals, and a 2014 rule revising the standards' startup provisions, arguing that both the particulate-matter limit and startup provisions were insufficiently protective. Final Opening Brief of Environmental Petitioners, *ARIPPA v. EPA*, No. 15-1180 (and consolidated cases) (D.C. Cir. Apr. 3, 2017); *Chesapeake Climate Action Network v. EPA*, 952 F.3d 310 (D.C. Cir. 2020).

this Court ultimately did. *White Stallion Energy Center v. EPA*, No. 12-1100 (and consolidated cases), 2015 U.S. App. LEXIS 21819 (D.C. Cir. Dec. 15, 2015).

When EPA proposed in 2019 to withdraw the appropriate-and-necessary finding and not to adopt more stringent standards pursuant to either the technology review or residual risk review, most Movants filed comments opposing that proposal⁷ and subsequently challenged those decisions in court when they were finalized. Petition for Review, *Air Alliance Houston v. EPA*, No. 20-02168 (D.C. Cir. July 21, 2020); *see also supra* pp. 4-5. Last year, most Movants submitted detailed comments on EPA's proposal, calling for EPA to strengthen it in several respects,⁸ and now seek to intervene to continue to defend their interests and their members' interests.

ARGUMENT

I. Movants Satisfy the Requirements for Intervention

To become a party to a petition for review in the courts of appeals, a potential intervenor must file a motion to intervene “within 30 days after the

⁷ Comments of Environmental, Public Health, and Civil Rights Organizations (Apr. 17, 2019), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-1191>; Comments of Allergy & Asthma Network et al. (Apr. 17, 2019), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-1678>.

⁸ Comments of Public Health and Environmental Organizations (June 23, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5996>; Comments of Allergy & Asthma Network et al. (June 23, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5997>.

petition for review” and provide “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d); *see Ala. Mun. Distribs. Grp. v. FERC*, 300 F.3d 877, 879 (D.C. Cir. 2002).

In determining what constitutes appropriate grounds for intervention, this Circuit has sometimes looked to the standard for intervention in the district courts. *See Building & Construction Trades Dep’t v. Reich*, 40 F.3d 1275, 1282–83 (D.C. Cir. 1994) (noting that “the policies underlying intervention [in district court] may be applicable in appellate courts”) (alteration in original) (quoting *Int’l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965)); *Massachusetts Sch. of L. at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997). Under Federal Rule of Civil Procedure 24(a)(2), a movant is entitled to intervention as-of-right whenever (1) its motion is “timely;” (2) the movant claims an “interest relating to the . . . subject of the action;” (3) disposition of the action “may as a practical matter impair or impede the movant’s ability to protect its interest;” and (4) the existing parties may not “adequately represent” the movant’s interest. Fed. R. Civ. P. 24(a)(2); *see also Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

Movants readily satisfy the standard of Federal Rule of Appellate Procedure 15(d) and, if applicable, the standards of Federal Rule of Civil Procedure 24(a). This motion is timely filed within thirty days of May 8, 2024, when the states’ petition for review was filed. As outlined below, Movants have strong interests in

the MATS Update Rule that are relevant to their organizational missions, including in protecting their members from the substantial public health and environmental harms associated with air toxics emissions; they will be harmed if the MATS Update Rule is vacated, weakened, or delayed by an adverse disposition in this case; and they are not adequately represented by existing parties.⁹

A. Movants Timely Filed This Motion

Under Federal Rule of Appellate Procedure 15(d), motions to intervene are due within thirty days of the filing of a petition for review. Because the states' petition for review was filed on May 8, 2024, the thirty-day period will expire on June 7, 2024. This motion is therefore timely.

⁹ Rule 24 also grants the district courts discretion to allow “permissive” intervention whenever an applicant “has a claim or defense that shares with the main action a common question of law or fact,” Fed. R. Civ. P. 24(b)(1)(B). Movants would easily meet these requirements if they were applied here.

To establish a common claim or defense as a defendant-intervenor in a challenge to agency action, it is sufficient that “movants seek to defend” the agency’s decision. *Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 14 (D.D.C. 2019). Here, Movants intend to offer defensive arguments, all of which will necessarily share questions of law and fact with the underlying challenge and with EPA’s defense of the Rule, given that all arguments are likely to be grounded in the Clean Air Act provisions under which EPA acted and in the administrative record for the Rule.

“It remains . . . an open question in this circuit whether Article III standing is required for permissive intervention.” *Safari Club Int’l v. Salazar*, 704 F.3d 972, 980 (D.C. Cir. 2013). Should the Court conclude that standing for permissive intervention is required, Movants have standing to intervene in this matter. *See infra* Part II.

B. Movants Have Significant Interests in the MATS Update Rule and the Protections It Provides

Movants and their members have an interest in this matter within the meaning of Federal Rule of Appellate Procedure 15(d). Movants have missions to protect public health and the environment. Their members live, work, and recreate in areas affected by pollution from the coal-fired power plants regulated by this rule. As reflected in the attached declarations, Movants' members will benefit from the MATS Update Rule in several ways:

- some members live, work, or recreate near plants that must comply with the strengthened filterable particulate matter standard (a surrogate for toxic metals other than mercury);¹⁰
- some members live, work, or recreate near lignite-fired plants that must comply with the strengthened mercury standards;¹¹
- some members live or work near plants that must now employ continuous emissions monitoring for the filterable particulate matter standard, which

¹⁰ *See, e.g.*, Coates Decl. ¶ 16; Gilbert Decl. ¶¶ 9–11, 15; Oppewal Decl. ¶¶ 4, 9; Schuba Decl. ¶¶ 3–8; Sikorski Decl. ¶¶ 7–14.

¹¹ *See, e.g.*, Cantu Decl. ¶¶ 3, 8; Coates Decl. ¶ 16.

can result in reduced pollution through faster identification and correction of problems with pollution control devices;¹²

- some members fish recreationally but curtail their fishing or refrain from fishing, or avoid eating the fish they catch, because of mercury advisories or other reasonable concerns about the mercury content of fish;¹³ and
- members of Movant public health organizations include health care professionals who are concerned about the impacts of power plant hazardous air pollutant emissions and fine particulate matter associated with increased hazardous air pollutant emissions on their health, the health of their families, and the health of their patients.¹⁴

Movants also have organizational interests in upholding the MATS Update Rule. Many have worked for years to advocate for strong standards that would reduce hazardous air pollutant emissions from power plants. *See supra* pp. 6–9. In this rulemaking, as in many of EPA’s prior attempts to address hazardous air pollutants, Movants submitted substantial legal arguments and technical data

¹² *See, e.g.*, Cantu Decl. ¶¶ 3, 9; Coates Decl. ¶¶ 9–10, 16; O’Quinn Decl. ¶¶ 7–9, 13; Resch Decl. ¶¶ 7, 10; Sedor Decl. ¶¶ 7–8, 12; *see* 88 Fed. Reg. at 38,536 (discussing the pollution reduction benefits of continuous emissions monitoring).

¹³ *See, e.g.*, Schuba Decl. ¶ 4; Theberge Decl. ¶¶ 5–6; Uberuaga Decl. ¶¶ 10–12.

¹⁴ *See, e.g.*, Cantu Decl. ¶¶ 14–17; Hill Decl. ¶¶ 9–10; Nerlinger Decl. ¶¶ 7–12; Oppewal Decl. ¶¶ 14–16.

urging EPA to adopt more stringent standards.¹⁵ In addition, for some Movants, air pollution monitoring supports their programmatic work; the MATS Update Rule's removal of the startup loophole and its continuous emissions monitoring requirements will allow them to expand monitoring and public outreach efforts, including through providing real-time information to impacted communities.¹⁶

Those interests are sufficient to support intervention under Rule 15(d). *See Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 317–18 (D.C. Cir. 2015) (finding a protectable interest supporting intervention where a party would benefit from agency action). Indeed, this Court has granted many of the Movants leave to intervene in prior litigation regarding regulation of air toxics from power plants. *See supra* pp. 7–8.

C. Movants' Interests Would Be Threatened by a Ruling That Vacates, Delays, or Weakens the Rule's Requirements

An order delaying, weakening, or undoing the MATS Update Rule would harm both the member and organizational interests described in the previous section. First, Movants' members' health and welfare—and the health and welfare of those for whom members of the Movant public health organizations care—will be harmed if Petitioners succeed in delaying, weakening, or overturning the

¹⁵ *See* Comments, *supra* note 8.

¹⁶ *See, e.g.*, Coates Decl. ¶¶ 8–13; D'Souza Decl. ¶¶ 18–24; Duggan Decl. ¶¶ 11–15; Hadayia Decl. ¶¶ 7, 19–23; Lavergne Decl. ¶¶ 14–16.

emission reductions and monitoring improvements required by the MATS Update Rule. Second, a successful challenge would undermine the years of work Movants have invested in advocating for reductions in air toxics emissions. Thus, the disposition of this case “may as a practical matter impair or impede” Movants’ ability to protect those interests, Fed. R. Civ. P. 24(a)(2), and an adverse ruling would deny them the “benefits” of the MATS Update Rule, *Crossroads*, 788 F.3d at 317 (holding that intervention is warranted when petitioners’ challenge would “remove” the “benefit[s]” of the rule).

D. Movants’ Interests May Not Be Adequately Represented by EPA, Which Has Changed Course Repeatedly in Addressing Hazardous Air Pollutant Emissions from Power Plants

Finally, although Federal Rule of Appellate Procedure 15(d) imposes no such requirement, Movants’ interests in this case are distinct from EPA’s, and therefore EPA may not “adequately represent” them. Fed. R. Civ. P. 24(a)(2).

Movants’ burden to show that EPA’s representation of their interest “‘may be’ inadequate” is “minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Movants need not “predict now the specific instances,” *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977), in which conflicts may arise; a “potential conflict,” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986), or a “possibility of disparate interests,” *Costle*, 561 F.2d at 912, is sufficient. Notably, this Court “look[s] skeptically on government entities serving

as adequate advocates for private parties,” *id.*, and, in evaluating motions to intervene, this Court “ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Fund for Animals*, 322 F.3d at 736.

Movants readily satisfy this “not onerous” standard. *Crossroads*, 788 F.3d at 321. While EPA must balance multiple interests and perspectives, Movants’ goals are to protect their members and ensure that emissions standards promulgated under section 112 achieve the greatest pollution reductions as soon as possible. Moreover, Movants have frequently disagreed with and challenged EPA’s actions in both administrative and judicial proceedings regarding regulation of air toxics emissions from power plants. *See supra* pp. 6–9. For example, in one of these proceedings, EPA took the position that these emissions should be regulated under a different section of the Clean Air Act—a position that some of the Movants challenged and that was ultimately rejected by this Court. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). In public comments on the proposed rule, Movants advocated for strengthened mercury limits for all plants (and not just lignite-fired plants) and for an even more stringent filterable particulate matter limit, among other areas of disagreement with EPA.¹⁷ Indeed, several Movants submitted a

¹⁷ *See* Comments of Public Health and Environmental Organizations (June 23, 2023), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-5996>.

petition for reconsideration to EPA in 2020 that, among other things, objected to the agency's failure to strengthen the standards pursuant to its residual risk review; that part of the petition is still pending.¹⁸ As this Court has previously observed, “doubtful friends may provide dubious representation.” *Crossroads*, 788 F.3d at 314.

Finally, Movants will “serve as a vigorous and helpful supplement to EPA’s defense.” *Costle*, 561 F.2d at 912–13. Movants’ interests and experience provide them with a unique and distinctive perspective on the issues at stake. And, consistent with this Circuit’s rules, the proposed intervenors will “focus on points not made or adequately elaborated upon in the . . . [government’s] brief, although relevant to the issues before this court.” D.C. Cir. R. 28(d)(2).

II. Movants Have Standing to Defend the Rule

Should it be required, Movants have Article III standing.¹⁹ Under D.C. Circuit caselaw, a movant-intervenor has standing to defend a challenged

¹⁸ See Petition for Reconsideration of Air Alliance Houston, et al. (July 21, 2020), <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0794-4565>; see also 88 Fed. Reg. at 38,518 (stating that EPA “continues to review and will respond to other aspects of the petition in a separate action”).

¹⁹ Because this Court’s precedents require that defendant-intervenors establish standing, see, e.g., *Yocha Dehe v. United States Dep’t of the Interior*, 3 F.4th 427, 430 (D.C. Cir. 2021), Movants explain herein why they have standing to defend the MATS Update Rule. Recent decisions of the Supreme Court, however, call into question this line of cases. See *Little Sisters of the Poor Saints Peter & Paul Home*

regulation when it “benefits from [the] agency action, the action is then challenged in court, and an unfavorable decision would remove the [movant’s] benefit.”

Crossroads, 788 F.3d at 317. In addition, an organization may defend agency action on its members’ behalf when “(1) at least one of its members would have standing to [defend] in his or her own right; (2) the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the [defense] asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hearth, Patio & Barbecue Ass’n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021) (cleaned up).

Movants’ members have standing to defend the MATS Update Rule in their own right. As explained above, they directly benefit from the public-health and environmental protections provided by the MATS Update Rule and as a result will be harmed if this Court vacates, delays, or weakens those protections. *See supra* pp. 12–15. This is all that is required to establish standing under *Crossroads*.

v. Pennsylvania, 140 S. Ct. 2367, 2379 n.6 (2020) (holding that an intervenor need establish standing only “if it pursues relief that is broader than or different from the party invoking the court’s jurisdiction”); *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1951 (2019) (explaining that “it was not ... incumbent on [a party] to demonstrate its standing” when it participated “as an intervenor in support of the ... Defendants,” or “as an appellee” on appeal, “[b]ecause neither role entailed invoking a court’s jurisdiction”). As then-Judge Jackson explained, “th[is] Circuit’s holdings in this regard predate, and are plainly inconsistent with, the Supreme Court’s recent opinions.” *Env’t Integrity Project v. Wheeler*, No. 20-cv-1734, 2021 U.S. Dist. LEXIS 254365 (D.D.C. Jan. 27, 2021).

Movants also satisfy the remaining requirements of associational standing. The interests Movants seek to protect by participating in this case are germane to their organizational purposes of advocating for reductions of harmful air pollutants from sources covered by the MATS Update Rule. *See, e.g., Chesapeake Climate Action Network v. EPA*, 952 F.3d 310, 318 (D.C. Cir. 2020) (finding members' interests in reducing their exposure to air pollutant germane to the Sierra Club's organizational purposes). Furthermore, Movants' defense does not require participation of their members because Petitioner will raise questions of law or fact that will be resolved on the administrative record without consideration of those members' individual circumstances. *See Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 597–98 (D.C. Cir. 2015).

Finally, Movants including Environmental Integrity Project and Air Alliance Houston have organizational standing, because they will directly benefit from the removal of the startup loophole and continuous emissions monitoring provided by the MATS Update Rule. As stated above, the MATS Update Rule will allow these organizations to improve their core programmatic work related to air quality monitoring, public education, and outreach without having to expend more of their limited resources. *See supra* p. 14; *see also Action Alliance of Senior Citizens v. Heckler*, 789 F.2d 931, 937–38 (D.C. Cir. 1986) (holding that organization had

standing to challenge federal regulations that would deny it “access to information and avenues of redress they wish to use in their routine . . . activities”).

CONCLUSION

For the foregoing reasons, this Court should grant Movants leave to intervene in support of Respondent in all petitions challenging the MATS Update Rule, except for any petitions that may be filed challenging the Rule as insufficiently stringent.

Dated: June 3, 2024 Respectfully submitted,

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure and D.C. Circuit Rule 26.1, Movants Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club state that they are non-profit environmental and public health organizations. None of the organizations have any parent corporation or any publicly held corporation that owns 10% or more of its stock.

DATED: June 3, 2024

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CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), I certify that the parties to this case are set forth below.

Petitioners: The States of North Dakota, West Virginia, Alaska, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, States of Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming, the Commonwealths of Kentucky and Virginia, and NACCO Natural Resources Corporation.

Respondents: The United States Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency.

Intervenors: There are no other intervenors or movant-intervenors at the time of this filing.

Amici Curiae: There are no amici curiae at the time of this filing.

DATED: June 3, 2024

/s/ Shaun A. Goho
Shaun A. Goho

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), counsel hereby certifies that the foregoing Motion of Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club to Intervene in Support of Respondent contains 4,269 words, as counted by counsel's word processing system, and thus complies with the 5,200 word limit. *See* Fed. R. App. P. 27(d)(2)(A).

Further, this document complies with the typeface and type-style requirements of the Federal Rules of Appellate Procedure, 32(a)(5) and (a)(6), because this document has been prepared in a proportionally spaced typeface using **Microsoft Word for Mac Version 16.85** using **size 14 Times New Roman** font.

DATED: June 3, 2024

/s/ Shaun A. Goho
Shaun A. Goho

CERTIFICATE OF SERVICE

On this 3rd day of June, 2024, a true and correct copy of the foregoing Motion To Intervene By Air Alliance Houston, Alliance of Nurses for Healthy Environments, American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Environmental Integrity Project, Montana Environmental Information Center, Natural Resources Council of Maine, Natural Resources Defense Council, the Ohio Environmental Council, Physicians for Social Responsibility, and Sierra Club was filed with the electronic case filing ("ECF") system of the U.S. Court of Appeals for the D.C. Circuit, which will provide electronic notice to counsel of record.

/s/ Shaun A. Goho
Shaun A. Goho