

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEW YORK, STATE OF
NEW JERSEY and THE CITY OF NEW YORK,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and ANDREW
WHEELER, in his official capacity as
Administrator of the U.S. Environmental
Protection Agency,

Respondents.

Case No. 19-1231

**UNOPPOSED MOTION OF ADIRONDACK COUNCIL,
ENVIRONMENTAL DEFENSE FUND, AND SIERRA CLUB TO
INTERVENE ON BEHALF OF PETITIONERS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b), Adirondack Council, Environmental Defense Fund, and Sierra Club (“Movants”) respectfully move for leave to intervene in the above-captioned case. The petition for review, filed by the State of New York, the State of New Jersey, and the City of New York (“Petitioners”), challenges a final action of the Environmental Protection Agency (“EPA” or “the Agency”) entitled “Response to

Clean Air Act Section 126(b) Petition from New York,” 84 Fed. Reg. 56,058 (Oct. 18, 2019). (Doc. No. 1813323). Petitioners have also filed a motion to expedite this case with a proposed briefing schedule. (Doc. No. 1817645). Movants support this motion and Petitioners’ proposed schedule.

This motion is unopposed. Counsel for Petitioners indicated that Petitioners consent to this motion. Counsel for EPA has represented to Movants that Respondent takes no position on this motion.

Movants are national and regional environmental organizations dedicated to protecting public health and the environment, and have participated in administrative and judicial proceedings related to the implementation of Section 110(a)(2)(D) and Section 126(b) of the Clean Air Act. *See, e.g.,* Ex. E, Declaration of Adam Peltz ¶ 3; Ex. B, Declaration of Mark Kresowik ¶ 6; Ex. G, Declaration of James Alfred Tyler Frakes ¶ 2. Moreover, Movants’ organizations and their members are substantially harmed as a result of air pollution from the power plants, industrial facilities, and oil and gas sector facilities identified in New York’s Section 126(b) Petition and would directly benefit from the enforceable air emission reductions proposed by the State of New York. *See, e.g.,* Ex. C, Declaration of Bridget Lee ¶¶ 6-9; Peltz Decl. ¶¶ 11-14, 17; Ex. F, Declaration of Jennifer Freeman ¶¶ 9-11; Frakes Decl. ¶¶ 14-15.

Movants meet the grounds for intervention under Federal Rule of Appellate Procedure 15(d), as they have in other Clean Air Act cases addressing the interstate transport of air pollution.¹ An order granting the present motion would also be consistent with the Movants' past and present participation in a number of cases related to the interstate transport of ozone with respect to the 2008 and the 2015 National Ambient Air Quality Standards.²

Pursuant to D.C. Circuit Rule 15(b), this motion also constitutes a motion to intervene in any other challenges (including later-filed challenges) to the EPA's final denial of New York's Section 126(b) Petition). 84 Fed. Reg. 56,058 (Oct. 18, 2019) ("Petition").

¹ See, e.g., Order, *North Carolina v. EPA*, No. 05-1244 (and consolidated cases) (D.C. Cir. Oct. 29, 2005), Doc. No. 928141 (granting EDF's motion to intervene to challenge portions of EPA's Clean Air Interstate Rule as unlawful and inconsistent with the requirements of the Clean Air Act); Order, *EME Homer City Generation L.P. v. EPA*, No. 11-1302 (and consolidated cases) (D.C. Cir. Oct. 12, 2011), Doc. No. 1334766 (granting Movants' motion to intervene with respect to the Original Transport Rule); Order, *Wisconsin v. EPA*, No. 16-1406 (D.C. Cir. Jan. 31, 2017), Doc. No. 1658440 (granting motion to intervene in support of EPA with respect to the Cross-State Air Pollution Rule Update).

² See, e.g., Petition for Review, *Sierra Club v. EPA*, No. 16-1443 (and consolidated cases) (D.C. Cir. Dec. 23, 2016), Doc. No. 1652997 (arguing that in the Cross-State Air Pollution Rule Update, EPA had failed to timely prohibit significant contributions to downwind nonattainment and interference with the maintenance of the 2008 ozone standard as mandated by the Clean Air Act, among other issues); Petition for Review, *Chesapeake Bay Foundation v. EPA*, No. 18-1285 (and consolidated cases) (D.C. Cir. Oct. 15, 2018), Doc. No. 1755727 (challenging EPA's final denial of Section 126(b) petitions submitted by the State of Maryland and the State of Delaware regarding the interstate transport of ozone pollution under the 2008 and the 2015 ozone National Ambient Air Quality Standards).

BACKGROUND

I. Clean Air Act Framework

Under the Clean Air Act's cooperative federalism framework, EPA establishes and periodically revises National Ambient Air Quality Standards, which establish maximum allowable concentrations in the ambient air for certain pollutants that endanger human health and welfare. 42 U.S.C. §§ 7407, 7409(b)(1). States are primarily responsible for ensuring that air quality meets the National Ambient Air Quality Standards by set deadlines, with EPA providing a federal "backstop" if states fail to timely submit approvable implementation plans. *Id.* §§ 7407(a), 7410(c)(1), 7511(a), 7511a.

With respect to interstate air pollution, the Act's "Good Neighbor" provision requires that each state implementation plan contain adequate provisions "prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard." *Id.*

§ 7410(a)(2)(D)(i)(I). If EPA determines that a state's Good Neighbor plan is inadequate, the Agency has a statutory duty to issue a federal implementation plan to address the state's Good Neighbor obligations. *Id.* § 7410(c)(1). This mandate provides relief for states whose ability to meet health-based standards by the

statutory deadlines is attributable in significant part to pollution from upwind states. *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1603-04 (2014).

In addition to the affirmative obligations imposed upon upwind states and EPA to address interstate air pollution through state implementation plans or, if necessary, federal implementation plans, the Clean Air Act authorizes downwind states and local governments afflicted by interstate air pollution to petition EPA for relief. Section 126(b) provides that “[a]ny State or political subdivision may Petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of [the Good Neighbor Provision].” 42 U.S.C. § 7426(b).³ If a Section 126(b) finding is made by EPA, any source emitting in violation of the Good Neighbor Provision must cease operating within three months, unless the source complies with emission limitations and compliance schedules provided for by EPA. *Id.* § 7426(c). Section 126(b) provides “a separate and alternative method for states to address interstate air pollution.” *GenOn REMA, LLC v. EPA*, 722 F.3d 513, 522-23 (3d Cir. 2013).

³ The text of 42 U.S.C. § 7426(b) cross-references Clean Air Act section 7410(a)(2)(D)(ii) instead of 7410(a)(2)(D)(i). This was a scrivener’s error; the correct cross reference is to section 7410(a)(2)(D)(i). *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (D.C. Cir. 2001).

II. New York's Section 126(b) Petition

On March 12, 2018, New York submitted a Petition pursuant to Section 126(b) of the Clean Air Act requesting that EPA make a finding that approximately 360 sources in nine upwind states were significantly contributing to New York's nonattainment and/or interfering with New York's maintenance of the 2008 and 2015 ozone National Ambient Air Quality Standards. State of New York, Department of Environmental Conservation, *New York State Petition for a Finding Pursuant to Clean Air Act Section 126(b)* (Mar. 12, 2018). To support its Petition, New York provided substantial technical information demonstrating that emissions from electric generating units, industrial facilities, and oil and gas sector facilities in Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia, and West Virginia were significantly contributing to unhealthy ozone levels within New York. *See id.*

New York requested that EPA establish enforceable emissions limitations for the identified sources. *Id.* at 17. In particular, the Petition states that these sources should be operating with the same modern emission controls for ozone-forming nitrogen oxides already required in New York (e.g., selective catalytic or non-catalytic reduction systems) and at emission rates commensurate with New York's Reasonably Available Control Technology standards. *Id.* New York's

Reasonably Available Control Technology standards are based on a control cost effectiveness of \$5,000 per ton of nitrogen oxide removed. *Id.*

The Petition also included air quality modeling demonstrating that its proposed solution would help New York meet the national, health-based, air quality standards for ozone. *Id.* at 13-14. This proposed solution would also provide air quality benefits to the communities surrounding the affected power plants in the nine upwind states, as well as other downwind states, such as Connecticut and New Jersey. *Id.* at 14-16.

On October 18, 2019, EPA issued a final denial of New York's Petition. EPA concluded that New York had not met its statutory burden to demonstrate that the group of identified sources emits or would emit in violation of the Good Neighbor Provision for the 2008 or the 2015 ozone National Ambient Air Quality Standards. 84 Fed. Reg. at 56,058. In particular, EPA determined that (1) Chautauqua County will not have air quality problems with respect to either the 2008 or the 2015 ozone standards; (2) the New York Metropolitan Area does not have any air quality problems with respect to the 2008 ozone standard; and (3) New York had not met its burden to demonstrate that the named sources would significantly contribute to nonattainment or interfere with maintenance of the 2008 or 2015 National Ambient Air Quality Standards as required by section 110(a)(2)(D)(i) of the Clean Air Act. *Id.* at 56,058-59.

On October 29, 2019, the State of New York, the State of New Jersey, and the City of New York filed a timely petition for review. (Doc. No. 1813323).

ARGUMENT

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene “be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention.” This rule “simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

The Supreme Court has recognized that Federal Rule of Civil Procedure 24, while not binding in cases originating in courts of appeals, may inform the intervention inquiry under Federal Rule of Appellate Procedure 15(d). *See Int’l Union, United Auto. Workers v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *see also*, e.g., *Amalgamated Transit Union Int’l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curiam).

The criteria required for intervention of right under Federal Rule of Civil Procedure 24(a)(2) include: (1) that the motion to intervene is timely; (2) that the movant claims an interest relating to the subject of the action; (3) that disposition of the action may as a practical matter impair or impede the movants’ ability to protect its interest; and (4) that existing parties may not adequately represent the

movants' interest. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003); *see also, e.g., Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 320-21 (D.C. Cir. 2015).

For the reasons discussed below, Movants meet Rule 15(d)'s requirements, satisfy the elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2), and satisfy any standing requirements that apply in determining whether intervention is justified in this Court.

I. Movants Meet the Standard for Intervention Under Rule 15(d) and of Right in This Case

A. The Motion is Timely

Movants meet the timeliness requirement because this motion is being filed, in compliance with Federal Rule of Appellate Procedure 15(d), within 30 days after Petitioners filed their October 29, 2019 petition for review.

B. Movants Have an Interest in Subject of This Action

Movants are nonprofit citizens' groups working on behalf of their members' interests in public health and environmental protection. In addition, Movants research, analyze, and advocate for the control of interstate air pollution and the protection of public health in the United States. For both of these reasons, Movants' have an interest in the subject of this action.

Environmental Defense Fund ("EDF") is a national nonprofit organization representing over 400,000 members nationwide, including tens of thousands of

members in states potentially affected by Petitioners' present challenges. *See* Ex. D, Declaration of John Stith ¶ 9. Since 1967, EDF has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. Through its programs aimed at protecting human health, EDF has long pursued initiatives at the state and national levels designed to reduce emissions and ambient levels of air pollution, including ground-level ozone and other pollution for which National Ambient Air Quality Standards are set under the Clean Air Act. EDF has been involved in previous efforts to reduce ozone pollution and the interstate transport of ozone pollution. *See* Stith Decl. ¶¶ 5-7.

Sierra Club, founded in 1892, is a national nonprofit environmental organization with more than 779,000 members nationwide, including more than 49,000 thousand members in New York State and more than 26,000 members in the New York counties struggling to attain or maintain the 2008 and 2015 ozone National Ambient Air Quality Standards. *See* Ex. A, Declaration of Huda Fashho ¶ 6; Kresowik Decl. ¶ 4. Sierra Club's purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to carry out these objectives. *See* Kresowik Decl. ¶ 4. Sierra Club members are greatly concerned about air quality, and the Club has a long history of

involvement in air quality related activities on both the local and national levels.

See Kresowik Decl. ¶¶ 4, 6.

Founded in 1975, Adirondack Council is a non-profit corporation dedicated to ensuring ecological integrity and protecting the wild character of New York's six-million-acre Adirondack Park. *See* Frakes Decl. ¶ 2. The Council engages in educational and advocacy designed to preserve the Park's extraordinary values, and publishes annual "State of the Park" Reports as well as reports on acid rain and other environmental challenges facing the Park. The Council has participated in Clean Air Act litigation attempting to reduce interstate air pollution that harms the Park. *See, e.g., Chesapeake Bay Found., et al. v. EPA*, No. 18-1301 (consolidated with *State of Maryland v. EPA*, No. 18-1285).

As detailed above, Movants have historically participated in administrative and judicial proceedings related to the implementation of Section 110(a)(2)(D) and Section 126(b) of the Clean Air Act. This Court's prior grant of leave to intervene in those cases recognized that Movants offer a distinct perspective in challenging government actions that threaten their members' interests in their health and the environment where they live, work, and recreate. *See, e.g., Order, Wisconsin v. EPA*, No. 16-1406 (D.C. Cir. Jan. 31, 2017), Doc. No. 1658440; *see also* Petition for Review, *Chesapeake Bay Foundation v. EPA*, No. 18-1285 (and consolidated cases) (D.C. Cir. Oct. 15, 2018), Doc. No. 1755727.

Movants' previous participation in administrative and judicial proceedings related to EPA's Section 110(a)(2)(D) and Section 126(b) actions strongly favors Movants' motion to intervene here.

C. Disposition of the Action May as a Practical Matter Impair or Impede the Movants' Ability to Protect Their Interests.

The disposition of this case "may as a practical matter impair or impede" Movants' interests, *Fund for Animals*, 322 F.3d at 735 (quoting Fed. R. Civ. P. 24(a)(2)), as Movants' members face ongoing harm as a direct result of EPA's denial of New York's Section 126(b) Petition. Judgment against the government Petitioners would have significant adverse health consequences for Movants' members, who work and recreate in areas that are impacted by upwind emissions of ozone-forming nitrogen oxides. *See, e.g.*, Lee Decl. ¶¶ 3-9; Peltz Decl. ¶¶ 6-14; Freeman Decl. ¶¶ 4-11; Fashho Decl. ¶¶ 6-7; Stith Decl. ¶¶ 9-10; Frakes Decl. ¶ 3.

In addition, reduction of ozone concentrations in the ambient air is a long-standing interest of Movants and is a major human health imperative. *See, e.g.*, Stith Decl. ¶ 5; Kresowik Decl. ¶¶ 6-7. As EPA has described, the adverse human health effects of ozone include premature mortality, reduced lung function, aggravation of asthma, coughing, respiratory and throat pain, and chest pain. *See* 81 Fed. Reg. 74,504, 74,574 (Oct. 26, 2016).

Accordingly, disposition of this case may as a practical matter impair or impede Movants ability to protect its interests and those of its members.

D. Existing Parties do not Adequately Represent Movants' Interests.

Assuming *arguendo* that adequacy of representation is relevant here, Movants' interests are not adequately represented by the existing parties. 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 (construing Fed. R. Civ. P. 24). This is especially true here, where the government Petitioners have a discrete interest in resolving upwind ozone pollution in New York, New Jersey, and New York City, but may lack Movants' broader interest in ensuring that the Good Neighbor Provision of the Clean Air Act is an effective tool for protecting their member's health in every downwind state going forward.

Overall, the existing parties do not and cannot adequately represent Movants' interests, and Movants' intervention is accordingly warranted.

II. Article III Standing

Movants have standing to seek judicial review on their own behalf and on behalf of their members. Article III standing requires petitioners to establish: (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–61 (1992). An organization has associational standing when one or more of its members would have standing to sue in his or her own right, the interests which the organization seeks to protect in the lawsuit are germane to the purpose of the organization, and where "neither the claim asserted nor the relief

requested requires the participation of individual members in the lawsuit.” *Friends of the Earth v. Laidlaw Env'tl. Servs., Inc.*, 528 U.S. 167, 181 (2000) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

i. Injury in Fact

EPA’s denial of New York’s Section 126(b) Petition causes a concrete and particularized harm to Movants and their members by allowing upwind sources to continue to pollute the air in New York and other downwind areas. Movants are public interest, non-profit environmental organizations representing members across the country, including areas negatively impacted by ozone pollution. Movants have devoted significant resources to participate in public stakeholder proceedings related to the regulation of air pollution; educate and engage members and the public on air pollution issues; advocate at state and federal legislatures; and develop resources to support these activities. *See, e.g.*, Kresowik Decl. ¶¶ 6-7; Stith Decl. ¶ 5. Movants work to protect and improve the health of their members at a local, regional, and national level, and this work is directly affected by EPA’s denial of New York’s Section 126(b) Petition, which will allow emissions contributing to the interstate transport of ozone pollution to continue.

Movants’ members have standing to sue in their own right. *See, e.g.*, Lee Decl.; Peltz Decl.; Frakes Decl. These members live, work, raise families, recreate, and engage in economic and other activities in states affected by ground-level

ozone pollution and by air pollution from the sources identified in New York's Section 126(b) Petition, including the regions of New York that are struggling to attain and maintain the health-based ozone ambient air quality standards. *Id.*

Ozone pollution, including ozone pollution caused and exacerbated by the upwind air pollution sources identified by the New York Petition, deprives Movants' members of their enjoyment of natural resources, and limits their ability to engage in the outdoor activities they would ordinarily pursue. *See, e.g.,* Lee Decl. ¶¶ 3-9; Peltz Decl. ¶¶ 6-14; Fashho Decl. ¶¶ 6-7; Stith Decl. ¶¶ 9-10; Frakes Decl. ¶¶ 4-15. These impairments to use and enjoyment of the outdoors are sufficient to establish injury for standing purposes. *See, e.g., Friends of the Earth*, 528 U.S. at 181-85 (recognizing that disrupted enjoyment of natural resources and reasonable fear of harm from pollution as injuries in fact).⁴

ii. Causation

EPA's denial of New York's Section 126(b) Petition harms Movants and their members by allowing the identified sources to continue operating without additional enforceable emissions limitations for ozone forming nitrogen oxides. Without further action by EPA, these sources will continue to contribute

⁴ This Court has held repeatedly that organizations such as Movants have standing to sue to protect their members from pollution that harms those members. *See, e.g., Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1016-17 (D.C. Cir. 2014); *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672-73 (D.C. Cir. 2013).

significantly to ground-level ozone pollution in New York and other downwind areas. *See, e.g.*, Lee Decl. ¶¶ 8-9; Peltz Decl. ¶ 17; Frakes Decl. ¶ 15. Therefore, Movants and their members are harmed, and continue to be harmed, by EPA's denial of New York's Section 126(b) Petition.

iii. Redressability

The injuries suffered by Movants and their members are caused and perpetuated by EPA's action to deny New York's Petition. These injuries would be redressed by an order from this Court finding that the action was arbitrary, capricious, and otherwise unlawful, and vacating the final denial and ordering EPA to evaluate the Petition in a lawful manner.

CONCLUSION

For the foregoing reasons, Movants respectfully request leave to intervene in Case No. 19-1231, and in any other challenges (including later-filed challenges) to EPA's final denial of New York's Section 126(b) Petition.

DATED: November 26, 2019

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EXHIBITS

- A. Declaration of Huda Fashho
- B. Declaration of Mark Kresowik
- C. Declaration of Bridget Lee
- D. Declaration of John Stith
- E. Declaration of Adam Peltz
- F. Declaration of Jennifer Freeman
- G. Declaration of James Alfred Tyler Frakes

EXHIBIT A

DECLARATION OF HUDA FASHHO

I, Huda Fashho, 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 no legal incapacity.
2. The Sierra Club is a non-profit membership organization.
3. I am the Director of Member Care at the Sierra Club. I have had this position for eight years.
4. In this role, I manage Sierra Club's customer service functions related to members, including maintaining an accurate list of members and managing the organization's member databases.
5. 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 and updated as needed.
6. The Sierra Club currently has 779,340 members, including state and county membership numbers as follows:
 - New York State – 49,368 members;
 - Bronx County (NY) – 827 members;
 - Chautauqua County (NY) – 225 members;
 - Erie County (NY) – 2,239 members;
 - Kings County (NY) – 3,370 members;
 - Nassau County (NY) – 2,788 members;
 - New York County (NY) – 6,222 members;
 - Queens County (NY) – 2,302 members;

- Richmond County (NY) – 553 members;
- Rockland County (NY) – 759 members;
- Suffolk County (NY) – 3,620 members;
- Westchester County (NY) – 3,150 members.

7. Sierra Club members have a strong interest in protecting air quality and in protecting wild places and their ambient environment from the effects of air pollution.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 20th day of November 2019.


Huda Fashho

EXHIBIT B

DECLARATION OF MARK KRESOWIK

I, Mark Kresowik, 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 no legal incapacity.
2. I am the Deputy Regional Director, Eastern Region for the Beyond Coal Campaign (“Campaign”) based in Washington, D.C. The Campaign is a project of the Sierra Club. I am responsible for overseeing the Campaign’s operations in several Eastern states, including New York and other states suffering from unsafe levels of ground-level ozone pollution.
3. I have been working at the Sierra Club since 2006. In my position, I am responsible for directing the activities of the Beyond Coal Campaign throughout the Northeast and Mid-Atlantic. These activities include community outreach, public education, lobbying, and litigation. In order to perform the responsibilities of my job, my staff and I interact on a daily basis with the Sierra Club’s members in states throughout the Northeast and Mid-Atlantic. Because of my position and responsibilities, and through my regular interaction with members, I am familiar with the Sierra Club’s purpose, organization, and activities, and with the environmental interests and concerns of Sierra Club members.
4. The Sierra Club is a national, non-profit organization founded in 1892 and incorporated under the laws of California, with its principal place of business in Oakland,

California. The Club's purposes are to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club members are greatly concerned about air quality, and the Club has a long history of involvement in air quality related activities on both the local and national levels.

5. I understand that the state of New York has submitted a petition to the U.S. Environmental Protection Agency ("EPA") requesting that EPA find that emissions of nitrogen oxides ("NOx") from approximately 350 industrial sources in nine states upwind of New York are significantly interfering with New York's ability to attain and maintain the 2008 and 2015 ozone National Ambient Air Quality Standards. I further understand that in October 2019, EPA published a final denial of New York's petition. Ensuring that such ozone precursor pollution is reduced, air quality is improved, and issues involving interstate transportation of air pollution are resolved, are critical priorities for Sierra Club, in keeping with its organizational purposes.

6. Sierra Club has expended significant resources addressing air pollution issues, particularly those issues related to ozone. For example, Sierra Club has sought to inform the public about the health impacts of ozone air pollution, including increased asthma, using larger-than-life-size constructions of asthma inhalers at public events

where we discuss the issue with members of the public. Similarly, Sierra Club has worked extensively on interstate air pollution transport issues, particularly those concerning ozone impacts in downwind states flowing from power plant emissions in upwind states, including educating the public and seeking solutions to these pollution problems. In New York, Sierra Club submitted formal comments on proposed regulations by the New York State Department of Environmental Conservation that would restrict emissions of NOx from combustion turbines located primarily in New York City metro area and Long Island.

7. Addressing and resolving interstate ozone pollution transport is a priority for the Sierra Club. Ensuring that the upwind sources identified in New York's petition are required to control their NOx emissions consistent with cost control thresholds imposed by New York on in-state sources would help the Sierra Club fulfill its organizational objectives, and would advance the interests of its members.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on this 19 day of November 2019.



Mark Kresowik

EXHIBIT C

DECLARATION OF BRIDGET LEE

I, Bridget Lee, 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 no legal incapacity.
2. I am a member of the Sierra Club, having joined around 2013. I joined the Sierra Club because I share the Club's commitment to protecting the environment and wanted to support its work to combat climate change and to ensure that all people have access to clean water and air. I am currently employed as a Senior Attorney with the Sierra Club's Environmental Law Program and have been on staff at the Sierra Club since 2014. In my current position, I have worked on a variety of matters, including cases involving air pollution emissions and coal ash from coal-burning power plants, so I understand the impact that such emissions and wastes have on downwind and surrounding communities.
3. I've lived at my current address, 92 Horatio Street in New York City, for about five (5) years and in this part of the City for about sixteen (16) years.
4. I am an avid runner. Running is how I stay physically fit and maintain cardiovascular health. I find it also serves as excellent stress relief. One of the reasons I decided to live where I do is the access to running paths along the Hudson River on the west side of Manhattan. I run on these paths multiple times every week. I love to look at the natural beauty of the river and the wildlife while I run, particularly the changing light across the Hudson River and the birds that make the river and shoreline their home. Spending time near the river environment makes me feel connected to the natural world around me, something I find especially important when living in a major city.

5. I've run a number of marathons and half marathons over the years, including the New York City Marathon in 2017 and 2018. Given my interest in participating in these events, my training runs and ability to run certain numbers of miles each week is of particular importance to me. When I first began increasing my mileage while training for races, I had a number of experiences where, despite overall fitness and cardio-respiratory health, I had difficulty breathing while running. The first time this happened was very scary, as I was unable to get the amount of oxygen I knew I needed into my lungs. These incidents occurred during ozone season.

6. I've been an athlete all my life, so I understand how my body reacts to different stressors. Given that, I have been able to attribute at least some of the impairment described to poor air quality. I now check the air quality index before going outside for a run. If the index is higher than 100, I will skip the run or run indoors on a treadmill. Having to forgo a run or run on a treadmill negatively affects my quality of life. To me, running on a treadmill and staring at a wall or mirror is terribly boring and not as fulfilling as running outside, where I am able to look at the changing natural beauty of the Hudson River. My experience with poor air quality, specifically with respect to elevated ozone levels, has diminished my ability to run outdoors and enjoy my connection to the Hudson River.

7. In addition to recreation in New York City, I also enjoy spending time outdoors north of the City in Rockland County. I was born and raised in Rockland and have family that still live there. When I visit Rockland, I enjoy spending time outdoors at state parks—running at Rockland Lake State Park and hiking at Hook Mountain State Park and Harriman State Park. Knowing that air pollution from upwind coal-burning power plants contributes to damage to

foliage and plant growth and impairment of the air quality in these special places—places where I have spent time since my childhood—diminishes my enjoyment of them.

8. I understand that New York State is suffering from high air pollution due to emissions of nitrogen oxides (NOx) and Volatile Organic Compounds, both of which are major contributors to ozone, a primary component of smog. This pollution has resulted in areas of New York, including New York County (Manhattan) where I live, violating the U.S. Environmental Protection Agency's National Ambient Air Quality Standards for ground-level ozone. I understand that NOx pollution from coal-fired power plants and other large industrial sources located in upwind states travels through the air and contributes to the ozone I experience in New York City. I am aware that, to remedy this transported pollution, New York State petitioned EPA under the “good neighbor” provision of the Clean Air Act to find that pollution coming from 350 power plants and other large NOx sources in nine (9) upwind states is contributing to New York State's failing air quality and to impose emission limits on these upwind sources. I also understand that the EPA rejected the petition, precipitating this legal challenge.

9. If Sierra Club is successful in its challenge of EPA's rejection of New York State's “good neighbor” petition, it is likely that the upwind power plants would reduce their harmful emissions, resulting in fewer days with poor air quality in New York City and Rockland County. My ability to spend time running outdoors and enjoying the natural world would, therefore, be improved.

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

Executed on this 20th day of November, 2019.

A handwritten signature in black ink, appearing to read "Bridget Lee", with a long horizontal flourish extending to the right.

Bridget Lee

EXHIBIT D

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

STATE OF NEW YORK, STATE OF
NEW JERSEY and THE CITY OF
NEW YORK,

Petitioners,

v.

Case No. 19-1231

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
ANDREW WHEELER, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Respondents.

DECLARATION OF JOHN STITH

I, John Stith, declare:

1. I am Director of Database Marketing and Analytics at the Environmental Defense Fund (“EDF”). I have had this position for more than fourteen years. I am over 18 years of age. I have personal knowledge of the matters set forth herein and, if called to testify, I would testify to the truth of these facts. I submit this declaration in support of EDF’s appearance in the above-captioned case challenging the U.S. Environmental Protection Agency’s (“EPA’s”) denial of the State of New York’s Clean Air Act Section 126(b) petition.

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. My work requires me to be familiar with EDF's purposes, staffing, activities, and membership.

3. EDF 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. EDF has U.S. offices in Austin, TX; New York, NY; Washington, D.C.; Boston, MA; San Francisco and Sacramento, CA; Raleigh, NC; Boulder, CO; Chicago, IL; and, Bentonville, AR.

4. EDF relies on science, economics, and law to protect and restore the quality of our air, water, and other natural resources, and to support policies that mitigate the impacts of climate change.

5. Through its programs aimed at protecting human health, EDF has long pursued initiatives at the state and national levels designed to reduce emissions and ambient levels of air pollution, including ground-level ozone and other pollution for which national ambient air quality standards are set under the Clean Air Act. EDF has been involved in previous efforts to reduce ozone pollution and the interstate transport of ozone pollution.

6. I understand that EPA has denied a Clean Air Act Section 126(b) petition filed by the State of New York, requesting that EPA find that emissions

from power plants, industrial facilities, and oil and gas sector facilities located in nine upwind states are contributing to ozone pollution in New York.

7. EDF has a strong organizational interest—and a strong interest that is based in its members' health, environmental, recreational, aesthetic, professional, educational, and economic interests—in reducing the ground-level ozone addressed by New York's Section 126(b) petition.

8. When an individual becomes a member of EDF, 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. The database is maintained in the regular course of business and each entry reflecting a member's residential address and membership status is promptly updated to reflect changes. I obtained the information about our membership discussed below from our membership database.

9. EDF has over 402,375 members in the United States, and we have members in all 50 states and the District of Columbia. These members likewise have a strong interest in protecting human health and the environment from air pollution. A significant number of these members reside in areas affected by New York's Section 126(b) petition including New York (34,806 members), Connecticut (7,464 members), Delaware (1,394 members), New Jersey (12,895 members), Illinois (15,620 members), Indiana (5,577 members), Kentucky (2,569

members), Maryland (11,034 members), Michigan (11,979 members), Ohio (12,426 members), Pennsylvania (18,821 members), Virginia (11,711 members), and West Virginia (1,361 members). These areas include upwind areas near the sources that are the subject of New York's petition as well as downwind areas where ozone levels would decrease if NO_x emissions were controlled as requested by New York.

10. I understand that if emissions from the sources identified in New York's Section 126(b) petition were controlled as requested, emissions and/or ozone pollution in the areas identified above would decrease. Therefore, there is a likelihood that the harms EDF members suffer from air pollution would be lessened should the remedy requested by New York in its Section 126(b) petition be implemented.

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

Executed in Washington, D.C. on November 19, 2019.


John Stith

EXHIBIT E

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

STATE OF NEW YORK, STATE OF
NEW JERSEY and THE CITY OF
NEW YORK,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
ANDREW WHEELER, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Respondents.

Case No. 19-1231

DECLARATION OF ADAM PELTZ

I, Adam Peltz, declare and state as follows:

1. I am over the age of eighteen years and have personal knowledge of the facts stated herein. If called to testify, I could and would testify to the truth of these facts.

2. I submit this declaration in support of the Environmental Defense Fund's ("EDF's") appearance in the above-captioned case challenging the U.S.

Environmental Protection Agency's ("EPA's") denial of the State of New York's Clean Air Act Section 126(b) petition.

3. I am a member of EDF, a nonprofit organization that works to address urgent environmental challenges by targeting issues that affect people around the world. As part of EDF's work, the organization has long sought to promote its members' interests in reducing emissions of air pollution. More specifically, EDF has engaged in significant efforts to help address the interstate transport of ozone pollution. For example, EDF engaged extensively in the administrative and legal proceedings involving the EPA's Cross-State Air Pollution Rule and its predecessor, the Clean Air Interstate Rule. In addition, EDF has long advocated in support of federal, state, and local efforts to reduce ozone pollution and to ensure that the national, health-based national ambient air quality standards for ozone are grounded in sound and rigorous science.

4. In addition to being a member of EDF, I serve as a Senior Attorney in EDF's Energy Program. In this role, I work to reduce risks to groundwater, surface water, and public health from oil and gas development. I have worked for EDF since July of 2012.

5. I have a Bachelor of Arts degree in Political Science and International Studies, a Master of Arts degree in International Relations, and a Juris Doctorate.

6. I was born and raised in New York City and now live in Brooklyn. While I left the city to attend school, I have resided in New York City for the majority of my life.

7. When I am not traveling for work, I typically commute to the EDF office in New York City by bike. My bike commute from my home in Brooklyn to the EDF office in Gramercy is approximately five miles.

8. In addition to enjoying my daily bike commute, I am also an avid urban hiker and love spending time in New York City parks. Despite my deep enjoyment of the outdoors, elevated ozone pollution often detracts from my ability to participate in the outdoor activities I enjoy.

9. Due to my professional background and my personal interests, I am aware that short- and long-term exposure to ozone pollution harms human health. EPA has concluded that “a very large amount of evidence spanning several decades supports a relationship between exposure to [ozone] and a broad range of respiratory effects.” *2013 Final Report: Integrated Science Assessment of Ozone and Related Photochemical Oxidants* (EPA/600/R-10/076F) at 1-6. These effects range from decreases in lung function and increases in respiratory-related hospital admissions and emergency room visits, to premature death from ozone exposure. *Id.* at 6-131 to 6-158, 6-162 to 6-163. Ozone pollution poses increased risks for vulnerable populations, such as children, people with respiratory diseases or asthma, older adults, and people who are active outdoors, especially outdoor workers. *Id.* at 1-8.

10. I am also aware that the New York Metropolitan Area is a “serious” non-attainment area for the 2008 ozone standard and a “moderate” nonattainment area for the 2015 ozone standard. See *EPA, Nonattainment Areas for Criteria Pollutants (Green Book)*, <https://www.epa.gov/green-book> (last updated October 31, 2019).

11. When ozone levels in my area are high and I ride my bicycle to work, I often notice a burning sensation in my throat and lungs. This feeling is particularly noticeable during the summer months.

12. When temperatures are high, I generally monitor ozone levels on the Air Quality Index in and around the New York Metropolitan Area. When ozone pollution is high, I sometimes choose not to ride my bicycle home due to my concerns about the negative effects of short-term ozone exposure on my respiratory health. I also choose not to visit city parks or go on urban hikes when ozone pollution levels are high. In fact, when air quality is particularly bad, I try to leave New York City entirely.

13. When I am traveling for work or personal reasons, I often notice how much nicer the air quality is in other places around the United States. It makes me sad to realize how much dirty and compromised air I breathe in the city I love.

14. I intend to continue monitoring ozone levels in my area in the future and to reduce or curtail outdoor activities when ozone concentrations reach levels that are considered unhealthy.

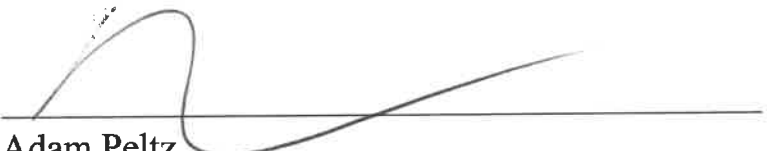
15. I am aware that EPA has denied a Clean Air Act Section 126(b) petition filed by the State of New York, requesting that EPA address emissions from power plants, industrial facilities, and oil and gas sector facilities located in nine upwind states that are contributing to ozone problems in and around New York City.

16. It is my understanding that emissions from the power plants, industrial facilities, and oil and gas sector facilities identified in New York's petition exacerbate ozone pollution in New York and that the State of New York and the City of New York are incapable of directly addressing emissions from those facilities located in other states.

17. I also understand that if emissions from the power plants, industrial facilities, and oil and gas sector facilities identified in New York's Section 126(b) petition were controlled as requested, pollution in areas where I engage in outdoor activities would likely decrease. I am also concerned that without enforceable emission limitations and requirements for each source identified in New York's Section 126(b) petition to operate with the same modern emission controls and emission rates already required for sources located within the borders of New York, I will continue to be harmed by high levels of ozone pollution. Therefore, there is a likelihood that the harms I suffer from ozone pollution would be lessened should the remedy requested by New York in their Section 126(b) petition be implemented.

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

Executed in Boulder, Colorado on November 21, 2019.



Adam Peltz

EXHIBIT F

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

STATE OF NEW YORK, STATE OF
NEW JERSEY and THE CITY OF
NEW YORK,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
ANDREW WHEELER, in his official
capacity as Administrator of the U.S.
Environmental Protection Agency,

Respondents.

Case No. 19-1231

DECLARATION OF JENNIFER FREEMAN

I, Jennifer Freeman, declare:

1. This declaration is based on my personal and professional knowledge.

I am over the age of eighteen years and suffer from no legal incapacity. I submit this declaration in support of the Environmental Defense Fund's ("EDF's") appearance in the above-captioned case challenging the U.S. Environmental Protection Agency's ("EPA's") denial of the State of New York's Clean Air Act Section 126(b) petition. If called to testify, I could and would testify to the truth of these facts.

2. I am a member of EDF, a non-profit organization with U.S. offices in Austin, TX; New York, NY; Washington, D.C.; Boston, MA; San Francisco and Sacramento, CA; Raleigh, NC; Boulder, CO; Chicago, IL; and Bentonville, AR. A core mission of EDF is to protect human health and the environment from airborne contaminants, including ozone pollution that results from power plant, industrial, and oil and gas emissions.

3. In addition to being a member of EDF, I serve as a Development Writer for EDF where I draft proposals, reports and fact sheets on a variety of environmental issues to assist the organization with donor relations. I have worked at EDF since August of 2013.

4. I have lived on the Upper West Side of Manhattan, New York City for more than three decades.

5. I typically work from either my home office in the Upper West Side or the EDF office, which is located at 257 Park Ave. S, New York, NY 10010.

6. I deeply enjoy spending time outdoors in and around New York City. In particular, I enjoy riding my bike to work regardless of the season, as well as hiking and running around the city. I plan to continue spending time exercising outdoors throughout New York City in the future and I am concerned that poor air quality will detract from my enjoyment of those outdoor activities.

7. I understand that ozone pollution can cause serious health problems including inflammation of the airways, difficult breathing, coughing, lung irritation and respiratory illnesses that require medication or can cause permanent lung damage.

8. I am also aware that New York City suffers from poor air quality, particularly with respect to ozone.

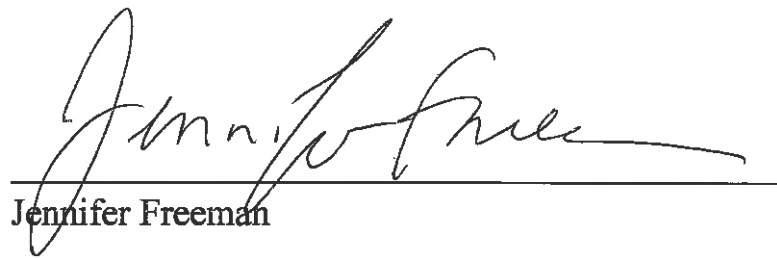
9. When ozone levels in my area are high and I have to ride my bicycle to work, I am exposed to harmful levels of air pollution. This is particularly true during the summer ozone season. When pollution levels are high, I can visibly see the pollution when the sun sets. I am acutely aware that I am sometimes exposed to air pollution that can harm my health and the health of others in my community, a disproportionate number of whom suffer from asthma.

10. I understand that New York filed a petition asking EPA to find that emissions from a number of sources surrounding states are impeding New York's ability to achieve and maintain safe levels of ozone.

11. I also understand that EPA has recently finalized its denial of New York's petition. EPA's refusal to control emissions from the sources identified in New York's petition prolongs my exposure to unsafe levels of ozone.

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

Executed in New York, NY on November 20, 2019



Jennifer Freeman

EXHIBIT G

DECLARATION OF JAMES ALFRED TYLER FRAKES

I, James Alfred Tyler Frakes, declare:

1. I am over 18 years of age. The information in this declaration is based on my personal knowledge or public information in government records.
2. I am a dues-paying member and employee of the Adirondack Council (“Council”), a nonprofit organization dedicated to ensuring ecological integrity and wild character of New York’s six-million-acre Adirondack Park. Among other advocacy activities, the Council participates in legislative, administrative and judicial proceedings concerning interstate air pollution that harms the Park, its natural resources, and the people who use and enjoy it. This declaration is submitted in support of the petition for review filed by the Council and other parties in the United States Court of Appeals for the District of Columbia Circuit captioned *State of New York, et al., v. U.S. Environmental Protection Agency, et al.*, No. 19-1231.
3. I live in Plattsburgh in Clinton County, in the state of New York. I enjoy outdoor pursuits such as nature photography, camping, hiking, fishing, mountain climbing, golfing, gardening, sailing in Essex and Clinton counties and in the Adirondack Park. I plan to engage in these activities in the future. For example, I climbed Giant Mountain in 2017 and plan to climb other Adirondack

Mountains in the future. I work in Essex County in Elizabethtown, NY, where I routinely exercise outdoors during the work week.

4. I have asthma. I was diagnosed with asthma in 1994. I frequently experience tightness in my chest, shortness of breath, difficulty catching my breath, wheezing and coughing while attempting to exercise outdoors. My symptoms are worst when ground-level ozone levels are high in the Northeast. Ozone levels appear to be the highest around Essex County when the weather is warm or hot and the wind is out of the west or southwest.

5. Elevated ozone pollution levels adversely affect my ability to participate in the outdoor activities that I enjoy. In general, the activities that would otherwise be excellent methods for maintaining my health and stamina. I spend money on medication such as rescue inhalers to reduce the symptoms of asthma, and routinely see a physician for advice on controlling the symptoms. I use rescue inhalers containing the prescription drug Albuterol.

6. In addition to harming my health and causing me to postpone or avoid activities that I enjoy, ground-level ozone can also cause poor visibility, impairing my ability to photograph nature in the Adirondacks. It also impairs my ability to enjoy mountain vistas.

7. I understand that ground-level ozone pollution forms when nitrogen-based air pollution is affected by heat and sunlight.

8. I also understand that nitrogen-based air pollution can mix with cloud water and form acid rain, acid snow and acid fog, and also falls from the sky as dry particles. All of these pollutants are known under the collective term of “acid rain.”

9. I understand that in March 2018, the State of New York filed a petition under Section 126 of the Clean Air Act (“Petition”) asking that the Environmental Protection Agency (“EPA”) find that approximately 360 sources or groups of sources in nine upwind states were significantly contributing to New York's nonattainment and/or interfering with New York's maintenance of the 2008 and 2015 ozone National Ambient Air Quality Standards. New York's Petition requested that EPA establish, consistent with the Clean Air Act, enforceable emission limits to reduce harmful interstate pollution.

10. I understand that emissions of NO_x from the sources identified in the Petition exacerbate air pollution not only in those states, but in numerous other downwind states, including portions of New York State that contain Adirondack Park.

11. I understand that ozone levels in Essex County, NY, have exceeded the national, health-based air quality standards several times in recent years, according to state and federal records. I understand that the atmospheric science

research station where those pollution levels were recorded is located on Whiteface Mountain.

12. I understand that acid rain falls on the Adirondack Mountains daily.

13. I understand that most of the nitrogen pollution affecting the Adirondacks, Essex County and Clinton County comes from upwind power plants, including those emitted by the generating units listed in the Petition.

14. I understand that, according to EPA, ozone pollution can cause serious health problems including inflammation of the airways, difficult breathing, coughing, lung irritation and respiratory illnesses that require medication or can cause permanent lung damage. EPA says people with asthma, like me, are likely to be affected by exposure to ozone.

15. I understand that if emissions of NO_x from the sources identified in the New York's Petition were controlled as the Petition demands, pollution in areas of the Park where I work and engage in recreational activities, and where I use and enjoy the natural environment, would also be decreased. Therefore, were the Court to set aside EPA's denial of the Petition, there is a likelihood that the harms that I suffer from air pollution would be lessened.

I declare that the foregoing is true and correct.

Date:

11/25/19

Signed:



ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEW YORK, STATE OF
NEW JERSEY and THE CITY OF NEW YORK,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and ANDREW
WHEELER, in his official capacity as
Administrator of the U.S. Environmental
Protection Agency,

Respondents.

Case No. 19-1231

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Movants

Adirondack Council, Environmental Defense Fund, and Sierra Club hereby certify
as follows:

Petitioners. The Petitioners in the above captioned case are the States of
New York and New Jersey, and the City of New York.

Respondents. The Respondents in the above captioned case are the United
States Environmental Protection Agency (“EPA”) and Andrew Wheeler,
Administrator of EPA.

Intervenors. As of the date of this filing, no party has been permitted to intervene in this action. On November 20, 2019, the Midwest Ozone Group moved to intervene in support of respondents. (Doc. No. 1816648). On November 25, 2019, the Air Stewardship Coalition, the Chamber of Commerce of the United States of America, and the National Association of Manufacturers moved to intervene in support of respondents. (Doc. No. 1817507).

DATED: November 26, 2019

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Littleton**

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Counsel for Adirondack Council

Respectfully submitted,

/s/ Graham G. McCahan

GRAHAM G. MCCAHAH

VICKIE PATTON

LIANA JAMES

Environmental Defense Fund

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(303) 447-7215 (Ms. Patton)

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vpatton@edf.org

ljames@edf.org

Counsel for Environmental Defense Fund

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NEW YORK, STATE OF
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UNITED STATES ENVIRONMENTAL
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Administrator of the U.S. Environmental
Protection Agency,

Respondents.

Case No. 19-1231

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Adirondack Council, Environmental Defense Fund, and Sierra Club (collectively, Movants) make the following disclosures:

Adirondack Council

Adirondack Council is a non-profit corporation organized under the laws of the State of New York. Adirondack Council is dedicated to ensuring ecological integrity and wild character of New York's six-million-acre Adirondack Park.

Adirondack Council does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Adirondack Council.

Environmental Defense Fund

Environmental Defense Fund is a national non-profit organization, organized under the laws of the State of New York, which links science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems.

Environmental Defense Fund does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in the Environmental Defense Fund.

Sierra Club

Sierra Club is a non-profit corporation organized under the laws of the State of California. 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 ecosystems and resources; 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.

Sierra Club does not have any parent corporations, and no publicly held corporation has a ten percent or greater ownership interest in Sierra Club.

DATED: November 26, 2019

JOSH BERMAN

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Respectfully submitted,

/s/ Graham G. McCahan

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Counsel for Environmental Defense Fund

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

The undersigned attorney, Graham McCahan, hereby certifies:

1. This document complies with the type-volume limitations of Fed. R. App. P. 27(d)(2). According to the word processing system used in this office, this document contains 3,612 words.
2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and 27(d)(1)(E) and the type-style requirements of Fed. R. App. P. 32(a)(6) and 27(d)(1)(E) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type style.

Dated: November 26, 2019

/s/ Graham G. McCahan
GRAHAM G. MCCAHAH
Environmental Defense Fund
2060 Broadway, Suite 300
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(303) 447-7228
gmccahan@edf.org

CERTIFICATE OF SERVICE

I certify that on November 26, 2019 the MOTION OF THE ADIRONDACK COUNCIL, ENVIRONMENTAL DEFENSE FUND, AND SIERRA CLUB TO INTERVENE ON BEHALF OF PETITIONERS, associated declarations, RULE 26.1 DISCLOSURE STATEMENT, and CERTIFICATE AS TO PARTIES were served on counsel of record for Respondents and Petitioners in Case No. 19-1231 using the Court's ECF system.

Dated: November 26, 2019

/s/ Graham G. McCahan
GRAHAM G. MCCAHAH
Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302
(303) 447-7228
gmccahan@edf.org