

ORAL ARGUMENT NOT YET SCHEDULED

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

_____)	
AMERICAN PETROLEUM)	
INSTITUTE,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 15-1020
)	(and Consolidated Case No. 15-1021)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, and GINA)	
McCARTHY, Administrator, U.S.)	
Environmental Protection Agency,)	
)	
<i>Respondents.</i>)	
_____)	

**MOTION TO INTERVENE BY ENVIRONMENTAL DEFENSE FUND,
NATURAL RESOURCES DEFENSE COUNCIL, AND SIERRA CLUB IN
SUPPORT OF RESPONDENT**

Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club (collectively “Movants”) respectfully move pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b) to intervene in support of Respondents U.S. Environmental Protection Agency and Gina McCarthy, Administrator, U.S. Environmental Protection Agency (collectively “EPA”) in the above-captioned proceeding. This case concerns review of the final rule promulgated by EPA entitled “Greenhouse Gas Reporting Rule: 2014 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems,”

published at 79 Fed. Reg. 70,352-425 (Nov. 25, 2014) (“Final Rule”). Counsel for all parties have been consulted for their position on this motion. Counsel for Petitioner Gas Processors Association (“GPA”) and Respondent EPA stated that GPA and EPA take no position on this motion and do not plan to file a response. Counsel for Petitioner American Petroleum Institute (“API”) stated that API takes no position on this motion. Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a motion to intervene in all petitions for review of the Final Rule.

INTRODUCTION

This case involves a rule to strengthen the national program for reporting greenhouse gas emissions from the oil and natural gas sector. EPA developed the program as part of the agency’s response to a broader directive from Congress to “require mandatory reporting of greenhouse gas emissions ... in all sectors of the economy of the United States.” Appropriations Act of 2009, Pub. L. No. 111-8, 123 Stat. 524, 729 (Mar. 11, 2009). Such a program is essential to support the development of effective policies to reduce greenhouse gas emissions and to provide transparent emissions information for individuals living in communities near oil and gas development. Accordingly, Movants have advocated for rigorous reporting requirements under this program since its inception and supported the changes at issue in the instant case.

These actions challenge recently-finalized revisions to the greenhouse gas reporting program for oil and natural gas systems that would, among other improvements, eliminate certain non-standardized and unreliable reporting procedures, known as best available monitoring methods (“BAMM”). According to EPA, the oil and natural gas sources required to report under the program accounted for greenhouse gas emissions equivalent to 224 million metric tons of carbon dioxide in 2013, making the industry the second largest industrial source of these emissions in the U.S., after electric power plants. EPA, *Greenhouse Gas Reporting Program: Reported Data*, <http://www.epa.gov/ghgreporting/ghgdata/reported/index.html> (Reported Emissions Tab) (last visited Feb. 19, 2015). The American Petroleum Institute (“API”) and the Gas Processors Association (“GPA”) have petitioned for review of these strengthened standards. Movants now seek to intervene in this proceeding in support of Respondent EPA.

BACKGROUND

I. Movant Environmental Organizations

Movants are national nonprofit organizations representing hundreds of thousands of members nationwide. *See* Declaration of John Stith ¶ 9 (“Stith Decl.”); Declaration of Gina Trujillo ¶¶ 2, 7 (“Trujillo Decl.”). Movants use interdisciplinary approaches to identify and advocate solutions to the most urgent

environmental problems. *See* Stith Decl. ¶ 4; Declaration of David Doniger ¶ 3 (“Doniger Decl.”). Advocacy for well-designed national policies to reduce climate-altering emissions forms a core part of Movants’ organizational work. *See* Stith Decl. ¶ 6; Doniger Decl. ¶¶ 2-3; Trujillo Decl. ¶¶ 4-5. Essential to this work is Movants’ ability to analyze and disseminate accurate emissions data. *See* Stith Decl. ¶¶ 5-6, 9-10; Doniger Decl. ¶¶ 5-9. Movants actively engage in public outreach activities using this emissions data by communicating with their members, policymakers, and the public through a variety of media. *See* Stith Decl. ¶¶ 6, 9-10; Doniger Decl. ¶¶ 5-8.

II. The Final Rule

In 2010, in response to Congress’s directive to develop mandatory reporting requirements for all economic sectors, EPA promulgated the nation’s first comprehensive requirements for tracking greenhouse gas emissions from oil and natural gas systems. 75 Fed. Reg. 74,458 (Nov. 30, 2010). This rule allowed certain sources to use non-standardized “Best Available Monitoring Methods” (“BAMM”) to calculate emissions. The availability of BAMM, which was initially formulated as a means of giving sources time to install necessary monitoring equipment, *see id.* at 74,471-73, was repeatedly extended and expanded by the agency.¹

¹ In January 2011, Petitioners API and GPA, along with other industry

In March 2014, EPA proposed amendments to the oil and gas reporting requirements, including elimination of BMM (with modest and time-limited exceptions for newly regulated sources). 79 Fed. Reg. 13,394 (Mar. 10, 2014). The agency explained that the removal of BMM would “improve data quality by requiring consistent reporting” and that the elimination of BMM was justified by the extended period of time in which facilities had to come into compliance with reporting requirements, along with the additional revisions EPA was proposing in the rule. *Id.* at 13,404-05. The proposal also contained additional procedures for measuring emissions from compressors and other sources. Movants submitted comments to the agency on the proposal, strongly supporting the elimination of BMM. EPA Docket ID No. EPA-HQ-OAR-2011-0512-0087 at 2-3 (Apr. 24, 2014) (comments of Environmental Defense Fund (“EDF”), Natural Resources Defense Council (“NRDC”), Sierra Club, *et al.*).

In the Final Rule, EPA largely followed the approach it had proposed, ending the availability of BMM as an option for most sources. 79 Fed. Reg. at 70,372. However, in response to comments expressing concern about the time needed to comply with other changes in the Final Rule, EPA allowed BMM on a

representatives, filed petitions for reconsideration asking EPA to extend the deadline for BMM applications. 76 Fed. Reg. 22,825, 22,825 (Apr. 25, 2011). In response, EPA extended the deadline, *id.*, and has further extended or expanded the use of BMM in subsequent rules. *See* 78 Fed. Reg. 71,904 (Nov. 29, 2013); 76 Fed. Reg. 59,533 (Sept. 27, 2011).

short-term, transitional basis for certain sources for which the Final Rule amended monitoring or measuring requirements. *Id.* at 70,374. In addition, the Final Rule adopted many of the other changes to the reporting requirements that EPA had proposed. *See id.* at 70,354-55.

III. Industry Petitioners' Challenges to the Final Rule

On January 23, 2015, API and GPA filed separate petitions for review of the Final Rule. Both groups represent petroleum and natural gas industry interests, and their comments opposed the limitations on BMM and other improvements adopted in the Final Rule. For instance, Petitioner API argued in its comments on the proposed rule that BMM should be extended. EPA Docket ID No. EPA-HQ-OAR-2011-0512-0084 at 6-8 (Apr. 24, 2014). API also claimed that EPA lacked authority under the Clean Air Act to require reporting of certain compressor information. *Id.* at 9. Similarly, GPA, in its comments, opposed EPA's proposed reporting requirements for compressors and argued that BMM continues to be necessary. EPA Docket ID No. EPA-HQ-OAR-2011-0512-0089 at 1-2 (Apr. 24, 2014). In sum, Petitioners' comments indicate that in this litigation they will attempt to vacate and weaken the Final Rule.²

² Indeed, this proceeding is the most recent in a series of legal challenges by industry groups to EPA's greenhouse gas reporting requirements for the oil and natural gas sector. Petitioners API and GPA, in a consolidated case before this Court, No. 11-1020, have challenged EPA's initial reporting rule for oil and natural gas systems, promulgated in 2010. *Petition for Review, Am. Petroleum Inst. v.*

ARGUMENT

Movants should be permitted to intervene in these proceedings in support of EPA's Final Rule. As discussed below, Movants meet the requirements for intervention. Further, this motion was timely filed within thirty days of January 23, 2015, when both API and GPA filed their respective petitions for review. Fed. R. App. P. 15(d); *Ala. Power Co. v. Interstate Commerce Comm'n*, 852 F.2d 1361, 1367 (D.C. Cir. 1988).

I. Standard Applicable to a Motion to Intervene

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene need only make “a concise statement of the interest of the moving party and the grounds for intervention.” This Court has noted that “in the intervention area the ‘interest’ test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due

EPA, No. 11-1026 (D.C. Cir. Jan. 31, 2011) (challenging EPA's final rule at 75 Fed. Reg. 74,458 (Nov. 30, 2010)); Petition for Review, *Gas Processors Ass'n v. EPA*, No. 11-1023 (D.C. Cir. Jan. 28, 2011) (same). API, in an action also consolidated with that case, No. 12-1107, has challenged technical revisions to the oil and natural gas systems reporting rule that EPA issued in 2011. Petition for Review, *Am. Petroleum Inst. v. EPA*, No. 12-1107 (D.C. Cir. Feb. 21, 2012) (challenging EPA's final rule at 76 Fed. Reg. 80,554 (Dec. 23, 2011)). Movants intervened in support of Respondent EPA in case No. 11-1020, and the consolidated cases are currently being held in abeyance pending the agency's consideration of administrative petitions for reconsideration. Order, *Am. Gas Ass'n v. EPA*, No. 11-1020 (D.C. Cir. Apr. 8, 2011) (granting motion for leave to intervene filed by EDF, Sierra Club, and NRDC); Status Report, *Am. Gas Ass'n v. EPA*, No. 11-1020, (D.C. Cir. Feb. 10, 2015).

process.” *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (reversing denial of intervention under Fed. R. Civ. P. 24(a)).

II. Movants Meet the Standard for Intervention

Movants seek intervention to oppose attempts to weaken access to information on public health and environmental impacts that concern the interests of their members and thus satisfy this Court’s test for intervention, as explained below and shown by the attached declarations.

A. Movants Have Organizational Interests in Ensuring the Rigor of Oil and Gas Emissions Data Collected through EPA’s Reporting Program.

Movants have substantial institutional interests in defending the accuracy and transparency of greenhouse gas emissions data. Efforts to document, analyze, and reduce greenhouse gas emissions are central to Movants’ organizational purposes to protect public health and the environment. *See* Declaration of Arthur Cooley ¶ 10 (“Cooley Decl.”); Stith Decl. ¶ 6; Doniger Decl. ¶¶ 2-3; Trujillo Decl. ¶¶ 4-5. Their members directly and substantially benefit from this work. *See* Cooley Decl. ¶¶ 2-9; Declaration of Denise Fort ¶¶ 3-11 (“Fort Decl.”); Declaration of Elizabeth Coplon ¶¶ 2-6 (“Coplon Decl.”).

Movants require accurate and comprehensive emissions data to effectively advocate for emissions reductions policies, and inform their members and the general public. *See* Cooley Decl. ¶ 10 (“Providing accurate emissions information to EDF members and the public is integral to EDF’s advocacy activities, including

with policymakers and corporate leaders who are making or considering changes to their business practices related to GHG emissions and global warming.”); Stith Decl. ¶ 6 (“Accurate public information about emissions is essential to the EDF’s mission and its ability to effectuate that mission through specific initiatives, such as ... informing EDF’s members and the public about greenhouse gas emissions, and advocating for measures to limit those emissions.”); Doniger Decl. ¶ 7 (“Accurate, timely, and comprehensive data from [oil and gas] facilities will improve the accuracy of projections of the environmental, health, and economic impacts of reducing greenhouse gas emissions for specific states, regions, and the nation as a whole. The quantitative analysis enabled by the emissions data will help in understanding how proposed legislation and regulations may affect specific sources, sectors, and geographic areas.”).

Movants have long advocated for measures to reduce greenhouse gases. Movants were prevailing parties in *Massachusetts v. EPA*, which confirmed that greenhouse gases are pollutants under the Clean Air Act. 549 U.S. 497, 531 (2007). Movants also intervened on behalf of EPA before this Court in challenges to the agency’s initial endangerment finding for greenhouse gases and the rules establishing greenhouse gas emissions limits for motor vehicles in *Coalition for Responsible Regulation v. EPA*, see Order, No. 09-1322 (D.C. Cir. May 5, 2010),

and in the industry appeal of that decision to the U.S. Supreme Court in *Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014).

Given the importance of comprehensive and accurate emissions data to emissions reduction policies, Movants have also been deeply involved in the development of EPA's greenhouse gas reporting regulations. Movants have submitted extensive comments on EPA's various proposals to establish the mandatory greenhouse gas reporting requirements.³ Further, when EPA failed to include requirements for oil and natural gas systems in the initial mandatory reporting rule, Movant EDF filed a petition for judicial review of that rule and a complaint in federal district court to compel inclusion of reporting requirements for the sector. *See* Petition for Review, *EDF v. EPA*, No. 09-1334 (D.C. Cir. Dec. 29, 2009); Complaint, *EDF v. Jackson*, No. 10-CIV-0466 (S.D.N.Y. Jan. 20, 2010).

Movants have also been extensively involved with EPA's development of the mandatory greenhouse gas reporting program for oil and natural gas systems and provided comments on the challenged rule. EPA Docket ID No. EPA-HQ-OAR-2011-0512-0087 (Apr. 24, 2014) (comments of EDF, NRDC, Sierra Club, *et*

³ *See, e.g.*, EPA Docket ID No. EPA-HQ-OAR-2008-0508-2398 (Sept. 27, 2010) (comments of NRDC, Sierra Club, *et al.*, on proposed revisions to the mandatory greenhouse gas reporting rule, 75 Fed. Reg. 48,744 (Aug. 11, 2010)); EPA Docket ID No. EPA-HQ-OAR-2008-0508-2370 (Sept. 27, 2010) (comments of EDF on same); EPA Docket ID No. EPA-HQ-OAR-2008-0508-0635 (June 8, 2009) (comments of EDF, NRDC, Sierra Club, *et al.*, on the initial proposed mandatory greenhouse gas reporting rule, 74 Fed. Reg. 16,448 (Apr. 10, 2009)).

al.). Indeed, Movants have participated in the development of oil and natural gas reporting requirements since the agency's initial rulemaking proposal for the sector in April 2010. *See* EPA Docket ID No. EPA-HQ-OAR-2009-0923-1155 (June 11, 2010) (comments of EDF, NRDC, Sierra Club, *et al.*, on 75 Fed. Reg. 18,608 (Apr. 12, 2010)). Movants' significant engagement in proceedings to develop greenhouse reporting requirements, specifically for oil and natural gas systems, reflects Movants' strong interest in the improved accuracy and consistency of reporting requirements ensured by the Final Rule and supports their intervention in this case.

Because of their extensive engagement on policies to reduce greenhouse gas emissions and require rigorous reporting of those emissions from the oil and natural gas sector, Movants bring a distinctive perspective to the issues at stake in this case. Movants are independent nonprofit organizations committed to the protection of public health and the environment. This Court has consistently allowed intervention by Movants opposing industry challenges to EPA actions implementing emissions reporting obligations for greenhouse gases.⁴ The Court's

⁴ *See* Order, *Am. Gas Ass'n v. EPA*, No. 11-1020 (D.C. Cir. Apr. 8, 2011) (granting EDF, NRDC, and Sierra Club intervention in industry challenges to greenhouse gas reporting requirements for the oil and natural gas sector); Order, *American Chemistry Council v. EPA*, No. 09-1325 (D.C. Cir. Feb. 3, 2011) (same as to industry challenges to greenhouse gas reporting requirements for numerous sectors); Order, *Semiconductor Industry Ass'n v. EPA*, No. 11-1024 (D.C. Cir. Jan. 8, 2014) (granting EDF and NRDC intervention in industry challenges to

practice of granting requests to intervene to support these agency actions reflects a recognition of the unique and important perspective Movants bring to the issue.

B. Movants' Members' Interests Will Be Harmed if the Court Sets Aside the Final Rule.

Movants' continued advocacy and history of engagement on greenhouse gas reporting policies reflect the strong interest of Movants' hundreds of thousands of members in supporting regulations to protect public health and the environment, particularly regulations to reduce emissions responsible for global warming.

Avoiding the worst consequences of global warming requires reductions in greenhouse gas emissions.⁵ Accurate and comprehensive emissions data from the oil and gas industry are important elements in identifying and understanding these emissions and crafting policies for effective reductions. *See, e.g.*, 75 Fed. Reg. 18,608, 18,612 (Apr. 12, 2010) (emissions data from the oil and gas industry are “crucial to the timely development of future [greenhouse gas] policy and regulatory programs”).

greenhouse gas reporting requirements for the electronics manufacturing sector).

⁵ Atmospheric emissions of greenhouse gases cause climate change. *See, e.g.*, Endangerment and Cause or Contribute Findings for Greenhouse Gases, 74 Fed. Reg. 66,496 (Dec. 15, 2009). The U.S. is already experiencing the impacts of climate change, including an increase in extreme temperatures (and attendant heat-related illnesses), reduced snow cover, increases in ocean temperatures and acidity, sea level rise, and accelerated melting of arctic sea ice and the world's glaciers. *See, e.g.*, EPA, *Climate Change Indicators in the United States* at 8-11 (3rd ed. 2014), available at <http://www.epa.gov/climatechange/pdfs/climateindicators-full-2014.pdf>.

Movants' members have a significant interest in the accuracy of emissions data from the oil and gas sector because they rely on this data in their advocacy efforts and professional work. *See* Cooley Decl. ¶ 9 (“I plan to use [data on greenhouse gas emissions from oil and gas sources] to advocate for policies that will protect the natural habitats that I have studied and for which I care deeply. However, to effectively advocate for policies that protect these areas, I need data on greenhouse gas emissions from the oil and gas sector that I can be sure are accurate.”); Fort Decl. ¶ 8 (“Having access to accurate, facility-specific greenhouse gas emissions data for the oil and natural gas sector is also valuable to me personally because I need this in order to plan and perform research on the law and policy of global warming.”).

Movants' members will also directly benefit from policies that more effectively address greenhouse gas emissions based on the more accurate and rigorous data provided for in the Final Rule. These members use, own, and enjoy property and natural resources that are harmed or at risk of harm from climate change. *See, e.g.*, Cooley Decl. ¶ 5 (“I would not be able to continue to enjoy my property and my current recreational routine as I can now if the sea level continues to rise and the current beach changes or disappears.”); Fort Decl. ¶ 9 (“My home in Santa Fe is in a pinon juniper forest, which is affected by a bark beetle that spreads during conditions that are more prevalent in a warmer climate. The bark beetle

kills pinons. The resulting dead trees make ready fuel for increasingly intense and frequent wildfires.”); Coplon Decl. ¶ 4 (“My property could be eroded and my home destroyed if sea level rise caused increased erosion of the shoreline. In addition, increased storm surges could flood my home. Erosion of nearby beaches would also deprive me of recreational opportunities and likely affect the value of my home.”). These harms to members’ use and enjoyment of their property, as well as their interests in the use and enjoyment of natural resources, are sufficient to establish their strong interest in upholding the Final Rule as well as sufficient injury if the rule is undermined. *See Massachusetts*, 549 U.S. at 521-23 (finding particularized injury based on harm to coastal property).

In addition, Movants’ members will likely enjoy health benefits from policies that more effectively address greenhouse gas emissions based on the Final Rule’s strengthened reporting requirements. For example, stabilizing the climate by reducing greenhouse gas emissions would likely help to avoid increases in ozone pollution levels, which are exacerbated by increased warming. *See Cooley Decl.* ¶ 7 (“During high ozone days, I avoid strenuous exertion and significantly limit my time spent outside working and enjoying nature, in order to protect my health as well.”). Members would also likely benefit from reductions in the number and intensity of wildfires, a major source of air pollution, to which increased warming contributes. *See id.* ¶ 7 (“I must take similar measures to

protect my health during unusually hot days or during high pollution episodes due to wildfires.”); Coplon Decl. ¶ 5 (“air quality has been extremely bad during wildfires, which are expected to occur more frequently as a result of global warming”).

These informational, health, and environmental benefits and concerns establish both Movants’ “interest” under Rule 15(d) and their standing to sue under Article III of the Constitution, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992); *Federal Election Comm’n v. Akins*, 524 U.S. 11 (1998), assuming such standing were required of parties who, as here, seek to intervene in support of respondents.⁶ For the same reasons, Movants fall squarely within the “zone of interests” protected or regulated by the relevant provisions of the Clean Air Act. *See Akins*, 524 U.S. at 20 (quoting *Ass’n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 153 (1970)).

The disposition of this case ““may as a practical matter impair or impede [Movants’] ability to protect [their] interest[s].”” *Fund for Animals, Inc. v. Norton*,

⁶ *See, e.g., Deutsche Bank Nat’l Trust Co. v. FDIC*, 717 F.3d 189, 193-94 (D.C. Cir. 2013); *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317, 1323 (D.C. Cir. 2013); *but see Bond v. United States*, 131 S. Ct. 2355, 2361-62 (2011) (Article III requirements apply to those “who seek[] to initiate or continue proceedings in federal court,” not to those who *defend* against such proceedings); *McConnell v. FEC*, 540 U.S. 93, 233 (2003) (holding that where the position of the respondent-intervenors is identical to that of the agency and the agency’s standing is unquestionable, no separate inquiry regarding intervenor standing is necessary), *overruled on other grounds by Citizens United v. FEC*, 130 S. Ct. 876 (2010).

322 F.3d 728, 735 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)). Petitioners seek to undermine reporting requirements for one of the largest sources of greenhouse gas emissions. Movants and their members have a substantial interest, and have expended significant effort, in analyzing emissions data and identifying approaches to reducing greenhouse gas emissions. Thus, disposition of the petitions may, as a practical matter, materially impair the interests of Movants and their members in understanding and responding to climate change.

CONCLUSION

For all the foregoing reasons, Movants should be granted leave to intervene in support of Respondents.

DATED: February 23, 2015

Respectfully submitted,

/s/ Timothy D. Ballo

/s/ Andres Restrepo (by permission)

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2015, I have served the foregoing **Motion to Intervene by Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club in Support of Respondent** on all registered counsel through the Court's electronic filing system (ECF).

/s/ Timothy D. Ballo
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