

ORAL ARGUMENT NOT YET SCHEDULEDIN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL ASSOCIATION OF
MANUFACTURERS,

Petitioner,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and
BOB PERCIASEPE, Acting
Administrator, U.S. Environmental
Protection AgencyRespondents.

No. 13-1069

**MOTION TO INTERVENE BY AMERICAN LUNG ASSOCIATION
ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES
DEFENSE COUNCIL, AND SIERRA CLUB**

American Lung Association, Environmental Defense Fund, Natural Resources Defense Council (“NRDC”), and Sierra Club (collectively, “Movants”) hereby move pursuant to Fed. R. App. P. 15(d) to intervene in support of Respondents in the Petition for Review filed in this Court in the above-captioned matter. The petition seeks review of the final rulemaking promulgated by the U.S. Environmental Protection Agency (“EPA”) titled “National Ambient Air Quality Standards for Particulate Matter,” published at 78 Fed. Reg. 3086 (Jan. 15, 2013)

(“Final Rule”). Pursuant to D.C. Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged Final Rule.

Counsel for Petitioner National Association of Manufacturers (“NAM”) and counsel for Respondent EPA have authorized the undersigned to represent that they take no position on this motion.

BACKGROUND

I. The EPA Rulemakings

The Clean Air Act (“CAA”) requires EPA to adopt and periodically update National Ambient Air Quality Standards (“NAAQS”) for harmful air pollutants. CAA § 109, 42 U.S.C. § 7409. The NAAQS must include “primary” standards requisite to protect public health with an adequate margin of safety, and “secondary” standards requisite to protect public welfare. *Id.* § 109(b), 42 U.S.C. § 7409(b). Once in place, NAAQS are implemented by enforceable regulatory programs sufficient to ensure that air quality will meet the NAAQS. CAA §§ 110(a) & (c), 172, 42 U.S.C. §§ 7410(a) & (c), 7502.

The petition for review in this case addresses EPA’s 2013 revision of the primary NAAQS for fine particulate matter (“PM_{2.5}”). Exposure to PM_{2.5} pollution is linked to premature death, increased hospital admissions and emergency department visits, and development of chronic respiratory disease. 77 Fed. Reg. 38,890 (June 29, 2012).

On January 15, 2013, EPA published a notice of final rulemaking announcing its latest revisions of the primary PM_{2.5} NAAQS. 78 Fed. Reg. 3086. Among other things, EPA decided to strengthen the annual PM_{2.5} standard to 12 µg/m³ (compared to its prior level of 15 µg/ m³) and to retain the pre-existing 24-hour standard of 35 µg/ m³. *Id.* These standards were within ranges recommended by the Clean Air Scientific Advisory Committee (CASAC), whose advice the Act requires EPA to consider in revising NAAQS. 78 Fed. Reg. at 3139.

The American Lung Association is a national nonprofit organization dedicated to saving lives through the prevention of lung disease and the promotion of lung health. Environmental Defense Fund is a national nonprofit environmental organization dedicated to, among other things, protecting the public health from air pollution. Sierra Club is a national nonprofit organization dedicated to protecting and restoring the quality of the natural and human environment. NRDC is a national nonprofit organization that works to protect and restore air quality. These organizations submitted extensive comments on the EPA proposal that lead to adoption the Final Rule challenged by the petitioner here. *See* Comments of the ALA, *et al.* on EPA's Proposed Revisions to the Primary National Ambient Air Quality Standards for Particulate Matter, EPA Doc. No. EPA-HQ-OAR-2007-0492-9826 (Aug. 31, 2012) (hereinafter, "Comments of ALA, *et al.*"). They each have members who live in areas that do not meet the annual PM_{2.5} NAAQS, as

revised by EPA in the Final Rule, and whose health would be threatened if the NAAQS were weakened, delayed, or inadequately implemented. Support for Movants' interests in defending the Final Rule is provided in the attached declarations and in the discussion below. Accordingly, for reasons further detailed below, Movants seek to intervene in the above-captioned matter to oppose Petitioners' challenges to the Final Rule.

II. The Petitioner's Challenge.

On March 15, 2013, Petitioner National Association of Manufacturers filed a petition for review of the Final Rule. NAM will likely seek to invalidate, weaken, or delay implementation of the Final Rule. In comments on the proposed version of the Final Rule, NAM argued against strengthening the annual PM_{2.5} NAAQS, raising various legal and technical objections. EPA-HQ-OAR-2007-0492-9425. Movants and their members have strong interests in maintaining the level of health protection provided by the revised PM_{2.5} NAAQS and in ensuring that the NAAQS are effectively implemented. Accordingly, they meet the standards for intervention in Petitioner's challenge pursuant to Fed. R. App. P. 15(d), as further detailed below.

ARGUMENT

I. Introduction

This Court should permit Movants to intervene in these proceedings.

Movants timely filed this motion within thirty days of March 15, the date the petition for review in 13-1069 was filed with this Court. Fed. R. App. P. 15(d); *Alabama Power Co. v. I.C.C.*, 852 F.2d 1361, 1367 (D.C. Cir. 1988). Under Fed. R. App. P. 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 process.” *See Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967) (internal quotation marks removed). Movants seek intervention to oppose attempts to weaken public health and environmental safeguards that benefit their members. As demonstrated below, that interest is sufficient to support intervention in this case.

This court has previously allowed Movants to intervene in petitions for review challenging EPA actions under the Clean Air Act — including NAAQS promulgations. *See, e.g., National Environmental Development Ass’n’s Clean Air Project v. EPA*, 686 F.3d 803 (D.C. Cir. 2012) (wherein American Lung Association and Environmental Defense Fund were granted intervention in industry challenge to NAAQS for sulfur dioxide); *American Petroleum Institute v. EPA*, 684 F.3d 1342 (D.C. Cir. 2012) (wherein NRDC was granted intervention in

industry challenge to NAAQS for nitrogen dioxide); *American Farm Bureau Fed'n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (listing American Lung and Environmental Defense Fund as intervenors in industry challenges to 2006 particulate matter (“PM”) NAAQS); *see also* Order of August 17, 2004, *Alcoa, Inc. v. EPA*, No. 04-1189 (D.C. Cir.) (granting intervention to American Lung Association, Environmental Defense Fund, NRDC and Sierra Club in suits by industry and governmental entities challenging designations of areas as “nonattainment” for ozone NAAQS); Order of August 19, 2004, *S. Coast Air Quality Mgmt. Dist. v. EPA*, No. 04-1200 (D.C. Cir.) (granting intervention to Sierra Club, American Lung Association, Environmental Defense Fund, and NRDC in industry petitions challenging EPA rules implementing ozone NAAQS); Order of June 26, 2003, *New York v. EPA*, No. 02-1387 (D.C. Cir.) (granting intervention to Sierra Club, American Lung Association, Environmental Defense Fund and NRDC in industry suits challenging national EPA rules governing increased pollution from major factories and power plants). Comparable circumstances warrant a grant of intervention to Movants here.

II. Petitioner’s Challenge Threatens the Health of Movants’ Members.

Movants have an interest in this action because their organizational purposes encompass the prevention and cleanup of air pollution, and because they have members whose health is directly impacted by the particulate matter pollution that

the Final Rule seeks to remedy. *See* attached declarations. Members live in areas that do not meet the revised annual PM_{2.5} standard, and who are therefore breathing air that EPA has determined to be more polluted than requisite to protect their health and welfare. *Id.*; <http://www.epa.gov/pm/2012/20092011table.pdf>; <http://www.epa.gov/airtrends/values.html>. Invalidation, weakening, or delay of the revised standard would prolong exposure of these members to PM_{2.5} levels that EPA – as well as pulmonologist and other medical experts – have determined are unsafe to breathe. Indeed, Movants’ comments on the proposed standard argued, based on substantial scientific evidence, that standards even more protective than those ultimately adopted were warranted to protect people’s health. Comments of ALA, *et al.* The health interest of Movants’ members is central to the underlying Clean Air Act provisions governing EPA’s adoption and revision of the NAAQS. Those provisions require EPA to adopt primary NAAQS “requisite to protect the public health” and “allowing an adequate margin of safety.” CAA § 109(b)(1), 42 U.S.C. § 7409(b)(1). The Supreme Court has expressly ruled that EPA must base the primary NAAQS solely on public health considerations. *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 465 (2001).

Movants’ interests are especially strong here, because the Clean Air Act grants this Court exclusive jurisdiction to review the challenged rules. 42 U.S.C. § 7607(b)(1), (e). Accordingly, this proceeding will determine the rule’s validity.

Movants' interest in preventing weakening of health protections for their members under the Clean Air Act will be prejudiced if movants are not allowed to intervene.

Movants' interests are further demonstrated by their longstanding history of arguing for protective particulate standards. Several Movants successfully challenged EPA's prior PM_{2.5} standards as being insufficiently protective of health and welfare. *American Farm Bureau Fed'n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (suit by American Lung Association and EDF). American Lung Association subsequently sued and obtained a consent decree setting a deadline for EPA's completion of the NAAQS review that led to adoption of the Final Rule at issue here. For all the foregoing reasons, Movants have a clear "interest" in this matter within the meaning of Federal Rule of Appellate Procedure 15(d). Further, that interest and the injury Movants' members face from a weakening or reversal of the Final Rule are more than sufficient to satisfy the requirements of Article III and prudential standing (though such a demonstration is not necessary here¹). *See, e.g., Friends of the Earth v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 183 (2000)

¹ The Supreme Court recently held that Article III standing requirements apply to those "who seek[] to initiate or continue proceedings in federal court," not to those who defend against such proceedings. *Bond v. United States*, 131 S. Ct. 2355, 2361-62 (2011); see also *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("Requiring standing of someone who seeks to intervene as a defendant runs into the doctrine that the standing inquiry is directed at those who invoke the court's jurisdiction" (discussing district court intervention under Fed. R. Civ. P. 24 (citing *Virginia v. Hicks*, 539 U.S. 113, 117-22 (2003)) (internal citation omitted))).

(environmental group has standing to enforce pollution limits where members have reasonable concern about adverse effects of pollution in area they use); *Nat'l Parks Conservation Ass'n v. Manson*, 414 F.3d 1, 4-7 (D.C. Cir. 2005) (conservation groups with members in affected area have standing to challenge action that would facilitate increased air pollution in the area); *Sierra Club v. EPA*, 129 F.3d 137, 139 (D.C. Cir. 1997) (environmental group with members in affected areas has standing to challenge weakening of Clean Air Act requirements for such areas).

In addition, Movants' interests are not adequately represented by the existing parties. As matters now stand, the Court will hear only EPA's arguments against weakening the Final Rule. This Court "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003); *see also Natural Res. Def. Council v. Costle*, 561 F.2d 904, 913 (D.C. Cir. 1977) (holding that industry intervenors' interests may not be adequately represented by EPA and that intervention as a matter of right is thus justified). That is especially true here, where Movants submitted comments arguing for standards even more protective than those ultimately adopted by EPA. Indeed, Movants have frequently disagreed with — and challenged in rulemaking comments and court proceedings — EPA's actions and inaction under the Clean Air Act. *See, e.g., Am. Farm Bureau Fed'n*, 559 F.3d 512 (challenge by American Lung, Environmental Defense, and others to

EPA PM NAAQS); *S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) (challenge by American Lung, Environmental Defense Fund, NRDC, Sierra Club, and others to EPA rules to implement ozone NAAQS); *Am. Lung Ass'n v. EPA*, 134 F.3d 388 (D.C. Cir. 1998) (challenge by American Lung and Environmental Defense Fund to EPA SO₂ NAAQS). Movants respectfully submit that the Court's adjudication will be assisted by hearing from leading non-governmental advocates of the Clean Air Act's public health protections.

In short, Movants have shown more than sufficient interest and grounds for intervention: They each have an interest relating to the subject matter of this action that may be impaired by disposition in their absence, and that interest is not adequately represented by the existing parties. *See* Fed. R. App. P. 15(d).² Moreover, the motion to intervene is being timely filed within the thirty-day period allowed under Fed. R. App. P. 15(d). For all of the foregoing reasons, Movants respectfully request leave to intervene in the above captioned case, and, under D.C. Cir. Rule 15(b), in all other petitions for review of the EPA final action at issue.

² Indeed, for reasons shown above, movant's showing would even meet the more detailed requirements governing intervention of right in a district court proceeding, Fed. R. Civ. P. 24(a)(2), as well as the lesser prerequisites for permissive intervention in such a proceeding, Fed. R. Civ. P. 24(b)(1)(B), though such a demonstration is not required under Fed. R. App. P. 15(d).

Dated: April 15, 2013

Respectfully submitted,

/s/David S. Baron

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2013 I have served the foregoing **Motion to Intervene By American Lung Association Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club** on all registered counsel through the Court's electronic filing system (ECF). I further certify that I have served counsel for EPA, Eric Hostetler, by email. I further certify that I have served Lucinda Minton Langworthy, William L. Wehrum, Jr., and Allison D. Wood, counsel for Utility Air Regulatory Group, *et al.* in case no. 13-1071, *Utility Air Regulatory Group v. EPA* (D.C. Cir.) by email.

/s/ David S. Baron
David S. Baron

Declarations

American Lung Association

DECLARATION OF HAROLD P. WIMMER

I, Harold P. Wimmer, declare as follows:

1. I am the National President and Chief Executive Officer for the American Lung Association ("ALA"). I am responsible for the overall management and operation of the organization. In that capacity, I am required to be familiar with the organization's structure, function, purpose, and membership.

2. ALA is incorporated in Maine with headquarters in Washington, D.C. It has chartered organizations (akin to state chapters) in all fifty states and the District of Columbia. ALA is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

3. ALA has a vision of a world free of lung disease. Its mission statement is "to save lives by improving lung health and preventing lung disease." As scientific research has shown that air pollution is a major contributor to the worsening of lung disease, ALA has for many years conducted advocacy and litigation to promote full and timely implementation of the Clean Air Act. ALA is also committed to improving lung health and preventing lung disease through education, including informing the public about health threats from air pollution.. Our board includes pulmonologists and other experts on lung health.

4. ALA has long advocated for adoption of a more protective annual primary national ambient air quality standard (NAAQS) for fine particulate matter (PM_{2.5}),

based on extensive scientific evidence that PM_{2.5} levels allowed by the annual standard adopted by EPA in 1997 are associated with a wide array of adverse health effects, including premature deaths, hospitalizations for respiratory problems, emergency department visits, aggravated asthma, nonfatal heart attacks, irregular heartbeat, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. When EPA proposed revision of PM_{2.5} NAAQS in 2012, ALA filed extensive comments supporting (among other things), substantial strengthening of the annual PM_{2.5} NAAQS to protect people's health from this dangerous pollutant. EPA ultimately did strengthen the annual PM_{2.5} NAAQS at 78 Fed. Reg. 3086 (Jan. 15, 2013)(“revised standard”), and while still not as strong as ALA has advocated, the revised standard will provide important additional protection against the above-described health threats of PM_{2.5}.

5. ALA has members throughout the country that reside in areas that exceed the revised standard, including the greater metropolitan area of St. Louis, MO-IL.

6. ALA members living in the above-named and other areas have a strong interest in full, timely, and effective implementation of the Clean Air Act requirements designed to protect the purity of the air they breathe, including the revised standard. The health of those members will be threatened if the revised standard is overturned or weakened, or its implementation delayed or undermined.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 5th day of April, 2013.



Harold P. Wimmer

DECLARATION OF MARIO CASTRO

I, Mario Castro, hereby declare and state:

1. I am a member of the American Lung Association (“ALA”). I have served on the ALA Board of Directors since 2012. I have previously served as President of the ALA of Missouri Board and am a current member of the ALA of the Plains-Gulf Region Leadership Council. Since 2003, I have also served as a member of the ALA Scientific Advisory Committee which I now currently Chair. I am the Principal Investigator for the St. Louis site of the ALA Asthma Clinical Research Centers (“ACRC”) and chair the Protocol Committee for ACRC.

2. I live in St. Louis County, Missouri, and work in St. Louis City. I have lived and worked here since 1994.

3. I am a pulmonologist & critical care medicine intensivist and a professor of medicine and pediatrics at Washington University in St. Louis. I began working there as an assistant professor in 1994. I see patients at Barnes-Jewish Hospital, the teaching hospital for Washington University in St. Louis’s medical school. As well as an M.D., I also have a master’s degree in public health.

4. I spend a lot of time outdoors. I am an avid runner, biker, and swimmer. A few days ago, I ran a half-marathon in St. Louis City, and am going to complete a triathlon in the fall. I run about 20-25 miles a week, split between running near my home and running in Forest Park, the large park across from the medical school. I also spend a lot of time doing yard work at home.

5. I have three boys, aged 16, 18, and 21. The two youngest attend high school in St. Louis City. They have allergies, and some of their sinus problems are related to irritants in the atmosphere. In my youngest, air pollution has triggered an asthma-like condition.

6. Every day, I see patients with lung problems. We treat a wide variety of patients, from those critically ill in the intensive care all the way to outpatients with chronic lung disease. My areas of expertise are asthma and COPD. People with those conditions, including my patients, are highly susceptible to the effects of fine particulate matter (“PM_{2.5}”) pollution in the atmosphere. We have to tell them in the summer months, when there are peaks in air pollution, to keep an eye on regional air quality monitoring systems and to avoid spending time outdoors when air quality is bad. We also instruct our patients to always carry rescue inhaler medication with them, especially when traveling outdoors, to use when an exacerbation of their lung disease is triggered by air pollution exposure.

7. I do research with children who are affected by asthma. We have a long-term project looking at development of asthma early in life in kids less than a year old. They’ve all had a serious viral infection early in life, and we believe that this and environmental effects render them more prone to develop asthma. In fact, we have published that by age 6, 48% develop physician diagnosed asthma. We’re doing this research in St. Louis and Boston, also, with super-air pollution monitoring stations to see where the kids are coming from and what their pollutant exposure is. Currently, we are looking at air pollution measurements, including PM_{2.5} and ozone, from these monitoring stations back to 1999 and modeling their effects in children from our study in St. Louis and Boston..

8. From information on EPA’s website (epa.gov/pm/2012/20092011table.pdf), I am aware that PM_{2.5} air pollution levels in St. Louis are higher than allowed under EPA’s new annual PM_{2.5} national ambient air quality standard of 12 µg/m³ for protection of public health. Based on my knowledge of the harms PM_{2.5} causes, I am very concerned about the impacts of PM_{2.5} pollution on me, my family, and my patients. I notice the difference in air quality when

pollution levels spike. Fine particulate matter has a significant, negative impact on human health. It can cause death, heart attacks, and breathing problems severe enough to send people to the hospital or emergency room. If the standards were weakened, the unsafe PM_{2.5} levels in my community would be allowed to continue or even worsen. That would prolong and allow worsening of the health threats to my sons and to me from PM_{2.5} pollution. It would also be harmful for the patients I treat and track as a doctor and researcher. Many of them already suffer from respiratory ailments like asthma or COPD that are exacerbated by PM_{2.5} levels above EPA's standards.

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

Executed on April 11, 2013.

A handwritten signature in black ink, appearing to read "M. Castro", written in a cursive style.

Mario Castro

Environmental Defense Fund

DECLARATION OF JOHN STITH

I, John Stith, declare as follows:

1. I am the Manager of Database Marketing at Environmental Defense Fund. I have held this position since October 2005. My duties include providing information to members, acknowledging gifts and volunteer actions, and managing the organization's member databases. My work requires that I be familiar with Environmental Defense Fund's purpose, structure, and activities.
2. Environmental Defense Fund is a membership organization incorporated under the laws of the State of New York, and is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.
3. The purpose of Environmental Defense Fund is to use science, economics, and law to protect and restore the quality of air, water, and other natural resources. Environmental Defense Fund is committed to "Finding the Ways that Work."
4. Protecting human health and the environment from air pollution, including particulate pollution, has long been a central goal of Environmental Defense Fund. Environmental Defense Fund has carried out initiatives at the state, regional, and national levels focused on solutions to reduce air pollution, including particulate pollution from mobile and stationary sources.
5. My duties require me to maintain an accurate list of members. When an individual becomes a member of Environmental Defense Fund, his or her

current residential address is recorded in the organization's membership database, which EDF maintains in the regular course of business. The database entry reflecting a member's residential address is shown to members for verification as a routine part of EDF's membership communications, and address changes provided by members are regularly applied to EDF's database.

I obtained the information below from this database.

6. Environmental Defense Fund members have a strong interest in protecting human health and the environment from air pollution. Environmental Defense Fund currently has over 340,000 members in the United States, including members residing in each of the 50 states and the District of Columbia. Members live in numerous counties shown on EPA's web site as not meeting the annual primary fine particulate standard of $12.0 \mu\text{g}/\text{m}^3$. For example, EDF has 13,347 members in Los Angeles County, California; 1,936 members in Harris County, Texas; 874 members in Hamilton County, Ohio; and 687 members in Fulton County, Georgia.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 11, 2013.



John Stith

DECLARATION OF DR. HAROLD J. FARBER

I, Dr. Harold J. Farber, declare as follows:

1. I am a member of Environmental Defense Fund (EDF), and I have been a member of EDF since 2010. I reside in Houston, Texas, which is located in Harris County.
2. I am a pediatric pulmonologist at Texas Children's Hospital in Houston and hold an appointment as Associate Professor of Pediatrics at Baylor College of Medicine. I specialize in both asthma and pediatric pulmonary medicine. I am board certified by the American Board of Pediatrics with a subspecialty in Pediatric Pulmonology. I have published extensively on the subject of childhood asthma, including a book for the lay public entitled "Control your Child's Asthma; A Breakthrough Program for the Treatment and Management of Childhood Asthma," as well as many contributions to the professional and scientific literature, including over 25 publications in the peer-reviewed scientific literature. I am the author or co-author of three chapters in professional textbooks, and I serve as editor for the scientific journal *Pediatric Allergy, Immunology, and Pulmonology*.
3. As a pediatric pulmonologist, I am acutely aware of the negative health effects of particulate matter, including fine particulate matter or PM_{2.5}. Numerous scientific studies have linked fine particulate pollution to adverse health conditions,

including premature death in people with heart or lung disease, nonfatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing. Patients suffering with cystic fibrosis are at increased risk for pulmonary exacerbations requiring escalation of therapy when particulate matter levels are greater. Children, older adults and individuals with heart or lung disease are most susceptible to the harms associated with fine particulate pollution, though healthy adults can also experience adverse effects.

4. I understand that the U.S. Environmental Protection Agency sets national health-based air quality standards for certain pollutants, including particulate matter, that are required to protect public health. I am aware that EPA recently revised these national ambient air quality standards (NAAQS) for particulate matter, and in particular, strengthened the annual $PM_{2.5}$ standard by lowering the level from 15.0 to 12.0 mg/m^3 so as to provide increased protection against health effects associated with long-and short-term exposures. I understand that the particulate matter NAAQS are an important catalyst for clean air measures that states and local government – including my home state of Texas – carry out to reduce harmful particle pollution.

5. I understand that Harris County, Texas, where I live and work, does not violate the previous annual $PM_{2.5}$ NAAQS, which was established at a level of 15.0

mg/m³. Based on the most recent air quality “design values” published on EPA’s web site, however, I am aware that Harris County, Texas violates the more protective 12.0 mg/m³ annual PM_{2.5} standard that EPA recently promulgated.

6. I spend significant amounts of time outdoors in my hometown of Houston, where I enjoy walking, running, bicycling, and gardening several times a week. I intend to continue these activities with similar frequency in the future, as they are important to maintaining physical and emotional health. I am concerned that unhealthy concentrations of PM_{2.5} will adversely affect my health and limit my ability to pursue the activities that I enjoy in the future.

7. As a pediatric pulmonologist, I treat children in the greater Houston area who have asthma and other chronic respiratory problems. Unhealthy air quality due to elevated concentrations of PM_{2.5} likewise adversely affects my patients’ health.

8. I believe that EPA’s strengthened annual standards for PM_{2.5} will reduce levels of particulate pollution in the greater Houston area and help to improve my health and the health of my patients. I have a deep professional and personal interest in providing care for my patients that helps to improve their health and quality of life, and strengthened particulate matter standards will better enable me to achieve my professional goals.

9. Conversely, if these strengthened particulate matter standards are overturned or weakened, I am concerned that the Houston area particulate matter levels will not improve, and as a result, my health and the health of my patients will suffer. Moreover, if $PM_{2.5}$ exposure continues at the elevated levels allowed by the previous standard, it will make achieving my professional goals with respect to my patients' health more difficult. Accordingly, I strongly support the efforts of Environmental Defense Fund to intervene in support of EPA's strengthened particulate standards.

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

Signed on April 11, 2013.

A handwritten signature in dark ink, appearing to read "Harold J. Farber", written over a horizontal line.

Harold J. Farber, MD, MSPH

Natural Resources Defense Council

DECLARATION OF MARIE WEINMANN

I, Marie Weinmann, declare as follows:

1. I am the Director of Online Fundraising at the Natural Resources Defense Council, Inc. (“NRDC”). I have been the Director of Online Fundraising for 7 years.
2. As the Director of Online Fundraising, I am familiar with the materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.
3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.
4. NRDC’s mission statement declares that “The Natural Resources Defense Council’s purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends.” The mission statement goes on to declare that NRDC works “to restore the integrity of the elements that sustain life – air, land, and water – and to defend endangered natural places.”
5. When an individual becomes a member of NRDC, his or her current residential address is recorded in NRDC’s membership database. When a member renews his or her membership or otherwise makes a contribution to NRDC, the database entry reflecting the member’s residential address is verified or updated.

6. Since its inception in 1970, NRDC has worked on issues relating to clean air. In particular, protecting its members and the public from the substantial adverse health effects caused by exposure to polluted air is central to NRDC's purpose. NRDC's Clean Air Project works on, among other things, EPA rules issued under the Clean Air Act. NRDC routinely brings cases to enforce the Clean Air Act to protect its members from harm due to air pollution. NRDC also carries out education and advocacy to inform its members and the public about air pollution.

7. NRDC currently has more than 363,000 members. There are NRDC members residing in each of the fifty United States and in the District of Columbia

8. NRDC members live in many of the counties shown on EPA's web site (<http://www.epa.gov/pm/2012/20092011table.pdf>) as not meeting the annual primary fine particle standard of $12.0 \mu\text{g}/\text{m}^3$. For example, NRDC has 12,663 members in Los Angeles County, California; 38 members in Imperial County, California; 611 members in Fulton County, Georgia; 115 members in Vanderburgh County, Indiana; 1,570 members in Allegheny County, PA; and 5,729 members in Cook County, IL.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on April 12, 2013.



Marie Weinmann

DECLARATION OF DR. DEREK GREEN

I, Derek Green, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council (NRDC). I have been a member since 2008.
2. I live in Evansville, Indiana in Vanderburgh County. I have lived in Vanderburgh County since 1993, and at my current address for seven years.
3. I am an active person and I spend a great deal of time outdoors. I have two children, and I spend a great deal of time outside with them. They play soccer and football, and I golf and hike. As a whole, my family spends a great deal of time outside – I think it's better to have the kids running around outside rather than being stuck inside on the computer. My wife suffers from allergies, so she tries to monitor the pollen count but otherwise we spend as much time outside as we can.
4. The farmers in the area near where I live have on a number of occasions burned their fields, and the air quality was so bad that our family couldn't go outside. My kids wanted to go outside and I had to tell them they couldn't because the air was too dirty. There was so much smoke in the air that the visibility was reduced to less than half a mile. I also have found that my neighbors are increasingly using wood stoves to heat their homes instead of gas heat. Over the winter, this caused lots of smoke and led to poor air quality as well.

5. Evansville is in the middle of coal country, so there are mines, manufacturing facilities, and lots of different industries that operate near my town. It is frustrating to see more and more industry move in, and to see the air get worse and worse. I do not want to have to keep my kids inside all the time like I do now when the air pollution gets bad. Because of poor air quality in the area, we do not get to be outside as much as we would like, and my family does not get as much exercise as we would like. I am concerned about the impact that this pollution will have on our health.

6. I am a pharmacist, and I also worry about air pollution because of my professional background. I see more and more one and two year olds who have prescriptions for breathing treatments due to respiratory problems. I also have seen an increase in prescriptions for long-acting steroids. For both personal and professional reasons, I am worried about air pollution from fine particles (so-called "PM2.5") and the impact that it may have on my family's health and the health of our community. It is beginning to feel like if people can make money off of coal or manufacturing, they will do it no matter what, with no regard to the consequences.

7. I'm aware that my county often experiences poor air quality. I'm also aware that my county currently meets EPA's previous basic clean air standards for fine particle pollution (of 15 micrograms per cubic meter (ug/m3)) that are required by

the Clean Air Act. I believe that our air quality in Evansville is not as good as it should be, and that it can be improved.

8. I am aware from my training as a doctor of pharmacy that fine particle pollution (PM_{2.5} pollution) can be dangerous to your health. I am also aware from my training that fine particle pollution can irritate lungs, exacerbate asthma attacks, and increase a person's risk of developing serious and even life-threatening illnesses. For these reasons, I am very concerned that increases in this pollution would pose a threat to my health and the health of my family and community.

9. I am aware that EPA recently strengthened standards protecting against fine particle pollution to 12 ug/m³, from 15. I'm also aware that Evansville is an area that will have to reduce its pollution to meet this strengthened standard. It is important that Evansville reduce its pollution – these standards are needed to protect people's health. Our air quality cannot afford to get worse, and needs to improve.

10. I am concerned that if the recently-strengthened soot standards are weakened or struck down in court, weaker standards will not protect Evansville's citizens from breathing in fine particle pollution that is dangerous to human health. Not only am I concerned about my health and the health of my family, but also about the impact that this pollution could have on the community's health.

11. I support litigation by NRDC to ensure that the requirements of the Clean Air Act for controlling air pollution are fully and expeditiously implemented so as to protect my health.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Evansville, Indiana on April 12, 2013


Dr. Derek Green

DECLARATION OF WILLIAM LIDE

I, William Lide, hereby declare as follows:

1. I am currently a member of the Natural Resources Defense Council (“NRDC”). I have been a member since 2003.
2. I live in Atlanta, Georgia in Fulton County. I have lived at my current address for thirteen years. I was born and raised in Atlanta, and returned to Fulton County nineteen years ago. I’ve been back ever since.
3. I am an active person and I spend a great deal of time outdoors. I’m an avid gardener, and I work for a nonprofit that is developing thirty five acres of land as a natural area and park in the downtown Atlanta area. Because of this, I spend a large amount of my time at this property working on and cleaning up the land, and necessarily spend a great deal of time.
4. I watch the news and keep track of the Air Quality Index (AQI). On “code red” days I try to limit my outdoor activity. On these bad air quality days I won’t garden as much and will try to stay inside as much as possible. Though I don’t have any respiratory problems myself, I have a number of friends with asthma, and I know that these “code red” days can be difficult for them.
5. The nonprofit that I work for is an entirely volunteer-driven organization, and every month we have a scheduled cleanup day. As a result of the poor air quality, we have had to cancel scheduled park cleanups. Over the past five years, we have had to cancel approximately three park cleanups because of the

dangerous AQI. These park cleanups are important, and cancelling them is not only frustrating for the volunteers, but also it hinders the organization's goal of cleaning up and rehabilitating this 35 acre area in Atlanta.

6. Since I've been living in Atlanta for most of my life, I am well aware that Atlanta, and Fulton County, struggle with poor air quality. Until recently, my county did not meet basic clean air standards for soot pollution that are required by the Clean Air Act. Atlanta suffers from a lack of usable public transit options. MARTA, the commuter train, is not very well thought out, and does not go anywhere that is really useful to commuters. There are too many cars on the road, and Atlanta is not a walking city.

7. I am aware from reading the newspaper that soot can be dangerous to your health. I am also aware from published reports that soot pollution can irritate lungs, exacerbate asthma attacks, and increase a person's risk of developing serious and even life-threatening illnesses. For these reasons, I am very concerned that increases in this pollution would pose a threat to my health and the health of my family and community.

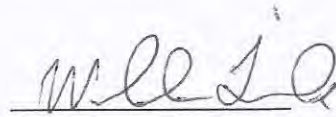
8. I am aware that EPA recently strengthened standards protecting against soot pollution. It is important that Atlanta continue to meet the basic air quality standards and improve on them – these standards are needed to protect people's health. Atlanta's air quality cannot afford to get worse, and needs to get better.

9. I am concerned that if the recently-strengthened soot standards are

weakened or struck down in court, weaker standards will not protect Atlanta's citizens from breathing in fine particle pollution that is dangerous to human health. Not only am I concerned about my health and the health of my friends, but also about the impact that this pollution could have on the community's ability to recreate outside, and use the 35 acre park that I have worked to rehabilitate.

10. I support litigation by NRDC to ensure that the requirements of the Clean Air Act for controlling air pollution are fully and expeditiously implemented so as to protect my health.

I declare that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Atlanta, Georgia on April 11, 2013


William Lide

Sierra Club

DECLARATION OF MARY ANNE HITT

I, Mary Anne Hitt, declare as follows:

1. I am the Director of the Sierra Club's Beyond Coal Campaign, and have held this position since 2010. I joined the Sierra Club staff in 2008, as the Deputy Director of the Beyond Coal Campaign, and also served on staff in 2001 as the President's Assistant. I have been a member of Sierra Club since March 2001.

2. My work requires that I be familiar with Sierra Club's purposes, as well as its activities surrounding air pollution and air quality, and EPA's efforts to reduce emissions of air pollution from numerous sources, including coal- and oil-fired power plants. The Club regularly maintains membership records that include the address of each member, and these records are regularly updated. The records are maintained on a computer database, from which I obtained the information on member numbers and locations provided below.

3. 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."

4. The Sierra Club is a non-profit environmental organization with 598,329 members as of April 8, 2013.

5. In the course of my work, I regularly communicate with Sierra Club members about air pollution issues. Many of Sierra Club's members are concerned about health and environmental threats from air pollution, including fine particulate matter ("PM2.5") pollution. I am aware from published reports that PM2.5 is emitted directly from many different sources, including vehicles, smokestacks and fires and indirectly by power plants, industrial processes, and gasoline and diesel engines. I am also aware from published reports that long- and short-term exposure to PM2.5 pollution has adverse impacts to human health.

6. Many of Sierra Club's members enjoy visiting parks and natural areas for the scenic vistas and beautiful views. According to published reports, PM2.5 pollution is a major cause of haze which decreases visibility and adversely impacts Sierra Club's members' aesthetic enjoyment of the outdoors.

7. I am aware that the U.S. Environmental Protection Agency ("EPA") recently promulgated revised National Ambient Air Quality Standards ("NAAQS") for particulate matter, including a strengthening of the annual PM2.5 standard from 15.0 to 12.0 $\mu\text{g}/\text{m}^3$. EPA has identified 66 counties that currently do not meet the revised annual PM2.5 standard and therefore have unsafe levels of PM2.5 pollution. <http://www.epa.gov/pm/2012/20092011table.pdf>. According to our membership records, over 84,000 Sierra Club members live in these 66 counties. A

spreadsheet listing the number of Sierra Club members by county is attached to my declaration.

8. The Sierra Club has long sought to educate the public regarding the dangers associated with PM_{2.5} pollution by preparing fact sheets and other informational materials regarding the sources and impacts of that pollution. (See, e.g., <http://content.sierraclub.org/coal/burning-smog-soot-and-asthma>).

9. The Sierra Club and its members have devoted substantial time, effort, and other resources to advocate for stronger protections from a variety of air pollution threats, such as emissions of PM_{2.5} from a variety of sources, including coal- and oil-fired power plants. While at the Sierra Club, I have worked on numerous matters involving federal air pollution regulations and rulemakings promulgated by the U.S. Environmental Protection Agency (“EPA”) under the Clean Air Act.

10. In collaboration with other groups, Sierra Club submitted extensive written comments, including detailed legal and technical analysis, during the public notice and comment period on EPA’s proposed revisions to the primary NAAQS for PM_{2.5} that led to the recent action strengthening the annual standard to 12 ug/m³. Additionally, according to our records, Sierra Club generated 191,353 comments in support of the proposed standards and 87,792 comments in support of the final standards from our members, supporters, and the general public through a variety of means, including email alerts and online petitions through outside vendors.

Sierra Club and its members have a strong interest in ensuring that the revised PM2.5 NAAQS are upheld and that our members enjoy the additional health and environmental protection provided by those standards.

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

Executed on April 12, 2013.

A handwritten signature in cursive script that reads "Mary Anne Hitt". The signature is written in dark ink and is positioned above a horizontal line.

Mary Anne Hitt

Attachment

State	County	Number of Sierra Club Members in County
Alabama	Jefferson	552
Alabama	Russell	10
Alaska	Fairbanks North Star	188
Arkansas	Pulaski	586
California	Fresno	1229
California	Imperial	66
California	Kern	914
California	Kings	50
California	Los Angeles	30025
California	Merced	250
California	Riverside	2952
California	San Bernardino	2499
California	Stanislaus	790
California	Tulare	375

Georgia	Bibb	107
Georgia	Clayton	62
Georgia	Dougherty	41
Georgia	Floyd	66
Georgia	Fulton	1626
Georgia	Muscogee	93
Georgia	Richmond	153
Georgia	Wilkinson	0
Hawaii	Hawaii	803
Illinois	Cook	10297
Illinois	Madison	499
Illinois	Saint Clair	284
Indiana	Clark	87
Indiana	Dubois	17
Indiana	Floyd	119

Indiana	Lake	474
Indiana	Marion	1200
Indiana	Spencer	22
Indiana	Vanderburgh	179
Indiana	Vigo	110
Iowa	Muscatine	48
Iowa	Scott	322
Kentucky	Bullitt	42
Kentucky	Daviess	86
Kentucky	Jefferson	1350
Missouri	St Louis City	2824
Ohio	Butler	422
Ohio	Clark	127
Ohio	Cuyahoga	2658
Ohio	Franklin	2328

Ohio	Hamilton	2078
Ohio	Jefferson	39
Ohio	Montgomery	722
Ohio	Stark	376
Ohio	Summit	994
Pennsylvania	Allegheny	3017
Pennsylvania	Beaver	167
Pennsylvania	Cambria	161
Pennsylvania	Chester	1627
Pennsylvania	Dauphin	500
Pennsylvania	Delaware	1394
Pennsylvania	Northampton	574
Pennsylvania	Washington	284
Pennsylvania	Westmoreland	441
Tennessee	Knox	715

Texas	Harris	3520
West Virginia	Brooke	25
West Virginia	Cabell	111
West Virginia	Kanawha	267
West Virginia	Marion	52
West Virginia	Marshall	23
West Virginia	Wood	55
		84074

DECLARATION OF MARTI SINCLAIR

1. I am a member of Sierra Club and have been since 1992.

2. I am the co-chair of Sierra Club's national clean air team, which is a volunteer position responsible for oversight of the Club's work to protect and improve air quality. I have served as the chair (2005-2011) or co-chair (2011-present) of this committee since 2005.

3. I currently live in Cincinnati (Hamilton County), Ohio, which is in the Miami River Valley area. I am 60 years old. I have two adult children, ages 23 and 27, who currently live with me. Both of my children have asthma and I have a history of asthma.

4. When he was younger and we lived in Oklahoma, my son was hospitalized with life-threatening asthma and was rushed to the emergency room dozens of times for asthma attacks. Since moving to Ohio in 1997, my son's asthma has continued to be aggravated. He was hospitalized once again while in middle school. Now, he exercises by walking in the local public park several times per week but must constantly carry a rescue inhaler to mitigate asthma symptoms. My son takes steroids daily and uses his rescue inhaler several times per week.

5. My daughter works out several times a week, in the gym during inclement weather and by running at the park during good weather. She suffers

asthma symptoms weekly accompanying the increased breathing rate resulting from indoor and outdoor exercise.

6. As a result of our asthma, my son, my daughter and I have a greater sensitivity and are more vulnerable to health impacts from air pollution than the population in general. I am also a cancer survivor and I am concerned about the impacts of poor air quality on my health, my quality of life, and my enjoyment of the outdoors.

7. Almost every day, I spend significant amounts of time outside. I work in my flower gardens on weekends during growing season. On weekdays, I walk twenty minutes a day year round; I walk outdoors weather permitting. On weekends my family and I spend significant time walking in public parks near our house and in and around greater Cincinnati, as well as visiting the zoo, and attending local outdoor festivals, including several Oktoberfest gatherings, the Cincinnati *panegyri* Greek festival, and the Celtic festival.

8. Whenever I am outside in my area, I breathe the air. Outside air also circulates into my home. Our family keeps our windows open day and night in the warm seasons to enjoy the breezes.

9. I have a master's degree in zoology from Colorado State University and worked for many years as a bench scientist. Currently, I commute four days a week to my office in downtown Cincinnati and work from my home office one day a

week. At both offices and during my commute, I breathe the polluted air in the Miami Valley.

10. For years I have smelled air pollution from industrial sources during the course of my daily life. Even when there is no odor, I am concerned about the haze that I see and about the fine particulate matter pollution that I know is a constituent of that haze.

11. Because of my concern about my children's health and my love for the outdoors, I have volunteered with Sierra Club for many years at the local and national level to try to reduce air pollution. I have extensively reviewed scientific information on air pollution during my years of volunteering with the Club and leading the national air team. Over the years, I have devoted significant time and effort working to protect air quality and to reduce air pollution emissions, including commenting extensively on EPA's proposed national rules for municipal waste combustors, engaging in air permit advocacy on numerous local air pollution sources, and informing and organizing Club members and concerned citizens about air quality related issues in Cincinnati.

12. From my years of experience engaging in clean air work with Sierra Club, I am familiar with the nature of fine particulate matter pollution, or PM_{2.5}, and the health threats that it creates. I am aware that this comes from a number of major sources like power plants and chemical plants. I am aware of the serious

health and welfare impacts associated with fine particulate matter, including aggravation of lung and respiratory problems like asthma and long-term bronchitis and cardiac function. I understand that these illnesses, which are aggravated by particulate matter, can cause early death and particulate matter has been linked to early mortality. In addition, I am familiar with the science showing that fine particulate matter and its precursors are major contributors to haze and visibility impairment in both urban and rural areas.

13. I am aware from my Sierra Club volunteer work, from published reports, and the dismal haze that hangs over the city during the summer months, that the Cincinnati area has a significant amount of air pollution, including fine particulate matter. I am very concerned about the threat that this air pollution poses to my health and wellbeing, and the health and quality of life for my children.

14. I am aware that in January 2013 the U.S. Environmental Protection Agency issued revised national ambient air quality standards (“NAAQS”) for particulate matter and that the revised NAAQS strengthens the annual health standard for PM_{2.5} pollution, providing protection against the health effects associated with short-and long-term exposure to PM_{2.5}. I am aware that EPA has identified 66 counties, including Hamilton County, which do not meet the revised standard. Accordingly, I believe that my children and I are being exposed to

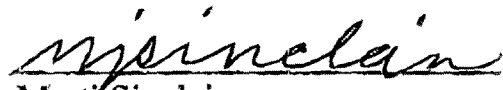
unsafe levels of fine particle pollution, and that implementation of the revised annual health standard is important to protecting our health.

15. I am aware that the revised NAAQS also retain the existing 24-hour PM2.5 health standard and the annual and 24-hour standards for coarse particulate matter. These standards provide additional health protection from PM2.5 pollution.

16. For all the above reasons, I am concerned that any weakening of the particulate matter NAAQS or delay or weakening in their implementation would endanger my health and welfare and that of my children.

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

Executed this 12th day of April, 2013.


Martha Sinclair

DECLARATION OF KELLY PIERCE

1. My name is Kelly Pierce. I am 48 years old and I reside in Chicago, Cook County with my partner. I have lived at my present address since 1991.

2. I am a member of the Sierra Club and have been a member for over two years. I joined Sierra Club so that I could work to improve air quality in the Chicago area. I attend monthly meetings as a member of the Air & Energy Committee of the Club's Chicago group.

3. From my work with the Sierra Club and independent research, I am aware that fine particulate matter pollution ("PM2.5") is linked to harmful effects on human health, including increasing respiratory problems, aggravating asthma symptoms, and premature death from heart or lung disease. I am also aware that the health risks from PM2.5 pollution are even greater to people with existing respiratory and heart ailments and to older adults. Also because of that work and research, I am aware of the typical sources of PM2.5 pollution and that this pollution can travel long distances in the air.

4. I suffer from weak adrenals and a low thyroid, which cause underactive lung and heart function and for which I take medication daily. I am aware that particulate matter air pollution is especially dangerous for people who, like me, have heart or lung conditions. Particulate matter air pollution makes it more difficult for me to breathe.

5. I enjoy spending time outdoors and try to do so as much as possible. I estimate that during the nicer months, I spend time outdoors most days of the week. I enjoy biking, walking, and exercising at the track across the street from my home. I frequently bike on the trail in Lincoln Park.

6. Particulate matter air pollution diminishes my ability to take part in the outdoor activities that I enjoy. On days where there is a high temperature, little wind and elevated levels

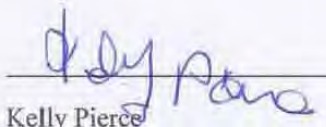
of humidity, I have difficulty breathing due to stagnant air pollution, including particulate matter, so I avoid taking part in outdoor activities. On these days, I have increased difficulty breathing and tire easily. Particulate matter air pollution diminishes my ability to enjoy the outdoors. When I travel outside the Chicago area about four to six times a year find it much easier to breathe.

7. I understand that in January 2013 the U.S. Environmental Protection Agency issued revised national ambient air quality standards ("NAAQS") for particulate matter and that the new NAAQS strengthens the annual health standard for PM2.5 pollution, providing protection against the health effects associated with short-and long-term exposure to PM2.5. I understand that EPA has identified 66 counties, including Cook County, that do not meet the new standard.

8. If the new NAAQS is implemented, I believe my breathing difficulties will be lessened, allowing me to spend more time outdoors. However, if the new NAAQS or its implementation is weakened or delayed, I am very concerned I will be denied these benefits, and that my health will continue to be threatened by PM2.5 pollution. I want the new standards to go into effect and support the Sierra Club's efforts to ensure that they do.

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

Executed on April 12, 2013.


Kelly Pierce