

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

OUTDOOR POWER EQUIPMENT INSTITUTE,

Petitioner,

v.

U.S ENVIRONMENTAL PROTECTION AGENCY
AND ADMINISTRATOR LEE ZELDIN, IN HIS
OFFICIAL CAPACITY

Respondents.

No. 25-881

**MOTION OF PUBLIC HEALTH ORGANIZATIONS TO INTERVENE IN
SUPPORT OF RESPONDENTS IN CASE NO. 25-881**

American Lung Association and Coalition for Clean Air respectfully move to intervene under Fed. R. App. P. 15(d) in support of the challenged action in the above-captioned case and any consolidated petitions for review of final action of the U.S. Environmental Protection Agency (EPA) published as *California State Nonroad Engine Pollution Control Standards; Small Off-Road Engines Regulations*, 90 Fed. Reg. 640 (Jan. 6, 2025) (“SORE Authorization”). See Cir. R. 15(b).

Petitioner Outdoor Power Equipment Institute does not consent to this motion. Respondent EPA takes no position on this motion at this time and reserves the right to file a response. Respondent-Intervenor State of California does not oppose this motion.

INTRODUCTION

I. Legal Background

Through the Clean Air Act, Congress established states and the federal government as “partners in the struggle against air pollution.” *General Motors Corp. v. United States*, 496 U.S. 530, 532 (1990). An emblematic feature of the Clean Air Act’s cooperative federalism framework is California and EPA’s shared responsibility of regulating mobile source emissions.

Since 1967, the Clean Air Act has generally preempted states from establishing their own motor vehicle emission standards, while carving out an exception to this preemption for California. 42 U.S.C. §§ 7543(a)–(b); *see Motor & Equip. Mfrs. Ass’n v. EPA*, 627 F.2d 1095, 1109 (D.C. Cir. 1979) (*MEMA*). Congress deliberately sought to preserve California’s authority to regulate mobile source emissions because California had long served as a “laboratory for innovation,” leading “pioneering efforts” in the field more advanced than that at the federal level. 627 F.2d at 1111. Congress also acknowledged that the persistent air pollution problems in California required a separate approach. Indeed, “unique local conditions virtually demand that California retain strict and hopefully total control over all efforts to reduce emissions within her boundaries.” H.R. Rep. No. 90-728, at 1986 (1967).

In 1990, Congress amended the Clean Air Act to extend to California another exemption from federal preemption. These amendments preserved California's authority to regulate certain nonroad vehicles and engines, indicating Congress's belief that California's innovation in this area would again benefit the nation in its fight against air pollution. *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075, 1081–82 (9th Cir. 1996). While EPA has sole responsibility to regulate emissions from “[n]ew engines ... used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower,” and “[n]ew locomotives or new engines used in locomotives,” 42 U.S.C. § 7543(e)(1), the Clean Air Act states that California may, with authorization from EPA, adopt and enforce standards for “any nonroad vehicles or engines” beyond these categories. *Id.* § 7543(e)(2)(A). Other states may adopt identical standards to California after notice to the EPA Administrator. 42 U.S.C. § 7543(e)(2)(B).

As articulated by Congress, the Administrator may only deny California's request for an authorization of preemption under three narrow circumstances, namely if the Administrator finds: (1) California's determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards, is arbitrary and capricious, (2) California does not need state standards to meet its compelling and extraordinary conditions, or (3) the state's standards and accompanying enforcement procedures are not consistent

with Section 209 of the Clean Air Act. 42 U.S.C. § 7543(e)(2)(A). Importantly, “[i]f EPA concludes that California’s standards pass this test, it is obligated to approve California’s waiver application.” *Motor & Equip. Mfrs. Ass’n v. Nichols*, 142 F.3d 449, 463 (D.C. Cir. 1998). The burden of proof lies with those groups opposing California’s authorization requests. *MEMA*, 627 F.2d at 1121.

II. SORE Authorization Decision

On December 20, 2022, California submitted an authorization request to EPA for its Small Off-Road Engine (“SORE”) Rule. *See* 88 Fed. Reg. 33143, 33143–44 (May 23, 2023). The SORE rule sets exhaust and evaporative emission standards for small off-road equipment in two phases. First, exhaust emission standards for model year (MY) 2024 and all subsequent model years are set to zero, except for carbon monoxide. *Id.* at 33144. These zero emission standards apply for all small off-road engines produced for sale or lease for operation in California, except generators. *Id.* The SORE regulation sets more stringent emission standards for generators beginning in MY 2024, but does not require that generators be zero emissions until MY 2028. *Id.*

EPA published a notice of opportunity for public hearing and comment on May 23, 2023. *Id.* In response to the notice, Movants provided testimony at the public hearing and submitted comments urging EPA to grant the requested

authorization.¹ Following this extensive public process, EPA published a notice of its final decision in the Federal Register on January 6, 2025 granting the requested authorization. SORE Authorization, 90 Fed. Reg. 640.

On February 10, 2025, Petitioner Outdoor Power Equipment Institute filed its petition for review. In this lawsuit, Petitioner seeks to vacate the SORE Authorization. Movants seek to intervene in this action to protect their significant interests in ensuring that the SORE rule may be enforced and to preserve the rule's important public health and environmental benefits.

STANDARDS FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) authorizes intervention in defense of agency action, providing that the movant moves to intervene “within 30 days after the petition for review is filed” and provides “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d). The rule does not specify any standard for intervention, but the Supreme Court has stated that the “policies underlying intervention in district courts” apply in appellate courts. *Cameron v. EMW Women’s Surgical Ctr.*, 595 U.S. 267, 277 (2022) (citing *Automobile Workers v. Scofield*, 382 U.S. 205, 217 n.10 (1965)).

Under Federal Rule of Civil Procedure 24(a)(2), a movant-intervenor must show that: (1) the movant has a significant protectable interest relating to the

¹ EPA-HQ-OAR-2023-0151-0016, EPA-HQ-OAR-2023-0151-0031.

property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the movant's ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the movant's interest. Fed. R. Civ. P. 24(a)(2); *see also Perry v. Schwarzenegger*, 630 F.3d 898, 903 (9th Cir. 2011).

Additionally, under Rule 24(b)(1)(B), courts have "broad discretion" to grant permissive intervention to applicants that, through a timely motion, assert a claim or defense that shares a common question of law or fact with the principal action. *Orange Cnty v. Air Cal.*, 799 F.2d 535, 537, 539 (9th Cir. 1986).

STATEMENT OF INTEREST AND STANDING

Movants have standing to intervene and a clear interest in the disposition of this action.

American Lung Association ("ALA") is a national nonprofit organization dedicated to saving lives by improving lung health and preventing lung disease. The organization is committed to protecting the public from unhealthy air pollution through research, education and advocacy.

Coalition for Clean Air ("CCA") is California's only statewide nonprofit organization that works exclusively on air quality issues in the State. Since 1971, CCA has been actively involved in local, state, and federal regulatory activities affecting California's air quality.

Movants have a long history of advocating for California regulations to reduce harmful ozone-forming emissions from mobile sources, such as small off-road engines. Barrett Decl. ¶¶ 7–8; Magavern Decl. ¶¶ 2–4, 8. Movants advocated for a strong SORE Rule at the California Air Resources Board and actively participated in EPA’s administrative process for the SORE Authorization Decision.² Movants’ members include people who live, work, and recreate in parts of California that fail to meet national ambient air quality standards. Abramowitz Decl. ¶¶ 2, 13; El-Hasan Decl. ¶ 3; Magavern Decl. ¶¶ 4. Movants’ members and their families experience health impacts from the persistent air quality problems in California, including worsened asthma symptoms and respiratory irritation. Abramowitz Decl. ¶¶ 9–10; El-Hasan Decl. ¶¶ 11–12. Some members report anxiety about the adverse health effects that vulnerable populations in their communities, such as children and the elderly, may experience from high levels of air pollution. El-Hasan Decl. ¶¶ 7–13.

These impacts are made worse by their frequent exposure to pollution and noise from small off-road engines, which can prevent Movants’ members from partaking in outdoor activities or even opening their windows at home. Abramowitz Decl. ¶¶ 15–17; El-Hasan Decl. ¶¶ 16–23; Magavern Decl. ¶¶ 12–15.

² See EPA-HQ-OAR-2023-0151-0007, EPA-HQ-OAR-2023-0151-0016, EPA-HQ-OAR-2023-0151-0031. See also Barrett Decl. ¶¶ 10–13; Magavern Decl. ¶¶ 8–10.

If this Court were to vacate the SORE Authorization, Movants' members would suffer health and recreational injuries from increased air pollution. Abramowitz Decl. ¶¶ 15–19; El-Hasan Decl. ¶ 29; Magavern Decl. ¶¶ 12–15.

In transitioning the State to zero-emission small-off road engine equipment, the SORE rule is projected to reduce statewide emissions of nitrogen oxides and fine particulate matter by 58,844 tons and 2,030 tons, respectively, between 2023 and 2043.³ The emission reductions associated with the SORE rule will result in significant public health benefits in California, including 887 fewer cardiopulmonary deaths, 436 fewer emergency room visits for asthma, and nearly 300 fewer respiratory and cardiovascular-related hospitalizations over the life of the rule.⁴

ARGUMENT

The Court should grant Movants intervention as of right under Federal Rule of Civil Procedure 24(a). In the alternative, the Court should grant permissive intervention under Rule 24(b).

I. **Movants Are Entitled to Intervene as of Right**

³ Cal. Air Resources Bd., SORE Regulation Authorization Support Document, 32–33 (Dec. 22, 2022), EPA-HQ-OAR-2023-0003.

⁴ *Id.* at 33.

Movants' intervention request is timely because it was filed within 30 days after the petition for review was filed, Fed. R. App. P. 15(d), and Movants easily satisfy the four criteria of Federal Rule of Civil Procedure 24(a)(2).

First, Movants have a significant protectable interest in shielding their members from the harm that would result if the SORE Authorization Decision were vacated. A movant for intervention satisfies the interest test "if it will suffer a practical impairment of its interests as a result of the pending litigation." *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006). Movants' members and their families live in areas of California that fail to meet national ambient air quality standards and some suffer from respiratory diseases such as asthma. Abramowitz Decl. ¶¶ 2, 9–10; El-Hasan Decl. ¶¶ 3, 7–13; Magavern Decl. ¶ 4. Some members are physicians who report that California's air quality issues make providing care more difficult because of the amount of work necessary to treat the respiratory issues patients present with. El-Hasan Decl. ¶¶ 5, 7–12. Small off-road engines are used in equipment such as lawn mowers, leaf blowers, chainsaws, pressure washers, air compressors, and portable generators.⁵ The internal combustion engines used in small off-road equipment are responsible for a significant amount of harmful air pollution in California, emitting more nitrogen

⁵ Cal. Air Resources Bd., SORE Regulation Authorization Support Document, 3 (Dec. 22, 2022), EPA-HQ-OAR-2023.

oxides and reactive organic gases than all passenger cars in the state.⁶ Movants' members already experience health and recreational impacts from regular exposure to pollution from small off-road engines. Abramowitz Decl. ¶¶ 15–19; El-Hasan Decl. ¶¶ 16–21; Magavern Decl. ¶¶ 9, 19. Absent enforcement of the SORE Rule, Movants' members will continue to be exposed to pollution from small off-road engines at current rates, without assurances that these pollution levels and the associated health impacts they experience will improve. Abramowitz Decl. ¶¶ 15–18, 20; El-Hasan Decl. ¶¶ 24–29; Magavern Decl. ¶¶ 12–16.

Because of these significant interests, Movants actively participated in the administrative process for EPA's Authorization Decision, including submitting comments and testifying at a hearing in support of the SORE Rule. Barrett Decl. ¶ 13; Magavern Decl. ¶ 10. Movants also participated in the rulemaking process at the California Air Resources Board. Barrett Decl. ¶¶ 10–12, Magavern Decl. ¶¶ 8–9. Movants' support of the SORE Authorization Decision constitutes a protectable interest, as “a public interest group that has supported a measure . . . has a significant protectable interest in defending the legality of the measure.” *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006); *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995).

⁶ *Id.* at 32; *see also* Barrett Decl. ¶ 9; Magavern Decl. ¶ 11.

Finally, Movants' interests are not adequately represented by Petitioner, Respondent EPA, or State Respondent-Intervenor. "The burden on proposed intervenors in showing inadequate representation is minimal, and would be satisfied if they could demonstrate that representation of their interests 'may be' inadequate." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972) (emphasis added)); see also *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 900 (9th Cir. 2011) ("[I]ntervention of right does not require an absolute certainty that . . . existing parties will not adequately represent [a movant's] interests."). The three factors a court must consider in determining whether a movant's interests are adequately represented by existing parties are: "(1) whether the interest of a present party is such that it will undoubtedly make of all a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki*, 324 F.3d at 1086.

While some courts apply a rebuttable presumption of adequate representation when a proposed intervenor and a party have the same ultimate objective, or when the government is acting on behalf of its constituency, a "compelling showing" to the contrary rebuts the presumption. *Citizens for*

Balanced Use, 647 F.3d at 898. Moreover, even when that presumption arises, this Court has “emphasize[d] that the burden of showing inadequacy of representation is generally minimal” *Prete*, 438 F.3d at 959. Ultimately, “[t]he most important factor in assessing the adequacy of representation is how the interest compares with the interests of existing parties.” *Citizens for Balanced Use*, 647 F.3d at 898 (internal quotation marks and citation omitted).

Movants’ interests are narrowly focused on public health and environmental impacts, as stated above, whereas the interests of Respondent and Respondent-Intervenor lie in the administration of their legal obligations and governmental responsibilities. As such, Respondent and Respondent-Intervenor are influenced by cost, administrative resource constraints, and political pressures that are not coextensive with the interests of Movants.

Respondent did not act upon California’s authorization request for the SORE Rule for nearly two years. This inaction has resulted in delayed enforcement of the Rule and decreased emissions and health benefits. Barrett Decl. ¶¶ 14–16; Magavern Decl. ¶ 19. Moreover, the SORE Authorization Decision was granted under the previous federal administration, and Respondent’s motion to hold the case in abeyance indicates that the agency may potentially take a different position. ECF No. 9; *see also* Magavern Decl. ¶ 20. In particular, Respondent notes that the President issued an executive order on January 20, 2025, directing agencies to

immediately review “state emission waivers,” which Respondent may interpret to include the SORE Authorization. ECF No. 9. Therefore, it is quite possible that Respondent will not advance the same legal arguments as Movants in this case and is unable to adequately represent Movants’ narrower, particularized interests. Similarly, Respondent-Intervenor is focused on its own sovereign interests and its authority to enforce its laws, which are broader than the specific and deeply personal interests of Movants’ members stated above. This is evidenced by the fact that Movants often advocate for more stringent regulations than those proposed and adopted by Respondent-Intervenor, including for the SORE regulation. Barrett Decl. ¶¶ 18–21; Magavern Decl. ¶ 21.

This Court has found that more focused interests of this type are sufficient to make a compelling showing of inadequate representation and to defeat any presumption of adequate representation. *Arakaki*, 324 F.23d at 1087–88 (citing Ninth Circuit precedent that “permit[s] intervention on the government’s side [when] the intervenors’ interests are narrower than that of the government and therefore may not be adequately represented.”) The presumption of adequate representation is overcome when a government entity “is required to represent a broader view than the more narrow, parochial interests” of movants. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), abrogated on other grounds by *Wilderness Soc’y*, 630 F.3d 1173; *see also Sw. Ctr.*

for Biological Diversity, 268 F.3d 810, 823–24 (9th Cir. 2001) (narrower interests of intervening developers defeated presumption of adequate representation by government defendants). Because the interests of Respondent and State Intervenor diverge from that of Movants, Movants easily meet their minimal burden to show that these parties may not “undoubtedly make all of [Movants’] arguments” or may not be “capable and willing to make such arguments.” *See Arakaki*, 324 F.3d at 1086.

Movants are not required to anticipate and identify specific differences in arguments and strategy in advance. “It is sufficient for [movants] to show that, because of the difference in interests, it is likely that [an existing party] will not advance the same arguments as [movants].” *Sw. Ctr. for Biological Diversity*, 268 F.3d at 824. Because the interests of Respondent and Respondent-Intervenor differ from that of Movants, it is likely that existing parties will not make all of Movants’ arguments and may not adequately represent the interests of Movants.

II. Alternatively, the Court should grant permissive intervention

Movants meet the requirements for intervention as of right, but alternatively also satisfy the requirements for permissive intervention. Permissive intervention is appropriate when (1) a movant files a timely motion; (2) the prospective intervenor has a claim or defense that shares a common question of law or fact with the main

action; and (3) intervention will not unduly delay or prejudice existing parties. Fed. R. Civ. P. 24(b)(1)–(3).

Movants easily meet the three-part test for intervention. As discussed above, this motion is timely. Because this motion is made at an early stage of the proceedings, intervention will neither cause delay nor prejudice the existing parties. *See Citizens for Balanced Use*, 647 F.3d at 897. Movants do not intend to duplicate Respondent or Respondent-Intervenor’s efforts. Movants are aware that Respondent EPA has filed a motion to hold the case in abeyance, and do not oppose the motion. The case is at a preliminary stage, so this timely motion will not unduly delay or prejudice any other party’s rights. Moreover, Movants do not bring new claims, but rather intend to offer defensive arguments, all of which necessarily share questions of law and fact in common with the underlying action. Movants’ longstanding advocacy for clean air protections in California and the adoption of a strong SORE Rule also lends a perspective that may aid the Court’s consideration of issues in this litigation.

CONCLUSION

For the foregoing reasons, the Court should grant Movants leave to intervene.

Dated: February 28, 2025

Respectfully submitted,

/s/ Regina J. Hsu

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*Counsel for American Lung Association
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CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion of Public Health Organizations to Intervene in Support of Respondents contains 3095 words and is less than 20 pages, excluding the items exempted by Federal Rule of Appellate Procedure 32(f), and thus complies with this Court's type-volume and length requirements under Appellate Rules 27(d)(2)(A) and 32(g), and Circuit Rule 27-1(1)(d). I further certify that this motion's typeface and type-style comply with the requirements of Appellate Rules 32(a)(5) and (6).

Dated: February 28, 2025

/s/ Regina J. Hsu
Regina J. Hsu

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on February 28, 2025.

All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

Dated: February 28, 2025

/s/ Yessenia Moreno
Yessenia Moreno

ATTACHMENTS

| | |
|----------|--------------------------------------|
| 1 | Declaration of William Barrett |
| 2 | Declaration of Dr. Afif El-Hasan |
| 3 | Declaration of Bill Magavern |
| 4 | Declaration of Mark Allen Abramowitz |
| 5 | Declaration of Regina Hsu |

DECLARATION OF WILLIAM BARRETT

I, William Barrett, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, unless stated on information and belief, and if called to testify as a witness, I could and would testify competently to the truth of these facts.

2. I am the Senior Director for Nationwide Advocacy, Clean Air with American Lung Association (“ALA”). I have been employed by ALA since January 2009 and have served in my current role since 2021. I am based in Sacramento, California.

3. Founded in 1904, ALA is a nonprofit public health organization dedicated to saving lives by improving lung health and preventing lung disease. ALA engages in advocacy relating to a wide range of lung health issues, including advocating for regulations to improve air quality in California and nationwide.

4. As Senior Director for Nationwide Advocacy, Clean Air, I advocate at the local, state, and federal levels for strong clean air policies to protect public health. This includes advocating for policies and regulations that will aid California in its attainment of state and federal clean air standards.

5. I have also served on a range of advisory committees including currently serving on the U.S. Environmental Protection Agency’s Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee.

6. In this capacity, I work closely with ALA’s supporters and our Health Network for Clean Air and Climate Action. The Health Network includes dozens of medical and health organizations, which coordinate together to advocate for clean air policies. ALA acts as a central point of contact for the Health Network and informs medical and health organizations and health professionals within the network of advocacy opportunities in California and nationwide.

7. ALA's mission is to save lives by improving lung health and preventing lung disease, and this mission is impacted by air pollution from mobile sources. Mobile sources, including small off-road engines, contribute approximately 80 percent of all smog-forming emissions in California. Exposure to ozone pollution can lead to asthma attacks, lung and heart disease, and premature death.

8. Since at least 2016, I have supported our advocacy for policies to reduce pollution from small off-road engines. Cleaning up small off-road engines is a priority issue for ALA because this category of mobile sources has not been cleaned up as much as other sectors.

9. During the rulemaking process at the California Air Resources Board ("CARB"), I learned that pollution from small off-road engines has surpassed that of all on-road vehicles. I recall that CARB staff shared a statistic that the ozone-forming emissions from running one commercial leafblower for just one hour is equivalent to driving 15 hours, or roughly the 1,100 mile drive from Los Angeles to Denver.

10. Beginning in 2019, I participated in public workshops that CARB held to consider the most recent amendments to its Small Off-Road Engine ("SORE") Rule.

11. I regularly met with program staff to provide ALA's perspective on the need for a stronger rule, including an accelerated timeline for implementation. I also met with CARB's executive staff and board members throughout the process to highlight the public health impacts of this polluting equipment and the need for a strong SORE Rule.

12. ALA, along with our medical and health partner organizations, submitted comment letters during CARB's rulemaking process to advocate for a SORE Rule. On December 9, 2021, I testified on behalf of ALA at the CARB

hearing calling for the agency to adopt their final SORE amendments, referencing the many health and medical organizations also in support of the rule through the Health Network for Clean Air and Climate Action.

13. On June 27, 2023, I testified on behalf of ALA at a hearing held by EPA on California's authorization request for its SORE Rule. At the hearing, I urged EPA to grant the authorization request because the Rule will result in lifesavings health benefits for workers and communities across California.

14. I do not believe that EPA would be able to represent ALA's interests in this case. ALA called on EPA multiple times to move quickly on California's pending waiver and authorization requests because timely implementation of the Rule is critical to ALA's mission.

15. Because of the length of time EPA took to act on the SORE authorization request, California had to delay implementation of the rule by one year. This means that another year's worth of combustion-based small off-road equipment were certified and will be available for sale.

16. While CARB has yet to provide an updated analysis on the overall health impacts of this delay, I am concerned that this delayed start and reduced window of benefits from the Rule will have detrimental health impacts for Californians.

17. ALA has also consistently advocated for stronger national ambient air quality standards for particulate matter and ozone. While EPA strengthened its annual fine particulate matter standard last year, ALA recommended a more stringent standard. EPA has also failed to act to strengthen the national ozone standards for many years.

18. CARB also cannot adequately represent ALA's interests in this case. ALA has repeatedly pushed CARB to adopt more stringent standards than were

ultimately adopted, including California's heavy-duty truck emission standards, fuel standards and others.

19. During the SORE rulemaking process, ALA recommended that CARB require zero-emission standards for new small off-road engines beginning in 2023. This was an earlier timeline, compared to CARB's proposal.

20. In 2021, ALA worked with California legislators on Assembly Bill 1346 to direct CARB to accelerate the timeline for its proposed SORE Rule to phase in requirements beginning in 2024.

21. On behalf of ALA, I served as a lead witness during several legislative hearings and testified in support of the bill. Assembly Bill 1346 was ultimately passed and signed into law, requiring CARB to accelerate the implementation timeline, and ALA ultimately supported the SORE Rule.

22. ALA supports the SORE Rule because it will provide important emission reductions and result in improvements in lung health for Californians.

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

Executed this 28th day of February, 2025 at Sacramento, California

A handwritten signature in blue ink, appearing to read "William Barrett", written over a horizontal line.

William Barrett

DECLARATION OF DR. AFIF EL-HASAN

I, Dr. Afif El-Hasan, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, unless stated on information and belief, and if called to testify as a witness, I could and would testify competently to the truth of these facts.

2. I am over 18 years old.

3. I currently reside in Laguna Niguel, California and have lived there for nearly 25 years. I have lived in California for almost my entire life.

4. I am a member of the American Lung Association and have been for approximately 20 years. I am currently a Regional and National Board Member of the American Lung Association (“ALA”). I also serve as Chairman of ALA’s Policy Committee and as a spokesperson for the organization.

5. I am a physician and pediatrician, specializing in asthma and respiratory health in children.

6. I am an active member and volunteer in ALA’s advocacy. For example, I often give talks on air quality issues, including the impacts of wildfire on air quality.

7. Air pollution in California impacts my life greatly. As a pediatrician, I see the impacts of California’s longstanding air quality issues in my patients.

8. The severity of the illnesses that I see in my clinic is directly correlated with air pollution in the region. Sometimes intense work is necessary to accommodate the needs of my patients and to treat their respiratory issues.

9. Exposure to air pollution can predispose even healthy individuals to upper respiratory infections, such as colds, covid-19, and other viruses. This can also increase the likelihood of viruses turning into a secondary bacterial infection, such as sinus infection and pneumonia. These impacts are even more noticeable in asthmatics and other children who have lung disease or are immuno-compromised.

10. The air pollution in southern California makes my practice harder because I regularly deal with the consequences of air pollution in my patients. It creates an extra layer of work that I must account for in the treatment plan for my patients. In addition to treating their asthma and anticipating regular viral illnesses, I need to have a treatment plan for them when there is a sudden increase in particulate matter in the air. This can happen during wildfires.

11. I have elderly relatives who also live in the Los Angeles area. My relatives are in their eighties and nineties and have lung issues. They live in areas that have higher levels of air pollution compared to my neighborhood. I am very concerned about them and their health because they are regularly exposed to high levels of particulate pollution.

12. Because of their vulnerability and frequent exposure to air pollution, I regularly check on my relatives and take very seriously any symptoms of difficulty breathing or chest pain that they complain about. I also regularly check that the air filters in their homes are clean and working to reduce indoor air pollution exposure.

13. I also worry about the effects of air pollution on my community. In general, there is an increased incidence of urgent care and emergency room visits in the summer, when there are higher levels of air pollution.

14. I am aware of some studies that suggest increased frequency and severity of upper respiratory illnesses even in the winter may be connected to high levels of particulate pollution.

15. For example, we had a significant flu season this year. There are studies that show a good likelihood that particulate matter pollution contributed to the severity of our flu season and the frequency of viral illnesses.

16. I see gas-powered leaf blowers and lawn and garden equipment being used several times a week at my workplace, my home, and in the community

where I live. There is a lot of landscaping in my association so this equipment is frequently used in my community. I find that gas-powered lawn and garden equipment is very noisy.

17. I am very concerned about the air pollution that this equipment generates. This equipment is usually operated in the same area for a significant period of time and the gas motor creates concentrated, localized smoke pollution.

18. This equipment is used in my backyard, front yard, or in my community for prolonged periods of time. I also see workers operating this equipment at my workplace.

19. It is difficult to avoid small off-road equipment because I come across this equipment when I am walking to work and to my home. It is unavoidable because I cannot make a detour to avoid pollution from this equipment. Sometimes I walk through a cloud of smoke generated from small off-road equipment, which has a bad odor.

20. I am worried about breathing in pollution from gas-powered lawn and garden equipment, especially because the equipment being used around my home and workplace may be old and not up to date with current emission guidelines. I am also concerned about my family's exposure to this pollution.

21. The use of gas motors generates air pollution, but also residual particulate matter on the ground. Pollutants on the ground may continue to be an exposure risk, even after the workers have stopped the machines and left the area.

22. I am also very concerned about the workers operating gas-powered lawn and garden equipment. I rarely see them using any type of protective equipment, other than a piece of cloth or a very simple mask, yet they are being exposed to unhealthy amounts of smoke and particulate pollution.

23. People operating gas-powered small off-road equipment may have residual particulate matter on their clothing even after they have stopped using

these machines. I think this also poses a significant risk to them and their families because proper protective equipment is not used or practical.

24. I would personally see a great benefit from California's Small Off-Road Engine ("SORE") Rule because it will lead to more zero-emission small off-road equipment in my community. Not only would it reduce my personal exposure to air and noise pollution from this equipment, but my family would also be exposed to less pollution from gas engines.

25. It would also reduce general particulate matter pollution in my community, both in terms of air pollution and residual particulate matter that settles on the ground.

26. A cleaner environment would also benefit my patients, who are more vulnerable and susceptible to developing health issues from exposure to high levels of air pollution.

27. Zero-emission small off-road equipment would also be far healthier for the workers using this equipment.

28. I am anxious about the possibility of California losing its ability to enforce its SORE Rule. Air pollution levels will not decrease unless we implement rules such as the SORE Rule.

29. Without this rule, I believe we will see an added cost to our community and the general population in California because we will have to manage people who are disabled from the long-term exposure to air pollution. This includes the workers using gas-powered small off-road equipment and my pediatric patients who experience health impacts from air pollution. There is a human cost to our continued use of polluting small off-road equipment, and we all pay for it.

30. A switch to zero-emissions small off-road equipment is an evidence-based move that considers several factors, including air quality, health, and

economic benefits. The emission reductions we will see from the rule will lead to better health outcomes for the people using small off-road equipment and the broader community. In the long run, the use of electric equipment will be cheaper than gas-powered equipment.

31. A reversal of this rule would be a reversal of actions taken based on research and evidence to the contrary, giving in to economic pressures stated by industry.

32. I fully support ALA's defense of EPA's authorization of the SORE rule. Ensuring that California's SORE rule stays in effect will ensure that I, my family, and patients are exposed to less pollution and can breathe clean air.

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

Executed the 28th day of February, 2025 in Laguna, California.

Niguel

Dr. Afif El-Hasan

DECLARATION OF BILL MAGAVERN

I, Bill Magavern, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, unless stated on information and belief, and if called to testify as a witness, I could and would testify competently to the truth of these facts.

2. I am the Policy Director with Coalition for Clean Air (“CCA”) and have been employed by CCA since 2012.

3. CCA is a nonprofit organization exclusively dedicated to protecting public health, improving air quality, and preventing climate change. CCA is headquartered in Los Angeles and has an office location in Sacramento and has approximately 375 members statewide.

4. In my position as Policy Director, I work on air quality issues in California with a focus on transportation and mobile source emissions. California suffers from the worst air pollution in the country, particularly in regions such as the South Coast Air Basin and San Joaquin Valley. I currently live in Sacramento, California, in an area that is located between two major freeways. In American Lung Association’s 2024 State of the Air Report, Sacramento ranked as the seventh most ozone-polluted metropolitan area in the country. I am affected by ozone pollution in the summer and high levels of particulate matter pollution in the winter.

5. While I do not suffer from respiratory illnesses, I am concerned with the air quality around my home. I have two air purifiers in my home to ensure that my family and I can breathe clean air indoors even when there are high levels of outdoor air pollution. During particularly bad air days, I will not open my windows at home. On average, this happens around 8 to 12 times a year.

6. I enjoy exercising outdoors and would prefer to do so every day. For example, I play competitive tennis and am a captain of several local tennis teams,

and I jog in my local park several times a week. I frequently check air quality monitors to ensure that the air is healthy enough to exercise outdoors. I also inform my neighbors of bad air days so they can take steps to reduce their exposure to pollution.

7. Sometimes the poor air quality prevents me from being able to exercise outdoors. I cancel tennis matches when air quality is unhealthy. While I like to hike and participate in other outdoor activities around Sacramento and the Sierra Nevada and its foothills, I occasionally need to cancel these plans because of poor air quality.

8. I have worked on the issue of pollution from small off-road engines for around nine years. Beginning in 2016, I attended public workshops on proposed amendments to the California Air Resources Board's ("CARB") Small Off-Road Engine ("SORE") Rule.

9. I submitted numerous public comments to CARB to advocate for a strong zero-emission small off-road engine rule. For example, I sent letters requesting that the agency phase in zero-emission requirements for new small off-road engines beginning with model year 2023.

10. I also submitted a comment letter and testified at an EPA hearing, urging the agency to grant an authorization of California's SORE rule.

11. Pollution from small off-road equipment, specifically volatile organic compounds, is one of the major causes of smog in California. During the SORE rulemaking process, CARB projected that smog-forming emissions from small off-road equipment would exceed that of all passenger cars in California.

12. Small off-road equipment is a source of pollution that I encounter frequently, second only to pollution from cars and other vehicles.

13. I commute to the office by bike 2-3 times weekly and pass through one of the leafiest neighborhoods in Sacramento. In the late summer and fall, I

often come across small off-road equipment such as gasoline-powered leaf blowers during my commute. I often change my route to avoid the pollution and noise caused by these leaf blowers. When I am working or attending events downtown, I sometimes visit food trucks, many of which use gas-fueled generators.

14. I am very concerned about pollution from small off-road equipment and how it affects my community because this type of equipment generates a substantial amount of smog, as well as particulate matter pollution.

15. In addition to harmful pollution, gas-powered small off-road equipment is very noisy. I like to open the windows at home during warmer weather, but often hear neighbors using gas-powered lawn or garden equipment. This is very disruptive when I am working from home.

16. Zero-emissions small off-road equipment is much cleaner because it does not burn fuel and therefore does not emit pollutants associated with combustion. Zero-emissions small off-road equipment is also much quieter compared to gas-powered engines.

17. I believe that I will benefit from the SORE rule because it will bring more zero-emission small off-road equipment to my community, leading to reduced air pollution and a quieter, more pleasant environment for us to live in.

18. The SORE Rule and the emission benefits it provides are also critical to CCA's mission to protect public health, improve air quality, and prevent climate change.

19. EPA cannot represent CCA's mission or our supporters who are impacted by SORE pollution in California because the agency failed to act quickly enough to allow California to implement and enforce the rule as adopted. Because of EPA's delay, CARB was unable to implement the rule beginning with the 2024 model year, depriving Californians from reaping the full health benefits of the rule.

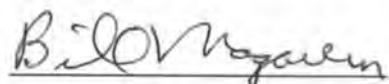
20. I also do not believe that EPA will properly defend its authorization of the SORE Rule because the agency is focused on carrying out the Trump Administration's priorities of weakening and invalidating California's innovative regulations.

21. Similarly, I do not believe that CARB will adequately represent CCA's interests. CCA advocated for a more ambitious timeline to transition to zero-emission small off-road engines than what was ultimately adopted. Moreover, CCA advocated for a more stringent penalty for fleets that do not meet their annual credit requirement.

22. While the rule was not as strong as CCA hoped for, CCA ultimately supported the SORE Rule because of the critical emission reductions and health benefits that would result from it.

I declare under penalty of perjury pursuant to the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 29th day of February, 2025 at Sacramento, California



Bill Magavern

DECLARATION OF MARK ALLEN ABRAMOWITZ

I, Mark Allen Abramowitz, declare as follows:

1. I have personal knowledge of the facts stated in this declaration, unless stated on information and belief, and if called to testify as a witness, I could and would testify competently to the truth of these facts.

2. I currently reside in Yorba Linda, California and have lived there since June 1991.

3. I am 67 years old. I was born in California and moved out of state shortly afterwards. I moved back to California in 1976.

4. I am currently a member of Coalition for Clean Air. I first became a member of Coalition for Clean Air in approximately 1980 and previously served on the organization's board.

5. I support Coalition for Clean Air's advocacy efforts, including advocacy at local air agencies, and have helped to train and brief CCA's policy staff on air quality issues over the past five to ten years.

6. I have a degree in Analysis and Conservation of Ecosystems from the University of California, Los Angeles (UCLA), with a specialization in environmental impact analysis and air quality.

7. I have given several guest lectures at UCLA on air toxics and air quality, developed a course on air toxics, and have published numerous articles relating to air quality.

8. I have also spoken extensively with reporters and the media to educate the public on health impacts related to air quality. I received a Clean Air Award from the South Coast Air Quality Management District for Education on Air Quality Issues at their inaugural annual event.

9. I was diagnosed with adult asthma approximately 20 years ago. I suffer symptoms from adult asthma, such as tightness in the chest, coughing, and

congestion. Generally, my asthma symptoms are worse on days with poor air quality.

10. My quality of life is severely diminished when I experience asthma symptoms, as the symptoms affect my ability to work or do normal activities without medication. I sometimes get anxiety during the onset of asthma symptoms. I try to be especially careful about exposing myself to air pollutants that could exacerbate my asthma.

11. I also suffer from an autoimmune disease, psoriatic arthritis, and was diagnosed around 1994. As a result, I experience stiffness and swelling in my joints, loss of energy, and pain. I currently take medicine to control my psoriatic arthritis.

12. As air quality can affect the immune system, I believe poor air quality can contribute to the worsening of my autoimmune condition and symptoms.

13. I check air quality every single day and sometimes many times a day, depending on my expected activities and recent air quality, and have an air monitor installed outside my home to track particulate matter levels. I limit outdoor activities and time spent outdoors on days where the air quality does not meet state and federal air quality standards. This happens very frequently.

14. Since the covid-19 pandemic, I rarely engage in outdoor exercise or other outdoor activities. Because I suffer from asthma, I am careful about reducing my exposure to air pollution and environments where I may contract respiratory illnesses, such as covid-19. I believe that poor air quality is correlated with worse covid-19 outcomes, so I tried to stay indoors and away from public activities for several years to reduce my exposure and risk of catching other respiratory diseases such as covid-19.

15. I encounter gas-powered lawn equipment and leaf blowers in my neighborhood daily. I am aware that this type of small off-road equipment is

designed to generate particulates and particulate matter, and the pollution from this equipment affects me tremendously.

16. I also find gas-powered leaf blowers and other small off-road equipment extremely noisy. Gas-powered lawn equipment also produces bad smells, which make it uncomfortable to breathe.

17. If I am outside of my home and see this equipment being operated, I will go indoors to avoid exposure to the pollution and noise or walk in a different direction. I keep the windows shut at home to limit exposure to pollution and noise from gas-powered leaf blowers and other lawn equipment.

18. I previously served as an elected director of a water district and as a statewide air quality director of Citizens for a Better Environment. In those roles, I learned about federal and state requirements to avoid serving contaminated water and the risk of groundwater contamination from leaked fuels, which can occur with gas-powered small off-road equipment. I am very concerned about soil contamination and water pollution impacts that might occur with the use of dirty lawn and garden equipment and how this may affect the food that I consume and purchase at the grocery store.

19. I believe that I first learned about California's Small Off-Road Engine Rule in approximately 2015. I also believe the rule will provide important emission benefits to me and my community. If people switched to zero-emission small off-road equipment, I would not have to deal with increased air pollution when my neighbors mow their lawns, clean the sidewalks, or tend to their gardens. My neighborhood would be a more peaceful environment because zero-emission lawn/garden equipment is much quieter.

20. Without the Small Off-Road Engine Rule, I will be forced to deal with the air pollution and noise of dirty small off-road equipment with no hope of those impacts going away.

21. The loss of this rule would also impact me financially. I sometimes work with companies that produce zero-emission technologies. Without this rule, there will be less demand for these technologies, which will affect my clients and their businesses, as well as the market for my services.

22. I understand that Coalition for Clean Air is seeking to intervene in a federal lawsuit challenging EPA's authorization of California's Small Off-Road Engine Rule. I fully support this effort and believe this case is important because the outcome will have an impact on the health of my community and communities across California. Allowing California to enforce its SORE Rule will ensure that I, and other Californians, can breathe clean air.

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

Executed the 27th day of February 2025 in ^{Yerba Linda} ^, California.


Mark Allen Abramowitz

DECLARATION OF REGINA HSU

I, Regina Hsu, hereby declare and state as follows:

1. I am an attorney in the San Francisco office of Earthjustice. I represent Movants American Lung Association and Coalition for Clean Air in the above-captioned matter.

2. I submit this declaration in support of the Motion of Public Health Organizations to Intervene in Support of Respondents. I am personally familiar with the factual bases for the following assertions and have sufficient knowledge to competently attest to them.

3. On February 26, 2025, counsel for Petitioner Outdoor Power Equipment Institute indicated that Petitioner does not consent to this intervention motion.

4. On February 26, 2025, counsel for Respondents U.S. Environmental Protection Agency (“EPA”) and Lee Zeldin, in his official capacity as Administrator of the EPA, indicated that the United States takes no position on this motion.

5. On February 26, 2025, I conferred with counsel for Respondent-Intervenor State of California. Counsel conveyed that California would not oppose this motion.

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

Executed this 28th day of February, 2025 in San Francisco, California.

/s/ Regina Hsu

Regina Hsu