

ORAL ARGUMENT NOT YET SCHEDULED

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

AMERICAN LUNG ASSOCIATION and  
AMERICAN PUBLIC HEALTH ASSOCIATION

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and ANDREW R.  
WHEELER, ADMINISTRATOR, United States  
Environmental Protection Agency,

Respondents.

Case No. 19-1140

**WESTMORELAND MINING HOLDINGS LLC  
UNOPPOSED MOTION FOR LEAVE TO INTERVENE**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, Westmoreland Mining Holdings LLC respectfully moves for leave to intervene in support of respondents in opposition to the petition for review in this case. The petition challenges a final action taken by the United States Environmental Protection Agency on July 8, 2019, styled “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations.” 84 Fed. Reg. 32520 (July 8, 2019). This motion constitutes a request to intervene in all petitions for review of this final action.

## STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

Westmoreland has an extensive portfolio of coal mining operations in the United States and Canada including the Rosebud mine in Colstrip, Montana.

The final action challenged by petitioners in this case repeals a final action taken by the United States Environmental Protection Agency on October 23, 2015, *see* 80 Fed. Reg. 64662 (Oct. 23, 2015), and revises and clarifies the EPA's regulations implementing Section 111(d) of the Clean Air Act.

The so-called "Clean Power Plan" repealed by the final action challenged by the petitioners in this case substantially threatens Westmoreland's business and the company accordingly has standing to intervene in support of its repeal. Analyses conducted of the Clean Power Plan demonstrated its potential threats to Westmoreland's largest domestic customer, the coal power plant in Colstrip which has always been exclusively supplied by Westmoreland's Rosebud mine. Declaration of John D. Hines and Michael R. Cashell, ECF No. 1582215, *West Virginia v. EPA*, Case No. 15-1363 (Nov. 5, 2015) (incorporated fully herein by reference as evidence of Westmoreland's standing to intervene). The operation and survival of other current and future customers are similarly threatened by the Clean Power Plan *by design* as the previous Administration sought to use the rule to achieve sweeping reductions in the utilization of coal.

In addition to repealing the Clean Power Plan, EPA's final action revises and clarifies Section 111(d)'s implementing regulations to recognize the States' statutorily guaranteed authority to determine the appropriate stringency for their particular sources based on local circumstances and source-specific concerns.

The petitioners in this case challenge EPA's decision to recognize the States' authority as part of an effort to ensure Section 111(d) of the Clean Air Act is available and in fact used in future rulemakings to force reductions in utilization of coal for electricity generation. Any such future rulemakings would threaten the company's business in the same fashion and to a potentially greater extent than the Clean Power Plan, and the company has standing to defend the ability of the State of Montana and other States to ensure that any future regulatory obligations imposed on Colstrip and other coal power plants are tailored in light of local circumstances and source-specific concerns.

Accordingly, Westmoreland's interests satisfy the applicable standards for intervention here. "The 'threatened loss' of [a] favorable action . . . constitutes a 'concrete and imminent injury'" justifying intervention of right. Order, *New York v. EPA*, No. 17-1273 (D.C. Cir. Mar. 14, 2018) (ECF No. 1722115) (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728,733 (D.C. Cir. 2003)).

No party in this case will adequately and appropriately represent the interests that Westmoreland and other American coal companies have in this proceeding.

This Court has recognized that parties like respondents that have a general duty to represent the public interest writ large do not adequately advance and defend more narrow, specific interests of businesses that are at stake in litigation. See *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015); *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). And it goes

without saying that petitioners are opposed to the continued sale of coal in the United States and in turn the continued prosperity of the company's business.

With respect to groups representing regulated utilities and cooperatives that own and operate coal power plants among other assets which often compete with coal, coal companies like Westmoreland do not stand to benefit in any way and do not enjoy any mitigating increase in the value of other assets when the operation of coal plants is curtailed or when coal plants are shut down.

Thus, Westmoreland and other coal companies have undiluted interests that are at stake in this case that are not equivalent to the interests of the parties and movant respondent intervenors representing regulated utilities and cooperatives.

The motion is timely because it is filed within 30 days of the filing of the first petition for review challenging EPA's final action. Fed. R. App. P. 15(d).

The petitioners take no position on this motion and the United States does not oppose this motion.

Respectfully submitted,

/s/ Robert D. Cheren

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## CERTIFICATE OF COMPLIANCE

The motion complies with the word limit in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 806 words, excluding those parts exempted by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typographic requirements of Federal Rule of Appellate Procedure 32(a) because it is typeset in proportionally spaced 14 point Calisto MT type.

/s/ Robert D. Cheren  
Robert D. Cheren

August 7, 2019

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**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Westmoreland Mining Holdings LLC makes the following corporate disclosure:

Westmoreland Mining Holdings LLC has no parent corporation and no publicly held corporation owns 10% or more of its stock. The company has an extensive portfolio of coal mining operations in the United States and Canada.

Respectfully submitted,

/s/ Robert D. Cheren

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**CERTIFICATE OF PARTIES AND *AMICI CURIAE***

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), Westmoreland Mining Holdings LLC certifies the following are the parties and *amici curiae* in this case as of the time of the filing of this motion:

The petitioners are the American Lung Association and the American Public Health Association. The respondents are the United States Environmental Protection Agency and Andrew R. Wheeler as Administrator of the United States Environmental Protection Agency.

The National Rural Electric Cooperative Association, the Chamber of Commerce of the United States of America, the National Mining Association, America's Power, Appalachian Power Company, Indiana Michigan Power



Company, Kentucky Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, AEP Generating Company, AEP Generation Resources Inc., and Wheeling Power Company have filed motions to intervene as respondents in the case.

Respectfully submitted,

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August 7, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Motion to Intervene and accompanying certificates have been filed using the Court's CM/ECF system.

/s/ Robert D. Cheren  
Robert D. Cheren

August 7, 2019