

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

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<b>CLEAN AIR COUNCIL, EARTHWORKS,</b>	)	
<b>ENVIRONMENTAL DEFENSE FUND,</b>	)	
<b>ENVIRONMENTAL INTEGRITY</b>	)	
<b>PROJECT, NATURAL RESOURCES</b>	)	
<b>DEFENSE COUNCIL, and SIERRA CLUB,</b>	)	
	)	
<b>Petitioners,</b>	)	
	)	
<b>v.</b>	)	<b>No. 17-1145</b>
	)	
<b>SCOTT PRUITT, Administrator,</b>	)	
<b>Environmental Protection</b>	)	
<b>Agency, and UNITED STATES</b>	)	
<b>ENVIRONMENTAL PROTECTION</b>	)	
<b>AGENCY,</b>	)	
	)	
<b>Respondents.</b>	)	

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**UNOPPOSED MOTION OF AMERICAN PETROLEUM INSTITUTE  
FOR LEAVE TO INTERVENE AS A RESPONDENT**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, the American Petroleum Institute (“API”) respectfully moves for leave to intervene as a Respondent in the above-captioned case. The Petitioners in this case are Clean Air Council, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council, and Sierra Club (“Petitioners” or “Environmental Petitioners”). The Petitioners challenge a final action of the United States Environmental Protection Agency

(“EPA” or “Agency”) under the Clean Air Act (“CAA” or “Act,”) entitled, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay,” 82 Fed. Reg. 25,730 (June 5, 2017) (“EPA’s Stay Decision”). EPA’s Stay Decision granted a three-month stay of certain requirements of EPA’s final rule, “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule,” 81 Fed. Reg. 35,824 (June 3, 2016) (“Quad Oa Rule” or “2016 Rule”). Pursuant to Federal Rule of Appellate Procedure 15(d), this motion to intervene has been filed within 30 days after the Petitioners filed their petition for review. Counsel for API have contacted counsel for the other parties in this case. Counsel for the Petitioners and counsel for EPA have stated they do not oppose this motion.

API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

Many API members are subject to the provisions that EPA has stayed in EPA’s Stay Decision. API’s members will thus be directly impacted if the Petitioners succeed in their challenge to EPA’s Stay Decision.

## ARGUMENT

The Court should grant this motion for leave to intervene as a respondent because API meets the standard for intervention in petition for review proceedings in this Court.

### **I. Standard for Intervention in Petition for Review Proceedings in This Court**

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

The Supreme Court and appellate courts, including this Court, have recognized that Federal Rule of Civil Procedure 24, while not binding in cases originating in courts of appeals, may be relevant to the intervention inquiry under Federal Rule of Appellate Procedure 15(d). *See, e.g., Int’l Union v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *Amalgamated Transit Union Int’l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985). The requirements for intervention of right under Federal Rule of Civil Procedure 24(a)(2) are that: (1) the application is timely; (2)

the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *See, e.g., Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003).

As discussed below, API meets all of the elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2). This motion thus satisfies any criteria that arguably might apply to determining whether intervention as respondents is warranted in this Court.<sup>1</sup>

## **II. API Meets the Standard for Intervention.**

### **A. This Motion Is Timely.**

This motion meets the timeliness requirement. In compliance with Federal Rule of Appellate Procedure 15(d), this motion has been filed within 30 days after

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<sup>1</sup> An association, such as API, has standing to litigate on its members' behalf when: (a) "its members would otherwise have standing to sue in their own right"; (b) "the interests it seeks to protect are germane to the organization's purpose"; and (c) "neither the claim asserted nor the relief requested requires the participation . . . of the individual members" in the lawsuit. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

API meets this standard. For reasons discussed herein, the interests of API's members will be harmed if Petitioners prevail in this litigation. Those members therefore would have standing to intervene in their own right. Moreover, the interests that API seeks to protect are germane to its purpose of participating in proceedings and related litigation that affect its members. Finally, participation of individual API members in this litigation is not required.

Environmental Petitioners filed their petition for review on June 5, 2017.

Moreover, this motion is being filed at an early stage of the proceedings and before establishment of a schedule and format for briefing. Thus, granting this motion will not disrupt or delay any proceedings.

**B. API and Its Members Have Interests that Will Be Impaired if Petitioners Prevail.**

This litigation threatens the interests of API and its members. If the interest prongs of Federal Rule of Civil Procedure 24 are relevant, API clearly meets them here. Where parties are objects of governmental regulatory action, “there is ordinarily little question that the action . . . has caused [them] injury.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). API’s members are subject to the Quad Oa Rule. EPA’s Stay Decision granted a three-month stay of specific provisions in the Quad Oa Rule. In this case, the Petitioners seek to challenge EPA’s Stay Decision, which would result in API’s members being subject to regulatory requirements earlier than currently required. Thus, if the Petitioners are successful in whole or in part, the members of API would face impairment of their interests through the imposition of additional regulatory requirements, with their attendant costs and burdens.

**C. Existing Parties Cannot Adequately Represent API’s Interests.**

Assuming *arguendo* that inadequate representation is an applicable test for intervention under Federal Rule of Appellate Procedure 15(d),<sup>2</sup> API passes that test here. Under Federal Rule of Civil Procedure 24(a)(2), the burden of showing inadequate representation in a motion for intervention “is not onerous,” as “[t]he applicant need only show that representation of his interest ‘may be’ inadequate, not that representation will in fact be inadequate.” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

Neither the Environmental Petitioners nor EPA can adequately represent the interests of API and its members. As discussed earlier, the likely arguments of Environmental Petitioners are inimical to the interests of API and its members. Thus, the Environmental Petitioners cannot represent the interests of API and its respective members. EPA also cannot adequately represent the interests of API. The Agency, as a governmental entity, necessarily represents the broader “general public interest.” *Id.* at 192-93 (“A government entity . . . is charged by law with representing the public interest of its citizens. . . . The District [of Columbia] would be shirking its duty were it to advance th[e] narrower interest [of a business concern] at the expense of its representation of the general public interest.”); *Fund*

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<sup>2</sup> Federal Rule of Civil Procedure 24(a)(2)’s “adequate representation” prong has no parallel in Federal Rule of Appellate Procedure 15(d), but API addresses it here to inform the Court fully.

*for Animals*, 322 F.3d at 736 (this Court “ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors”). Unlike EPA, API has a specific, focused interest in avoiding unwarranted or unsupported imposition of potentially burdensome and costly emission control obligations on their respective members. This Court has recognized that, “[e]ven when the interests of EPA and [intervenors] can be expected to coincide, . . . that does not necessarily mean that adequacy of representation is ensured.” *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). In sum, the existing parties do not and cannot adequately represent the interests of API in this case.

### **CONCLUSION**

For the foregoing reasons, API respectfully requests leave to intervene as a respondent in the above-captioned case.

Respectfully submitted,

/s/ William L. Wehrum

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Dated: June 14, 2017

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Environmental Protection )  
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ENVIRONMENTAL PROTECTION )  
AGENCY, )  
*Respondents.* )

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**RULE 26.1 DISCLOSURE STATEMENT OF  
MOVANT INTERVENOR-RESPONDENT  
AMERICAN PETROLEUM INSTITUTE**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, movant intervenor the American Petroleum Institute (“API”) files the following statement:

API is a national trade association representing all aspects of America’s oil and natural gas industry. API has more than 625 members, from the largest major oil company to the smallest of independents, from all segments of the industry,

including producers, refiners, suppliers, pipeline operators and marine transporters, as well as service and supply companies that support all segments of industry. API has no parent company, and no publicly held company has a 10% or greater ownership interest in API.

Respectfully submitted,

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Dated: June 14, 2017



Petitioners: Clean Air Council, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council, and Sierra Club.

Respondents: Scott Pruitt, Administrator, Environmental Protection Agency, and United States Environmental Protection Agency.

Intervenors: API is submitting herewith a Motion for Leave to Intervene as a Respondent.

Amici Curiae: There are no amici curiae as of the time of this filing.

Respectfully submitted,

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Dated: June 14, 2017

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rules 27(d)(2) and 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing Unopposed Motion of American Petroleum Institute for Leave to Intervene as a Respondent contains 1,402 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit of 5,200 words set by Rule 27(d)(2)(A) and this Court. I also certify that this document complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure because it has been prepared in a proportionally spaced typeface using Microsoft Word™ 2010 with 14-point Times New Roman font.

*/s/ William L. Wehrum*

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William L. Wehrum

DATED: June 14, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 14th day of June 2017, a copy of the foregoing Unopposed Motion of American Petroleum Institute for Leave to Intervene as a Respondent, Rule 26.1 Corporate Disclosure Statement of Movant Intervenor-Respondent American Petroleum Institute, Certificate of Parties and *Amici Curiae*, and Certificate of Compliance were electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

Respectfully submitted,

/s/ William L. Wehrum

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