

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WESTMORELAND MINING HOLDINGS LLC,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,Respondent.

))))) Case No. 20-1160)))))

**UNOPPOSED MOTION TO INTERVENE OF
PUBLIC HEALTH AND ENVIRONMENTAL ORGANIZATIONS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(b), public health and environmental organizations American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Conservation Law Foundation, Environment America, Environmental Defense Fund, Environmental Integrity Project, Environmental Law & Policy Center, Montana Environmental Information Center, National Association for the Advancement of Colored People,

Natural Resources Council of Maine, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club, and The Ohio Environmental Council (“Movants”) respectfully move for leave to intervene in the above-captioned matter.

In particular, Movants intervene to defend the following regulations Petitioner seeks to challenge: 1) the “National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units,” 77 Fed. Reg. 9,304 (Feb. 16, 2012) (“Mercury and Air Toxics Standards” or “Air Toxics Rule”); 2) the “Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units,” 65 Fed. Reg. 79,825 (Dec. 20, 2000) (“2000 Finding and Listing Rule”); 3) the “Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units,” 81 Fed. Reg. 24,420 (Apr. 25, 2016) (“Supplemental Finding”);¹ and 4) any aspect of

¹ The Supplemental Finding, which Petitioner also seeks to challenge, is already the subject of ongoing litigation in this Court, *Murray Energy Corp. v. EPA*, D.C. Cir. No. 16-1127. This Court has granted many of the Movants here leave to intervene in defense of the Supplemental Finding, *see infra* n.3.

EPA’s decision not to revoke, repeal, or undo these regulations, in the “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,” 85 Fed. Reg. 31,286 (May 22, 2020) (“2020 Revision Rule”).

However, to be clear, Movants do not hereby seek to intervene as to any subsequently-filed petitions challenging the 2020 Revision Rule on the basis that the revocation of the “appropriate” finding was unlawful or arbitrary and capricious. Movants anticipate filing their own petitions for review of the 2020 Revision Rule.

Counsel for Respondent has stated that Respondent EPA consents to this Motion. Counsel for Petitioner has stated that Petitioner Westmoreland Mining Holdings LLC does not oppose this Motion.

BACKGROUND

EPA’s 2020 Revision Rule reverses the decision reached in the 2016 Supplemental Finding, that it is appropriate, considering costs, for EPA to regulate emissions of hazardous air pollutants from coal- and oil-fired electric utility steam generating units (“power plants”) under section 112 of the Clean Air Act. 85 Fed. Reg. at 31,286. EPA promulgated the Supplemental Finding in response to the remand by the U.S. Supreme Court in *Michigan v. EPA*, 135

S. Ct. 2699 (2015), a case challenging the 2012 Air Toxics Rule, directing that EPA consider costs in making the section 112(n)(1)(A) appropriateness determination.

The 2012 Air Toxics Rule has a long regulatory and legal history. A fully revised Clean Air Act section 112, enacted in the Clean Air Act Amendments of 1990, established a detailed framework for regulation of hazardous air pollutants, which are listed in the statute, and defined as those air pollutants that are “carcinogenic, mutagenic, teratogenic, [or] neurotoxic”, cause “reproductive dysfunction”; are otherwise “acutely or chronically toxic”; or may present or threaten “adverse environmental consequences” due to “bioaccumulation, deposition, or otherwise,” 42 U.S.C. § 7412(b)(2), even when present in small amounts. In 1990, Congress also mandated that electric utility steam generating units’ emissions of hazardous air pollutants must be regulated if the Agency found such regulation “appropriate and necessary” after performing a study of the public health hazards reasonably anticipated as a result of those emissions. Clean Air Act section 112(n)(1)(A), 42 U.S.C. § 7412(n)(1)(A).

EPA completed the section 112(n)(1)(A) study in 1998, documenting that power plants were the largest industrial sources of mercury and significant sources of many of the other hazardous air pollutants listed by Congress in the

Act, including nickel, arsenic, cadmium and other toxic metals, acid gases, and dioxins. 65 Fed. Reg. 79,825, 79,827–28. After considering the 1998 study, and other relevant studies, and seeking comment, EPA in 2000 found that regulation is appropriate and necessary, and listed power plants for regulation under section 112. *Id.* at 79,825.² This Court dismissed a challenge to that decision on ripeness grounds. *See Order, Util. Air Regulatory Grp. v. EPA*, Case No. 01-1074, 2001 U.S. App. LEXIS 18436 (D.C. Cir. July 26, 2001), Doc. 613098. The Agency thus faced a statutory deadline of Dec. 20, 2002 to promulgate emissions standards for power plants. *See* 42 U.S.C. § 7412(c)(5).

EPA in 2004, however, in addition to proposing the required standards under section 112(d), alternatively proposed to revise the 2000 Finding and Listing. 69 Fed. Reg. 4,652 (Jan. 30, 2004). In 2005, the Agency finalized the rule purporting to reverse the 2000 finding, and, on that basis alone to remove power plants from the list of industrial categories requiring section 112(d) regulation. *See* “Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units from the

² *See also* 67 Fed. Reg. 6,521 (Feb. 12, 2002) (formally updating the section 112(c) list of industries subject to section 112 regulation).

Section 112(c) List,” 70 Fed. Reg. 15,994 (Mar. 29, 2005) (“2005 Revision/Delisting Rule”).

Several states, tribes, and non-governmental public health and environmental organizations, including some of the Movants here, challenged both the 2005 Revision/Delisting Rule and an accompanying regulation known as the Clean Air Mercury Rule. In response, this Court vacated both rules and confirmed EPA’s ongoing obligation to finalize emission standards for hazardous air pollutants from power plants under section 112 of the Clean Air Act. *New Jersey v. EPA*, 517 F.3d 574, 578 (D.C. Cir. 2008). In particular, the Court in *New Jersey* held that EPA did not have authority to remove power plants from the section 112(c) list, and thereby undo the obligation to issue standards under section 112, simply by purporting to reverse or revise the section 112(n)(1)(A) appropriate and necessary determination without satisfying Congress’s delisting criteria contained in section 112(c)(9). *New Jersey*, 517 F.3d at 582.

Public health and environmental groups, including several Movants, again filed suit in December 2008 seeking enforceable deadlines for EPA to fulfill its obligation to regulate air toxics from power plants. *Am. Nurses Ass’n v. EPA*, No. 1:08-cv-02198 (RMC) (D.D.C. filed Dec. 18, 2008). Pursuant to the consent decree in that case, EPA ultimately in 2012 promulgated the Air Toxics Rule, setting forth section 112(d) emission standards for the listed hazardous air

pollutants emitted by coal- and oil-fired power plants. 77 Fed. Reg. at 9,304.

EPA also affirmed its prior finding that regulating hazardous air pollutants emitted by coal- and oil-fired power plants under section 112 “remains appropriate and necessary,” and that they are linked to and exacerbate significant public health harms, including serious neurological disorders, cancers, and respiratory illnesses, which are disproportionately experienced by the most vulnerable persons in society. *Id.* at 9,310–11, 9,363–64, 9,441, 9,443–46. The agency reaffirmed the finding considering the section 112 studies and updated information, *id.* at 9,333–9,336, even though it was not required to do so because under *New Jersey*, the source category “remain[ed] listed,” *New Jersey*, 517 F.3d at 583.

A coalition of industry and state petitioners sought review of the Air Toxics Rule in this Court, which denied the petitions. *See White Stallion Energy Ctr. v. EPA*, 748 F.3d 1222, 1229 (D.C. Cir. 2014) (“*White Stallion*”). The Supreme Court granted review on the narrow question of whether EPA unreasonably refused to consider cost when determining that it was “appropriate” to regulate hazardous air pollution from power plants, and found that EPA erred by not considering cost. *See Michigan v. EPA*, 135 S. Ct. 2699, 2706 (2015). Both the Supreme Court and this Court on remand declined requests to vacate the Air Toxics Rule, which has been continuously in effect since 2012, while EPA conducted its cost consideration. *See, e.g.*, Opening Brief of Petitioner National Mining Association, *Michigan v.*

EPA, U.S. S. Ct. No. 14-47, at 45 (Jan. 20, 2015) (seeking vacatur of the Air Toxics Rule); Joint Motion to Govern Further Proceedings for Certain States and Industry Petitioners, *White Stallion Energy Ctr. v. EPA*, D.C. Cir. No. 12-1100, at 20 (Sept. 24, 2015), Doc. 1574809 (again seeking vacatur on remand); Order, *White Stallion Energy Ctr. v. EPA*, D.C. Cir. No. 12-1100, 2015 U.S. App. LEXIS 21819, at *56 (Dec. 15, 2015) (remanding without vacatur); *Michigan v. EPA*, 136 S. Ct. 2463 (June 13, 2016) (mem.) (denying *certiorari*). By the end of 2015 the “significant majority of [power plants] were in compliance or near compliance with” the Air Toxics Rule’s emissions limitation requirements. Response to Comments (RTC) for Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, EPA-HQ-OAR-2009-0234-20578, at 37 (Apr. 2016). EPA’s record accompanying the 2020 Rule documents a 96 percent reduction in hazardous air pollutant emissions from the regulated industry as compared with the period before that compliance. National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review, Proposed Rule, 84 Fed. Reg. 2,670, 2,689 (Table 4) (Feb. 7, 2019).

On remand from the Supreme Court, and after considering extensive comment, EPA in 2016 promulgated the Supplemental Finding, concluding that it

remains appropriate, considering costs, to regulate emissions of hazardous air pollutants from coal- and oil-fired power plants under Clean Air Act section 112(d). *See* 81 Fed. Reg. at 24,420, 24,426–27. The Agency determined that the costs of regulation were reasonable under several metrics, and that compliance would not (and had not) adversely impacted electricity supply reliability. *Id.* at 24,427. The 2016 Supplemental Finding was challenged in a pending action in this Court, *Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir. filed Apr. 25, 2016), Doc. 1610467. Many of the Movants here successfully intervened in defense of the 2016 Supplemental Finding in that case,³ which was fully briefed and awaiting argument, when EPA announced its intention to reconsider the Supplemental Finding. This Court granted EPA’s motion to hold the case in abeyance, pending the completion of EPA’s reconsideration of the Supplemental Finding. Order, *Murray Energy Corp. v. EPA*, No. 16-1127 (Apr. 27, 2017), Doc. 1672987. That case remains in abeyance, with motions to govern further proceedings due on August 5, 2020. Order, *Murray Energy Corp. v. EPA*, No. 16-1127 (June 1, 2020), Doc. 1845184.

³ *See, e.g.*, Order, *Murray Energy v. EPA*, D.C. Cir. No. 16-1127 (Aug. 3, 2016), Doc. 1628451 (granting intervention to defend the 2016 Regulatory Finding to American Lung Association, American Public Health Association, Citizens for Pennsylvania’s Future, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Clean Air Council, Conservation Law Foundation, Environmental Defense Fund, Environmental Integrity Project, National Association for the Advancement of Colored People, Natural Resources Council of Maine, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club and The Ohio Environmental Council).

Westmoreland Mining Holdings LLC, filed its petition on May 22, 2020, seeking review not only of the 2020 Revision Rule, but also the 2016 Supplemental Finding Rule, the 2012 Air Toxics Standards, and the 2000 Finding and Listing Rule.

**STATEMENT OF INTERESTS, GROUNDS FOR INTERVENTION,
AND ARTICLE III STANDING**

Federal Rule of Appellate Procedure 15(d) “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 Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

A. Statement of Interests

Movants have strong organizational interests in protecting the significant health and environmental benefits which result from the Air Toxics Rule, as set forth in the declarations attached in Exhibit A. Movants are committed to protecting their members and others from dangerous air pollution, including the power plant hazardous air pollutant emissions regulated by the Air Toxics Rule, and the fine particulate air pollution eliminated when power plant hazardous air pollutants are controlled, as evidenced by their long history seeking and defending that regulation. Many of the Movants have participated for over twenty years on behalf of their members in the proceedings leading up to this case, including

intervening to defend the Air Toxics Standards in *White Stallion*, and appearing as respondents before the Supreme Court in *Michigan v. EPA*.

Following the *Michigan* Court's remand to this Court, many of the Movants here continued to participate as intervenors, first with respect to the question whether to remand or vacate the Air Toxics Rule, *see, e.g.*, Joint Motion of the State, Local Government, and Public Health Respondent-Intervenors for Remand Without Vacatur, *White Stallion Energy Ctr. v. EPA*, No. 12-1100 (D.C. Cir. Sept. 24, 2015), Doc. 1574820, and then in the defense of the 2016 Supplemental Finding, *see* Brief of Non-Governmental Organization Intervenors, *Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir. Feb. 10, 2017), Doc. 1660822. This Court's prior grants of leave to intervene in *Murray Energy* and *White Stallion* properly recognize that Movant organizations offer a distinct perspective in defending against threats to regulations that protect their members' concrete interests in their health and the environment in which they live and recreate. And, the history of this regulatory program in particular, including the current action, illustrates that Movants' interests are not always fully represented by Respondent EPA.

Movants' members currently are benefiting from the Air Toxics Rule because it is now effectively reducing coal- and oil-fired power plant hazardous air pollutant emissions. Movants therefore seek intervention to defend and preserve any and all aspects of the Air Toxics Rule that are threatened by this proceeding, in

order to avoid harm to their and their members' interests. EPA's record shows that the Air Toxics Rule has resulted in a 96 percent reduction in hazardous air pollutant emissions. National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review, Proposed Rule, 84 Fed. Reg. 2,670, 2,689 (Table 4) (Feb. 7, 2019). The benefits of these pollution reductions accrue disproportionately to African Americans and other people of color, who are more likely to live near the regulated sources. 77 Fed. Reg. at 9,445 tbl. 12; Comments of Environmental, Public Health, and Civil Rights Organizations, EPA-HQ-OAR-2018-0794-1191, at 54 (Apr. 17, 2019) ("NGO Comments"). Petitioner's challenge to the Air Toxics Rule threatens Movants' members with the loss of the significant public health and environmental benefits that have been achieved as a result of those reductions in hazardous air pollution. Movants therefore seek intervention to defend and preserve any and all aspects of the Air Toxics Rule that are threatened by this proceeding in order to avoid harm to their and their members' interests.

As many of Movants' members live and recreate in proximity to the regulated sources, power plant hazardous air pollution emissions, and the fine particulate matter associated with hazardous air pollution emissions, are a real and personal threat to them, and to their families. Perry Decl. ¶ 2, 17; Schuba Decl. ¶ 3;

Stith Decl. ¶ 10; Wall Decl. ¶¶ 7–8; Trujillo Decl. ¶ 7; Jaeger Decl. ¶ 12; Sedor Decl. ¶¶ 3–6; Thelen Decl. ¶¶ 1, 3; Dello Iacono Decl. ¶¶ 9–10; Theberge Decl. ¶¶ 7-8; Sikorski Decl. ¶¶ 6–7; Baker Decl. ¶¶ 15, 21-22; Tatlock Decl. ¶¶ 4-9.

Movants’ members’ livelihoods or property values are also threatened by the presence of power plant air pollution, and by any danger of increases in such pollution. Schuba Decl. ¶¶ 3, 6, 7; Jaeger Decl. ¶ 12; Sedor Decl. ¶ 11; Sikorski Decl. ¶¶ 2, 10.

Members of Movant public health organizations include health care professionals, whose health, the health of their families, and the health of their patients are harmed by hazardous air pollutants and threatened increases of hazardous air pollutant emissions, and of the fine particulate matter associated with increased hazardous air pollutant emissions. Benjamin Decl. ¶¶ 2–3, 7–8, 10–12; Bole Decl. ¶¶ 6–7, 9, 11–17; Carter Decl. ¶¶ 2, 11–13; Del Monte Decl. ¶¶ 7–9; Hill Decl. ¶¶ 4, 7–11; Landrigan Decl. ¶¶ 10–16; Schwartz Decl. ¶¶ 11–15; Wimmer Decl. ¶¶ 3, 8–10. Absent the Air Toxics Rule’s reductions, Movants’ members, their families, and those under members’ care, would be exposed to higher levels of toxic metals and organic hazardous air pollutants that are known carcinogens, and to air acid gases such as hydrogen chloride, and small particulates that are emitted directly by power plants or form in the vicinity of power plants after acid gases are emitted. Such exposures harm their health by introducing small particulates and

acid gases into their bodies through inhalation, which has been shown to cause serious respiratory and cardiovascular disorders, and even premature death. *See* National Emissions Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standard of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, Proposed Rule, 76 Fed. Reg. 24,976, 25,003–04 (May 3, 2011) (health impacts of organic hazardous air pollution); *id.* at 25,050 (health impacts of acid gases); *id.* at 25,085 (health impacts of reducing fine particulate matter); *see also* Sedor Decl. ¶¶ 7–9 (discussing concerns about the linkages between power plant hazardous air pollution emissions and health conditions in his own family); Sikorski Decl. ¶¶ 10, 14 (same, and for others in his region).

Additionally, a significant percentage of the mercury emitted from coal-fired power plants is deposited into waterbodies, where it transforms into methylmercury—a highly toxic form of mercury that accumulates in fish. *See* 76 Fed. Reg. at 25,007–09. By eating contaminated fish, humans and wildlife are exposed to methylmercury. *See id.* at 25,007. Women of childbearing age and young children are particularly endangered by the consumption of methylmercury. *See id.* The adverse health effects for fetuses, babies, and children exposed to methylmercury include neurological and developmental problems such as poor

attention span and delayed language development, impaired memory and vision, problems processing information, and impaired fine motor coordination. *See id.* at 25,018; *cf.* O'Malley Decl. ¶¶ 4-7 (discussing decision to curtail fish consumption due to informed concern about this issue). Because African Americans, Native Americans, and low-income families are more likely to consume self-caught fish as a significant portion of their diet, their children are disproportionately harmed by mercury pollution. *See id.*; NGO Comments at 54; Baker Decl. ¶ 19; Bole Decl. ¶¶ 8–10, 13–14; Vogel Decl. ¶ 9.

Reductions in mercury emissions are linked to reduced methylmercury in fish tissues in a number of freshwater fisheries, and also have been correlated with fish tissue methylmercury reductions in at least one important ocean fishery. *See, e.g.,* Supplemental Finding, 81 Fed. Reg. at 24,441 n.45 (citing studies linking mercury air emissions reductions with lower levels of methylmercury in fish and wildlife in fresh water and ocean waterbodies near the sources); *see also* Vogel Decl. ¶ 6. Maintaining the Air Toxics Rule's significant mercury reductions therefore is critical to Movants' members who fish, and eat the fish they catch, and, with respect to public health Movants, the health of members' patients who may eat the fish they catch as an economic necessity. Bole Decl. ¶ 14; Brooks Decl. ¶¶ 10–11, 14; Baker Decl. ¶¶ 17, 19–22; Reynolds Decl. ¶¶ 3, 5, 10; Kinney Decl. ¶¶

12, 15–16; Dello Iacono Decl. ¶ 13; Theberge Decl. ¶¶ 7-8; Gilbert Decl. ¶¶ 5, 11; Paly Decl. ¶¶ 5-6.

Movants also have a direct interest in preserving the public health and environmental benefits of the Air Toxics Rule because their members recreate in places where they are already exposed to power plant emissions, including hazardous air pollutant emissions. Wall Decl. ¶¶ 8, 11; Kinney Decl. ¶¶ 13–14; Theberge ¶¶ 7-8; Sikorski Decl. ¶¶ 4, 6–7, 11; Gilbert Decl. ¶¶ 5–6, 8–10; VonBenken Decl. ¶¶ 3–4, 7–8; Tatlock Decl. ¶¶ 8-9. Should the Air Toxics Rule be weakened or eliminated, their exposures to those hazardous pollutant emissions would increase, as would the fine particulates associated with hazardous air pollutant emissions, and therefore the harm that Movants’ members experience would also increase. The enjoyment of recreational activities by Movants’ members—including fishing, paddling, boating, hiking, observing fish and wildlife in their native habitats, and even simply being outside near their homes—is diminished by power plant hazardous emissions, including the contamination of water bodies by such emissions, and the respiratory effects that Movants’ members experience. Brooks Decl. ¶¶ 13–15; Jaeger Decl. ¶¶ 4–6, 10; Schuba Decl. ¶ 9; Perry ¶¶ 7–11; Reynolds Decl. ¶¶ 3, 5, 10; Wall Decl. ¶¶ 8, 11; Kinney Decl. ¶¶ 13–14; Thelen Decl. ¶¶ 3–5; Theberge Decl. ¶¶ 5, 7-8; Sikorski Decl. ¶¶ 4, 11; Gilbert Decl. ¶¶ 5–6, 8–10; Williams Decl. ¶¶ 5–6, 11; Paly Decl. ¶¶ 2, 5-7; Tatlock

Decl. ¶¶ 8-9. Metal toxics and mercury that bioaccumulate in fish, can cause neurological and reproductive harms in the waterfowl and other animals that eat the fish—damaging Movants’ members’ enjoyment of those animals. Brooks Decl. ¶¶ 11–13, 15; Paly Decl. ¶ 7. Movants’ members have been forced to curtail or refrain from activities in which they would like to engage, such as fishing, eating fish, teaching others to fish, and sharing the fish they catch with others; and their opportunity to observe fish and wildlife can be similarly compromised, due to hazardous air pollutant emissions from power plants. Brooks Decl. ¶¶ 10–15; Schuba Decl. ¶ 4; Wall Decl. ¶¶ 8, 10–11; Vogel Decl. ¶ 11; Jaeger Decl. ¶¶ 10–12; Theberge Decl. ¶¶ 7-8; Paly Decl. ¶ 6.

Petitioner, through this challenge, seeks to weaken or vacate the Air Toxics Rule. Because such results would increase Movants’ members’ exposure to toxic air pollution from power plants and also increase the threat to the environment in which they live and recreate, Movants have an interest in intervening on behalf of Respondents to defend the Air Toxics Rule in the present case. *See Fed. R. App. P. 15(d).*

B. Grounds for Intervention

The “grounds” for the Movants’ intervention, Fed. R. App. P. 15(d), are to oppose Petitioner’s attempts to eliminate or weaken the Air Toxics Rule. Movants’ interests in preventing the elimination or weakening of the Air Toxics Rule—and

thus protecting their members' health and ability to continue enjoying recreational and aesthetic activities, and protecting their own and their members' interests in receiving access to information about emissions from the source category—will be prejudiced if they are not allowed to intervene.

As nonprofit environmental, public health, and civil rights citizens' groups with members living, working, and recreating near power plants regulated under the Air Toxics Rule, the Movants have a palpable interest in the subject matter of this case. Movant public health organizations, whose members include professional health care providers, also have a direct interest in retaining the Air Toxics Rule, because their missions include protection and preservation of public health, of members' health, the health of their families, and the health of patients from harmful air pollution emissions including the hazardous air pollutants from power plants. Benjamin Decl. ¶¶ 2–3, 12; Carter Decl. ¶¶ 2–3, 12–13; Del Monte Decl. ¶¶ 2–3, 7–9; Wimmer Decl. ¶¶ 2–4, 9–10. Movant environmental organizations have as their missions the preservation not only of the public health protections of the Air Toxics Rule, but also the environmental benefits that ensue from its continued applicability to regulated power plants. Baker Decl. ¶¶ 5–7, 13; Jones Decl. ¶¶ 3–4; Schaeffer Decl. ¶¶ 3–4, 6; Stith Decl. ¶ 5; Vogel Decl. ¶ 4; Mahoney Decl. ¶¶ 3, 5; Theberge Decl. ¶¶ 3, 13. Movants' missions and activities also include protection of the most vulnerable, including low income persons, racial minorities, and

children. Bole Decl. ¶¶ 4–5, 8–10. This Court has regularly allowed intervention by public health and environmental organizations to support EPA in Clean Air Act rulemakings, including in defending the Air Toxics Rule, the 2016 Supplemental Finding, and the 2000 Finding and Listing Decision.⁴

This motion to intervene is timely. *See* Fed. R. App. P. 15(d) (motions to intervene due within 30 days after the filing of the Petition). As Westmoreland Mining Holdings LLC filed its petition on May 22, 2020, Motions to Intervene are due in this proceeding on or before June 22, 2020.

C. Article III Standing

Movants have Article III standing for many of the same reasons that they are interested in this case, *supra* sections A & B. Any weakening or vacatur of the Air Toxics Rule would harm Movants' members by threatening their and their families' health, and the health of patients for whom Movants' members provide professional care, Bole Decl. ¶¶ 12–17; Hill Decl. ¶¶ 7, 9–11; Landrigan Decl. ¶¶ 15–16; Schwartz Decl. ¶¶ 11–15, and by diminishing Movants' members use and enjoyment of their property and natural resources, Brooks Decl. ¶¶ 2, 13–15;

⁴ *See supra* n. 3; *see also* Order, *White Stallion Energy Ctr. v. EPA*, No. 12-1100 (D.C. Cir. May 18, 2012), Doc. 1374443 (granting intervention to 13 organizations that are among the 19 Movants here); Order, *Util. Air Regulatory Grp. v. EPA*, No. 01-1074 (D.C. Cir. Apr. 10, 2001) (granting intervention to defend EPA's 2000 Finding and Listing Rule to, among others, three organizations that are Movants here).

Theberge Decl. ¶¶ 6–7; Dello Iacono Decl. ¶¶ 8–10, 13; Tatlock Decl. ¶¶ 8-9. This is sufficient to establish injury for standing purposes. *See, e.g., Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181–85 (2000) (disrupted enjoyment of natural resources and decreased property values due to pollution concerns are injuries in fact); *Sierra Club v. EPA*, 129 F.3d 137, 139 (D.C. Cir. 1997) (organization had standing to challenge delay in implementation of pollution-control measures that would benefit its members).⁵ Petitioner plainly seeks the weakening or vacatur of the Air Toxics Rule as the ultimate goal of this proceeding.

Moreover, a decision rejecting Petitioner’s challenge (or other later challenges seeking to weaken or vacate the Air Toxics Rule) would eliminate this threat to the Air Toxics Rule, thereby preventing harm to Movants’ members. Thus, causation and redressability “rationally follow[]” from the threatened harm. *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015) (movant had standing to intervene in order to defend against a challenge to an agency decision favorable to its interests, because invalidation of that decision

⁵ This Court has held repeatedly that organizations such as Movants have standing to sue to protect their members from pollution that threatens and concerns those members. *See, e.g., Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1016–17 (D.C. Cir. 2014); *Ass’n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672–73 (D.C. Cir. 2013).

would expose it to harm). Here, the injuries to Movants' members resulting from any weakening or elimination of the Air Toxics Rule are "directly traceable," *id.*, to the relief sought in this proceeding, and redressable by a decision of this Court.

CONCLUSION

For the foregoing reasons, Movants should be granted leave to intervene. Pursuant to this Court's Rule 15(b), a motion to intervene in one case challenging agency action is deemed a motion to intervene in other cases challenging the same agency action "unless the moving party specifically states otherwise." Movants hereby seek to intervene in any other cases challenging the 2020 Revision Rule in which any petitioner seeks vacatur or weakening of the Air Toxics Rule, or purporting to directly challenge the 2000 Finding and Listing Rule, the 2012 Air Toxics Rule, or the Supplemental Finding.

Respectfully submitted,

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DATED: June 19, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27 and 32(g)(1), the undersigned counsel for Movants certifies that this motion complies (1) with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) and D.C. Circuit Rule 27(a)(2) because it contains 4690 words and (2) with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5)–(6) because it is has been prepared using Microsoft Office Word for Office 365 and is set in Times New Roman font in a size equivalent to 14 points or larger.

/s/ Ann Brewster Weeks

Dated: June 19, 2020

CERTIFICATE OF SERVICE

I certify that on June 19, 2020, the foregoing Motion for Leave to Intervene as Respondents of American Academy of Pediatrics, American Lung Association, American Public Health Association, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Citizens for Pennsylvania's Future, Clean Air Council, Conservation Law Foundation, Environment America, Environmental Defense Fund, Environmental Integrity Project, Environmental Law & Policy Center, Montana Environmental Information Center, National Association for the Advancement of Colored People, Natural Resources Council of Maine, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club, and The Ohio Environmental Council, filed through the Court's CM/ECF System, and the accompanying Appendix of declarations, Certificate of Parties, and Rule 26.1 Disclosure Statement were served electronically on all counsel of record.

/s/ Ann Brewster Weeks

Dated: June 19, 2020