ORAL ARGUMENT NOT YET SCHEDULED

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

National Association of Chemical Distributors, d/b/a Alliance for Chemical Distribution et al., Petitioners, **v.** **United States Environmental Protection Agency,** Respondent.	Case No. 25-1075

On Petition for Review of Final Action of the United States Environmental Protection Agency

MOTION FOR LEAVE TO INTERVENE AS RESPONDENTS

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), New York, California, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, Oregon, Vermont, Washington, Wisconsin, District of Columbia, and Harris County, Texas (the "Movant State and Local Governments") move to intervene in support of the Environmental Protection Agency ("EPA") in litigation challenging EPA's denial

of a petition for reconsideration filed by industry groups regarding a federal rule that revises the Risk Management Program under section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Movant State and Local Governments seek to intervene to defend the regulations, which would further protect vulnerable communities from chemical accidents, especially those living near facilities in industry sectors with high accident rates. The industry groups ("Industry Petitioners") challenging the rule stated that they take no position on the motion and reserve the right to oppose the motion. EPA stated that it takes no position on the motion but reserves the right to take a position once the motion is filed.

BACKGROUND

This case involves a petition filed by Industry Petitioners challenging EPA's denial of its petition for reconsideration of the final rule entitled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention," published at 89 Fed. Reg. 17,622 (Mar. 11, 2024) ("Rule"). EPA promulgated the Rule pursuant to its authority in section 112(r) of the Clean Air Act. *See* 42 U.S.C. § 7412(r).

The Risk Management Program

Congress enacted section 112(r) of the Clean Air Act in 1990 in the aftermath of the 1984 accident at the Union Carbide plant in Bhopal, India, where more than 3,000 people died after a tank leaked a toxic chemical that the facility used to manufacture pesticides. *See* H.R. Rep. No. 101-490 at 154-57 (citing the Bhopal incident in support of the need to amend the statute). In section 112(r), Congress directed EPA to issue regulations that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for the response to such releases by the owners and operators of the sources." 42 U.S.C. § 7412(r)(7)(B).

EPA issued initial regulations pursuant to section 112(r)(7) in 1994 and 1996 that established the list of chemical substances with threshold quantities regulated under the program and that required facilities to comply with safeguards to prevent and mitigate accidental releases, respectively. 59 Fed. Reg. 4,478 (Jan. 31, 1994) & 61 Fed. Reg. 31,668 (June 20, 1996). The regulations require facilities to conduct a worst-case scenario analysis and a review of accident history, coordinate procedures with local

emergency response organizations, conduct a hazard assessment, document a management system, implement a prevention program and emergency response program, and submit a risk management plan that addresses all covered processes and chemicals. 87 Fed. Reg. at 53,562-63.

The 2017 Rule

Prompted by concerns that the initial regulations did not provide sufficient protections against chemical accidents, as borne out by tragic accidents at West Fertilizer in Texas that killed 15 people in 2013 and a refinery explosion in 2010 in Washington State that killed seven, President Obama issued an executive order in 2013 that required EPA and other federal agencies to review—and consider strengthening—regulations to prevent or mitigate chemical accidents. *See* Executive Order 13,650: Improving Chemical Facility Safety and Security (Aug. 1, 2013).[1]

In March 2016, EPA issued a notice of proposed rulemaking to amend the accidental release prevention regulations and

[1] Available at: https://obamawhitehouse.archives.gov/the-press-office/2013/08/01/executive-order-improving-chemical-facility-safety-and-security.

related programs. *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 81 Fed. Reg. 13,638 (Mar. 14, 2016). In January 2017, EPA promulgated the final rule to "improve safety at facilities that use and distribute hazardous chemicals." *Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act* ("2017 Rule"), 82 Fed. Reg. 4594 (Jan. 13, 2017).

The 2019 Rule and Litigation

After EPA unsuccessfully attempted to delay the effective date of the 2017 Rule by two years following a change in Administration, *see Air All. Houston v. EPA*, 906 F.3d 1049, 1053 (D.C. Cir. 2018), in May 2018, EPA proposed repealing critical aspects of the 2017 Rule, including almost all the accident prevention requirements. *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 83 Fed. Reg. 24,850, 25,852 (May 30, 2018).

In December 2019, EPA published the final rule, *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act*, 84 Fed. Reg. 69,834 (Dec. 19, 2019), which followed through on the proposal. Several of the Movant

State and Local Governments, community and environmental groups, and the United Steelworkers filed petitions for review in the D.C. Circuit.[2]

The Rule at Issue

After the change in Presidential administrations in 2021, EPA announced that it intended to initiate new notice and comment proceedings to review and potentially revise the 2019 rule.

Meanwhile, serious chemical accidents continued to occur. For example, flooding from Hurricane Harvey led to a fire at the Arkema chemical facility in Crosby, Texas in August 2017. *See* 87 Fed. Reg. 53,568 (Aug. 31, 2022). That accident resulted in 21 people seeking medical attention and 200 nearby residents being evacuated. *Id.*

On August 18, 2022, after soliciting public comment, EPA issued a proposed rule. *See* 87 Fed. Reg. 53,556 (Aug. 31, 2022).

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[2] *See State of New York, et al. v. Andrew Wheeler, et al.*, Case No. 20-1022 (D.C. Cir.); *State of Delaware v. EPA, et al.*, Case No. 20-1034 (D.C. Cir. 2020); *United Steel, Paper and Forest v. EPA, et al.*, Case No. 20-1005 (D.C. Cir. 2020); *Air Alliance Houston, et al v. EPA, et al*, Case No. 19-1260 (D.C. Cir.).

EPA then finalized the Rule, which restored the main provisions from the 2017 Rule and improved on that rule in several respects.

As to accident prevention, the Rule includes the requirements contained in the 2017 Rule with several changes and amplifications, including the following:

- ***Safer Technologies and Alternatives Analysis.*** The Rule restores the 2017 Rule's obligation for certain types of facilities (including chemical manufacturers and petroleum refiners) to conduct a safer technologies and alternatives analysis, and goes a step further by requiring the implementation of at least one feasible measure. *See* 40 C.F.R. §§ 68.3, 68.67(c)(9) and (h).
- ***Third-Party Compliance Audits and Root Cause Analysis.*** The Rule requires third-party compliance audits and root cause analysis incident investigations for facilities with a prior accident. *See* 40 C.F.R. §§ 68.3, 68.58, 68.79, 68.80; 40 C.F.R. §§ 68.3, 68.60, 68.81.

The Rule also added other accident prevention requirements, including the following:

- ***Employee Participation.*** The Rule encourages employee participation, training, and opportunities for employee decision

making. For example, the Rule allows partial or complete process shutdowns based on the potential for a catastrophic release. The Rule also implements a process to allow employees and their representatives to anonymously report specific unaddressed hazards or other noncompliance. *See* 40 C.F.R. §§ 68.62, 68.83.

- ***Natural Hazards.*** In light of increased vulnerability of facilities to severe weather, as demonstrated by the 2017 Arkema fire, the Rule requires evaluation of the risks of natural hazards and climate change, including any associated loss of power. *See* 40 C.F.R. §§ 68.3, 68.50, 68.67, 68.170, 68.175.

As to emergency response, the Rule includes requirements similar to those contained in the 2017 Rule with respect to incident-response exercises. 40 C.F.R. § 68.96(b). The Rule also added other requirements that ensure the timely sharing of chemical release information with local responders and implement a community notification system to warn the community surrounding a facility of an impending chemical release. *See* 40 C.F.R. §§ 68.90(b), 68.95(a) and (c).

As to public information disclosure, similar to the 2017 Rule, the Rule provides nearby communities with access to certain chemical hazard information to be better prepared if an accident at a nearby facility were to occur. *See* 40 C.F.R. § 68.210.

Litigation Regarding the Rule

A group of states and Industry Petitioners filed petitions for review on May 9 and 10, 2024, challenging the Rule. *See* ECF Doc. Nos. 2053737, 2054427. Movant State and Local Governments, as well as several community and environmental groups, and the United Steelworkers intervened in support of EPA and the Rule. *See* ECF Doc. Nos. 2061291. Those petitions for review are consolidated under Case No. 24-1125, *Oklahoma v. EPA*, and those cases are currently in abeyance pending further order of the court.

Petition for Reconsideration

On May 10, 2024, Industry Petitioners filed a petition for reconsideration of the Rule with EPA under section 307(d)(7)(B) of the Clean Air Act and requested stay of the Rule. Industry Petitioners argued that procedural deficiencies in the Rule prevented them from being able to comment effectively on the

provisions of and support for the Rule. *See* Petition for Reconsideration at 4.

On December 26, 2024, EPA denied the Industry Petitioner's petition for reconsideration, as well as their request that the Rule be stayed. EPA concluded the petition for reconsideration failed to identify any information or circumstances that warrant mandatory reconsideration under section 307(d)(7)(B) of the Clean Air Act.

This Litigation

Industry Petitioners filed a petition for review on February 24, 2025 challenging EPA's denial of their petition for reconsideration. Before filing this motion, counsel for the Movant State and Local Governments contacted counsel for Industry Petitioners and for EPA. Industry Petitioners stated that they take no position on the motion and reserve the right to oppose the motion. EPA stated that it takes no position on the motion but reserves the right to take a position once the motion is filed.

LEGAL STANDARD

Federal Rule of Appellate Procedure 15(d) authorizes intervention in circuit court proceedings to review agency actions

on a motion containing "a concise statement of interest of the moving party and the grounds for intervention" that is filed within 30 days after the petition for review. In determining whether to grant intervention, this Court typically draws on the policies underlying Federal Rule of Civil Procedure 24. *See Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997).

Under Federal Rule of Civil Procedure 24, a party seeking to intervene as of right must satisfy four factors: 1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor's interest. *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 320 (D.C. Cir. 2015); *see also Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1233 (D.C. Cir. 2018) (looking "to the timeliness of the motion to intervene and whether the existing parties can be expected to vindicate the would-be intervenor's interests"). A party that satisfies the requirements of Rule 24(a) will also meet the standing

requirement under Article III of the Constitution. *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

A court may also grant permissive intervention when a movant makes a timely application and the applicant's claim or defense and the main action have a question of law or fact in common. Fed. Rule Civ. Proc. 24(b)(1); *see EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

ARGUMENT

I. MOVANT STATE AND LOCAL GOVERNMENTS ARE ENTITLED TO INTERVENE AS A MATTER OF RIGHT.

Movant State and Local Governments satisfy the Federal Rule of Appellate Procedure 15(d) standard for intervention and the showings required for intervention as of right under Federal Rule of Civil Procedure 24(a)(2). First, this motion is timely filed within 30 days of the filing of the petition for review. *See* Fed. Rule App. Proc. 15(d). Second, Movant State and Local Governments have legally protected interests in the reduction and mitigation of chemical accidents that the Rule provides. *See Air All. Houston*, 906 F.3d at 1059-60. Third, Movants' legally protected interests would be impaired by granting the petition

here. *See Crossroads Grassroots*, 788 F.3d at 320. Finally, no existing party to the action can adequately represent Movant State and Local Governments' unique quasi-sovereign and proprietary interests. *See id. at 321.*

A. Movant State and Local Governments Have Legally Protected Interests in the Rule that Would Be Impaired if the Petition is Granted.

Movant State and Local Governments have longstanding, legally protected interests in reducing and mitigating chemical accidents that harm our residents' health, contaminate our natural resources, and damage our economies. *See Air All. Houston*, 906 F.3d at 1059-60 (citing Washington state's incurring of response costs from responding to a refinery accident and concluding that "State Petitioners have demonstrated their independent proprietary interests in avoiding chemical releases in their territory sufficient to support standing"); *Massachusetts v. EPA*, 549 U.S. 497, 521-23 (2007) (recognizing states' interests in protecting their territory and residents from harmful pollution). *See also Declaration of Diana Ramirez in Support of Motion for Intervention*, attached hereto as Exhibit A; *Declaration of Nhi Irwin*, attached hereto as Exhibit B.

According to EPA's Regulatory Impact Analysis prepared in support of the Rule, between 2016 and 2020, there were 488 reportable accidents with onsite impacts at Risk Management Program facilities across the country, including in many of our jurisdictions, and 133 of those accidents also had offsite impacts. Regulatory Impact Analysis, Aug. 30, 2023, EPA-HQ-OLEM-2022-0174-0582, at 41-42. Together, these accidents resulted in 18 deaths, 575 onsite injuries, 85,808 people sheltering in place, and approximately 2.4 billion dollars of property damage. *Id.*

Because major and serious chemical accidents continue to happen, the Rule aims "to better identify and further regulate risky facilities to prevent accidental releases before they can occur." 89 Fed. Reg. at 17,623. EPA determined that implementation of the Rule "will improve the health and safety protection provided by the [Risk Management Program] rule and result in a reduced frequency and magnitude of damages from releases, including damages . . . such as fatalities, injuries, property damage, hospitalizations, medical treatment, [and] sheltering in place." 89 Fed. Reg. at 17,628.

By preventing and mitigating chemical accidents, the Rule protects the welfare of the Movant State and Local Governments' residents who live near and work at facilities subject to the Rule, and also protects the environment and natural resources surrounding those facilities. By preventing and mitigating chemical accidents, the Rule also reduces the cost to Movant State and Local Governments of responding to and investigating those accidents, and treating illnesses and injuries caused by those accidents.

These concrete regulatory, environmental, and economic interests would be impaired were this Court to grant the Petition. Industry Petitioners' petition for reconsideration requested reconsideration of the Rule and a stay of the effective date of the Rule. Industry Petitioners' petition for reconsideration challenges several aspects of the Rule.

For example, Industry Petitioners opposed the Rule's (1) requirement that facilities implement some measures identified by the Safer Technology Alternatives Analysis; (2) requirement to make certain information available to individuals who work or spend significant time within 6 miles of a

facility; (3) employee participation provisions in Program 2 and Program 3 prevention programs, including annual written or electronic notices to employees, additional training, additional methods for reporting unaddressed hazards, recordkeeping of such reports, and the ability to report unaddressed hazards to the facility or EPA; and (4) provisions to support the continuous operation of monitoring equipment.

The four provisions opposed by Industry Petitioners are central to the Rule's aim of preventing and mitigating accidents. First, the Safer Technology Alternatives Analysis is targeted at industries—petroleum and coal products manufacturing and chemical manufacturing—that experience more frequent accidental releases. 87 Fed. Reg. at 53,577. EPA expects that this provision will help to "ameliorate the upper end of the distribution of accident magnitudes so that the highest impact accidents are less likely." Regulatory Impact Analysis, EPA-HQ-OLEM-2022-0174-0582, at 91.

Second, the information availability requirements "will allow people that live or work near a regulated facility to improve their awareness of risks to the community and to be prepared to protect

themselves in the event of an accidental release." 89 Fed. Reg. at 17,670.

Third, the employee participation provisions are designed to, among other things, "ensure facilities' employees have authorities to manage unsafe work as they are one of the last lines of defense to protect human health and the environment from a catastrophic release[,]" *id.* at 17,664, and "help employees identify, and owners and operators correct, issues that may prevent and mitigate accidents, *id.* at 17,665.

Fourth, the requirements aimed at supporting the continuous operation of monitoring equipment are needed because, among things, "power loss can threaten RMP-regulated processes and cause accidental releases if not properly managed," *id.* at 17,639, and the threat of extreme weather events has led to owners and operators disabling equipment designed to monitor and detect chemical releases, *id.* at 17,640.

Movant State and Local Governments' interests in these components of the Rule, as described above, would be impaired if the petition is granted and the Rule is reconsidered, making intervention warranted here. *See Fund for Animals, Inc. v.*

Norton, 322 F.3d 728, 733 (D.C. Cir. 2003) (determining that intervention in administrative review proceedings is appropriate where movant would be harmed by successful challenge to regulatory action and that harm could be avoided by ruling denying relief sought by petitioner).

B. Movant State and Local Governments' Interests Are Not Adequately Represented.

Movant State and Local Governments also satisfy the lack of adequate representation factor of Federal Rule of Civil Procedure 24(a) because no existing party in the case can vindicate their interests. This requirement is "not onerous," and a "movant ordinarily should be allowed to intervene unless it is clear that" existing parties "will provide adequate representation." *Crossroads Grassroots*, 788 F.3d at 321. "[G]eneral alignment" between would-be intervenors and existing parties is not dispositive. *Id.*

Movant State and Local Governments readily satisfy this "minimal burden" because their interests are not adequately represented by the other parties. Although Movants would be joining EPA in defending the Rule in the litigation, Movant State

and Local Governments have important interests that are distinct from EPA's interests. Specifically, as described above, in addition to quasi-sovereign interests in protecting the health and safety of our residents from chemical accidents, Movant State and Local Governments have proprietary interests in decreasing the costs of responding to and investigating accidents and in preventing harm to state-owned natural resources. *See Air All. Houston*, 906 F.3d at 1059-60.

These interests are distinct from EPA's interests in promulgating and defending the Rule, even if Movant State and Local Governments and EPA are generally aligned in contending that the petition should be denied. As a result, EPA and Movant State and Local Governments may choose to advance different arguments or make different strategic choices in this litigation. Movants therefore satisfy this final requirement for intervention as of right.

C. Movant State and Local Governments Have Article III Standing.

"[A]ny person who satisfies Rule 24(a) will also meet Article III's standing requirement." *Roeder*, 333 F.3d at 233; *see also*

Crossroads Grassroots, 788 F.3d at 320. Thus, for the same reasons that Movant States and Local Governments satisfy Federal Rule of Civil Procedure 24(a)'s standard for intervention as of right, they have Article III standing.

Indeed, Movant State and Local Governments meet each of the required elements of Article III standing. This Court's "cases have generally found a sufficient injury in fact [for a respondent intervenor] where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots*, 788 F.3d at 317.

As described above, Movant State and Local Governments will benefit from the reduction and mitigation of chemical accidents brought about by the Rule, and a decision in favor of the Industry Petitioners would remove those benefits, thereby establishing an injury-in-fact here. *See Air All. Houston*, 906 F.3d at 1059-60 (concluding that the delay rule affects the states' "proprietary interests due to the expenditures states have previously made and may incur again when responding to accidental releases" and, therefore, states "demonstrated their

independent proprietary interests in avoiding chemical releases in their territory" which is "sufficient to support standing"). *See also Declaration of Diana Ramirez in Support of Motion for Intervention*, attached hereto as Exhibit A; *Declaration of Nhi Irwin*, attached hereto as Exhibit B.

This injury to Movant State and Local Governments is "directly traceable" to Petitioners' challenge to the Rule, and a successful defense of the Rule would thus "prevent the injury," establishing the requisite causation and redressability. *Air All. Houston*, 906 F.3d at 1059-60; *Crossroads Grassroots*, 788 F.3d at 316; *see also Fund for Animals*, 322 F.3d at 733.

II. ALTERNATIVELY, MOVANT STATE AND LOCAL GOVERNMENTS ARE ENTITLED TO PERMISSIVE INTERVENTION.

Movant State and Local Governments also satisfy the requirements for permissive intervention. Under Federal Rule of Civil Procedure 24(b)(1), courts may "permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact" so long as the motion is timely and intervention would not "unduly delay or prejudice the rights of the original parties." Fed. Rule Civ. Proc. 24(b)(1)(B), (3).

Movant State and Local Governments' defense of the Rule would share questions of law with the challenge that Industry Petitioners will raise against the Rule. And as it is timely filed within 30 days of the petition, intervention at this early stage in the litigation will not cause any delay or prejudice. *See Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1236 (D.C. Cir. 2004) (holding that existing parties would not be prejudiced by any "issue proliferation" because proposed intervenors had already submitted comments on relevant issues that were considered in the underlying decision).

CONCLUSION

For the foregoing reasons, we respectfully request that this Court grant this motion to intervene.

Dated: March 26, 2025 Respectfully submitted,

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EXHIBIT A

(Declaration of Diana Ramirez in Support of Motion for Intervention)

ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

National Association of Chemical Distributors, d/b/a Alliance for Chemical Distribution et al., Petitioners, **v.** **United States Environmental Protection Agency,** Respondent.	Case No. 25-1075

On Petitions for Review of Final Action of the

United States Environmental Protection Agency

DECLARATION OF DIANA RAMIREZ IN SUPPORT OF MOTION FOR INTERVENTION

I, Diana Ramirez, declare as follows:

1. I am the County Administrator for Harris County, Texas (Harris County or the County), and oversee the day-to-day operations of departments that report to Harris County Commissioners Court, including the Harris County Pollution Control Services Department and

collaborates with other offices and departments such as the Harris County Fire Marshal's Office.

2. I have worked at Harris County since 2021 following 30 years of public service in various capacities with Travis County, the Texas General Land Office and Texas Health and Human Services.

3. I am familiar with the facts and circumstances of this matter, in which industry groups seek to challenge EPA's denial of a petition for reconsideration of the federal rule "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Safer Communities by Chemical Accident Prevention," published at 89 Fed. Reg. 17,622 (Mar. 11, 2024) ("Rule"). The Rule was enacted pursuant to 112(r) of the Clean Air Act, which directs EPA to issue regulations that "provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for the response to such release by the owners and operators of the sources." 40 U.S.C. § 7412(r)(7)(B).

4. After notice and comment, the EPA issued the Rule which provides for safeguards including:

a. obligating certain types of facilities to conduct a safer technologies and alternatives analysis and requires the implementation of at least one feasible measure, 40 C.F.R. §§ 68.3, 68.67(c)(9) and (h)(2);

b. requires third-party compliance audits and root cause analysis for facilities with a prior accident, 40 C.F.R. §§ 68.3, 68.58, 68.79, 68.80; 40 C.F.R. §§ 68.3, 68.60, 68.81;

c. encourages employee participation, training, and opportunities for employee decision making, 40 C.F.R. §§ 68.62, 68.83;

d. requires evaluation of risks of natural hazards and climate change, 40 C.F.R. §§ 68.3, 68.50, 68.67, 68.170, 68.175; and

e. requires the sharing of information with local responders. 40 C.F.R. §§ 68.90(b), 68.95(a) and (c).

5. I submit this declaration in support of the motion of New York, Connecticut, Hawaii, Massachusetts, Harris County, and other states to intervene as respondents.

HARRIS COUNTY IMPACTS

6. At a population of over 4.7 million residents,[1] Harris County is the most populous county in Texas, as well as the third most populous county in the nation. Harris County is the petrochemical capital of the nation and is home to the Houston Ship Channel, the nation's largest port for waterborne tonnage. Harris County has 187 facilities falling under the EPA Risk Management Program (RMP Facilities) – the highest number of RMP Facilities in any County in the United States.[2] RMP Facilities handle extremely hazardous substances, which is why they are subject to additional rules and regulations.

7. In the last several years, Harris County has been burdened with several high profile chemical incidents including the 2017 organic peroxide incident at Arkema during Hurricane Harvey in 2017, the 2019 multi-day ITC Deer Park tank farm fire, two fires in 2019 at the Exxon Baytown Complex – including a fire in the refinery and an explosion at

[1] U.S. Census Bureau, 2019 Population Estimates.
[2] Regulatory Impacts Analysis, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7) at Page 102, https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0734; RMO Amendments Reconsideration Proposed Rule, State/Local Pre-Proposal Briefing, May 21, 2018, EPA Presentation to State and Local Government Organization Representative, https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0891 at Slide 19.

the Olefins Plant, and the 2019 fire and explosion at the KMCO chemical processing facility that killed one worker and seriously injured two others.

8. The most recent large scale multi-injury incident occurred on October 10, 2024 at the PEMEX Deer Park Facility when a hydrogen sulfide leak killed two workers and injured 13 others.[3] The nearby cities of Deer Park and Pasadena issued shelter-in-place orders that lasted several hours.[4] Various Harris County departments responded to the incident. The Harris County Fire Marshal, which was a stakeholder coordinating with incident command, performed air monitoring and recovery and decontamination of decedents from the scene. Harris County Pollution Control conducted community air monitoring, and the Harris County Sheriff's Office was called in to assist with emergency response. During the incident, there were delays and gaps in the flow of information from PEMEX to Harris County responding departments that

[3] U.S. Chemical Safety and Hazard Investigation Board, *Fatal Hydrogen Sulfide Release at PEMEX Deer Park Refinery*, CSB.GOV (Nov. 2024) https://www.csb.gov/assets/1/20/pemex_investigation_1.pdf?17128.

[4] Anthony Robledo, *Shelter-in-place ordered for 2 east Texas cities after chemical release kills 1 person*, USATODAY.COM (Oct. 11, 2024, 8:43 am) https://www.usatoday.com/story/news/nation/2024/10/10/shell-pemex-deer-park-shelter-in-place/75619703007/.

could have drastically impacted the response plan. The Chemical Safety Board (CSB) responded to the incident and released a March 2025 investigation update noting the investigation is on-going and will focus on safe work practices, turnaround maintenance policies and procedures, remote isolation capability and notably - *emergency preparedness and response systems*.[5]

IMPACTS TO HARRIS COUNTY

9. Harris County Fire Marshal is the Harris County Department tasked with protecting Harris County residents and property through effective fire prevention, fire investigation, education, emergency response, and emergency management. The Harris County Hazardous Material Response Team is a bureau of the Fire Marshal's Office that responds to incidents involving hazardous materials that is trained and certified to provide technician duties on a hazardous materials scene. When responding to an incident, the Fire Marshal is a stakeholder coordinating with members of incident command and will assist in the response and mitigation of any type of hazards materials incident in

[5] U.S. Chemical Safety and Hazard Investigation Board, *Fatal Hydrogen Sulfide Release at PEMEX Deer Park Refinery*, CSB.GOV (Mar. 2025) https://www.csb.gov/assets/1/20/pemex_second_investigation_update_final.pdf?17165.

unincorporated Harris County and may assist other cities in Harris County and counties by responding to incidents under the Texas Statewide Mutual Aid System.[6]

10. Harris County Pollution Control Services Department is the Harris County Department designated to inspect facilities in Harris County for compliance with air quality laws and regulations. As a part of its mission, Pollution Control conducts investigations, both routine and complaint initiated, and, when appropriate, issues Violation Notices and refers cases for civil or criminal enforcement. Additionally, Pollution Control conducts routine and emergency response air monitoring and provides comments in EPA regulatory actions. Due to community concern about air pollution, especially during emergency response incidents, Pollution Control implemented a Community Air Monitoring Program.

11. In addition to the impacts to our communities, such as shelter-in-place orders and possible exposure to harmful substances, emergency response incidents require the mobilization of numerous County departments and personnel. Predictably, such mobilization has serious financial implications for Harris County. The 2019 ITC Deer

[6] Tex. Gov. Code § 418.107.

Park incident cost Harris County close to $1.5 million in direct and indirect costs. The Rule is designed to reduce the likelihood of incidents and ensure information sharing with local responders, the lack of which can have serious consequences for responder safety and decision making.

12. The direct and substantial interests discussed above demonstrate the harm to Harris County which would occur if challenges to the Rule are successful.

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

So declared this 26th day of March, 2025.

Diana Ramirez

EXHIBIT B

(Declaration of Nhi Irwin)

IN THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

National Association of Chemical Distributors, d/b/a Alliance for Chemical Distribution et. al., Petitioners, v. **United States Environmental Protection Agency,** Respondents.	Case No. 25-1075

DECLARATION OF NHI IRWIN

I, NHI IRWIN, declare as follows:

1. The following is based on my personal knowledge, and if called and sworn as a witness, I would competently testify thereto.

2. The Washington State Department of Ecology (Ecology) responds to chemical releases and accidents by investigating and coordinating oil spill and hazardous materials response efforts, including facilities subject to EPA's Risk Management Program. Washington contains regulatory authority over the facilities covered by EPA's Risk Management Program and Washington State attempts to work cooperatively with the federal program.

3. In 2024, Ecology responded to 164 incidents where releases of chemicals, hazardous materials, poisonous or flammable gases, flammable liquids, or corrosive gases were released. For example, Ecology responded to a fire at the Lineage Logistics cold store warehouse in Finley, Washington, beginning on April 21, 2024. Lineage Logistics is subject to EPA's Risk Management Program. There were approximately 28,000 pounds of anhydrous ammonia on the Lineage property when the fire started. Initially, Ecology responded at the request of a local fire department due to the potential of anhydrous ammonia release. Ecology responders did not detect concerning concentrations of ammonia in the community, but returned to perform particulate monitoring. After the incident created smoke in the community for many days, Ecology transitioned to Purple Air monitors that were set up and monitored remotely.
4. The fire burned for almost two months and the community was frustrated by the duration and safety risk resulting from the smoke. The cost for Ecology's initial response for air monitoring was $27,989.05. This cost included salaries and wages, employee benefits, and intra-agency reimbursements.

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

DATED this ____26___day of __March_____, 2025, in _____Olympia__

CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), I hereby certify the parties and amici are as follows:

Industry Petitioners are the National Association of Chemical Distributors, d/b/a Alliance for Chemical Distribution, American Chemistry Council, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Chamber of Commerce of the United States of America, and Society of Chemical Manufacturers & Affiliates.

Respondent is the United States Environmental Protection Agency.

There are no amici that have appeared in the litigation.

/s/ Sarah Kam

SARAH KAM

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced font. I further certify that the motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 3,620 words, excluding the parts of the motion exempted under Fed. R. App. P. 32(f), according to the count of Microsoft Word.

/s/ Sarah Kam

SARAH KAM

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion for Leave to Intervene as Respondents have been served through the Court's CM/ECF system on all registered counsel this 26th day of March, 2025.

/s/ Sarah Kam

SARAH KAM