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

| | | |
|---|---|---|
| **RENEWABLE FUELS ASSOCIATION, AMERICAN COALITION FOR ETHANOL, GROWTH ENERGY, NATIONAL BIODIESEL BOARD, NATIONAL CORN GROWERS ASSOCIATION, and NATIONAL FARMERS UNION,** | ) | |
| ***Petitioners*,** | ) | **Case No. 19-1220** |
| **v.** | ) | |
| **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,** | ) | |
| ***Respondent.*** | ) | |

**MOTION OF AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENT**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, American Fuel & Petrochemical Manufacturers ("AFPM") respectfully moves for leave to intervene in the above-captioned consolidated case in support of Respondent United States Environmental Protection Agency ("EPA"). The petition for review in this case concerns EPA's "Decision on 2018 Small Refinery Exemption Petitions, signed August 9, 2019" ("2018 SRE Decision").

This motion is timely because it is filed within 30 days of Petitioners' filing of their petition for review. Fed. R. App. P. 15(d); Cir. R. 15(b). Counsel for AFPM is authorized to state that Petitioners take no position on this motion and that Respondent EPA does not oppose this motion.

## BACKGROUND

AFPM is a trade association whose members include nearly all of the refining and petrochemical manufacturing capacity of the United States. AFPM's members produce virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life. To protect its members' interests, AFPM participates on behalf of its members in Clean Air Act ("CAA") administrative proceedings that affect its members, as well as litigation, like this case, which affects the market for transportation fuels through EPA's implementation of the Renewable Fuel Standard ("RFS").

AFPM has a longstanding interest in the Environmental Protection Agency's ("EPA's") implementation of the RFS program, which requires the blending of renewable fuel into gasoline and diesel. Specifically, AFPM has a strong interest in EPA's decisions related to small refinery exemptions from the RFS.

Congress designed small refinery exemptions as part of the original 2005 RFS statutory framework to allow EPA to avoid several undesirable outcomes

from implementing RFS standards, including the imposition of disproportionate economic hardship on small refineries. Petitioners are challenging an August 2019 letter in which EPA announced its decisions on a group of small refinery petitions, based on EPA's authority in Clean Air Act section 211(o)(9)(B). Because AFPM's members are directly affected by the circumstances under which EPA grants exemptions to small refineries and the method by which these exemptions are granted, AFPM seeks to intervene in support of Respondent EPA.

## I. The Renewable Fuel Standard Program

In the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594, Congress amended section 211 of the CAA to establish the Renewable Fuel Standard ("RFS") program. Congress expanded the RFS program in 2007. *See* Energy Independence and Security Act of 2007, Pub. L. No. 110-140, 121 Stat. 1492. Section 211(o) sets annual applicable volume requirements for renewable fuel, advanced biofuel, cellulosic biofuel and biomass-based diesel. *See* 42 U.S.C. § 7545(o)(1), (o)(2)(B).

No later than October 31 of each year, the Energy Information Administration ("EIA") must provide EPA with estimates of the "volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States" in the next calendar year. *Id.* § 7545(o)(3)(A). EPA must then determine and publish in the *Federal Register*

by November 30 the annual renewable fuel standards for the next calendar year for total renewable fuel, advanced biofuel, cellulosic biofuel and biomass-based diesel. *Id.* § 7545(o)(3)(B)(i). The annual standard for each of these four fuel categories is expressed as a "percentage of transportation fuel sold or introduced into commerce in the United States." *Id.* § 7545(o)(3)(B)(ii)(II). Obligated parties comply with these requirements through obtaining Renewable Identification Numbers ("RINs")—which represent the production of qualified renewable fuel and the blending of this fuel into gasoline and diesel—either through purchasing and blending renewable fuel or purchasing RINs, and thereafter submitting those RINs to EPA (a process known as "retiring"). *See* 40 C.F.R. §§ 80.1401, 80.1425, 80.1451.

Congress provided EPA authority to exempt small refineries facing disproportionate economic hardship as part of a statutory scheme to avoid imposing economic harm on a wide range of parties potentially affected by the RFS program. First, Congress required EPA to exempt *all* small refineries for the first five years of the RFS program (from 2006 to 2010).[1] Second, Congress directed the Department of Energy ("DOE") to study whether the RFS would cause

[1] The small refineries exemption was included in the Energy Policy Act of 2005, 119 Stat. 1073, which included the RFS program. As enacted, small refineries were exempted from the first year that standards applied "until calendar year 2011." 42 U.S.C. § 7545(o)(9)(A)(i). When Congress amended the RFS in 2007, this provision was retained without amendment.

a "disproportionate economic hardship on small refineries." 42 U.S.C. § 7545(o)(9)(A)(ii)(I). Upon finding a disproportionate economic hardship, as Department of Energy found in 2011, the EPA Administrator extended the exemption for all small refineries by two years, as required under the statute. 42 U.S.C. § 7545(o)(9)(A)(ii)(I). Third, Congress required EPA to extend the exemption for a small refinery "at any time" if EPA concluded that subjecting that small refinery to the program would cause the refinery "disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(A)-(B). Thus, Congress explicitly understood that small refineries might face undue hardships under the RFS program and created multiple statutory mechanisms to relieve small refineries from the burden of obtaining and retiring RINs.

## II. The Challenged Action

On August 9, 2019, EPA's Acting Assistant Administrator for the Office of Air and Radiation signed the 2018 SRE Decision, which reflected two conclusions: (1) to fully grant exemptions for 2018 small refinery petitions where DOE recommended either 50 or 100 percent relief and to deny exemptions where DOE recommended no relief, and (2) to interpret the statutory provisions governing such exemptions as intending EPA to grant exemptions only in full, not partially. In all, EPA granted 31 petitions and denied six; three were declared ineligible or

withdrawn. EPA, "RFS Small Refinery Exemptions," https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.

## ARGUMENT

AFPM has a significant, direct interest in this litigation. AFPM members include small refineries regulated under the RFS that sought and received relief under the RFS statute for 2018. AFPM also represents members who may seek relief under the small refinery exemption for RFS compliance years other than 2018. To the extent that Petitioners are challenging the exemptions granted pursuant to the 2018 SRE Decision or EPA's interpretation of the RFS statute, this challenge would directly and significantly impact the interests of AFPM and its members. EPA's statutory interpretation directly affects small refineries seeking RFS exemptions, not to mention those small refineries that have received such exemptions, and thus, they have standing to intervene in this litigation. In addition to these members, AFPM has members who do not qualify as small refineries but are nevertheless directly regulated as obligated parties under the RFS and retain an interest in the effective functioning of the program. AFPM's interests in this case are not adequately represented by the existing parties and may be harmed by a favorable ruling for the Petitioners. The Court should grant AFPM's motion for leave to intervene as a respondent in this case because AFPM meets the standard for intervention in petition-for-review proceedings in this Court.

## I. Petition for Review Intervention Standard

Under Federal Rule of Appellate Procedure 15(d), a party moving for intervention must do so "within 30 days after the petition for review is filed" and need only provide a "concise statement of interest . . . and the grounds for intervention." Fed. R. App. 15(d). Although Rule 15(d) does not provide clear criteria for intervention, Federal Rule of Civil Procedure 24(a) and the "policies underlying intervention" in federal district courts provide guidance. *See Int'l Union U.A.W. v. Scofield,* 382 U.S. 205, 216 n.10 (1965).

A party may intervene as of right pursuant to Federal Rule of Civil Procedure 24(a) if: (1) the intervention motion is timely, (2) the movant has a cognizable interest in the case, (3) the movant's absence from the case will impair its ability to protect its interests, and (4) the movant's interests are inadequately represented by the existing parties. *See Williams & Humbert, Ltd. v. W&H Trade Marks (Jersey)*, 840 F.2d 72, 74 (D.C. Cir. 1988).

## II. AFPM Meets the Criteria for Intervention.

Under the current RFS regulations, refiners and importers are "obligated parties" required annually to demonstrate compliance with the applicable volume requirements. Compliance is demonstrated by retiring RINs, which are used to demonstrate that required volumes of renewable fuel have been blended into transportation fuel sold or introduced into commerce in the United States. AFPM's

members are obligated parties and face significant penalties unless they can demonstrate that the requisite amount of renewable fuel has been blended into transportation fuel sold in the United States through the retirement of RINs. Some of AFPM's members are small refineries that seek exemptions from these obligations under the statutory provisions interpreted and applied in the 2018 SRE Decision.

As a result, AFPM members would be adversely affected if this Court set aside either the individual small refinery exemptions granted through the 2018 SRE Decision or EPA's interpretation of the statute. Accordingly, the Court should grant AFPM's motion to intervene.

### *A. AFPM's motion is timely.*

When evaluating the timeliness of a motion to intervene, this Court will consider the amount of time that has passed since the filing of the case, the likelihood of prejudice to the existing parties, the purpose for which intervention is sought, and the need for intervention to preserve the proposed intervenor's rights. *See United States v. British Am. Tobacco Australian Servs.*, 437 F.3d 1235, 1238 (D.C. Cir. 2006).

AFPM's motion to intervene is timely. Petitioners filed their petition for review on October 22, 2019; as such, this motion is being filed within the 30-day time period specified in Federal Rule of Appellate Procedure 15(d). The petition is

therefore in its infancy, and the Court has not yet set a schedule for the filing of merits briefs. Thus, granting this motion will not delay the proceedings in this case and will not cause any undue prejudice to the parties.

### *B. AFPM has direct and significantly protectable interests in this case, and disposition of the petitions may impair its interests.*[2]

This Court has held that a "significantly protectable" interest is required for intervention, *see S. Christian Leadership Conference v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984) (citation omitted), but it has instructed that the interest test is flexible and serves as "a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967). A party seeking to intervene can demonstrate it has a "legally protectable" interest upon a showing that it stands to "gain or lose by the direct legal operation and effect of the judgment." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980) (citation omitted). With respect to impairment, Federal Rule of Civil Procedure 24(a) requires only that a party seeking intervention be "so situated that disposing of the action *may* as a practical matter impair or impede the movant's ability to protect its interest" (emphasis added). AFPM meets both the interest and impairment requirements.

---

[2] The second and third criteria for intervention are related, thus AFPM discusses them together.

Courts have routinely recognized that when objects of governmental regulation are involved, "there is ordinarily little question that the action or inaction has caused [them] injury." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992); *CropLife Am. v. EPA*, 329 F.3d 876, 884 (D.C. Cir. 2003) (if there is "no doubt" a rule causes injury to a regulated party, standing is "clear"); *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (trade association had standing in challenge of EPA regulation where some of its members were subject to the regulation). Here, AFPM's members are obligated parties under the RFS that have sought exemptions from their RFS obligations and may seek such exemptions in the future, and are thus objects of the very governmental action at issue.

In cases involving petitions for review of EPA's regulatory actions, including where EPA has interpreted and applied its statutory authority, this Circuit has consistently granted requests by regulated entities to intervene as respondents. *See, e.g.*, *Energy Future Coal. v. EPA*, No. 14-1123 (Doc.# 1508246) (D.C. Cir. Aug. 19, 2014) (order granting AFPM's motion to intervene on EPA's behalf in a challenge to an EPA fuel regulation under CAA Title II); *Sierra Club v. EPA*, No. 13-1112 (Doc.# 1436907) (D.C. Cir. May 20, 2013) (order granting trade association's motion to intervene in a petition to review a Clean Air Act rulemaking governing Portland cement manufacturing); *Coffeyville Resources Refining & Mktg., LLC et al. v. EPA*, No. 17-1044 (Doc# 1706266) (D.C. Cir. Nov.

28, 2017) (order granting AFPM's and others' intervention with respect to the 2017 RFS rule), *Am. Fuel & Petrochemical Mfrs. v. EPA*, No. 17-1258 (Doc.# 1725309) (D.C. Cir. Apr. 5, 2018) (order granting AFPM and others' intervention with respect to the 2018 RFS rule).

For these reasons, AFPM members also meet the Article III standing requirements in this Circuit.[3] *See, e.g.*, *Deutsche Bank Nat. Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013) (indicating that Article III standing is a prerequisite to intervention); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("[A]ny person who satisfies Rule 24(a) will also meet Article III's standing requirement."); *accord*, *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (recognizing that the interest requirement under Federal Rule of Civil Procedure 24(a) is met when the proposed intervenor has Article III standing). AFPM members include small refineries that have received exemptions from their

[3] Associations such as AFPM have associational standing to litigate on behalf of their members when: (i) their members would have standing to sue individually; (ii) the interests they seek to protect are germane to their purpose; and (iii) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). The interests of AFPM's members will be harmed should Petitioners prevail in their challenge to 2018 SRE Decision. AFPM members thus would have standing to intervene in their own right. Moreover, the interests AFPM seeks to protect are germane to its purposes, and individual member participation is not required because Petitioner is seeking equitable relief, not money damages. *See United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553-54 (1996).

annual RFS obligations and may seek to do so in the future. Any changes to EPA's statutory interpretation as a result of this litigation, or any overturning of an individual small refinery exemption, would negatively affect AFPM members' operations.

AFPM has considerable expertise on and experience with federal fuel regulations and the real-world implementation of the RFS program. AFPM submitted detailed comments to EPA regarding initial implementation of the program in 2007 and again in 2010 when the RFS was substantially revised.[4] AFPM has also reviewed and commented on annual RFS regulations and other proposals to address the regulatory system for complying with the RFS—namely, the Renewable Identification Numbers ("RINs") that must be submitted to EPA representing use of renewable fuel.[5]

---

[4] National Petrochemical & Refiners Association, Comment on Proposed Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program (Nov. 9, 2006) (EPA-HQ-OAR-2005-0161-0170); National Petrochemical & Refiners Association, Comment on Proposed Regulation of Fuels and Fuel Additives: Renewable Fuel Program (Sept. 25, 2009) (EPA-HQ-OAR-2005-0161-2124).

[5] National Petrochemical & Refiners Association, Comment on Proposed Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards (Aug. 11, 2011) (EPA-HQ-OAR-2010-0133-0148); AFPM, Comment on Proposed Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards (Apr. 8, 2013) (EPA-HQ-OAR-2012-0546-0086); AFPM & American Petroleum Institute, Renewable Fuel Standard Program; 2014 Standards (Jan. 28, 2014) (EPA-HQ-OAR-2013-0479-3827); AFPM & API, Comment on Proposed Standards for the Renewable Fuel Standard (RFS) Program for 2014, 2015, and 2016 (July 27, 2015)
(Continued...)

For well over a decade, AFPM has also directly participated in the legal, legislative and regulatory policy debate over how the RFS and other fuel programs should be designed and implemented. AFPM has represented its membership before various United States Courts of Appeals and other federal and state courts in connection with challenges to the implementation of the RFS program. AFPM regularly testifies before Congress when it considers legislation to address the RFS or other fuel programs, and AFPM represents its membership when it meets with the EPA concerning various regulatory initiatives, including those involving the RFS program.

Petitioners' challenge to the 2018 SRE Decision could have a significant impact not only on the AFPM members involved, but on the nation's refining industry as a whole. Small refinery exemptions contribute to the effective implementation of the national RFS program, and the criteria used for EPA's

_____

(EPA-HQ-OAR-2015-0111-1948); AFPM, Comment on Proposed Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018 (July 11, 2016) (EPA-HQ-OAR-2016-0004-1814); AFPM, Comment on Proposed Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019 (Oct. 19, 2017) (EPA-HQ-OAR-2017-0091-4703); AFPM, Comment on Proposed Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020 (Aug. 17, 2018) (EPA-HQ-OAR-2018-0167-0672); API & AFPM, Comment on Draft Quality Assurance Project Plan for the Petroleum Refining Industry Detailed Study (Dec. 20, 2016), https://www.afpm.org/uploadedFiles/Content/Policy_Positions/Agency_Comments/api_comments_refining_elg_detailed_study_qapp.pdf.

consideration and approval of such exemptions can affect the RFS obligations of other parties, including their strategies to comply economically with the program.

### *C. The interests of AFPM are not adequately represented by any existing party.*

To the extent inadequate representation is a requirement for intervention under Federal Rule of Appellate Procedure 15(d), AFPM easily meets that requirement. The burden of demonstrating inadequate representation "is not onerous," and AFPM "need only show that representation of [its] interest 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (quoting *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)).

Here, none of the existing parties can adequately represent AFPM's interests. We expect Petitioners to challenge EPA's interpretation of its exemption authority and grant of 31 exemptions. Petitioners' interests are directly opposed to those of AFPM. EPA is not directly regulated by the decision and therefore does not share the same interests as AFPM. As a governmental entity "charged by law with representing the public interest of its citizens," EPA must avoid advancing the "narrower interest" of certain businesses "at the expense of its representation of the general public interest." *Dimond*, 792 F.2d at 192-93; *see also Utahns for Better Transp. v. U.S. Dep't of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) ("[T]he government's prospective task of protecting not only the interest of the public but

also the private interest of the petitioners in intervention is on its face impossible and creates the kind of conflict that satisfies the minimal burden of showing inadequacy of representation." (internal quotation marks and citation omitted)); *County of San Miguel, Colo. v. MacDonald*, 244 F.R.D. 36, 48 (D.D.C. 2007) ("The District of Columbia Circuit has 'often concluded that government entities do not adequately represent the interests of aspiring intervenors.'" (quoting *Fund for Animals*, 322 F.3d at 736)). This makes EPA unsuited to represent the interests of AFPM's members in this litigation.

Even if AFPM's interests and EPA's interests were more closely aligned, "that [would] not necessarily mean that adequacy of representation is ensured." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (concluding that the interests of companies seeking to intervene on EPA's behalf were "concerned primarily with the regulation that affects their industries" and that the companies' "participation in defense of EPA decisions that accord with their interest may also be likely to serve as a vigorous and helpful supplement to EPA's defense"); *see also Trbovich*, 404 U.S. at 538 & n.10 (finding a prospective intervenor met his "minimal" burden of showing possible inadequate representation of his interests by the government even where a statute expressly obligated the Secretary of Labor to serve his interests). Here, the unique perspectives that AFPM brings to this case

will supplement EPA's defense of the 2018 SRE Decision and provide an invaluable perspective to the Court in resolving this case.

## CONCLUSION

Because AFPM satisfies the requirements for intervention, AFPM respectfully requests that the Court grant AFPM leave to intervene in support of Respondent EPA.

DATED: November 21, 2019

Respectfully submitted,

*/s/ Robert J. Meyers*
Robert J. Meyers
Thomas A. Lorenzen
Elizabeth B. Dawson
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
(202) 624-2967
rmeyers@crowell.com

Richard S. Moskowitz
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
1800 M Street, NW
Suite 900 North
Washington, DC 20036
(202) 844-5474
rmoskowitz@afpm.org

*Counsel for Petitioner American Fuel & Petrochemical Manufacturers*

## CERTIFICATE OF COMPLIANCE

The foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 3,410 words, excluding those parts exempted by Fed. R. App. P. 32(f).

This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point, Times New Roman font.

*/s/ Robert J. Meyers*
Robert J. Meyers

DATED: November 21, 2019

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

| | | |
|---|---|---|
| **RENEWABLE FUELS ASSOCIATION, AMERICAN COALITION FOR ETHANOL, GROWTH ENERGY, NATIONAL BIODIESEL BOARD, NATIONAL CORN GROWERS ASSOCIATION, and NATIONAL FARMERS UNION,** | ) | |
| ***Petitioners*,** | ) | |
| **v.** | ) | |
| **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,** | ) | **Case No. 19-1220** |
| ***Respondent.*** | ) | |

**RULE 26.1 DISCLOSURE STATEMENT OF**
**AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioner American Fuel & Petrochemical Manufacturers ("AFPM") states that it is a national trade association of more than 300 companies, including virtually all U.S. refiners and petrochemical manufacturers. AFPM has no parent companies, and no publicly held company has a 10% or greater ownership interest in AFPM.

AFPM is a "trade association" within the meaning of Circuit Rule 26.1(b). AFPM is a continuing association operating for the purpose of promoting the general commercial, professional, legislative, or other interests of its membership.

DATED: November 21, 2019

Respectfully submitted,

*/s/ Robert J. Meyers*
Robert J. Meyers
Thomas A. Lorenzen
Elizabeth B. Dawson
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
(202) 624-2967
rmeyers@crowell.com

Richard S. Moskowitz
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
1800 M Street, NW
Suite 900 North
Washington, DC 20036
(202) 844-5474
rmoskowitz@afpm.org

*Counsel for Petitioner American Fuel & Petrochemical Manufacturers*

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

| | | |
|---|---|---|
| **RENEWABLE FUELS ASSOCIATION, AMERICAN COALITION FOR ETHANOL, GROWTH ENERGY, NATIONAL BIODIESEL BOARD, NATIONAL CORN GROWERS ASSOCIATION, and NATIONAL FARMERS UNION,** | ) | |
| ***Petitioners*,** | ) | |
| **v.** | ) | |
| **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,** | ) | **Case No. 19-1220** |
| ***Respondent.*** | ) | |

## CERTIFICATE AS TO PARTIES AND AMICI

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(a), American Fuel & Petrochemical Manufacturers ("AFPM") states as follows:

The Petitioners in this matter are Renewable Fuels Association, American Coalition for Ethanol, Growth Energy, National Biodiesel Board, National Corn Growers Association, and National Farmers Union.

The Respondent in this matter is the United States Environmental Protection Agency ("EPA").

HollyFrontier Refining & Marketing, LLC; HollyFrontier Cheyenne Refining, LLC; HollyFrontier Woods Cross Refining, LLC; Alon Refining Krotz Springs, Inc.; Alon USA, LP; American Refining Group, Inc.; Calumet Montana Refining, LLC; Calumet Shreveport Refining, LLC; Delek Refining, Ltd.; Ergon Refining, Inc.; Ergon-West Virginia, Inc.; Hunt Refining Company; Lion Oil Company; Par Hawaii Refining, LLC; Sinclair Casper Refining Company; Sinclair Wyoming Refining Company; U.S. Oil & Refining Company; and Wyoming Refining Company have moved for leave to intervene in support of Respondent EPA.

AFPM is not aware of any amici in this case.

DATED: November 21, 2019

Respectfully submitted,

*/s/ Robert J. Meyers*
Robert J. Meyers
Thomas A. Lorenzen
Elizabeth B. Dawson
CROWELL & MORING LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
(202) 624-2967
rmeyers@crowell.com

Richard S. Moskowitz
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
1800 M Street, NW
Suite 900 North
Washington, DC 20036
(202) 844-5474

rmoskowitz@afpm.org

*Counsel for Petitioner*
*American Fuel & Petrochemical*
*Manufacturers*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 21, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

*/s/ Robert J. Meyers*
Robert J. Meyers