

ORAL ARGUMENT NOT YET SCHEDULED
No. 16-1430 (Consolidated with No. 16-1447)
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**TRUCK TRAILER MANUFACTURERS
ASSOCIATION, INC.,**

Petitioner,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,**

Respondents.

On Petition for Review of Decision of the U.S. Environmental
Protection Agency and the U.S. Department of Transportation

**MOTION TO INTERVENE OF THE CALIFORNIA AIR
RESOURCES BOARD AND THE STATES OF
CONNECTICUT, IOWA, MASSACHUSETTS, OREGON,
RHODE ISLAND, VERMONT, AND WASHINGTON**

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Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the California Air Resources Board (ARB), and the States of Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont and Washington (collectively, “Proposed Intervenor States”) hereby move to intervene as Respondents to defend the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, published at 81 Fed. Reg. 73,478 on Oct. 25, 2016 (hereafter, “Phase 2 Standards”). Pursuant to Circuit Rule 15(b), the Proposed Intervenor States intend this motion to intervene to apply to all petitions for review of these Phase 2 Standards.

ARB’s counsel has contacted counsel for the parties in this action. Petitioners Truck Trailer Manufacturers Association, Inc. (No. 16-1430) indicated it would wait to see the motion before taking a position. Petitioners Racing Enthusiasts and Suppliers Coalition (No. 16-1447) indicated they intend to take no position on this motion. Respondents the United States Environmental Protection Agency (EPA) and the United States Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) indicated they take no position and reserve the right to review the motion once it is filed.

INTRODUCTION

The Phase 2 Standards, issued jointly by EPA and NHTSA, continue a program to reduce greenhouse gas emissions from new medium- and heavy-duty vehicles and engines. The Proposed Intervenor States seek to intervene because the greenhouse gas emission reductions that will be achieved through these Phase 2 Standards are an important part of broader efforts to reduce these harmful, climate-altering emissions. Specifically, the Proposed Intervenor States have substantial interests in strong federal emissions standards because such standards are needed to secure nationwide emissions reductions that are crucial to mitigate climate impacts which are already being experienced by the Proposed Intervenor States. Any weakening or delay of the Phase 2 Standards will result in increased harms to our natural resources, our economies, and our citizens.

BACKGROUND

In 2009, EPA found that greenhouse gas emissions qualify as “pollutants” for purposes of the Clean Air Act because they endanger public health and welfare. Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009). In 2010, EPA and NHTSA jointly issued standards to reduce greenhouse gas emissions from light-duty vehicles (cars and light trucks) for model years 2012 to 2016. Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate

Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010). This Court upheld the endangerment findings and the light-duty vehicle standards in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 113 (D.C. Cir. 2012), *rev'd in part on other grounds sub nom Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014). The Court granted a motion by Proposed Intervenor States to intervene in that action, which was made on grounds similar to those raised in this motion. *See id.* at pp. 107-113.

In 2011, EPA and NHTSA jointly issued the first national standards to reduce greenhouse gas emissions from new medium- and heavy-duty engines and vehicles (i.e., trucks), covering model years 2014 to 2018. Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, 76 Fed. Reg. 57,106 (Sept. 15, 2011). Those standards are now referred to as the Phase 1 Standards for medium- and heavy-duty engines and vehicles. *See* 81 Fed. Reg. at 73,479. This Court dismissed challenges to those Phase 1 Standards. *Delta Const. Co. v. EPA*, 783 F.3d 1291, 1301 (D.C. Cir. 2015). Many of the Proposed Intervenor States also moved to intervene in those cases for reasons similar to those presented here. *See id.*

The Phase 2 Standards at issue in the present cases build upon the Phase 1 Standards in several ways, including by establishing increasingly stringent standards beginning with model year 2021 and by establishing standards for certain

2018 and later trailers used in combination with tractors for the first time. 81 Fed. Reg. at 73,481. Because the vehicles sold under these standards will remain on the roads for years after their initial sale, these Phase 2 Standards are anticipated to reduce greenhouse gas emissions well beyond 2027. Indeed, the Phase 2 Standards are projected to reduce greenhouse gas emissions by more than 150 million metric tons annually by 2040. 81 Fed. Reg. at 73,482. The Phase 2 Standards are an important component of broader efforts to reduce greenhouse gas emissions from the transportation sector which, nationally, is the second largest contributor to those emissions. 81 Fed. Reg. at 73,833.

ARGUMENT

This motion to intervene meets the standards under Federal Rule of Appellate Procedure 15(d) as well as the standards under Federal Rule of Civil Procedure 24, which this Court has sometimes incorporated into its intervention analysis. *See, e.g., Building & Const. Trades Dept., AFL-CIO v. Reich*, 40 F.3d 1275, 1282 (D.C. Cir. 1994) (quoting *Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965) and applying Rule 24 standards to intervention in appellate proceedings).

The main issues under either Federal Rule of Appellate Procedure 15(d) or Federal Rule of Civil Procedure 24 are timeliness and the proposed intervenors' interest in the case. *See Fed. R. App. Proc. 15(d); Fed. R. Civ. Pro. 24.* This

motion is timely because it was filed within 30 days of the Petitions for Review, which were filed on December 22, 2016 (No. 16-1430) and December 27, 2016 (No. 16-1447). *See* Fed. R. App. Proc. 15(d).

In addition, the Proposed Intervenor States' interests in the Phase 2 Standards are more than sufficient to support their intervention. “[C]onstitutional standing is alone sufficient to establish that [a proposed intervenor] has an interest relating to the property or transaction which is the subject of the action.” *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (internal quotation omitted). The Proposed Intervenor States have constitutional standing under *Massachusetts v. EPA*, 549 U.S. 497 (2007). The Supreme Court held there that States, like Massachusetts, have “independent interest[s] in all the earth and air within [their] domain” that entitle them to “special solicitude in ... standing analysis.” *Id.* at 519-20 (internal quotation omitted). That case, like these cases, involved federal regulation of greenhouse gas emissions and the threats from climate change, so the “special solicitude” applicable there is equally applicable here. *See id.*

Climate change, the Court observed, has already led to “serious and well-recognized” harms, including accelerated rising of sea levels that are swallowing

States' coastal lands. *Id.* at 521-22.¹ The Court also concluded that unregulated greenhouse gas emissions contribute to these injuries to States, satisfying the causation inquiry for standing. *Id.* at 523-525. Finally, the Court held that some reductions in, or some regulation of, greenhouse gas emissions could slow or reduce the onset of climate-change-related harms, which was enough to meet the redressability requirement for standing, even if the reductions or regulation would not, in and of itself, eliminate the risks of climate change. *Id.* at 525-26.

These holdings are directly applicable here, where the Proposed Intervenor States seek to defend standards designed to reduce the very same emissions. And, consistent with these holdings, this Court has allowed many of the Proposed Intervenor States to intervene to defend federal greenhouse gas regulations. *See, e.g., Coalition for Responsible Regulation, Inc.*, 684 F.3d at 107-113. The same sovereign interests recognized in *Massachusetts* and these other cases could be impaired by any delay or weakening of the Phase 2 Standards as a result of this litigation. The Proposed Intervenor States accordingly have standing and more than sufficient interests to support granting this motion to intervene.

¹ EPA and NHTSA have similarly, and more recently, concluded that climate change threatens public health by increasing the likelihood of deaths and illnesses related to heat waves, ozone pollution, and extreme weather. 81 Fed. Reg. at 73,486. It also threatens public welfare by “plac[ing] large areas of the country at serious risk of reduced water supplies, increased water pollution, and increased occurrence of extreme events such as floods and droughts.” *Id.*

In addition, as EPA and NHTSA noted, California's Air Resources Board, the lead proposed intervenor here, "consulted frequently" and substantively with EPA and NHTSA during the development of these Phase 2 Standards. 81 Fed. Reg. at 73,480. This investment of effort reflects California's interest in strong national standards that reduce greenhouse gas emissions from heavy-duty vehicles and underscores that the Proposed State Intervenors have strong interests in these standards. *See id.* at 73,488.

Finally, although the Proposed State Intervenors' interests appear, at this early stage in the litigation, to be aligned with EPA's and NHTSA's interests in defending the Phase 2 Standards, that has not always been the case in the past and may not always be the case in the future. *See, e.g., Massachusetts*, 549 U.S. 497 (suit by Massachusetts to compel EPA to make endangerment finding for greenhouse gas emissions and to regulate greenhouse gas emissions from vehicles). EPA may, for example, seek to settle or otherwise resolve this case in ways that could be adverse to the Proposed Intervenor States' interests. Courts have recognized that the interests of one governmental entity may not be the same as another governmental entity. *See, e.g., Forest Conserv. Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011). Proposed

State Intervenors seek to intervene here so that they may adequately protect the important and substantial interests described above.

CONCLUSION

The Proposed Intervenor States respectfully request that this Court grant them leave to intervene to defend the Phase 2 Standards, as this Court has done for many of these States in similar proceedings. *See Coalition for Responsible Regulation*, 684 F.3d at 107-113.

Dated: January 23, 2017

Respectfully Submitted,

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² For purposes of ECF-3(b) of this Court's Administrative Order Regarding Electronic Case filing (May 15, 2009), counsel for ARB hereby represents that the other parties listed in the signature blocks have consented to the filing of this motion to intervene.

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**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

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Pursuant to D.C. Circuit Rule 28(a)(1), the California Air Resources Board (ARB), and the States of Connecticut, Iowa, Massachusetts, Oregon, Rhode Island, Vermont, and Washington (collectively, “Proposed Intervenor States”) hereby certify as follows:

(A) Parties and Amici

This is a petition for review of final agency action, so there were no district court proceedings. The parties before this Court are:

Petitioners: Truck Trailer Manufacturers Association, Inc. (No. 16-1430) and Racing Enthusiasts and Suppliers Coalition (No. 16-1447);

Respondents: U.S. Environmental Protection Agency (EPA); Gina McCarthy, in her official capacity as EPA Administrator; National Highway Traffic Safety Administration (NHTSA); and Mark Rosekind, in his official capacity as NHTSA Administrator;

Intervenors: Environmental Defense Fund has also moved to intervene.

There are no amici at this time.

(B) Rulings Under Review

Petitioners seek review of the final agency by EPA and NHTSA titled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, published at 81 Fed. Reg. 73,478 on Oct. 25, 2016

(C) Related Cases

Movants are not aware of any related cases.

Dated: January 23, 2017

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CERTIFICATE OF SERVICE

Case	Truck Trailer	No.	16-1430
Name:	Manufacturers		(and consolidated cases)
	Association, Inc. v. US		
	EPA, et al.		

I hereby certify that on January 23, 2017, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**MOTION TO INTERVENE OF CALIFORNIA AIR RESOURCES BOARD,
AND STATES OF CONNECTICUT, IOWA, MASSACHUSETTS,
OREGON, RHODE ISLAND, VERMONT, AND WASHINGTON**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 23, 2017 at Berkeley, California.

M. Elaine Meckenstock

/s/ M. Elaine Meckenstock

Declarant

Signature