

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
STATE OF NEW YORK, et al.,	)	
	)	
Plaintiffs,	)	
	)	
and	)	
	)	
ENVIRONMENTAL DEFENSE FUND,	)	Civil Action No. 18-773 (RBW)
2060 Broadway, Suite 300	)	
Boulder, CO 80302	)	
	)	
Applicant Plaintiff-Intervenor,	)	<b><u>ENVIRONMENTAL DEFENSE FUND’S</u></b>
	)	<b><u>UNOPPOSED MOTION TO INTERVENE AS</u></b>
	)	<b><u>PLAINTIFF</u></b>
v.	)	
	)	
E. SCOTT PRUITT, et al.,	)	
1200 Pennsylvania Avenue, NW	)	
Washington, D.C. 20460	)	
	)	
Defendants.	)	
_____	)	

**ENVIRONMENTAL DEFENSE FUND’S**  
**UNOPPOSED MOTION TO INTERVENE AS PLAINTIFF**

Pursuant to Federal Rule of Civil Procedure 24, Environmental Defense Fund (“EDF”) respectfully moves to intervene in the above-captioned matter as Plaintiff as of right, or, in the alternative, permissively. Plaintiffs ask this Court to compel the Environmental Protection Agency (“EPA”) to issue emission guidelines for methane from existing oil and natural gas sources, an action that the Clean Air Act requires EPA to take but that EPA has unreasonably delayed. Intervention is necessary because EDF and its members have an interest in obtaining the relief requested by Plaintiffs, and because disposition of this action without EDF’s participation could impair EDF’s ability to obtain that relief. This motion is accompanied by a

proposed complaint setting forth EDF's claim for unreasonable delay of agency action, as required by Local Civil Rule 7(j).

Counsel for EDF has conferred with counsel for the other parties in this matter. Counsel for Plaintiffs has indicated that they consent to EDF's motion to intervene, and counsel for Defendants has indicated that they do not oppose EDF's motion.

This case involves EPA's obligation, set forth in the Clean Air Act and associated regulations, to issue emission guidelines for existing sources in a designated source category concurrently upon or after its promulgation of emission standards for new sources in that category. Because EPA has issued new source standards for methane from oil and gas sources, but has unreasonably delayed issuing corresponding existing source guidelines, as required by the Clean Air Act, Plaintiffs seek to compel EPA to issue those guidelines. As discussed in the attached memorandum, EDF seeks intervention to ensure that its interests and the interests of its members in preventing the emission of methane and other harmful air pollutants are represented in this litigation.

DATED: May 25, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on May 25, 2018, I filed the foregoing **ENVIRONMENTAL DEFENSE FUND'S UNOPPOSED MOTION TO INTERVENE AS PLAINTIFF, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFF, APPENDIX TO MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFF, PROPOSED ORDER GRANTING ENVIRONMENTAL DEFENSE FUND'S MOTION TO INTERVENE AS PLAINTIFF, AND PROPOSED COMPLAINT** using the United States District Court CM/ECF system, which caused all counsel of record to be served electronically.

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v.	)	
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E. SCOTT PRUITT, et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF MOTION TO INTERVENE AS PLAINTIFF**

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May 25, 2018

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## INTRODUCTION

This case seeks to compel E. Scott Pruitt, in his official capacity as Administrator of the United States Environmental Protection Agency, and the United States Environmental Protection Agency (together, “EPA” or “the Agency”), to issue emission guidelines limiting methane emissions from existing sources in the oil and natural gas sector, as required by the Clean Air Act (“CAA”). EPA has unreasonably delayed issuing these guidelines, despite the CAA’s clear mandate for it to do so.

Section 111(b) of the CAA requires the EPA Administrator to establish standards of performance governing the emission of air pollutants from new sources in the oil and gas sector and to review, and if appropriate revise, those standards at least every 8 years. 42 U.S.C. § 7411(b)(1)(B). Section 111(d) of the CAA, as well as EPA’s implementing regulations, require EPA to issue emission guidelines covering existing oil and gas operations for which standards of performance have been issued. *Id.* § 7411(d); 40 C.F.R. § 60.22(a). The existing source requirements apply to those pollutants that have not been identified as criteria pollutants or regulated as hazardous air pollutants (“HAPs”), but that are regulated under the new source performance standards for a category of sources. 42 U.S.C. § 7411(d).

In June 2016, EPA issued new source performance standards governing methane emissions from new and modified sources in the oil and gas sector. 81 Fed. Reg. 35,824 (June 3, 2016) (“2016 NSPS”). The promulgation of these standards triggered EPA’s statutory duty under section 111(d) of the CAA to establish emission guidelines for existing sources of methane in the oil and gas sector. Yet, nearly two years later, EPA has failed to fulfill this obligation, and has shown no signs of beginning work to develop such guidelines. To the contrary, in March 2017, EPA reversed course, withdrawing an information collection request (“ICR”) that the agency had previously identified as an element of its approach to begin regulating existing

sources. 82 Fed. Reg. 12,817 (Mar. 7, 2017). Moreover, EPA's 2016 adoption of new source standards for methane was itself delayed since at least 2012. 77 Fed. Reg. 49,490, 49,513 (Aug. 16, 2012) ("2012 NSPS") ("In this rule, we are not taking final action with respect to regulation of methane. Rather, we intend to continue to evaluate the appropriateness of regulating methane with an eye toward taking additional steps if appropriate"). The Agency's failure to timely promulgate existing source standards for methane must be understood in the context of this extended delay in adopting new source methane standards.

As discussed in detail below, methane is a potent greenhouse gas with a climate-forcing effect significantly more powerful than that of carbon dioxide. The oil and gas sector is responsible for a substantial portion of total U.S. methane emissions, and existing sources within the sector account for the overwhelming majority of those emissions. Existing source standards for the oil and gas sector are needed to reduce these substantial methane emissions, and will have the added benefit of reducing co-emitted pollutants such as volatile organic compounds ("VOCs") and HAPs.

Emission guidelines for existing sources in the oil and natural gas sector are statutorily mandated and of vital importance for improving public health and reducing the impacts of climate change. EPA's failure to establish such guidelines for methane is contrary to section 111(d) of the CAA and its implementing regulations. 42 U.S.C. § 7411(d); 40 C.F.R. § 60.22(a). The States of New York, California, Connecticut, Illinois, Iowa, Maine, Maryland, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, and the City of Chicago (collectively, "the States") have filed suit to compel EPA to establish these guidelines, an action EPA has unreasonably delayed. Environmental Defense Fund ("EDF") seeks to intervene in this suit to require EPA to take that

action, mandated by the CAA, to secure critical emission reductions and public health benefits for the protection of EDF's members and the general public.

## ARGUMENT

### I. EDF IS ENTITLED TO INTERVENE AS OF RIGHT

Under Federal Rule of Civil Procedure 24(a), a movant is entitled to intervene as of right if: (1) the motion is “timely”; (2) the movant “claims an interest relating to the property or transaction that is the subject of the action”; (3) “disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest”; and (4) that interest is not “adequately represent[ed] by existing parties.” Fed. R. Civ. P. 24(a)(2); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). In this Circuit, “in addition to establishing its qualification for intervention under Rule 24(a)(2), a party seeking to intervene as of right must demonstrate that it has standing under Article III of the Constitution.” *Fund for Animals*, 322 F.3d at 731–32.

EDF satisfies each of Rule 24(a)’s requirements and has standing under Article III. EDF is therefore entitled to intervene in this action as of right.

#### A. EDF Has Article III Standing.

EDF has standing to intervene in this lawsuit on behalf of its members, who are harmed by pollution from existing oil and gas sources. To establish such “representational standing,” EDF must demonstrate that (1) “its members would otherwise have standing to sue in their own right”; (2) “the interests it seeks to protect are germane to the organization’s purpose”; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members.” *Nat. Res. Def. Council v. EPA*, 755 F.3d 1010, 1016 (D.C. Cir. 2014) (quoting *Defenders of Wildlife v. Perciasepe*, 714 F.3d 1317, 1323 (D.C. Cir. 2013)). To demonstrate that its members have standing to sue in their own right, EDF must show that (1) its members have

suffered an injury in fact; (2) there is a causal connection between that injury and EPA's unreasonable delay in issuing emission guidelines; and (3) the injury is likely to be redressed by a favorable decision. *Id.* The D.C. Circuit has repeatedly held that organizations such as EDF have standing to sue to protect their members from pollution that threatens and concerns those members. *See, e.g., id.* at 1016–17; *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672–73 (D.C. Cir. 2013).

Here, EDF's members satisfy these three elements that make up “the irreducible constitutional minimum of standing.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). EDF's members have suffered and continue to suffer injury due to emissions of methane and co-emitted pollutants from the oil and gas sector. The oil and gas sector is the largest industrial source of methane in the United States, accounting for nearly one-third of U.S. methane emissions,<sup>1</sup> and existing sources account for the overwhelming majority of methane emissions from the oil and gas sector.<sup>2</sup>

Methane is a potent greenhouse gas that is approximately 84 times more powerful than carbon dioxide over a 20-year period, and 28 times more powerful over a 100-year period.<sup>3</sup> Along with methane, existing wells emit smog-forming VOCs and cancer-causing HAPs.<sup>4</sup>

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<sup>1</sup> *Overview of Greenhouse Gases: Methane Emissions*, EPA, <https://www.epa.gov/ghgemissions/overview-greenhouse-gases#methane> (last visited May 10, 2018).

<sup>2</sup> ICF Int'l, *Economic Analysis of Methane Emission Reduction Opportunities in the U.S. Onshore Oil and Natural Gas Industries 1-1* (Mar. 2014) (“ICF Report”), available at [https://www.edf.org/sites/default/files/methane\\_cost\\_curve\\_report.pdf](https://www.edf.org/sites/default/files/methane_cost_curve_report.pdf).

<sup>3</sup> Gunnar Myhre et al., *Climate Change 2013: The Physical Science Basis*, Intergovernmental Panel on Climate Change, 713–14 (2013), [http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5\\_Chapter08\\_FINAL.pdf](http://www.ipcc.ch/pdf/assessment-report/ar5/wg1/WG1AR5_Chapter08_FINAL.pdf).

<sup>4</sup> ICF Report at 4-11 to -13.

Among other harmful effects, VOCs form ozone, exposure to which can lead to negative respiratory and cardiovascular effects. People with lung diseases such as asthma and chronic obstructive pulmonary disorder are particularly at risk, as are children and older adults. 81 Fed. Reg. at 35,837. Long-term exposure to ozone can also lead to the development of asthma. *Id.* HAPs, such as benzene, “can lead to a variety of health concerns such as cancer and noncancer illnesses (*e.g.*, respiratory, neurological).” *Id.*

EDF’s members suffer harm caused by these dangerous pollutants—and EPA’s failure to issue guidelines that would limit their emission—every day. EDF member Denise Fort lives in New Mexico and is threatened by forest fires that have become increasingly frequent and severe due to climate change. Fort Decl. ¶ 10. This threat affects her personal enjoyment of her property, as well as the property’s value. *Id.* Ms. Fort is concerned that climate change will also interfere with her recreational opportunities: reduced snowfall will limit her ability to participate in winter sports and will result in less runoff and lower water levels in the summer, interfering with her recreation on the river. *Id.* ¶ 12.

EDF member and board member Arthur Cooley is also concerned about the effects of climate change exacerbated by methane emissions from the oil and gas sector. Mr. Cooley lives near the ocean, and the beach on which he takes frequent walks “is now completely inundated in high surf and high tide conditions.” Cooley Decl. ¶ 7. Mr. Cooley is concerned that if greenhouse gas emissions, global warming, and sea level rise continue unabated, he will no longer be able to enjoy his recreational walks along the beach. *Id.* As a biologist, Mr. Cooley is also concerned about the adverse impacts of climate change on the wildlife, resources, and ecosystems he studies. *Id.* ¶¶ 8–9.

Don Schreiber, an EDF member who owns a ranch in northwestern New Mexico, is witnessing the harmful effects of climate change on his property. The warmer weather allows weeds to “flourish” and “inhibit the growth of essential native grasses.” Schreiber Decl. ¶ 13. Mr. Schreiber has observed changes in weather patterns in recent years—including drought and increased wind, severity of rainstorms, and erosion—that have required him to alter the timing of his ranching operations. *Id.*

EDF members also suffer harm from VOCs and HAPs that are co-emitted with methane. EDF has over 150,000 members in the 14 states with the highest levels of oil and gas production, and over 2,100 members in the 30 counties with the largest number of active oil and gas wells that would be subject to existing source guidelines. Stith Decl. ¶ 11. For example, EDF member Hugh Fitzsimons is a rancher and landowner near San Antonio, Texas, with oil and gas development on and immediately surrounding his property. Mr. Fitzsimons has approximately 90 producing and inactive wells on his ranch. Fitzsimons Decl. ¶ 2. He is concerned about the threat posed by air pollution from these wells to his health and the health of his family members and employees. *Id.* ¶¶ 13–14.

Mr. Schreiber, the ranch owner in New Mexico, has approximately 120 oil and gas wells on and immediately adjacent to his property. Schreiber Decl. ¶ 2. While walking on his property, Mr. Schreiber often sees that the air is distorted by vapor escaping from leaking wells, and is troubled by the near-constant smell of leaking gas, which can make breathing uncomfortable. *Id.* ¶¶ 8, 10. Mr. Schreiber is concerned about the health effects of inhaling pollution emitted by the wells on and near his property, especially because he has cardiovascular disease that increases his risk of harm. *Id.* ¶ 11. Mr. Schreiber is likewise concerned about his

grandchildren's exposure to air pollution on his property, limiting his ability to enjoy time with them when they visit the ranch. *Id.* at ¶ 12.

These harms to EDF's members will continue so long as EPA fails to regulate methane from existing sources of oil and gas pollution. Promulgating methane emission guidelines will redress EDF's members' injuries. Reducing methane emissions will play a key role in preventing the impacts of climate change, as EPA itself has acknowledged. 81 Fed. Reg. at 35,877 (“[T]he climate benefits anticipated from the implementation of [the 2016 NSPS] are consequential in terms of the quantity of methane reduced, particularly in light of the potency of methane as a [greenhouse gas].”); *id.* at 35,836 (noting that recent “assessments and observed changes make it clear that reducing emissions of [greenhouse gases] across the globe is necessary in order to avoid the worst impacts of climate change and underscore the urgency of reducing emissions now”). Reductions in co-emitted VOCs and HAPs will decrease the health risks those pollutants pose for individuals subject to elevated levels of exposure. *See id.* at 35,889 (explaining that reductions in VOCs and HAPs from 2016 NSPS will lead to “health improvements,” as well as “improvements in visibility effects, ecosystem effects and climate effects”). Existing source methane guidelines are therefore needed to redress EDF's members' ongoing injuries, and EDF's members have standing to bring the claims advanced here.

EDF also satisfies the additional prongs of the representational standing test. EDF's mission is to “preserve the natural systems on which all life depends.”<sup>5</sup> As detailed below, *infra* pp. 9–12, EDF has a long history of conducting extensive scientific research to understand the sources and impacts of methane emissions, and EDF has used that knowledge to engage

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<sup>5</sup> *Our Mission and Values*, EDF, <https://www.edf.org/our-mission-and-values> (last visited May 14, 2018).

thoroughly in EPA rulemakings related to regulating air pollution from the oil and gas sector. The interest EDF seeks to protect here—compelling EPA to comply with its duty under the CAA to issue methane emission guidelines—is clearly “germane to [EDF’s] purpose.” *Nat. Res. Def. Council*, 755 F.3d at 1016. There is also no reason that the claim asserted or relief requested would require the participation of individual members. *See id.* If EDF successfully litigates on its members’ behalf, and EPA issues the required emission guidelines, EDF’s members will obtain the benefits of reduced air pollution emissions. Thus, EDF has standing to intervene in this litigation on behalf of its members, who are continually harmed by EPA’s unreasonable delay in issuing emission guidelines for methane from existing sources, and whose injury will be redressed if EPA does in fact issue those guidelines.

**B. EDF Satisfies the Rule 24(a) Requirements.**

**1. The motion to intervene is timely.**

A motion to intervene under Rule 24(a) must be timely. Whether a motion to intervene is timely “is to be determined from all the circumstances.” *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 907 (D.C. Cir. 1977) (citation omitted). This requires a court to look not only to the amount of time that has elapsed since the litigation began, but also to the “related circumstances, including the purpose for which intervention is sought, the necessity for intervention as a means of preserving the applicant’s rights, and the improbability of prejudice to those already parties in the case.” *Hodgson v. United Mine Workers*, 473 F.2d 118, 129 (D.C. Cir. 1972); *see also Mortg. Bankers Ass’n v. Solis*, No. 1:11-CV-0073 (RBW), 2012 WL 13059892, at \*3 (D.D.C. Feb. 3, 2012) (“First, timeliness is assessed based on ‘consideration of all the circumstances’ in a case and the ultimate resolution of this factor ‘must [to a large degree] necessarily be left to the discretion of the trial court.’” (alteration in original) (citation omitted)).

EDF's motion is timely. The States filed their complaint on April 5, 2018. Federal defendants' answer to the complaint is due by June 17, 2018. During the time since the filing of the States' complaint, EDF has diligently prepared this filing and is now seeking intervention less than two months after the complaint was filed and over three weeks before federal defendants' answer is due. EDF's intervention at this early stage will not interfere with the briefing schedule and will not prejudice existing parties. This motion is therefore timely. *See Navistar v. Jackson*, 840 F. Supp. 2d 357, 361 (D.D.C. 2012) (finding motion to intervene was timely filed when it was filed nearly two and one half months after the complaint and less than two weeks after responsive pleadings); *Fund for Animals*, 322 F.3d at 735 (finding motion to intervene was timely filed when it was filed less than two months after the complaint and before any answer from defendants).

**2. EDF has an interest in the subject matter of this litigation.**

That EDF has Article III standing, as demonstrated above, is sufficient to establish that EDF has “an interest relating to the property or transaction which is the subject of the action.” *Fund for Animals*, 322 F.3d at 735 (quoting Fed. R. Civ. P. 24(a)(2)); *see also Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1076 (D.C. Cir. 1998) (“Upjohn need not show anything more than that it has standing to sue in order to demonstrate the existence of a legally protected interest for purposes of Rule 24(a).”).

Additionally, EDF has multiple strong interests in ensuring EPA carries out its duty to establish emission guidelines for methane from existing oil and gas sources. First, EDF has engaged in extensive scientific research to better document the problem of methane emissions from the oil and natural gas sector. For example, in 2012, in partnership with over 100 universities, research institutions, and companies, EDF launched a series of 16 independent

projects designed to assess methane emissions from the U.S. natural gas supply chain, and where in the chain those leaks occur.<sup>6</sup> Studies conducted as part of this effort have consistently found that methane leakage is likely to be larger than official estimates.<sup>7</sup> Just last month, EDF announced plans to develop and launch MethaneSAT, a new satellite that will identify and measure anthropogenic methane emissions worldwide, starting with the oil and gas industry.<sup>8</sup>

Second, informed by this research, EDF has been actively engaged in EPA's rulemaking process regarding methane emissions from the oil and gas industry, and has long advocated for EPA to issue existing source guidelines for methane. EDF and a coalition of public interest organizations submitted extensive comments on EPA's proposals for both the 2012 and 2016 NSPS, and in both sets of comments, urged EPA to issue emission guidelines for existing sources of methane, consistent with its Clean Air Act duty.<sup>9</sup> These comments explained the critical need for existing source standards given that 90 percent of emissions from the oil and natural gas sector come from existing infrastructure,<sup>10</sup> and provided in-depth suggestions for

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<sup>6</sup> EDF, Fact Sheet, Methane Research: The 16 Study Series, [https://www.edf.org/sites/default/files/methane\\_studies\\_fact\\_sheet.pdf](https://www.edf.org/sites/default/files/methane_studies_fact_sheet.pdf).

<sup>7</sup> *E.g., id.* at 2–3 (“The [gathering infrastructure and gas processing facility] study found methane leakage from gathering activities is 8 times larger than official estimates.”); *id.* at 4 (“The [Denver-Julesburg Basin] study estimated methane emissions that were three times higher than estimates derived from EPA data.”).

<sup>8</sup> Press Release, EDF, EDF Announces Satellite Mission to Locate and Measure Methane Emissions (Apr. 11, 2018), <https://www.edf.org/media/edf-announces-satellite-mission-locate-and-measure-methane-emissions>.

<sup>9</sup> See Sierra Club et al., Comments on “New Source Performance Standards: Oil and Natural Gas Sector; Review and Proposed Rule for Subpart OOOO” 74–80, 90–92 (Nov. 30, 2011) (“2012 NSPS Comments”), Docket ID: EPA-HQ-OAR-2010-0505-4240; Clean Air Task Force et al., Comments on “Oil and Natural Gas Sector: Emission Standards for New and Modified Sources” (Dec. 4, 2015) (“2016 NSPS Comments”), Docket ID: No. EPA-HQ-OAR-2010-0505-7322.

<sup>10</sup> 2016 NSPS Comments at 4; ICF Report at 1-1.

design approaches to reduce methane emissions from various sources of emissions within the sector (e.g., pneumatic devices, compressors, storage vessels, well completions, and liquids unloading).<sup>11</sup>

After EPA issued the 2012 NSPS, EDF and a number of other environmental organizations transmitted a notice of intent to sue the Agency for its failure to issue new source performance standards for methane in addition to VOCs, and for its failure to timely issue emission guidelines for the control of methane from existing sources.<sup>12</sup> After EPA issued the 2016 NSPS—which did include methane standards for new sources—EDF and other organizations submitted a petition for reconsideration highlighting the Agency’s failure to issue corresponding existing source guidelines. The petition explained that EPA was inappropriately delaying regulation of existing sources despite the fact that existing sources of methane in the oil and gas sector can be addressed through the same control methods that apply to new sources.<sup>13</sup>

When EPA published a Federal Register notice announcing its plan to issue an ICR to obtain specific information from the oil and gas sector that would help the Agency create existing source standards, EDF made clear its view that additional information was not needed to support existing source standards, but nonetheless submitted detailed comments recommending

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<sup>11</sup> 2012 NSPS Comments at 97–107.

<sup>12</sup> Letter from Timothy D. Ballo, Earthjustice, et al., to Lisa P. Jackson, Adm’r, EPA (Aug. 29, 2012).

<sup>13</sup> Clean Air Task Force et al., Petition for Reconsideration in the Matter of: Final Rule Published at 81 Fed. Reg. 35,824 (June 3, 2016), entitled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources” 16–17 (Aug. 2, 2016), Docket ID: EPA-HQ-OAR-2010-0505-7683.

altered or additional approaches the Agency could take to improve the ICR.<sup>14</sup> EDF also submitted comments on EPA's second draft of the proposed ICR.<sup>15</sup> EPA later withdrew the ICR without notice or any opportunity for public comment. 82 Fed. Reg. 12,817. In light of EPA's failure to establish existing source emission guidelines as required by the CAA, in August 2017, EDF transmitted a notice of intent to sue EPA over its unreasonable delay in performing that statutory duty.<sup>16</sup>

Additionally, on multiple occasions, the D.C. Circuit has permitted EDF to intervene in cases concerning EPA's new source performance standards for the oil and natural gas sector. *See* Order of Dec. 19, 2016, *North Dakota v. EPA*, No. 16-1242 (D.C. Cir.) (granting EDF and co-movants intervention in cases challenging 2016 NSPS); Order of Apr. 22, 2015, *Indep. Petroleum Ass'n v. EPA*, No. 15-1040 (D.C. Cir.) (same as to 2014 rulemaking related to oil and gas NSPS); Order of Aug. 6, 2014, *Am. Petroleum Inst. v. EPA*, No. 13-1289 (D.C. Cir.) (same as to 2013 rulemaking related to oil and gas NSPS); Order of Apr. 3, 2013, *Am. Petroleum Inst. v. EPA*, No. 12-1405 (D.C. Cir.) (same as to 2012 NSPS). EDF's long history of thorough engagement with EPA regarding methane regulation establishes EDF's clear interest in the subject matter of this litigation.

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<sup>14</sup> Clean Air Task Force et al., Comments on "Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities" (Aug. 2, 2016), Docket ID: EPA-HQ-OAR-2016-0204-0068.

<sup>15</sup> Clean Air Task Force et al., Comments on "Proposed Information Collection Request; Comment Request; Information Collection Effort for Oil and Gas Facilities" (Oct. 31, 2016), Docket ID: EPA-HQ-OAR-2016-0204-0188.

<sup>16</sup> Letter from Peter Zalzal, Env'tl. Def. Fund, et al., to E. Scott Pruitt, Adm'r, EPA (Aug. 28, 2017) ("2017 NOI"), [https://www.edf.org/sites/default/files/content/notice\\_of\\_intent\\_to\\_sue\\_epa\\_111d\\_og\\_8\\_28.pdf](https://www.edf.org/sites/default/files/content/notice_of_intent_to_sue_epa_caa_111d_og_8_28.pdf).

Third, EDF has an interest in the subject matter of this litigation because strong methane emission guidelines will benefit its members. As discussed above, *supra* p. 4, methane is a powerful greenhouse gas with significant global warming potential. Controlling methane emissions from existing oil and gas sources will help prevent the detrimental impacts of climate change, and will reduce the harmful health effects of co-emitted VOCs and HAPs. EDF's members who use, own, and enjoy property and natural resources that are harmed and threatened by climate change, and who live, work, and recreate in close proximity to oil and gas development, will benefit from limits on methane emissions from existing sources. *See supra* pp. 3–8 (establishing EDF's Article III standing).

**3. EDF's interests may be impaired as a result of this litigation.**

EDF and its members' interests in establishing strong methane emission guidelines for existing sources may be impaired as a result of this litigation.

Because this litigation concerns questions of law under the CAA, an adverse judgment may impair EDF's ability to fully pursue its claims in future litigation. Thus, this is not the type of case in which the proposed intervenor would be free to initiate its own suit regardless of the outcome, *Peters v. Dist. of Columbia*, 873 F. Supp. 2d 158, 218 (D.D.C. 2012) (citing *Shea v. Angulo*, 19 F.3d 343, 347 (7th Cir. 1994)); rather, an adverse decision in this litigation could “adversely affect the rights of [EDF] in a subsequent proceeding,” *id.* EDF's interest in securing near-term, rigorous emission guidelines for the oil and gas sector may therefore be impaired as a result of this litigation.

Similarly, EDF's interests would be affected if this litigation results in a settlement between EPA and the States. For example, in *Natural Resources Defense Council v. Costle*, the D.C. Circuit concluded that prospective intervenors' interests might be impaired by their

inability to participate in proceedings involving the implementation and oversight of a settlement agreement requiring EPA to issue regulations under the Clean Water Act. 561 F.2d at 911. The court explained that although the movants could protect their interests after promulgation by challenging the final regulations, this would “afford much less protection than the opportunity to participate in post-settlement proceedings that seek to ensure sustainable regulations in the first place, with no need for judicial review.” *Id.* at 909. Considering the “practical consequences” of denying intervention, the court permitted the movants to intervene. *Id.*

The same concerns apply here. Should EPA and the States enter into a settlement agreement, or should the contours of the emission guidelines rulemaking be otherwise affected by the States’ litigation, the “practical consequence” would be to deny EDF the opportunity to participate in the initial phase of the rulemaking process. EDF’s interests therefore may be impaired as a result of this litigation.

**4. EDF’s interests are not adequately represented by the States.**

EDF satisfies the fourth and final Rule 24(a) requirement because its interests are not adequately represented by the States. The burden of showing inadequate representation “is not onerous,” and the “applicant need only show that representation of his interest ‘may be’ inadequate, not that representation will in fact be inadequate.” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *see also Mortg. Bankers Ass’n*, 2012 WL 13059892, at \*4 (“[T]he putative intervenors’ burden of showing inadequate representation of their interest is minimal.”).

Though EDF’s desire to have EPA issue methane emission guidelines for existing sources may align with the States’ interest in pursuing this litigation, “a shared general agreement” that EPA should take this action “does not necessarily ensure agreement in all

particular respects.” *Costle*, 561 F.2d at 912; *Nusse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967) (“The tactical similarity of the present legal contentions of the state bank and the state commissioner does not assure adequacy of representation or necessarily preclude the Commissioner from the opportunity to appear in his own behalf.”).

The D.C. Circuit has “recogniz[ed] the inadequacy of governmental representation of the interests of private parties in certain circumstances.” *Dimond*, 792 F.2d at 192. Here, EDF’s interests will not be adequately represented absent intervention because the States are charged with representing the public interest of their citizens broadly, while EDF may seek to protect more focused interests regarding health and environmental protection. *See id.* at 193 (explaining that government entity would be “shirking its duty were it to advance [movant-intervenor’s] narrower interest at the expense of its representation of the general public interest”).

Additionally, EDF can provide a “vigorous and helpful supplement” to the States’ case. *Costle*, 561 F.2d at 912–13. As discussed above, *supra* pp. 9–12, EDF has extensively studied the problem of methane emissions from existing sources in the oil and natural gas sector as well as EPA’s duty and authority to issue these guidelines. EDF’s “experience and expertise . . . can reasonably be expected to contribute to the informed resolution[]” of this litigation. *Costle*, 561 F.2d at 913.

## **II. ALTERNATIVELY, THIS COURT SHOULD GRANT EDF PERMISSIVE INTERVENTION**

In addition to qualifying for intervention as of right, EDF satisfies the requirements for permissive intervention under Rule 24(b). A court may allow permissive intervention where the putative intervenor presents: (1) an independent ground for subject matter jurisdiction; (2) a timely motion; and (3) a claim or defense that has a question of law or fact in common with the main action. *Equal Emp’t Opportunity Comm’n v. Nat’l Children’s Ctr., Inc.*, 146 F.3d 1042,

1046 (D.C. Cir. 1998); *see* Fed. R. Civ. P. 24(b)(2). A court “must also determine whether the proposed intervention ‘will unduly delay or prejudice the adjudication of the original parties’ rights.” *Sierra Club v. Van Antwerp*, 523 F. Supp. 2d 5, 10 (D.D.C. 2007) (quoting Fed. R. Civ. P. 24(b)(3)). EDF satisfies each of these requirements.

The first requirement, an independent basis for jurisdiction, “stems not from any explicit language in Rule 24(b), but rather from the basic principle that a court may not adjudicate claims over which it lacks subject matter jurisdiction.” *Nat’l Children’s Ctr.*, 146 F.3d at 1046. This Court has independent jurisdiction here. Section 304(a) of the Clean Air Act, 42 U.S.C. § 7604(a), authorizes any person to commence a civil action in district court to compel the EPA Administrator to take an action unreasonably delayed. Section 304(a) requires a litigant to provide notice 180 days in advance of commencing such a suit, *id.*, which EDF has done here. *See* 2017 NOI. This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1361 (action to compel officer or agency to perform a duty owed to plaintiffs).

EDF’s motion is timely and will not unduly delay or prejudice the adjudication of the original parties’ rights for the reasons discussed above, *supra* pp. 8–9. EDF has moved for intervention in advance of any significant briefing, with a month remaining before federal respondents’ answer to the complaint is due.

Finally, EDF satisfies the third requirement for permissive intervention because it intends to address the same question of law raised by the States in their complaint: whether EPA unreasonably delayed carrying out its statutorily-mandated duty to issue emission guidelines for methane from existing oil and gas sources. *See* Complaint ¶¶ 42–54. As discussed above, *supra* pp. 9–12, EDF has significant legal and technical expertise pertaining to the issues implicated in

this case, expertise gained from independent research and from years of engagement with EPA's development of new source performance standards for the oil and gas sector. If permitted to intervene, EDF's expertise and its perspective as an affected party will contribute to an effective and efficient resolution of the underlying legal issues.

EDF satisfies the requirements for permissive intervention, and if this Court does not grant intervention as of right, permissive intervention is warranted.

### CONCLUSION

EDF meets each of the standards under Rule 24(a) and the Article III standing requirements, and therefore should be permitted to intervene as of right. Alternatively, this Court should allow permissive intervention under Rule 24(b).

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Respectfully submitted,

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