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ENVIRONMENTAL LAW CLINIC AT UNIVERSITY OF DENVER
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October 28, 2003

VIA HAND DELIVERY

Mark J. Langer, Clerk
U.S. Court of Appeals for the
District of Columbia Circuit
United States Courthouse
333 Constitution Ave, NW
Washington, DC 20001

Dear Mr. Langer:

Please accept the enclosed petition for review of final action (including promulgation of regulations) taken by respondents United States Environmental Protection Agency (U.S. EPA) and Marianne L. Horinko, Acting Administrator, U.S. EPA, at 68 Fed. Reg. 61248 *et seq.* (Oct. 27, 2003), entitled "Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion."

This letter is also intended to notify the clerk's office that this petition is related to the challenge of an EPA rule pending before a complex panel in *State of New York, et al. v. U.S. Environmental Protection Agency* (Docket No. 02-1387 and consolidated cases). The rule challenged in this petition and the rule challenged in the 02-1387 petitions purport to interpret the same sentence in the Clean Air Act. *See* Clean Air Act § 111(a)(4), 42 U.S.C. § 7411(a)(4) ("The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."). EPA has presented the two rules as part and parcel of a single policy decision. *See* "New Source Review Recommendations," <<http://www.epa.gov/air/nsr-review/bkgnd/recommendations.html>>. Moreover, EPA proposed the former rule on the same day that it promulgated the latter, and the Federal Register published both actions in a single notice entitled, "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Final Rule and Proposed Rule." 67 Fed. Reg. 80185 (Dec. 31, 2002). The respondents to this petition are the same as in Docket No. 02-1387, and all but one of the petitioners are also petitioners in Docket No. 02-1387. *See* Docket Nos. 03-1048, 03-1130, 03-1055, 03-1131 (consolidated with Docket No. 02-1387).

Sincerely,



Keri N. Powell

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This petition is related to the petitions consolidated under *State of New York, et al. v. U.S. Environmental Protection Agency*, Docket No. 02-1387. The rule challenged in this petition, and the rule challenged in the 02-1387 petitions, purport to interpret the same sentence in the Clean Air Act. See Clean Air Act § 111(a)(4), 42 U.S.C. § 7411(a)(4) (“The term ‘modification’ means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.”). EPA has presented the two rules as part and parcel of a single policy decision. See “New Source Review Recommendations,” <http://www.epa.gov/air/nsr-review/bkgrnd/recommendations.html>. Moreover, EPA proposed the former rule on the same day that it promulgated the latter, and the Federal Register published both actions in a single notice entitled, “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR); Final Rule and Proposed Rule.” 67 Fed. Reg. 80185 (Dec. 31, 2002). The respondents to this petition are the same as in Docket No. 02-1387, and all but one of the petitioners are also petitioners in Docket No. 02-1387. See Docket Nos. 03-1048, 03-1130, 03-1055, 03-1131 (consolidated with Docket No. 02-1387).

DATED: October 28, 2003.

Respectfully submitted,


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Of Counsel to Petitioner Southern Alliance for Clean Energy

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

NATURAL RESOURCES DEFENSE COUNCIL, *et al.*)
)
Petitioners,)
)
v.)
)
UNITED STATES ENVIRONMENTAL PROTECTION)
AGENCY and MARIANNE L. HORINKO, Acting)
Administrator, United States Environmental Protection)
Agency,)
)
Respondents.)
)

**RULE 26.1 STATEMENT OF PETITIONERS
NATURAL RESOURCES DEFENSE COUNCIL, ET AL.**

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, petitioners Natural Resources Defense Council, Environmental Defense, Sierra Club, American Lung Association, Communities for a Better Environment, United States Public Interest Research Group, Alabama Environmental Council, Clean Air Council, Group Against Smog and Pollution, Michigan Environmental Council, The Ohio Environmental Council, Scenic Hudson, and Southern Alliance for Clean Energy make the following disclosures:

Natural Resources Defense Council. Natural Resources Defense Council has no parent companies, and no publicly held company has a 10% or greater ownership interest in Natural Resources Defense Council.

Natural Resources Defense Council, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Environmental Defense. Environmental Defense has no parent companies, and no publicly held company has a 10% or greater ownership interest in Environmental Defense.

Environmental Defense, a corporation organized and existing under the laws of the State of New York, is a national nonprofit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems.

Sierra Club. Sierra Club has no parent companies, and no publicly held company has a 10% or greater ownership interest in Sierra Club.

Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

American Lung Association. American Lung Association has no parent companies, and no publicly held company has a 10% or greater ownership interest in American Lung Association.

American Lung Association, a nonprofit corporation organized and existing under the laws of the State of Maine, is a national organization dedicated to the conquest of lung disease and the promotion of lung health.

Communities for a Better Environment. Communities for a Better Environment has no parent companies, and no publicly held company has a 10% or greater ownership interest in Communities for a Better Environment.

Communities for a Better Environment (CBE) is a 501(c)(3) nonprofit corporation organized and existing under the laws of the State of California. CBE has approximately 20,000

members in California and is dedicated to improving the quality of the environment in California and throughout the United States.

United States Public Interest Research Group. United States Public Interest Research Group (U.S.PIRG) has no parent companies, and no publicly held company has a 10% or greater ownership interest in U.S. PIRG.

U.S. PIRG is a nonprofit corporation organized and existing under the laws of the Washington, D.C. U.S. PIRG, a national organization with members around the country, is dedicated to delivering persistent, result-oriented public interest activism that protects our environment, encourages a fair, sustainable economy, and fosters responsive, democratic government.

Alabama Environmental Council. Alabama Environmental Council has no parent companies, and no publicly held company has a 10% or greater ownership interest in Alabama Environmental Council.

Alabama Environmental Council, a nonprofit corporation organized and existing under the laws of the State of Alabama, works to protect and preserve Alabama's natural heritage.

Clean Air Council. Clean Air Council has no parent companies, and no publicly held company has a 10% or greater ownership interest in Clean Air Council.

Clean Air Council, a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, uses public education, community advocacy, and government oversight to ensure enforcement of environmental laws in its efforts to improve air quality throughout Pennsylvania and Delaware.

Group Against Smog and Pollution Group. Group Against Smog and Pollution has no parent companies, and no publicly held company has a 10% or greater ownership interest in Group Against Smog and Pollution.

Group Against Smog and Pollution, a nonprofit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, is dedicated to creating a healthy, sustainable environment, with a focus on improving air quality in the Pittsburgh region.

Michigan Environmental Council. Michigan Environmental Council has no parent companies, and no publicly held company has a 10% or greater ownership interest in Michigan Environmental Council.

Michigan Environmental Council, a nonprofit corporation organized and existing under the laws of the State of Michigan, is dedicated to addressing threats to Michigan's environment, promoting alternatives to urban blight and suburban sprawl, advocating for a sustainable environment and economy, protecting Michigan's water legacy, promoting cleaner energy, and working to diminish environmental impacts on children's health.

The Ohio Environmental Council. The Ohio Environmental Council has no parent companies, and no publicly held company has a 10% or greater ownership interest in The Ohio Environmental Council.

The Ohio Environmental Council, a nonprofit corporation organized and existing under the laws of the State of Ohio, works to inform, unite, and empower Ohio citizens to protect the environment and conserve natural resources.

Scenic Hudson. Scenic Hudson has no parent companies, and no publicly held company has a 10% or greater ownership interest in Scenic Hudson.

Scenic Hudson is a nonprofit corporation organized and existing under the laws of the State of New York and is dedicated to protecting and enhancing the scenic, natural, historic, agricultural and recreational treasures of the Hudson River and its valley.

Southern Alliance for Clean Energy. Southern Alliance for Clean Energy has no parent companies, and no publicly held company has a 10% or greater ownership interest in Southern Alliance for Clean Energy.

Southern Alliance for Clean Energy, a nonprofit corporation organized and existing under the laws of the State of Tennessee, is a regional organization working in eight southeastern states on energy issues, and dedicated to finding positive solutions to the negative impacts of power production by working for clean air policies and promoting the use of renewable energy and implementation of energy efficiency practices.

DATED: October 28, 2003.

Respectfully submitted,



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CERTIFICATE OF SERVICE

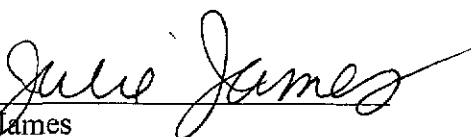
I hereby certify that the foregoing **Natural Resources Defense Council, et al.'s Petition for Review and Rule 26.1 Statement Of Petitioners Natural Resources Defense Council, et al.** have been served by United States first-class mail this 28 day of October 2003, upon the following:

Marianne L. Horinko, Acting Administrator
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