No. 23-1194 (and consolidated cases)

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CALUMET MONTANA REFINING LLC,

Petitioner,

v.

EPA,

Respondent.

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

MOTION OF GROWTH ENERGY TO INTERVENE IN SUPPORT OF RESPONDENT

On July 26, 2023, Calumet Montana Refining LLC petitioned this Court for review of EPA's decision denying its petition for exemption from its obligations under the Renewable Fuel Standard ("RFS") for 2021 and 2022. *See* Petition for Review, ECF No. 2009840 (D.C. Cir. July 26, 2023). On August 4, 2023, Wynnewood Refining Co. LLC petitioned for review of EPA's decision denying its petition for exemption from its RFS obligations for 2022. *See* Petition for Review, No. 23-1210, ECF No. 2012315 (D.C. Cir. Aug. 4, 2023). The cases were consolidated. If successful, this lawsuit will impair Growth Energy's significant

interests in the RFS standards. Accordingly, Growth Energy respectfully moves to intervene in support of respondent, EPA.

Petitioners state that they oppose this motion. EPA takes no position on this motion.[1]

BACKGROUND

A. Established by the Clean Air Act, the RFS "requires that increasing volumes of renewable fuel be introduced into the Nation's supply of transportation fuel each year. Congress enacted those requirements in order to move the United States toward greater energy independence and security and increase the production of clean renewable fuels." *Americans for Clean Energy v. EPA*, 864 F.3d 691, 697 (D.C. Cir. 2017) (cleaned up). The RFS standards define the minimum national "demand" for each of four "nested" categories of renewable fuel and thereby exclude competition from non-renewable fuel, i.e., petroleum, to that extent. *Id.* at 705, 710. "Obligated parties"—generally petroleum refineries, including petitioners—are then "responsible for ensuring that the renewable fuel

[1] Growth Energy requests that its intervention be deemed to extend to all present and future consolidated cases. *See* D.C. Cir. R. 15(b) ("A motion to intervene in a case before this court concerning direct review of an agency action will be deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion has the effect of granting intervention in all such cases.").

volume requirements are met" by incorporating the required amount of renewable fuel into the transportation fuel they make and sell. *Id*. at 705 (cleaned up).

To facilitate efficient compliance, Congress directed EPA to "establish a 'credit program' through which obligated parties can acquire and trade credits and thereby comply with" their RFS volume obligations. *Americans for Clean Energy*, 864 F.3d at 699. These credits—called Renewable Identification Numbers ("RINs")—are generated when renewable fuel is produced, and they "remain attached to the fuel until the fuel is purchased by … a refiner" and "blended" with petroleum to make transportation fuel, at which point the credits are "separated" and available to show RFS compliance or to be "sold or traded on the open RIN market." *Id*. Finally, when a RIN has been used to show compliance, it is "retired" and no longer available for use or sale. *Id*.

EPA sets deadlines to demonstrate compliance following the end of the compliance year. *See, e.g.*, 87 Fed. Reg 5,696, 5,697-5,698 (Feb. 2, 2022). After demonstrating compliance, an obligated party possessing excess RINs for a given year may carry them over so that it or another obligated party can use them to show compliance with the next year's requirements. *Americans for Clean Energy*, 864 F.3d at 699-700. The national aggregate volume of "carryover" RINs is colloquially called the "RIN bank." *Id*.

Congress also allowed individual "small refineries" to petition EPA for an "exemption" from their RFS obligations for a given year "for the reason of disproportionate economic hardship." 42 U.S.C. § 7545(o)(9)(B)(i); *see* § 7545(o)(1)(K) (defining "small refinery"). The effect of granting an exemption is that the RFS obligations "shall not apply to [that] refiner[y]" for that year. §7545(*o*)(9)(A)(i), (B)(i). These compliance exemptions are sometimes called "SREs."

B. For both 2021 and 2022, EPA established an "implied" non-advanced RFS requirement—i.e., the difference between the total and the nested "advanced" requirements—of 15 billion gallons, which could be met with non-advanced (or "conventional") renewable fuel and excess advanced biofuel above the advanced requirement. 87 Fed. Reg. 39,600, 39,601, 39,612:1 & :3, 39,623 (July 1, 2022). In doing so, EPA stated that it expected that about 95% of the renewable fuel used to meet the implied 15-billion-gallon requirement would be ethanol derived from corn and produced domestically. *Id*. at 39,612:1, 39,624:2; EPA, *Response to Comments* 129 (June 2022)[2].

C. Petitioners petitioned EPA for exemption from their RFS obligations for 2021 and 2022. EPA denied those petitions. 88 Fed. Reg. 46,795 (July 20,

[2] https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P101562X.pdf.

2023). In doing so, EPA "relie[d] on the same approach and the same analyses described in the April 2022 SRE Denial Action and the June 2022 SRE Denial Action." *Id.* at 46,795. Those 2022 actions are the subject of multiple pending lawsuits, including in this Court. *See Hunt Refining Co. v. EPA*, No. 22-11617 (11th Cir.); *Sinclair Wyoming Refining Co. v. EPA*, No. 22-1073 (D.C. Cir.); Order, *Calumet Shreveport Refining v. EPA*, No. 22-60266 (5th Cir.).

ARGUMENT

I. GROWTH ENERGY MEETS THE STANDARD FOR INTERVENTION

Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b) establish procedural requirements for intervention on appeal.[3] For the substantive requirements, this Court has "held that intervention in the court of appeals is governed by the same standards as in the district court." *Massachusetts School of Law at Andover, Inc. v. United States*, 118 F.3d 776, 779 (D.C. Cir. 1997) (emphasis omitted). Thus, a party has a right to intervene if it "claims an interest relating to the … transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's

[3] This motion satisfies those procedural requirements. The motion is timely because it was filed by the deadline for procedural motions set by the Court's order. ECF No. 2013772 (Aug. 23, 2023). This motion is being served on all parties to the case. And the discussion in the text constitutes "a concise statement of [Growth Energy's] interest … and the grounds for intervention." Federal Rule of Appellate Procedure 15(d).

ability to protect its interest, unless existing parties adequately represent that interest." Federal Rule of Civil Procedure 24(a)(2). Growth Energy satisfies this standard.[4]

A. Courts Have Routinely Allowed Growth Energy and Similar Biofuels Organizations to Participate in Challenges to RFS Exemption Decisions and RFS Standards

Growth Energy and other biofuels representatives have routinely participated in litigation involving RFS exemption decisions and, more broadly, RFS standards. This Court and the Fifth Circuit recently allowed Growth Energy (and other biofuels organizations) to intervene to defend the 2022 exemption decisions that formed the basis for the exemption decisions challenged here. Order, *Sinclair Wyoming Refining Co. v. EPA*, No. 22-1073, ECF No. 1987065 (D.C. Cir. Feb. 22, 2023); Order, *Calumet Shreveport Refining v. EPA*, No. 22-60266, ECF No. 303 (5th Cir. Mar. 16, 2023). The Tenth Circuit held that a similarly situated biofuels association had standing to challenge EPA's decision to grant certain exemptions. *Renewable Fuels Ass'n*, 948 F.3d 1206, 1230-39 (10th Cir. 2020).

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[4] *A fortiori*, Growth Energy satisfies the standard for permissive intervention, which requires only a showing that the proposed intervenor has "a claim or defense that shares with the main action a common question of law or fact." Federal Rule of Civil Procedure 24(b)(1)(B).

Further, Growth Energy has successfully intervened in every lawsuit challenging EPA's annual RFS standards (which are, in effect, reduced by exemptions). *See* Order, *Sinclair Wyoming Refining Co. v. EPA*, No. 22-1210, ECF No. 1975422 (D.C. Cir. Nov. 29, 2022) (2020-22 standards); Order, *RFS Power Coalition v. EPA*, No. 20-1046, ECF No. 1843937 (D.C. Cir. May 22, 2020) (2020 standards); Order, *Growth Energy v. EPA*, No. 19-1023, ECF No. 1784196 (D.C. Cir. Apr. 23, 2019) (2019 standards); Order, *American Fuel & Petrochemical Manufacturers v. EPA*, No. 17-1258, ECF No. 1725309 (D.C. Cir. Apr. 5, 2018) (2018 standards); Order, *Alon Refining Krotz Springs, Inc. v. EPA*, No. 16- 1052, ECF No. 1722824 (Mar. 19, 2018) (2017 standards); Order, *Americans for Clean Energy v. EPA*, No. 16-1005, ECF No. 1611965 (D.C. Cir. May 5, 2016) (2014-16 standards); Order, *Monroe Energy, LLC v. EPA*, No. 13-1265, ECF No. 1468501 (D.C. Cir. Dec. 2, 2013) (2013 standards); Order, *American Petroleum Institute v. EPA*, No. 12-1139, ECF No. 1370535 (D.C. Cir. Apr. 24, 2012) (2012 standards); Order, *National Petrochemical & Refiners v. EPA*, No. 10-1070, ECF No. 1242852 (D.C. Cir. May 3, 2010) (2009-10 standards).

There is no reason for the Court to depart from this wide recognition that Growth Energy is entitled to participate in challenges to RFS exemption decisions.

B. The Disposition of This Case Could Impair Growth Energy's Strong Interest in the 2021 and 2022 RFS Standards

If the Court were to vacate EPA's exemption decisions and petitioners' exemption petitions were to be granted, Growth Energy's members would be harmed. Declaration of Emily Skor ("Skor Declaration") ¶10 (Aug. 28, 2023) [attached as Ex.].

EPA has acknowledged that "those involved with the production, distribution, and sale of … renewable fuels such as ethanol"—which includes Growth Energy and its members—are "potentially affected by" the level of the 2021 and 2022 RFS standards. 87 Fed. Reg. at 39,600. Growth Energy is a national trade association dedicated to promoting the commercial production and use of ethanol. Skor Declaration ¶2. Growth Energy's 93 members are ethanol producers and account for almost 60% of domestic corn ethanol production. *Id.* ¶3. Growth Energy has a strong interest in RFS standards because they determine the minimum mandatory national demand for renewable fuel, most of which is domestically produced corn ethanol. *Id.* ¶¶4-5; *supra* p.2. That is why Growth Energy submitted extensive comments on the proposed standards for 2021 and 2022. *See* Growth Energy, *Comments on EPA's Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, EPA-HQ-OAR-2021-0324-0521 (Feb. 4, 2022).[5]

[5] https://www.regulations.gov/document/EPA-HQ-OAR-2021-0324-0521.

And that is why Growth Energy has consistently participated in litigation concerning RFS standards and exemptions. *See supra* pp.6-7.

This interest is jeopardized by petitioners' lawsuit. Because the "demand for renewable fuel will be a function of the renewable fuel standards," *Americans for Clean Energy*, 864 F.3d at 710 (cleaned up), "the basic laws of economics" establish that reducing RFS standards will "cause the demand" for corn ethanol "to drop," *Growth Energy v. EPA*, 5 F.4th 1, 3 (D.C. Cir. 2021); *see also Monroe Energy, LLC v. EPA*, 750 F.3d 909, 917 (D.C. Cir. 2014); Skor Declaration ¶¶5, 7. Additionally, RFS standards function as a barrier to competition from petroleum producers for the content of the nation's transportation fuel; lowering the standards "lift[s] that regulatory restriction[] on [ethanol producers'] competitors." *American Fuel & Petrochemical Manufacturers v. EPA*, 3 F.4th 373, 379 (D.C. Cir. 2021); *see* Skor Declaration ¶5.

As EPA has found, exemptions "effectively reduce[] the required volume of renewable fuel" and in turn reduce the marginal demand for renewable fuel, including ethanol. EPA, Regulatory Impact Analysis 5-7, 46 (June 2022)[6]; *see* Skor Declaration ¶7. Or, as this Court put it, exemptions create a "renewable-fuel shortfall." *American Fuel & Petrochemical Manufacturers v. EPA*, 937 F.3d 559,

[6] https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P10155TQ.pdf.

571, 588 (D.C. Cir. 2019). Exemptions also lift the regulatory barrier to competition from petroleum. Skor Declaration ¶7. Consequently, a decision by this Court in favor of petitioners and rejecting EPA's denial decisions could lead to the exemption petitions being granted on remand, which would injure Growth Energy and its members by reducing demand for their product and lifting regulatory barriers to competition. *Id.* ¶8.

It makes no difference that 2021 and 2022 are over because of the time-shifting enabled by carryover RINs. *See* Skor Declaration ¶9. Granting the exemption petitions would relieve petitioners of their obligation to use RINs to meet their 2021 and 2022 requirements, freeing those RINs to be used to meet a future year's requirements and thereby reducing the effective renewable-fuel demand of those future requirements and lifting a barrier to competition in that future year. *See, e.g.*, *Growth Energy*, 5 F.4th at 12 (exemptions "granted after EPA has promulgated that year's standards … hinder achievement of the applicable volumes by excusing some obligated parties from having to produce renewable fuel without requiring that other non-exempt parties make up the shortfall"); 87 Fed. Reg. at 39,613:1-2, 39,617:2 ("[C]ompliance with the RFS standards for one year is inherently intertwined with compliance for the prior year. … Any market effects of the 2020 and 2021 volumes finalized in this rule will be felt after the rule is promulgated and mediated through the carryover RIN bank.");

85 Fed. Reg. 7,016, 7,021:3 (Feb. 6, 2020) ("This increase in the carryover RIN bank is primarily the result of the millions of RINs that were unretired by small refineries that were granted hardship exemptions after the July 29 proposal."). Indeed, if granting petitioners' requested exemptions at this point would not affect the supply of RINs, petitioners would lack Article III standing because their alleged injury would not be redressable. *See, e.g.*, *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 801 (2021) ("no federal court has jurisdiction to enter a judgment unless it provides a remedy that can redress the plaintiff's injury").

C. Growth Energy's Interest Will Not Be Adequately Represented by Another Party

This may be Growth Energy's only opportunity to refute petitioners' claims and protect EPA's denial of the exemption petitions for 2021 and 2022. And no other party will adequately represent Growth Energy's interests. "The requirement of [Rule 24] is satisfied if the [movant] shows that representation of [its] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972); *see also Berger v. North Carolina State Conference of the NAACP*, 142 S. Ct. 2191, 2203 (2022) (requirement "present[s] proposed intervenors with only a minimal challenge"). Thus, this requirement precludes intervention only if "it is clear that the party will provide adequate representation." *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (cleaned up).

Although Growth Energy seeks to intervene in support of EPA, as a government agency, EPA's defenses necessarily will be focused on its own institutional interests and duties and therefore EPA cannot adequately represent the interests of the private commercial enterprises that comprise Growth Energy's membership and that Growth Energy represents. *See Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) ("we look skeptically on government entities serving as adequate advocates for private parties"); *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-37 (D.C. Cir. 2003); *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977). In fact, EPA's arguments in defense of the exemption denial could be in tension with Growth Energy's arguments in some respects, as has happened in RFS cases even when Growth Energy is defending EPA's action. *See Crossroads*, 788 F.3d at 321 (agency did not adequately represent private party even though there was "general alignment" between their positions).

II. GROWTH ENERGY NEED NOT ESTABLISH ARTICLE III STANDING, BUT ANYWAY IT SATISFIES THIS COURT'S REQUIREMENTS

A. Standing Is Not Required

This Court has said that a proposed intervenor supporting a respondent or defendant must also establish Article III standing. *See Deutsche Bank National Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013). Any such requirement is legally unsound and contrary to Supreme Court precedent because standing is necessary only for a party to invoke a court's jurisdiction, and a defensive intervenor, like the respondent or defendant it supports, does not invoke the court's jurisdiction. *See Virginia House of Delegates v. Bethune-Hill,* 139 S. Ct. 1945, 1951 (2019) (intervenor supporting defendants need not show standing because it is not invoking court's jurisdiction); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410-11 (2013); *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439-40 (2017).

Indeed, the notion of a defensive party's standing is incoherent because such a party necessarily does not claim to have been injured by the action being defended and does not seek relief from that action. Moreover, even if defensive standing were required, the respondent or defendant would certainly have it, obviating the need for a defensive intervenor to also establish standing because the defensive intervenor does not "pursue relief that is broader than or different from" that pursued by the respondent or defendant. *Little Sisters of the Poor Saints Peter*

& Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2379 n.6 (2020) (citing *Town of Chester*, 137 S. Ct. at 1650-51); *see Maine Lobstermen's Ass'n v. National Marine Fisheries Service*, 70 F.4th 582, 593 (D.C. Cir. 2023) ("Because the Association has standing to sue …, we do not need to consider the standing of the intervenors."). That is certainly true here, where Growth Energy seeks affirmance of the exemption denials just as EPA does.

Accordingly, other circuits have correctly held that defensive intervenors need not establish standing. *See, e.g.*, *King v. Governor of New Jersey*, 767 F.3d 216, 245-46 (3d Cir. 2014), *abrogated in part on other grounds by National Institute of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018).[7]

B. Growth Energy Has Standing

In any event, the Court's standing requirement as it has applied it to defensive intervenors is satisfied here for the same reasons that the Center's challenge threatens to impair Growth Energy's interests. An association has Article III standing to sue on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim

[7] If the Court considers standing dispositive of Growth Energy's motion, Growth Energy respectfully requests that the Court overturn *Deutsche Bank* and similar precedents through the *Irons* procedure. *See Irons v. Diamond*, 670 F.2d 265, 267-68 & n.11 (D.C. Cir. 1981).

asserted nor the relief requested requires the participation of individual members in the lawsuit." *Military Toxics Project v. EPA*, 146 F.3d 948, 953–54 (D.C. Cir. 1998). And to have standing in its own right, an association member must show "injury-in-fact, causation, and redressability." *Deutsche Bank*, 717 F.3d at 193.[8]

For the same reasons that Growth Energy has a substantial interest that could be impaired by this litigation, its members will suffer a cognizable injury-in-fact if the exemption denials are set aside. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("any person who satisfies Rule 24(a) will also meet Article III's standing requirement"). As explained above, granting the exemptions reduces the effective volume requirements, which in turn reduces the mandated national demand for renewable fuel, especially the corn ethanol that constitutes the vast majority of renewable fuel used to meet the RFS requirements and that Growth Energy's members sell. "[T]he constriction of [the members'] buyers' market" is "a direct economic injury" cognizable under Article III. *Craig v. Boren*, 429 U.S. 190, 194 (1976). Additionally, as explained above, granting the exemptions would "lift regulatory restrictions on [ethanol producers'] competitors," i.e., petroleum producers, for the content of transportation fuel—itself a "constitutional injury in fact." *American Fuel*, 3 F.4th at 379 (cleaned up).

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[8] It suffices for a single member of Growth Energy to have standing. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002); *Military Toxics Project*, 146 F.3d at 954.

See generally Crossroads, 788 F.3d at 317 ("Our cases have generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit."); *Fund for Animals*, 322 F.3d at 733-34 (D.C. Cir. 2003); *Military Toxics*, 146 F.3d at 954.

The causal relationship between the exemption denials, this litigation, and Growth Energy's members' potential injuries is straightforward. The 202 and 2022 RFS standards set the level of renewable-fuel demand and the restriction on competition; the success of petitioners' challenge to the exemption denials could reduce the effective standards, resulting in the financial and competitive injuries just described; and rejecting petitioners' challenge would preserve the effective standards and thus avoid those injuries. That satisfies the traceability and redressability elements of standing. *See American Fuel*, 3 F.4th at 379 ("the increased competition is … redressed by restoring the regulatory *status quo ante*").

Moreover, the interests that Growth Energy seeks to protect in this litigation are germane—indeed, integral—to its purpose of protecting and promoting the demand for renewable fuel, especially ethanol, and "mere pertinence between litigation subject and organizational purpose is sufficient." *National Lime Ass'n v. EPA*, 233 F.3d 625, 636 (D.C. Cir. 2000) (cleaned up). Finally, the validity of the

exemption denials can be adjudicated without the participation of any of Growth Energy's individual members.

CONCLUSION

For the foregoing reasons, the Court should grant Growth Energy's motion to intervene.

Respectfully submitted,

/s/ David M. Lehn

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August 28, 2023

EXHIBIT

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

CALUMET MONTANA REFINING LLC, Petitioner, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 23-1194 (and consolidated cases)

DECLARATION OF EMILY SKOR

1. My name is Emily Skor. I am over 18 years of age and am competent to give this Declaration. This Declaration is based on personal knowledge. I am submitting this Declaration on behalf of Growth Energy in the above-captioned matter.

2. I serve as the CEO of Growth Energy, a position I have held since May 2016. Growth Energy is a national trade association dedicated to promoting the commercial production and use of renewable fuels, particularly conventional and cellulosic ethanol derived from corn, sorghum, and kernel fiber.

3. Growth Energy has 93 members, all of which produce and sell ethanol in the United States. Its members account for almost 60% of all corn ethanol produced in the United States. In 2022, they collectively produced about 8.75

billion gallons of corn ethanol to meet the requirements of the Renewable Fuel Standard ("RFS") under the Clean Air Act.

4. In the market for transportation fuel, renewable fuel competes with petroleum-based fuel. Any renewable fuel that is used for transportation purposes displaces the petroleum-based fuel that would otherwise be used.

5. The RFS annual volume requirements define the minimum amount of renewable fuel that must be used in the nation's transportation fuel supply, i.e., the minimum nationwide demand for renewable fuel, including corn ethanol. Because the RFS requirements require the use of renewable fuel, they are a regulatory barrier to competition from petroleum over the content of the nation's transportation fuel.

6. Ethanol is, by far, the most used renewable fuel in the transportation fuel market. Roughly three-quarters of the renewable fuel used to comply with the RFS annually is ethanol. And corn ethanol accounts for roughly 95% of the renewable fuel used to meet the RFS's "implied non-advanced" requirement, i.e., the difference between the required advanced level and the required total level.

7. Small-refinery exemptions reduce the effective RFS requirements, reducing the national demand for renewable fuel and allowing more competition from petroleum.

8. Therefore, if the petitioners' exemption petition for 2021 or 2022 were to be granted, Growth Energy's members would be harmed. Competition with their product would go up and demand for their product would go down.

9. This is so even though the exemption years of 2021 and 2022 are fully in the past. The exemptions would relieve the petitioners from having to retire RINs, allowing those RINs to remain in the market and available for use to meet a future RFS obligation. Thus, the exemption would reduce the demand for renewable fuel created by that future obligation.

10. In sum, reversing EPA's denial of petitioners' exemption petition would hurt Growth Energy's members.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct based on my personal knowledge and information prepared by Growth Energy.

Executed this 28th day of August 2023.

Emily Skor

CORPORATE DISCLOSURE STATEMENT

Growth Energy is a non-profit trade association within the meaning of Circuit Rule 26.1(b). Its members are ethanol producers and supporters of the ethanol industry. It operates to promote the general commercial, legislative, and other common interests of its members. It does not have a parent company, and no publicly held company has a 10% or greater ownership interest in it.

Respectfully submitted,

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August 28, 2023

CERTIFICATE OF PARTIES AND AMICI CURIAE

Pursuant to Circuit Rule 27(a)(4), Growth Energy certifies that the parties in these consolidated cases are:

Petitioners: Calumet Montana Refining LLC; Wynnewood Refining Company, LLC.

Respondent: U.S. Environmental Protection Agency.

Movant-Intervenors: None.

Amici curiae: None.

Respectfully submitted,

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August 28, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the undersigned hereby certifies:

1. This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 3,478 words, excluding the exempted portions, as provided in Federal Rule of Appellate Procedure 32(f). As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This motion complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ David M. Lehn
DAVID M. LEHN

August 28, 2023

CERTIFICATE OF SERVICE

I certify that on August 28, 2023, I filed a copy of this brief using the Court's case management electronic case filing system, which will automatically serve notice of the filing on registered users of that system.

/s/ David M. Lehn
DAVID M. LEHN

August 28, 2023