

No. 24-1163

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

AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS,

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 May 28, 2024, American Fuel & Petrochemical Manufacturers (“AFPM”) petitioned this Court for review of EPA’s Denial of AFPM’s Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard Under the Renewable Fuel Standard (“RFS”), 89 Fed. Reg. 20,961 (Mar. 26, 2024) [*hereinafter* “Denial Notice”]. *See* Petition for Review, ECF No. 2056550 (D.C. Cir. May 28, 2024). If successful, this lawsuit will harm Growth Energy’s significant interests in the RFS program and in the production and sale of renewable fuel. Accordingly, Growth Energy respectfully moves to intervene in support of respondent, EPA.

AFPM and EPA take no position on this motion.

BACKGROUND

A. Congress created the RFS “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) (quoting Pub. L. No. 110-140, §§201-202, 121 Stat. 1492, preamble (2007)). The program achieves these goals by “mandating the replacement—at least to a certain degree—of fossil fuel with renewable fuel.” *Americans for Clean Energy*, 864 F.3d at 696 (cleaned up); *see* 42 U.S.C. §7545(o)(1)(J) (“renewable fuel” is “fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel”). Specifically, the RFS “requires an increasing amount of renewable fuel to be [blended] into the Nation’s transportation fuel supply each year.” *Americans for Clean Energy*, 864 F.3d at 696; *see* §7545(o)(2)(A)(i), (B). “Therefore, ... [national] demand for renewable fuel [is] a function of the renewable fuel standards.” *Americans for Clean Energy*, 864 F.3d at 710 (cleaned up).

Under the program, there are annual national volume requirements for four fuel categories: cellulosic biofuel; biomass-based diesel; advanced biofuel; and total renewable fuel. §7545(o)(2)(B)(i)(I)-(IV). These requirements are “nested,” meaning that the advanced-biofuel requirement comprises cellulosic biofuel, biomass-based diesel, and other advanced biofuels, while the total renewable-fuel

requirement comprises advanced biofuels and non-advanced renewable fuels, the principal non-advanced renewable fuel being conventional ethanol, i.e., ethanol made from corn starch. *Id.*; *Americans for Clean Energy*, 864 F.3d at 697-698; *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes*, 88 Fed. Reg. 44,468, 44,489:1-2 (July 12, 2023).

Congress allowed EPA to “waive”—i.e., “reduce”—the volume requirements “only in limited circumstances.” *Sinclair Wyoming Refining Co. LLC v. EPA*, 101 F.4th 871, 896 (D.C. Cir. 2024) (cleaned up). One such circumstance is the “cellulosic waiver,” which contains a “mandatory” component and a “discretionary” one. *Growth Energy v. EPA*, 5 F.4th 1, 9 (D.C. Cir. 2021). First, the statute provides: “For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum [required] volume ..., not later than November 30 of the preceding calendar year, the Administrator shall reduce the [required] volume of cellulosic biofuel ... to the projected volume available during that calendar year.” §7545(o)(7)(D)(i). Second, the statute provides that if the mandatory cellulosic waiver is triggered, EPA “may also reduce the [required] volume of [total] renewable fuel and advanced biofuels requirement[s] ... by the same or a lesser volume.” *Id.*

The statute also provides for a “general waiver,” whereby EPA has discretion to reduce any of the volume requirements if: (1) “there is an inadequate

domestic supply” of that category of renewable fuel, §7545(o)(7)(A)(ii); or (2) enforcing the volume requirement “would severely harm the economy or environment of a State, a region, or the United States,” §7545(o)(7)(A)(i).

EPA “polices [compliance with the volume] mandates with a system of credits.” *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Ass’n*, 594 U.S. 382, 386 (2021); *see* §7545(o)(5). “Each credit”—called a Renewable Identification Number (“RIN”)—“represents the blending of [an ethanol-equivalent gallon] of renewable fuel” into gasoline or diesel fuel. *HollyFrontier*, 594 U.S. at 386; *see* 40 C.F.R. §80.1415. “A refinery that blends renewables may either ‘retire’ the credits it has earned (i.e., use them) to satisfy its own RFS volume obligation—or sell those credits to a different [obligated party] that needs them.” *HollyFrontier*, 594 U.S. at 386; *see* 40 C.F.R. §§80.1428-80.1429. Unused RINs remain valid for compliance with the next year’s RFS obligations, 40 C.F.R. §80.1427, and the aggregate amount of the prior year’s still-valid excess RINs is called the “carryover RIN bank,” *Renewable Fuel Standard (RFS) Program: RFS Annual Rules*, 87 Fed. Reg. 39,600, 39,613:1 & n.75 (July 1, 2022); *Americans for Clean Energy*, 864 F.3d at 714-716.

B. For 2023, EPA established a cellulosic-biofuels requirement of 838 million gallons, comprising both natural gas and ethanol (a.k.a. liquid cellulosic biofuel). 88 Fed. Reg. at 44,513 Table VI.A-2.

C. On December 22, 2023, AFPM petitioned EPA to partially waive the 2023 cellulosic-biofuels requirement. Denial Notice, 89 Fed. Reg. at 20,962:1. EPA declined AFPM's request. First, EPA concluded that it was not statutorily permitted to exercise a cellulosic waiver based on a private party's petition. Denial of AFPM Petition for Partial Waiver of 2023 Cellulosic Biofuel Standard 4 (Mar. 2024) [*hereinafter* "Denial Decision"]. Second, EPA decided not to exercise a general waiver based on "inadequate domestic supply" because "the availability of carryover RINs" would cover the projected shortfall in cellulosic RIN production during 2023 (which is smaller than AFPM claimed). *Id.* at 6-7. Additionally, obligated parties could carry forward any RIN deficits that might remain. *Id.* Finally, EPA decided not to exercise a general waiver based on severe economic harm because obligated parties' use of carryover RINs or RIN-deficit carryforwards would not harm the economy by reducing cellulosic-biofuels production or increasing compliance costs. *Id.* at 8-9. And even if there would be adverse economic consequences, they would not be big enough to be "severe," at most raising fuel costs by 0.05%. *Id.* at 9.

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. This motion satisfies those

procedural requirements. It is timely because it was filed by the deadline for procedural motions set by the Court's order. Order, ECF No. 2056553 (D.C. Cir. May 28, 2024). It is being served on all parties to the case. And its discussion (below) constitutes "a concise statement of [Growth Energy's] interest ... and the grounds for intervention." Fed. R. App. P. 15(d).

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 ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). As explained presently, Growth Energy satisfies this standard. *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." Fed. R. Civ. P. 24(b)(1)(B).

A. This Court Has Consistently Allowed Growth Energy to Intervene in Support of EPA's Annual RFS Standards

Growth Energy has successfully intervened in support of EPA in every lawsuit claiming that EPA's annual RFS standards were too high, including the

2023 standards that are the subject of the Denial Decision challenged in this suit. *See* Order, *Center for Biological Diversity v. EPA*, No. 23-1177, ECF No. 2027447 (D.C. Cir. Nov. 16, 2023) (2023-25 standards); 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 its longstanding recognition that Growth Energy is entitled to defend RFS standards against arguments that they should be lower.

B. The Disposition of This Case Could Impair Growth Energy's Interests in the 2023 Cellulosic-Biofuels Requirement and Potentially in Future RFS Standards

Growth Energy is a national trade association dedicated to promoting the commercial production and use of ethanol, including both conventional and cellulosic ethanol. Declaration of Emily Skor (“Skor Declaration”) ¶2 (June 27, 2024) [attached as Ex.]. All 96 of Growth Energy’s full members produce ethanol and account for about 60% of domestic conventional ethanol production. *Id.* ¶¶3-4. Conventional ethanol is by far the most commonly used renewable fuel used to meet RFS requirements—roughly 14 billion gallons of it are used annually. EPA, *Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes, Regulatory Impact Analysis* 330-331 (June 2023), EPA-HQ-OAR-2021-0427-1113.¹ Seventeen of Growth Energy’s members also produce cellulosic ethanol that qualifies for RFS compliance and account for a significant portion of all domestic cellulosic-ethanol production. Skor Declaration ¶5.

Thus, Growth Energy has a strong interest in annual RFS requirements, especially those that govern the volume of ethanol, i.e., the cellulosic-biofuels requirement and the total renewable-fuel requirement. This is evident through Growth Energy’s extensive comments on EPA’s annual proposed RFS standards.

¹ <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1017OW2.pdf>.

See, e.g., Growth Energy, *Comments on EPA’s Renewable Fuel Standard (RFS) Program: Standards for 2023–2025 and Other Changes* (Feb. 10, 2023), EPA-HQ-OAR-2021-0427-0796.² And EPA acknowledged as much in the final rule establishing the 2023 standards, when it said: “Entities potentially affected by this final rule are those involved with the production, distribution, and sale of ... renewable fuels (e.g., ethanol ...).” 88 Fed. Reg. at 44,468:3.

If the Court were to reject EPA’s denial of AFPM’s waiver petition or EPA’s analysis in support of that decision, Growth Energy’s members would likely be harmed. This can be seen in multiple ways. First, the requested waiver would reduce the national demand for cellulosic biofuels, including the cellulosic ethanol produced by Growth Energy’s members. Skor Declaration ¶¶6-8. The national “demand for renewable fuel [is] a function of the renewable fuel standards,” *Americans for Clean Energy*, 864 F.3d at 710 (cleaned up), and therefore “the basic laws of economics” establish that reducing RFS standards will “cause the demand” for qualifying renewable fuel “to drop,” *Growth Energy v. EPA*, 5 F.4th 1, 33 (D.C. Cir. 2021); *see also Monroe Energy, LLC v. EPA*, 750 F.3d 909, 917 (D.C. Cir. 2014).

² <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0427-0796>.

Second, the requested waiver would expose producers of cellulosic biofuels to increased competition from other fuels. Skor Declaration ¶¶7-8. RFS standards function as a barrier to competition for the content of the nation's transportation fuel because they "mandat[e] the replacement ... of fossil fuel with renewable fuel." *Americans for Clean Energy*, 864 F.3d at 696 (cleaned up). Therefore, any reduction of an RFS standard "lift[s that] regulatory restriction[] on [renewable-fuel producers'] competitors." *American Fuel & Petrochemical Manufacturers v. EPA*, 3 F.4th 373, 379 (D.C. Cir. 2021).

It makes no difference that 2023 is in the past. Granting the requested waiver, as EPA stated, "could result in reduced future demand for cellulosic biofuel production." Denial Decision at 10. Waiving the cellulosic standard now, after the year is over, would cause obligated parties, including AFPM's members, to "alter future behavior through delaying acquisition of cellulosic biofuel or cellulosic RINs based on the prospective expectation of subsequent waivers." *Id.* at 7. That is, using the waiver now would teach obligated parties that if they drag their heels, they could be retroactively absolved of their binding duty to meet RFS requirements. In turn, cellulosic biofuel production and "investment" in such production would be "depress[ed]" or "cease ... altogether." *Id.* A vicious circle would ensue; production shortfalls would become a self-fulfilling prophecy,

“undermin[ing] the articulated goals of Congress in establishing the RFS program.” *Id.*; *see* Skor Declaration ¶9.

Finally, this case’s significance could extend well beyond cellulosic biofuels. The Court may be called upon to resolve questions about the meaning and implementation of the “inadequate domestic supply” waiver and the “severe economic harm” waiver, both of which can be used to reduce not only the cellulosic-biofuels requirement, but also the total renewable-fuel requirement—which affects the volume of *conventional* ethanol that is used—for any year. Exercising such waivers with respect to the total renewable-fuel requirement would reduce the demand for conventional ethanol and increase the competition that conventional ethanol faces. *See* 88 Fed. Reg. at 44,493. Therefore, the Court’s decision here could affect the interests of all of Growth Energy’s members for future years.

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

Rule 24’s adequate-representation requirement “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*, 597 U.S. 179, 195 (2022) (requirement “present[s] proposed intervenors with only a minimal challenge”). Thus, this requirement

precludes intervention only if “it is clear that [another] party will provide adequate representation.” *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015) (cleaned up).

It is far from clear—indeed, it is unlikely—that EPA will adequately represent Growth Energy’s interests in this case. This may be Growth Energy’s only opportunity to refute AFPM’s claims because the Court’s disposition of the issues would be conclusive as to the 2023 cellulosic standard and could be preclusive as to similar issues raised for future standards.

Further, although EPA will defend the Denial Decision, the Court “look[s] skeptically on government entities serving as adequate advocates for private parties.” *Crossroads*, 788 F.3d at 321; *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736-737 (D.C. Cir. 2003); *Natural Resources Defense Council v. Costle*, 561 F.2d 904, 912-913 (D.C. Cir. 1977). Such skepticism is warranted here. As in prior RFS cases, EPA is likely to focus its defenses on furthering its own institutional interests and duties, which could well differ from Growth Energy’s interests. For example, EPA typically advocates for the widest possible discretion, while Growth Energy often argues for a more constrained definition of EPA’s discretion, and that dynamic could well emerge in this case, depending on the specific arguments that AFPM and EPA make in their briefs. Therefore, even though there is “general alignment” between EPA’s and Growth Energy’s positions, the significant potential

for divergence on the specifics shows that EPA may not adequately represent Growth Energy's interests. *Crossroads*, 788 F.3d at 321.

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

A. Standing Is Not Required

“[W]here a party tries to intervene as another defendant, [this Court] ha[s] required it to demonstrate Article III standing,” using “the same [inquiry] as for a plaintiff.” *Crossroads*, 788 F.3d at 316. This requirement is unsound and contrary to binding Supreme Court precedent.

Standing is necessary only for a party to invoke a court's jurisdiction; a defensive intervenor, like the respondent or defendant it supports, does not invoke the court's jurisdiction. Consequently, the Supreme Court has recognized that a defensive intervenor need not show standing. See *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 662-663 (2019); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410-411 (2013); *Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439-440 (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, 597 U.S. 657, 674 n.6 (2020) (citing *Town of Chester*, 581 U.S. at 439-441); 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.”). Here, Growth Energy certainly does not seek broader relief than EPA; both seek only for the Denial Decision to be affirmed.

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, 245-246 (3d Cir. 2014), *abrogated in part on other grounds by National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755 (2018).³

B. Growth Energy Has Standing Under This Court’s Jurisprudence

In any event, the Court’s standing requirement as implemented for defensive intervenors is satisfied here for the same reasons that Rule 24’s requirements are satisfied. An association has Article III standing to sue on behalf of its members

³ If the Court considers standing dispositive of Growth Energy’s motion, Growth Energy respectfully requests that the Court overturn *Crossroads* and similar precedents through the *Irons* procedure. See *Irons v. Diamond*, 670 F.2d 265, 267-268 & n.11 (D.C. Cir. 1981).

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 asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Military Toxics Project v. EPA*, 146 F.3d 948, 953-954 (D.C. Cir. 1998). To have standing in its own right, an association member must show “injury-in-fact, causation, and redressability.” *Deutsche Bank National Trust Co. v. FDIC*, 717 F.3d 189, 193 (D.C. Cir. 2013). And only one member of the association must have standing in its own right. *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002); *Military Toxics Project*, 146 F.3d at 954.

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 Denial Decision is 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, waiving RFS requirements reduces the demand for, and increases competition with, the ethanol that Growth Energy’s members produce. These are cognizable injuries. *See, e.g., Craig v. Boren*, 429 U.S. 190, 194 (1976) (“the constriction of [plaintiff’s] buyers’ market” is “a direct economic injury” cognizable under Article III); *American Fuel*, 3 F.4th at 379 (cleaned up) (“lift[ing] regulatory restrictions on [petitioner’s] competitors” is a “constitutional injury in fact”). In short, this Court’s “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." *Crossroads*, 788 F.3d at 317. That is sufficient to establish Growth Energy's members' injury. *See also Fund for Animals*, 322 F.3d at 733-34; *Military Toxics*, 146 F.3d at 954.

Causation and redressability—which “are often flip sides of the same coin,” *FDA v. Alliance for Hippocratic Medicine*, No. 23-235, 602 U.S. ___, 2024 WL 2964140, at *6 (U.S. June 13, 2024)—are also clear. The 2023 standard established the level of required cellulosic biofuel; waiving that standard would cause the injuries discussed—diminished demand and increased competition—and accordingly rejecting AFPM's challenge and affirming the denial of its waiver petition would avoid those injuries. That satisfies causation and redressability. *See American Fuel*, 3 F.4th at 379 (“the increased competition is ... redressed by restoring the regulatory *status quo ante*”).

Finally, 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). And 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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June 27, 2024

EXHIBIT

**IN THE UNITED STATES COURT OF APPEALS
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AMERICAN FUEL & PETROCHEMICAL
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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 and sorghum.

3. Growth Energy has 96 voting members: Absolute Energy, L.L.C.; Ace Ethanol LLC; Adkins Energy LLC; Archer Daniels Midland Co. (ADM) -- Decatur; ADM – Cedar Rapids Dry Mill; ADM – Cedar Rapids Wet Mill; ADM –

Clinton; ADM – Columbus Dry Mill; ADM – Columbus Wet Mill; ADM – Marshall; Big River Resources Boyceville, LLC; Big River Resources Galva, LLC; Big River Resources West Burlington, LLC; Big River United Energy, LLC; Bridgeport Ethanol, LLC; Bushmills Ethanol; Cardinal Ethanol, LLC; Cargill Inc. – Blair; Cargill Inc. – Eddyville; Cargill Inc. – Fort Dodge; CHS - Annawan; Conestoga Energy Partners, LLC – Arkalon Energy; Conestoga Energy Partners, LLC – Bonanza; Conestoga Energy Partners, LLC – Diamond Ethanol; Corn, LP; Denco II, LLC; Didion Ethanol LLC; ELEMENT, LLC; Elite Octane; Fox River Valley Ethanol LLC; Front Range Energy, LLC; Glacial Lakes Energy, LLC – Aberdeen; Glacial Lakes Energy, LLC – Huron; Glacial Lakes Energy, LLC – Mina; Glacial Lakes Energy, LLC – Watertown; Golden Grain Energy, LLC; Greenfield Global Winnebago, LLC; Husker Ag, LLC; ICM, Inc.; Iroquois Bio-Energy Company, LLC; Kansas Ethanol, LLC; Lincolnway Energy LLC; Marquis Energy, LLC; Mid America Bio Energy & Commodities, L.L.C.; Midwest Ag Energy; Nebraska Corn Processing, LLC; Pennsylvania Grain Processing, LLC; Pine Lake Corn Processors, LLC; POET Bioprocessing (33 member plants); Redfield Energy, LLC; Siouxland Energy Cooperative; Sterling Ethanol, LLC; Tharaldson Ethanol Plant I, LLC; The Andersons – Albion; The Andersons – Clymers; The Andersons – Denison; The Andersons – Greenville; Three Rivers Energy; United Wisconsin Grain Producers; Western New York Energy, LLC;

Western Plains Energy, LLC; White Energy Hereford, LLC; White Energy Plainview, LLC; Yuma Ethanol, LLC.

4. All 96 of Growth Energy's voting members produce and sell conventional ethanol, i.e., ethanol derived from corn starch, in the United States. Its members account for about 60% of all conventional ethanol produced in the United States. In 2023, they collectively produced and sold more than 9 billion gallons of conventional ethanol to meet the requirements of the Renewable Fuel Standard ("RFS") under the Clean Air Act.

5. Seventeen of Growth Energy's voting members also produce and sell cellulosic ethanol that qualifies for RFS compliance: Ace Ethanol LLC; Glacial Lakes Energy, LLC – Aberdeen; Glacial Lakes Energy, LLC – Huron; Glacial Lakes Energy, LLC – Mina; Glacial Lakes Energy, LLC – Watertown; Golden Grain Energy, LLC; Lincolnway Energy LLC; Mid America Bio Energy & Commodities, L.L.C.; POET Bioprocessing – Caro; POET Bioprocessing – Fairbank; POET Bioprocessing – Jewell; POET Bioprocessing – Marion; POET Bioprocessing – North Manchester; POET Bioprocessing – Portland; POET Bioprocessing – Shelbyville; and Siouxland Energy Cooperative. Those members account for a significant portion of all cellulosic ethanol produced in the United States.

6. The RFS annual volume requirements define the minimum amount of renewable fuel that must be used in the nation's transportation fuel supply. Based on my long experience leading Growth Energy, any waiver or other reduction of the RFS requirements reduces national demand for qualifying renewable fuel.

7. In the market for transportation fuel, renewable fuel competes with petroleum-based fuel, i.e., fossil fuels. Any renewable fuel that is used for transportation purposes displaces the petroleum-based fuel that would otherwise be used. RFS requirements act as a regulatory barrier to competition from petroleum-based fuel for the content of transportation fuel. Based on my long experience leading Growth Energy, any waiver or other reduction of the RFS requirements increases the competition that qualifying renewable fuels face from petroleum-based fuels.

8. Therefore, a waiver of the cellulosic standard reduces demand for, and increases competition with, the cellulosic biofuels produced by Growth Energy's members.

9. A waiver of the 2023 cellulosic standard, although covering a past year, would be very harmful to cellulosic producers. It would incentivize obligated parties to suppress their use of cellulosic biofuel in the future, in hopes of obtaining future waivers. Once that begins to occur, the cellulosic industry would have a diminished incentive to increase—or even to maintain—production levels or to

invest in future production capacity. Consequently, the cellulosic market could dry up rapidly.

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 27th day of June 2024.



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,

/s/ David M. Lehn

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June 27, 2024

CERTIFICATE OF PARTIES AND AMICI CURIAE

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

Petitioner: American Fuel & Petrochemical Manufacturers.

Respondent: U.S. Environmental Protection Agency.

Movant-Intervenors: Coalition for Renewable Natural Gas.

Amici curiae: None.

Respectfully submitted,

/s/ David M. Lehn

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June 27, 2024

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 3,497 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

June 27, 2024

CERTIFICATE OF SERVICE

I certify that on June 27, 2024, 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

June 27, 2024