ORAL ARGUMENT REQUESTED

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

No. 09-1017

WATERKEEPER ALLIANCE, SIERRA CLUB, THE HUMANE SOCIETY OF THE UNITED STATES, ENVIRONMENTAL INTEGRITY PROJECT, and THE CENTER FOR FOOD SAFETY,
Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY and GINA MCCARTHY, Administrator, U.S. Environmental Protection Agency
Respondents.

MOTION TO RECALL THE MANDATE OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS

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GLOSSARY OF ABBREVIATIONS

EPA	Environmental Protection Agency
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPCRA	Emergency Planning and Community Right-to-Know Act
EEMs	Emissions Estimating Methodologies
NAEMS	National Air Emissions Monitoring Study
CAFO	Concentrated Animal Feeding Operation
AFO	Animal Feeding Operation

INTRODUCTION

Waterkeeper Alliance, Sierra Club, the Humane Society of the United States, Environmental Integrity Project, and the Center for Food Safety ("Petitioners") move this Court to recall its mandate and rule on their 2009 Petition for Review of CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms, 73 Fed. Reg. 76,948 (Dec. 18, 2008) (codified at 40 C.F.R. Pts. 302 & 355) ("Exemption Rule" or "Final Rule") (Attachment ("Att.") A).[1] Pet. for Review, *Waterkeeper Alliance v. U.S. EPA*, No. 09-1017 (filed Jan. 15, 2009 D.C. Cir.) ("Petition for Review") [Doc. 1159663] (Att. B). Alternatively, Petitioners ask the Court to issue a writ of mandamus requiring the Environmental Protection Agency ("EPA") within nine months to revise the Exemption Rule, as required by the mandate that issued over four years ago.

BACKGROUND

A. Procedural Background

On December 18, 2008, the EPA issued the Exemption Rule, which exempts "farms" [2] from public health, right-to-know statutes. 73 Fed. Reg. at 76,951 (Att. A, at A.005). The statutes – the Comprehensive Environmental Response,

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[1] References to "Attachments" or "Att." are to the attachments hereto. References to "A.____" are to the consecutively numbered pages of the Attachments.

[2] "Farm—means a facility . . . devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year." Final Rule, 73 Fed. Reg. at 76,952 (Att. A, at A.006).

Compensation, and Liability Act ("CERCLA") and the Emergency Planning and Community Right-to-Know Act ("EPCRA") – compel facilities that emit significant quantities of hazardous substances into the air to report those releases. 42 U.S.C. §§ 9602, 9603, 11004. The Exemption Rule exempts all animal feeding operations ("AFOs")[3] from the CERCLA requirement to notify the National Response Center of releases of hazardous substances into the air from animal waste, [4] and exempts all but the largest AFOs from the EPCRA requirement to report such releases to state and local officials. Exemption Rule, 73 Fed. Reg. at 76,950 (Att. A, at A.004).

On January 15, 2009, Petitioners petitioned this court for review of the Exemption Rule, alleging that this industrial meat production carve-out violates CERCLA and EPCRA, which by their terms apply to all industries that release hazardous substances into the environment. Pet. for Review, *Waterkeeper*, No. 09-1017 (Att. B). Before merits briefs were filed, EPA moved for a voluntary remand "to reevaluate the policy choices reflected in the Final Rule." EPA's Reply to Pet'r's Opp'n to EPA's Mot. for Voluntary Remand at 1, *Waterkeeper*, No. 09-1017 (Aug. 9, 2010) [Doc. 1259656] (Att. D, at A.025). EPA's motion stated that EPA

[3] "AFO" is defined under Clean Water Act regulations as a lot or facility where animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. 40 C.F.R. § 122.23(b)(1).

[4] "Animal Waste—means manure (feces, urine, and other excrement produced by livestock), digestive emissions, and urea. . . ." Final Rule, 73 Fed. Reg. at 76,952 (Att. A, at A.006).

"intends to consider vacatur of all or part of the Final Rule," and that its revisions "may resolve and render moot some or all of the challenges to the Final Rule." EPA's Motion for Voluntary Remand at 3-4, 5-6 (Att. E, at A.037-38, 039-40). On October 19, 2010, this court remanded the Exemption Rule without vacatur. Order, *Waterkeeper*, No. 09-1017 (Oct. 19, 2010) (Att. F). The mandate then issued. Mandate, *Waterkeeper*, No. 09-1017 (Dec. 10, 2010) [Doc. 1272527] (Att. C).

It has now been more than six years since EPA issued the Exemption Rule, more than four years since the Court remanded the Rule for reconsideration, and EPA has yet to even *propose* revisions as required by the remand order. As a result, the Exemption Rule remains in effect, and its legality, though timely challenged in early 2009, has never been adjudicated.

B. EPA Inaction Since Remand

EPA's work to revise the Exemption Rule pursuant to the Mandate appears to have completely stalled. According to EPA's Regulatory Development and Retrospective Review Tracker, in 2010, EPA initiated a rulemaking to reconsider the Exemption Rule. *See* EPA, CERCLA/EPCRA Reporting Requirements for Air Releases of Hazardous Substances from Animal Waste at Farms, Abstract, attached to the Declaration of Tarah Heinzen ("Heinzen Declaration") as Exhibit 13 ("Regulatory Tracker"). However, the Regulatory Tracker indicates a date of "00/0000" for the Notice of Proposed Rulemaking, and states "[b]ecause EPA

intends to use final emissions estimating methodologies (EEMs) based on the [National Air Emissions Monitoring Study] data as part of the proposed rule, the schedule for the publication of the proposed rule is dependent on a timely finalization of the EEMs." *Id.*

Documents recently provided by EPA to Petitioners in response to a Freedom of Information Act ("FOIA") request indicate that EPA's work on revising the Exemption Rule came to a complete standstill in 2012. Heinzen Decl. ¶ 14 & Exs. 3-11. In a recent meeting, EPA officials confirmed that work to revise the Exemption Rule has stopped until EEMs are developed, and that the EEM development process is on hold indefinitely. Heinzen Decl. ¶ 18.

C. Statutory Background

The reporting requirements in CERCLA and EPCRA enable federal, state and local authorities to prepare for and respond to releases of hazardous substances. Information about releases can be used to develop local plans and public health measures, and can provide data for regulatory and public policy purposes. Release reporting also promotes environmental justice by ensuring that *all* communities can access information about pollutants released in their vicinity. *See* Heinzen Decl. ¶ 12 & Ex. 7.

The Exemption Rule carves AFOs out of the CERCLA requirement that "[a]ny person in charge of a… facility[5] shall, as soon as he has knowledge of any release . . . of a hazardous substance from such… facility in quantities equal or greater than [reportable quantities], immediately notify the National Response Center… of such release." 42 U.S.C. § 9603(a). EPA may designate as "hazardous" any substance which "when released into the environment may present substantial danger to the public health or welfare or the environment." [6] 42 U.S.C. § 9602(a). The National Response Center must "convey the notification expeditiously to all appropriate Government agencies…" *Id*. § 9603(a). This allows agencies "to evaluate the need for and undertake any necessary action in a timely fashion." Guidance on the CERCLA Section 101(10)(H) Federally Permitted Release Definition for Certain Air Emissions, 67 Fed. Reg. 18,899, 18,900-01 (EPA April 17, 2012) ("CERCLA Guidance") (Att. G).

The Exemption Rule also creates an AFO-carveout to the EPCRA requirement that an owner or operator of a facility immediately notify the state emergency planning commission and local emergency planning committees when

[5] CERCLA defines "facility" broadly to include "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel." 42 U.S.C. § 9601(9)(B).
[6] CERCLA "hazardous substances" and their reportable quantities are set forth in 40 C.F.R. § 302.4 (tbl.302.47).

there is either (a) a release of an "extremely hazardous substance"[7] or (b) a release (other than a federally permitted release) of a reportable quantity of a CERCLA hazardous substance. 42 U.S.C. § 11004(a)-(b).

D. Health Impacts of Emissions from Animal Feeding Operations

Ammonia and hydrogen sulfide, substances emitted from decomposing animal waste, Final Rule, 73 Fed. Reg. at 76,950 (Att. A, at A.004), are "hazardous substances" within the meaning of CERCLA and "extremely hazardous substances" within the meaning of EPCRA.[8] The effects of exposure to ammonia range from slight eye and throat irritation to death after less than 30 minutes of exposure. Ad Hoc Comm. on Air Emissions from Animal Feeding Operations et. al., Nat'l Acad. of Sci., Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs 66 tbl.3-5 (2003) ("NAS Study") (Att. H, at A.145). The acute effects of exposure to hydrogen sulfide may include death, adverse respiratory and cardiovascular effects and neurological damage. *Id.* at 67-68 (A.146-47). Ammonia and hydrogen sulfide contribute to the development of fine particulate matter, *id.* at 55 (A.134), which is linked to a variety of problems, including: premature death, heart attacks, aggravated asthma, and decreased lung function. EPA, *Particulate*

[7] EPCRA "extremely hazardous substances" and their reportable quantities are set forth in 40 C.F.R. § 355, apps. A & B (Tables).

[8] The reportable quantities for ammonia and hydrogen sulfide are each 100 pounds per day. Designation of Hazardous Substances, 40 C.F.R. § 302.4 (listing hazardous substances); List of Hazardous Substances, 40 C.F.R. Pt. 355, app. A (listing extremely hazardous substances).

Matter (PM): Health, http://www.epa.gov/airquality/particlepollution/health.html (last updated May 6, 2014).

E. Pre-2008 Enforcement of Release Reporting Requirements

Prior to adoption of the Exemption Rule, the CERCLA and EPCRA release reporting requirements were enforced by citizens through 42 U.S.C. § 9659 (CERCLA citizen suit provision) and 42 U.S.C. 11046(a)(1) (EPCRA citizen suit provision), and the EPA. For example, in *Citizens Legal Environmental Action Network, Inc. v. Premium Standard Farms, Inc.*, No. 97-6073-CV-SJ-6, 20000 WL 220464 (W.D. Mo. Feb. 23, 2000), a citizens group sued an AFO, alleging violations of CERCLA's release reporting requirement. Consent Decree Between United States of America and Citizens Legal Environmental Action Network, Inc. & Premium Standard Farms, Inc. & Continental Grain Co., Inc. at ¶ 3, *Citizens Legal Envtl. Action Network, Inc. v. Premium Standard Farms*, 2000 WL 220464 (W.D. Mo. Nov. 19, 2001) (No. 97-6073-CV-SJ-6), *available at* http://www2.epa.gov/sites/production/files/documents/psfcd.pdf. The EPA intervened, and the parties entered into a consent agreement requiring the facility, among other measures, to design, construct, and implement best management practices to "substantially eliminate" emissions. *Id.* at ¶ 16(a); *see also Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d 693, 702, 706 (W.D. Ky. 2003) (CERCLA and EPCRA citizen suit against AFOs for failing to report emissions).

F. EPA's Suspension of EPCRA and CERCLA Enforcement

Around the time of the *Sierra Club* ruling, the livestock industry sought amnesty from the CERCLA/EPCRA reporting requirements. Jennifer 8. Lee, *Proposal Would Ease Rules of Livestock Farm Pollution*, N.Y. Times, May 6, 2003, http://www.nytimes.com/2003/05/06/politics/06ENVI.html, Heinzen Decl. Ex. 15. EPA then announced plans to conduct a National Air Emissions Monitoring Study ("NAEMS") to develop EEMs for AFOs. Animal Feeding Operations Consent Agreement and Final Order, 70 Fed. Reg. 4958 (EPA Jan. 31, 2005) (Att. I). EPA offered AFOs the option of entering into a "voluntary consent agreement," under which EPA would release participating facilities from liability for past and on-going Clean Air Act, CERCLA and EPCRA violations. In exchange, participating AFOs would pay a civil penalty and share responsibility for funding the NAEMS. *Id.* at 4958-59 (A.345-46). EPA refers to this as the "Air Compliance Agreement" although it *releases* AFOs from compliance with federal statutes. The Air Compliance Agreement was upheld by this Court over a dissent by Judge Rogers. *Ass'n of Irritated Residents* ("*AIR*") *v. EPA*, 494 F.3d 1027 (D.C. Cir. 2007).

The Government Accountability Office ("GAO") was critical of EPA's methodology for conducting the NAEMS, finding it to be so limited in scope and sample size that it may not produce sufficient information to shape future regulation. U.S. Gov't Accountability Office, GAO-08-944, Concentrated Animal Feeding

Operations 7 (2008) (Att. J, at A.377). The EPA Science Advisory Board also criticized the draft EEMs, finding that the small sample size limited the ability of EPA's models to predict emissions across the industry. EPA, Science Advisory Board, SAB Review of Emissions-Estimating Methodologies for Broiler Animal Feeding Operations and for Lagoons and Basins at Swine and Dairy Animal Feeding Operations 2 (2013), Heinzen Decl. ¶ 28 & Ex. 16.[9]

Under the schedule proposed in the Air Compliance Agreement, EEMs should have been developed by 2010, 70 Fed. Reg. at 4960 (Att. I, at A.347), but they have yet to be completed. Draft EEMs for ammonia for certain types of livestock operations were released in 2012,[10] but were criticized extensively by environmental and health organizations and industry groups. *See* Comments to *Animal Feeding Operations Emission Estimating Methodologies* (Docket ID EPA-HQ-OAR-2010-0960), Regulations.gov, *available at* http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=EPA-HQ-OAR-2010-0960;refD=EPA-HQ-OAR-2010-0960-0015 (last visited Mar. 16, 2015).

[9] Despite the serious shortcomings in both the NAEMS monitoring and the data analysis in the draft documents, initial findings indicate that many AFOs emit high levels of ammonia and likely exceed the reportable quantity. Heinzen Decl. ¶ 26.
[10] Notice of Availability: Draft Documents Related to the Development of Emissions Estimating Methodologies, 77 Fed. Reg. 14,716 (EPA March 13, 2012) (Att. K).

G. History of the Exemption Rule

Shortly after EPA announced the Air Compliance Agreement and the NAEMS, poultry trade associations petitioned EPA to exempt poultry operations from reporting under CERCLA and EPCRA. *See* Notice of Availability of a Petition for Exemption, 70 Fed. Reg. 76,452 (EPA Dec. 27, 2005) (Att. L, at A.455). Two years later, as EPA was starting the NAEMS, which was supposed to help AFOs *comply with* EPCRA and CERCLA, EPA proposed to *exempt* AFOs from reporting any hazardous substance released from animal waste. 72 Fed. Reg. 73,700, 73,704 (Dec. 28, 2007) ("Proposed Rule") (Att. M, at A.463).

Petitioners vigorously opposed the Proposed Rule. *See* Comments by Waterkeeper Alliance, *et al*., dated March 27, 2008 ("Comments") [Docket I.D. EPA-HQ-SFUND-2007-0469-0758] at 11-13 (Att. N, at A.479-81). Despite the lack of statutory authority, EPA finalized the Exemption Rule. The CERCLA exemption applies to all "[r]eleases to the air of any hazardous substance from animal waste at farms." EPA Notification Requirements, 40 C.F.R. § 302.6(e)(3) (2012). The EPCRA exemptions applies to: 1) "[a]ny release to the air of a hazardous substance from animal waste at farms from animals that are not stabled or otherwise confined"; and 2) "[a]ny release to the air of a hazardous substance from animal waste at farms that stable or confine fewer than the numbers of animals [that meet the criteria under 40 C.F.R. § 122.23(b)(4) for being a Large "concentrated

animal feeding operation" or "Large CAFO" [11]]." EPA Emergency Release Notification Exemptions, 40 C.F.R. § 355.31(g) and (h) (2012). The "Large CAFO" cutoff for AFOs that must still comply with EPCRA is not tethered to whether the AFO is likely to emit pollutants above reportable quantities. Heinzen Decl. ¶ 26.

STANDING

Petitioners meet the "irreducible constitutional minimum" requirements for standing required by *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), because they suffer from a variety of injuries that are traceable to the unlawful promulgation of the Exemption Rule, which would be redressed if the Court invalidated the rule in whole or part. Petitioner Environmental Integrity Project has standing on its own behalf. *See* Heinzen Decl. ¶¶ 2-12. Petitioners Center for Food Safety ("CFS"), Humane Society of the United States ("HSUS"), Sierra Club and Waterkeeper Alliance have standing to bring suit on behalf of their members under *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). *See* Declaration of Alma Hasse, member of CFS, at ¶¶ 6-12; Declaration of Andrew Kimbrell, Executive Director of CFS, at ¶¶ 10-13; Declaration of Jason Chance, member of HSUS, at ¶¶ 4-18; Declaration of Ronald Wyse, member of HSUS, at ¶¶ 3-16; Declaration of Dr. Michael Greger, Director of Public Health and Animal

[11] "Large concentrated animal feeding operation" ("CAFO") is defined in Clean Water Act regulations as an AFO that stables or confines more than a set numerical threshold of animals, which varies by type of livestock. 40 C.F.R. § 122.23(b)(4).

Agriculture for HSUS, at ¶¶ 5-9; Declaration of Diana Lynn Henning, member of Sierra Club, at ¶¶ 5-13, 19-23; Declaration of Max Wilson, member of Sierra Club, at ¶ 3-13; Declaration of Heather Deck, Riverkeeper for the Pamlico-Tar River Foundation, a member of the Waterkeeper Alliance, at ¶¶ 10-14; Declaration of Marc Yaggi, Executive Director of Waterkeeper Alliance, at ¶¶ 8-13.

ARGUMENT

For the last six years, EPA has engaged in a "marathon round of administrative keep-away." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 420 (D.C. Cir. 2004). It persuaded the Court to dismiss the Petition for Review without vacating the Exemption Rule based on representations that it would move promptly to revise the Rule. Now, more than four years have passed, EPA has not worked on the rulemaking since 2012, and it has no projected date for proposing a rule. EPA's inaction defies the Court's remand order and thwarts its jurisdiction by shielding the Exemption Rule from judicial review. In this circumstance, preserving the status quo, which would allow EPA to ignore the Court's mandate indefinitely, should not be an option.

The interests of judicial economy and justice would be best served by recalling the mandate and deciding the 2009 Petition for Review, rather than imposing a timetable for EPA to act. Even if the Court directs EPA to revise the Exemption Rule within a set timeframe, any revision short of complete vacatur

would raise the same legal issues presented in the 2009 Petition for Review. Accordingly, recalling the mandate and deciding the merits without further delay is the most efficient way to resolve this dispute.

In the alternative, the Court should find that EPA has thwarted the Court's mandate with its unreasonable delay, and direct EPA to finalize its revisions to the Exemption Rule within nine months. If the Court adopts this approach, Petitioners ask the Court to advise EPA that if it fails to meet this timetable, the Court will automatically restore the Petition for Review to its active docket.

POINT I: THIS COURT SHOULD RECALL ITS MANDATE AND RULE ON THE PETITION FOR REVIEW

EPA's enforcement of the Exemption Rule lawlessly exempts an industry from generally applicable federal statutes designed to protect public health. Yet the Agency has shielded the Rule from judicial review by persuading this Court to dismiss the Petition for Review without vacating the Rule; yet, any work on revisions appears to have stopped in 2012 and EPA has told Petitioners it has no present plans to revise the Exemption Rule. Heinzen Decl. ¶ 18. To avoid this ongoing—and without end-in-sight— injustice, the Court should exercise its authority to recall the mandate and rule on the 2009 Petition for Review.

A. This Court Has the Authority to Recall the Mandate

This court has authority to recall its mandate. *Calderon v. Thompson*, 523 U.S. 538, 549 (1998) ("[T]he courts of appeals are recognized to have an inherent

power to recall their mandates.") (citation omitted); *see also Dilley v. Alexander*, 627 F.2d 407, 412 (D.C. Cir. 1980) (recalling mandate where implementation was threatened by "delay and misconstruction"). This court has described its authority as "an inherent power to recall a mandate upon a showing of good cause . . . ." *Id.* at 410. "The 'good cause' requisite for recall of mandate is the showing of need to avoid injustice." *Greater Bos. Television Corp. v. FCC*, 463 F.2d 268, 277 (D.C. Cir. 1971).[12] "Good cause" encompasses "the public interest," *Am. Iron & Steel Inst. v. EPA* ("*AIS II*"), 560 F.2d 589, 598 (3d Cir. 1977), as well as the interest in "protect[ing] the integrity of [the court's] earlier decision." *Id.* at 597; *Greater Bos.*, 463 F.2d at 291 (recall of mandate permitted "to avoid an unconscionable injustice growing out of misconduct undercutting the integrity of the administrative or judicial process"); *cf. Dilley*, 627 F.2d at 411 ("[t]here could be no more good cause provided, nor injustice incurred, than by the misconstruction of our mandate by the Army or the court below"). Recall is also justified to correct an order that has continuing effect, such as an injunction or other order that regulates ongoing affairs outside the judicial system itself. *AIS II*, 560 F.2d at 598.

[12] "[T]he authority of the appellate court to recall a mandate… has a foundation in statute as well as the inherent power of a court." *Greater Bos.*, 463 F.2d at 277. Specifically, 28 U.S.C. § 2106, which by its terms authorizes appellate courts to require such further proceedings in connection with any court order "as may be just under the circumstances," supports recalling a mandate. *Id.*

B. Recalling the Mandate is the Most Appropriate Relief

This case presents the "good cause" and the need to "prevent injustice" requisite to justify a recall of the mandate. *See Greater Bos.*, 463 F.2d at 279.

1. Recall of the Mandate Will End the Injustice of Denying Petitioners the Right to Judicial Review of the Exemption Rule

There is no dispute that the Exemption Rule is the type of agency action that is reviewable in court. *See* 5 U.S.C. § 702 ("[a] person suffering legal wrong because of agency action… is entitled to judicial review thereof"); *Am. Rivers*, 372 F.3d at 419 (D.C. Cir. 2004) ("any person aggrieved by a[n agency action] … is entitled to judicial review"). Moreover, inherent in the presumption of reviewability is the right to *timely* judicial review of final agency action. *See Cutler v. Hayes*, 818 F.2d 879, 897 (D.C. Cir. 1987) ("agency delay may collide with the right to judicial review") (citation omitted); *cf. Nat'l Fuel Gas Supply Corp. v. FERC*, 899 F.2d 1244, 1250 (D.C. Cir. 1990) (noting that petitioner "is entitled to a speedy resolution of its challenge"). Indeed, Congress requires challenges to regulations promulgated under CERCLA to be filed directly in the Court of Appeals, 42 U.S.C. § 9613(a), and it is reasonable to infer that this was done to promote speedy resolution of such challenges. *Cf. Castro Cnty., Tex. v. Crespin*, 101 F.3d 121, 126 (D.C. Cir. 1996)

(the requirement of direct appeal to the Supreme Court over voting rights claims was enacted to "ensure the speedy resolution of [such] disputes").[13]

EPA's multi-year failure to revise the Exemption Rule undermines Petitioners' fundamental right to obtain judicial review of a regulation that is illegally depriving communities of information about hazardous substances they are exposed to from AFOs. As this Court noted in a similar context: "There comes a point when relegating issues to proceedings that go on without conclusion in any kind of reasonable time frame is *tantamount to refusing to address the issues at all* and the result is a denial of justice." *MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 344 (D.C. Cir 1980) (quoting *Nader v. FCC*, 520 F.2d 182 (D.C. Cir. 1985)) (emphasis added). That is precisely the situation here.

This Court has repeatedly stepped in where, as here, agency delay thwarts judicial review. For example, in *In re Core Commc'ns, Inc.*, the Court noted that its remand of interim rules without vacatur left in place rules that could not be challenged until the agency explained the basis for those rules, and the agency's delay in providing the explanation would "insulate[] its nullification of our decision from further review" unless the Court acted to "prevent the frustration" of its order. 531 F.3d 849, 856 (D.C. Cir. 2008) (quoting *Potomac Elec. Power Co. v. Interstate*

[13] The concern with timely access to judicial review leads to the maxim that "justice delayed is justice denied." *See, e.g., Rohr Indus., Inc. v. Washington Metro. Area Transit Auth.*, 720 F.2d 1319, 1327 (D.C. Cir. 1983).

Commerce Comm'n ("*PEPCO II*"), 702 F.2d 1026, 1032 (D.C. Cir. 1983)). In *In re People's Mojahedin Organization of Iran ("PMOI"),* 680 F.3d 832 (D.C. Cir. 2012), the Court noted that the Secretary's failure to act on the Court's remand "insulates [its] decision from our review," and, as a result, Petitioners are "stuck in administrative limbo." *Id*. at 837. Similarly, in *Sierra Club v. Gorsuch*, the Court noted that its

> review of delayed action in rulemaking . . . must be undertaken vigorously, . . . for it must enable reviewing courts to evaluate claims. . . that an agency is preventing review of a decision not to regulate by indefinitely insisting that final action has been deferred. *Judicial review of decisions not to regulate must not be frustrated* by *blind* acceptance of an agency's claim that a decision is still under study.

715 F.2d 653, 659 (D.C. Cir. 1983) (second alteration in original) (footnotes omitted).

As in *Core Communications, PMOI,* and *Sierra Club,* EPA's delay has left Petitioners "stuck in administrative limbo; [where they] enjoy[] neither a favorable ruling on [their] petition nor the opportunity to challenge an unfavorable one." *PMOI,* 680 F.3d at 837. The proper remedy is to recall the mandate. *See Radio-Television News Dirs. Ass'n v. FCC* ("*2000 Radio-TV*"), 229 F.3d 269, 271, 272 (D.C. Cir. 2000) (recall of mandate is "preordained" where absent relief petitioners would be subject to the rules they challenged with no agency action imminent).

In *Core Communications* and *PMOI,* the Court issued writs of mandamus that directed a result that would go into effect unless the relevant agency ended its delay

expeditiously. *Core Commc'ns*, 531 F.3d at 861-62 (ordering vacatur of intercarrier compensation rules unless the agency provided a justification for them within six months); *PMOI*, 680 F.3d at 838 (ordering revocation of the agency's designation, unless the agency ruled on the petition within four months). In those cases, the Court had already considered the merits of the underlying dispute before the petition for writ of mandamus was filed, putting the court in a position to issue provisional rulings on the merits. Here, where the merits of the Petition for Review have not been considered, the most appropriate remedy is to rule on the Petition for Review.

2. Recall of the Mandate Will Protect the Public Interest

The Exemption Rule's AFO carve-outs deny communities information about hazardous substances that they are breathing – a result that is plainly contrary to "the public interest." Recalling the mandate would serve the public interest by hastening a ruling that could enable communities to receive more information about hazardous air emissions in their vicinities, a first step to minimizing their exposures. *See, e.g.*, Heinzen Decl. ¶ 6; Chance Decl. ¶¶ 14, 18; Henning Decl. ¶¶ 20-22; *see also AIS II*, 560 F.2d at 599 (recalling the mandate has the potential to "serve the public interest by facilitating the enforcement of the national pollution laws").

3. Recall Will Protect the Integrity of This Court's Mandate

Recall is also necessary "in order to protect the integrity of this court's mandate." *Reserve Mining Co. v. Lord*, 529 F.2d 181, 188 (8th Cir. 1986). A

remand order like the one issued here "implicitly include[s] the understanding that the [agency will] respond to [the court's] mandate in a timely manner." *PEPCO II*, 702 F.2d at 1034. The integrity of the Court's Mandate is threatened by EPA's apparent decision to place revisions to the Exemption Rule on indefinite hold. *See* Heinzen Decl. ¶ 18; *cf. Dilley*, 627 F.2d at 412 ("Since the recalcitrance of the Army has necessitated [judicial intervention], we have even less difficulty surmounting" the usual rule disfavoring recalling a mandate).

This case is similar to *2000 Radio-TV*, where the court recalled its mandate and issued a writ of mandamus directing the Federal Communications Commission to immediately repeal its "personal attack and political editorial" rules where the agency "had taken no action to respond to the remand" until the motion for mandamus was filed, and the "court c[ould] only conclude that its remand order for expeditious action was ignored." 229 F.3d at 270-71 (footnotes omitted). Although EPA's delay here is not yet as long as the delay in *2000 Radio-TV*, the court's rationale for recalling the mandate in that case applies here: EPA's multi-year inaction and its admission that it has no current plan to revised the Exemption Rule, *see* Heinzen Decl. ¶ 29, defies the Court's mandate. In this situation, recall is the most appropriate remedy. *See 2000 Radio-TV*, 229 F.3d at 272.

C. The "Exceptional Circumstances" Rule Does Not Apply Here

The usual rule that a mandate should be recalled only in exceptional circumstances does not apply here because the strong interest in the finality of judgments that underlies that rule is not present. *See, e.g.*, *Calderon*, 523 U.S. at 550 ("In light of 'the profound interests in repose' attaching to the mandate of a court of appeals, however, the power [to recall the mandate] can be exercised only in extraordinary circumstances."). Unlike cases where the mandate resolves a lawsuit, here the mandate merely remands a rulemaking for further agency action. Thus, the Court's order is of a "continuing nature" and not "inherently final." *See AIS II*, 560 F.2d at 599. In this circumstance, recalling the mandate to rule on the legality of the Exemption Rule would not disrupt the strong policy interests in finality and repose.

The Third Circuit recalled a mandate under similar circumstances in *AIS II*. In explaining why recalling the mandate was appropriate, the court noted that the order from which EPA sought relief

> did not result in the award of a money judgment or in other relief that was inherently final. Rather, . . . this Court rendered an order which necessarily is of a continuing nature. Since the EPA has not yet [taken the regulatory action required by the court's ruling], the remand obligations currently remain in force. It would follow that modification of the extant judgment here would not appear to be particularly violative of the elemental precept . . . that there should be a conclusion to a controversy in litigation. Because *AIS I*, at least prior to completion by the agency of the tasks ordered by this panel, cannot be said to have constituted a final adjudication of the dispute concerning the validity of the challenged regulations, recall of the mandate in the

> present setting thus is not especially disruptive of the interests in finality of judgments.

Id. (footnote omitted).

The same reasoning applies here: the EPA is under a "continuing duty to satisfy an order of the [c]ourt," *Id.* at 599, and has yet to even propose the revisions to the Exemption Rule that it promised. Therefore, "the remand obligations currently remain in force," *see id.*, and the remand "cannot be said to have constituted a final adjudication of the dispute concerning the validity of the challenged regulations." *Id*. "[R]ecall of the mandate in the present setting thus is not especially disruptive of the interests in finality of judgments." *See id.*

For these reasons, Petitioners ask the Court to recall the mandate and decide the merits of their long dormant, but never fully adjudicated, Petition for Review so that the Exemption Rule no longer impedes the public from obtaining the health-related information required by CERCLA and EPCRA.

POINT II: ALTERNATIVELY, THIS COURT SHOULD ISSUE A WRIT OF MANDAMUS DIRECTING EPA TO COMPLY WITH THE MANDATE

If the Court does not recall the mandate, it should issue a writ of mandamus ordering the EPA to comply with the Court's mandate by issuing a final rule revising the Exemption Rule within nine months of the issuance of the writ. If EPA has not finalized its revisions to the Exemption Rule within that time period, this

Court should restore the Petition for Review to its active docket and establish a briefing schedule so the legality of the Exemption Rule can be decided.

A. This Court Has Jurisdiction to Enforce its Order and Mandate by Issuing a Writ of Mandamus

This Court has continuing jurisdiction to enforce its previous orders under the All Writs Act, U.S.C. § 1651(a), by "compel[ling] agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). *See PEPCO II*, 702 F.2d at 1032 ("Congress has empowered federal courts to issue a writ such as mandamus ... if necessary to effectuate or prevent the frustration of orders previously issued") (citations omitted); *Int'l Ladies' Garment Workers' Union v. Donovan*, 733 F.2d 920, 922 (D.C. Cir. 1984) ("The power of an original panel to grant relief enforcing the terms of its earlier mandate is clearly established in this Circuit . . . in cases that have been remanded directly to an administrative agency.") (citations omitted).

B. EPA Has Defied the Court's Mandate and Thwarted the Court's Jurisdiction by Shielding the Exemption Rule from Review

EPA's four-year delay in complying with the Court's remand order is tantamount to defying it because a remand "implicitly include[s] the understanding that the [agency will] respond to [the court's] mandate in a timely manner." *PEPCO II*, 702 F.2d at 1034. In *PMOI*, this Court found the "fail[ure] to heed [its] remand" to be "decisive" in granting relief to petitioners in the face of agency delay. *See* 680 F.3d at 837. Here, EPA's failure to revise the Exemption Rule for over four years is

nothing short of a "fail[ure] to heed [the] remand" order. *Id*. In this circumstance, this Court has regularly issued a writ of mandamus. *See id*. at 838 ("What remains is the content of the writ to issue."); *Core Comm'cns*, 531 F.3d at 861 ("There remains only the question of the content of the writ that we will issue."); *PEPCO II*, 702 F.2d at 1032 (granting writ to "prevent the frustration of orders previously issued") (citation omitted). It should do so here.

A writ of mandamus is also appropriate because EPA's delay is thwarting the Court's jurisdiction by preventing judicial review of the Exemption Rule. As discussed above, EPA made representations in its Motion for Voluntary Remand that persuaded this Court to remand without vacatur. EPA's flouting of the remand order has insulated the Exemption Rule from scrutiny. "[T]he primary purpose of the writ in circumstances like these is to ensure that an agency does not thwart [the court's] jurisdiction by withholding a reviewable decision." *Am. Rivers*, 372 F.3d at 419 (citation omitted); *see also Core Comm'cns*, 531 F.3d at 855-56.

The Court should issue a writ of mandamus requiring prompt agency action to protect its jurisdiction, which EPA has thwarted by seeking dismissal of the Petition for Review and then defying the remand order by ceasing all work on revising the Exemption Rule. Mandamus is especially appropriate because the Rule undermines public health and welfare and defies the language of Congress.

C. Mandamus Is Warranted Because EPA Has Unreasonably Delayed Complying with the Court's Mandate

Mandamus is also appropriate because EPA has unreasonably delayed in complying with the remand. This Court has identified six factors to considers in determining whether agency action is "unreasonably delayed" within the meaning of 5 U.S.C. § 706(1):

> (1) the time agencies take to make decisions must be governed by a "rule of reason"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is "unreasonably delayed."

Telecomms. Research & Action Ctr. v. FCC (*TRAC*), 750 F.2d 70, 80 (D.C. Cir. 1984) (citations omitted). [14] Applying these factors, this Court has issued numerous writs of mandamus compelling agency action. *See*, *e.g*., *Core Commc'ns*, 531 F.3d

[14] While the *TRAC* factors strongly support issuance of a writ of mandamus, these factors are not dispositive considerations in this context where EPA has not only "unreasonably delayed," it has defied the remand order and insulated the Exemption Rule from judicial review, thwarting the Court's jurisdiction as discussed above. *See Core Commc'ns*, 531 F.3d at 855-56 (while TRAC factors "are not unimportant here," more important is the fact that the agency is defying the court's remand order and effectively nullifying its decision); *PMOI*, 680 F.3d at 837 (discussing TRAC factors, but concluding that the "decisive" consideration is that the Secretary failed to heed the court's remand order).

at 861-62; *Am. Rivers*, 372 F.3d at 414; *In re Bluewater Network*, 234 F.3d 1305, 1316 (D.C. Cir. 2000); *Int'l Chem. Workers Union*, 958 F.2d 1144, 1150 (D.C. Cir. 1992). These factors compel mandamus here: EPA's unreasonable delay denies communities critical information about hazardous substances to which they are being exposed, circumvents the Court's remand order, and insulates EPS's unlawful rulemaking from review by this Court.

1. EPA's Delay Exceeds the Rule of Reason

While there is "no *per se* rule as to how long is too long to wait for agency action," *Am. Rivers*, 372 F.3d at 419 (quoting *Int'l Chem. Workers Union*, 958 F.2d at 1149), EPA's four-year delay here must be seen as "unreasonable." As a general matter, "a reasonable time for agency action is typically counted in weeks or months, not years." *Am. Rivers*, 372 F.3d at 419; *see also Midwest Gas Users Ass'n v. FERC*, 833 F.2d 341, 359 (D.C. Cir. 1987) ("[A] reasonable time for an agency decision could encompass 'months, occasionally a year or two, but not several years or a decade.'") (quoting *MCI Telecomms. Corp.*, 627 F.2d at 340). For example, a three-year delay has been found to be unreasonable, *Pub. Citizen Health Research Grp. v. Auchter*, 702 F.2d 1150, 1154 (D.C. Cir. 1983), and a six-year delay "nothing less than egregious," *Am. Rivers*, 372 F.3d at 419 (footnote omitted). *See also Air Line Pilots Ass'n, Int'l v. Civil Aeronautics Bd.*, 750 F.2d 81, 86 (D.C. Cir. 1984) (five-year delay unreasonable "under *any* set of circumstances"); *MCI*

Telecomms. Corp, 627 F.2d at 324-25, 338-42 (four-year delay unreasonable). EPA's more than four-year delay here is squarely within the timeframe that this court has considered "unreasonable."

In considering how a delay measures against the "rule of reason," courts should consider not only how long the delay has been, but also how long it will likely continue – in other words, the Court should consider "the pace of the agency decisional process." *Pub. Citizen Health Research Grp. v. Comm'r, FDA*, 740 F.2d 21, 35 (D.C. Cir. 1984). In *Muwekma Tribe*, the court found that where the agency indicated that "it would take two to four years… before [it] would even begin consideration of the petition," its pace violated the rule of reason and the "ambiguous, indefinite time frame … constitutes unreasonable delay." *Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 30, 37 (D.D.C. 2000). The pace in this case is even more problematic than in *Muwekma Tribe*: Petitioners have been given *no* time frame by which they can expect agency action. Indeed, responses to Petitioners' FOIA request, and statements by EPA to petitioners in a recent meeting, indicate that EPA is not currently moving forward to revise the Exemption Rule. Heinzen Decl. ¶¶ 14, 18. Moreover, by unnecessarily tethering its timeframe to the development and completion of the EEMs (an undertaking that also appears to have completely stalled), EPA has made it even less likely that the Exemption Rule will be revised in an acceptable time frame. *Id.* ¶ 18.

2. EPA's Delay Is Unreasonable In Light of the Human Health and Welfare Impacts at Stake and the Interests Prejudiced by Delay

The third and fifth *TRAC* factors direct courts to consider the nature of the interests prejudiced by the agency's delay. *See TRAC*, 750 F.2d at 80. The Court noted in *TRAC* that "delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake." *Id*; *see also Int'l Chem. Workers Union*, 958 F.2d at 1150 (finding that a six year delay is "an extraordinarily long time" in the face of serious health risks); *Pub. Citizen Health Research Grp. v. Block*, 823 F.2d 626, 629 (D.C. Cir. 1987) ("When lives are at stake, … [agency] must press forward with energy and perseverance in adopting regulatory protections"); *Pub.Citizen Health Research Grp. v. Comm'r, FDA*, 740 F.2d at 34 ("[T]he pace of agency decisionmaking is unreasonably dilatory" given that the "agency is charged with the administration of a statutory scheme whose paramount concern is protection of the public health"); *Pub. Citizen Health Research Grp. v. Auchter*, 702 F.2d at 1157.

EPA's delay in revising the Exemption Rule denies communities access to important information about hazardous substances emitted into their neighborhoods and their homes, and denies emergency responders notice of hazardous air pollution. The declarations from members of the Petitioners' organizations submitted herewith show the injuries that result when individuals are denied access to information that could be used to protect their health and their families' health. *See, e.g.*, Hasse Decl.

¶¶ 10-11; Chance Dec. ¶ 14; Wyse Decl. ¶ 13. EPA's standstill in this context is unconscionable.

3. Setting a Timetable for EPA to Finalize its Revisions to the Exemption Rule Will Not Impede EPA's Regulatory Agenda

The fourth TRAC factor asks courts to consider the agency's competing priorities in order to determine if delay is "unreasonable." It is not reasonable for EPA to delay revisions to the Exemption Rule until EEMs are finalized. *See* Regulatory Tracker, Heinzen Decl. Ex. 13. By their terms, CERCLA and EPCRA do not direct EPA to develop EEMs, nor do they suggest that enforcement is contingent on developing EEMs. *See Sierra Club, Inc. v. Tyson Foods, Inc.*, 299 F. Supp. 2d at 706 (court rejected AFO's argument that it need not comply with CERCLA and EPCRA because there is no "generally accepted methodology or model for estimating the amount of ammonia chicken production facilities emit"; it held: "[i]f Congress had intended such a result, it could have excluded animal production facilities . . . from the reporting requirements").

EPA cannot reasonably claim that EEMs are necessary to requiring AFOs to report their releases. In fact, in the months immediately after the remand of the Exemption Rule, EPA set a schedule for proposing revisions to the Rule that did not include finalizing EEMs before a revised rule was proposed. *See* Heinzen Decl. ¶ 14(d). Moreover, EPA does not expect other industries rely on EEMs to comply with EPCRA and CERCLA. EPA publishes a compilation of emissions factors by

industry, known as "AP-42." [1 Stationary Point and Area Sources] Office of Air Quality Planning & Standards, EPA, Compilation of Air Pollutant Emission Factors, Introduction to AP-42 (5th ed. 1995), *available at* http://www.epa.gov/ttn/chief/ap42/c00s00.pdf ("AP-42"). But EPA recommends *against relying* on these emission factors for reporting. Specifically, it advises: "[u]se of these [AP-42 emission] factors as source-specific permit limits and/or as emission regulation compliance determinations *is not recommended*" because "source-specific tests or continuous emission monitors can determine the actual pollutant contribution from an existing source better than can emission factors." *Id.* at 2, 3 (emphasis added).[15] If reliance on EEMs is not recommended for other industries, EPA need not delay revising the Exemption Rule until it finishes its decade-long attempt to develop EEMs for AFOs.

Moreover, EPA's theory that AFOs require EEMs in order to comply with CERCLA and EPCRA is at odds with the Exemption Rule itself. The Rule exempts large CAFOs from their obligations under CERCLA, Exemption Rule, 73 Fed. Reg. at 76,950 (Att. A, at A.004), but large CAFOs remain subject to EPCRA's reporting requirement, 42 U.S.C. § 11004(a) – even though there are no EEMs for this

[15] The AP-42 subsection on "Livestock & Poultry Feed Operations" states: "At this time, there is no 'AP-42 factor' or estimation method for this category. As would be the case even if there were an AP-42 method, *users must evaluate their own application to determine the most appropriate method of estimating emissions*." *Id.* at ch. 9, § 4. *See* Heinzen Decl. ¶ 21 & Ex. 14.

industry. If large CAFOs can comply with EPCRA without EEMs by giving notice of emissions that exceed reportable quantities, then large CAFOs can certainly make a virtually identical report under CERCLA. Likewise, EEMs are not needed for smaller AFOs to report emissions exceeding reportable quantities.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioners respectfully ask the Court to recall the mandate in this matter and set a schedule for briefing the merits of the Petition for Review. Alternatively, Petitioners respectfully ask the Court issue a writ of mandamus directing the EPA to comply with the Court's mandate by finalizing revisions to the Exemption Rule within nine months. The writ should alert EPA that if it does not comply with this timetable, the Court will move forward to consider and decide the merits of the dismissed Petition for Review. Petitioners further request that the Court retain jurisdiction pending full compliance with the writ of mandamus.

DATED: April 15, 2015

/s/

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UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

WATERKEEPER ALLIANCE, SIERRA CLUB, THE HUMANE SOCIETY OF THE UNITED STATES, ENVIRONMENTAL INTEGRITY PROJECT, and THE CENTER FOR FOOD SAFETY,	)	
Petitioners,	)	No. 09-1017
v.	)	
U.S. ENVIRONMENTAL PROTECTION AGENCY and GINA MCCARTHY, Administrator, U.S. Environmental Protection Agency,	)	
Respondents.	)	

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 21(d) and 28(a)(1)(A), counsel for Petitioners certifies as follows:

A. Parties and Amici

1. Petitioners in 09-1017: Waterkeeper Alliance, Sierra Club, The Humane Society of the United States, Environmental Integrity Project, The Center for Food Safety, and Citizens for Pennsylvania's Future. Citizens for Pennsylvania's Future does not join the current Motion/Petition.

2. Petitioner in the consolidated case, No. 09-1104: National Pork Producers Council.

3. Respondents: U.S. Environmental Protection Agency and Gina McCarthy, Administrator, U.S. Environmental Protection Agency.

4. Intervenors: U.S. Poultry & Egg Association, the National Chicken Council, and National Turkey Federation.

5. There are presently no *amici curiae*.

B. Rulings Under Review

In 2009, Petitioners sought review of final regulations issued by Respondents, entitled "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances From Animal Waste at Farms," 73 Fed. Reg. 76,948 (Dec. 18, 2008).

Petitioners now seek a recall of this Court's mandate and a ruling on the Petition for Review filed with this court in *Waterkeeper Alliance v. U.S. EPA*, No. 09-1017 (filed Jan. 15, 2009 D.C. Cir.) [Doc. 1159663]. Alternatively, Petitioners ask the Court to issue a writ of mandamus requiring the Environmental Protection Agency within nine months to finalize its revisions to the final regulations, as required by the mandate that issued over four years ago. Mandate, *Waterkeeper*, No. 09-1017 (Dec. 10, 2010) [Doc. 1272527].

C. Related Cases

As noted above, this case was consolidated with another Petition for Review of the same regulations filed by National Pork Producers Council, No. 09-1104.

DATED: April 15, 2015

/s/

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UNITED STATES COURT OF APPEALS
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WATERKEEPER ALLIANCE, SIERRA CLUB, THE HUMANE SOCIETY OF THE UNITED STATES, ENVIRONMENTAL INTEGRITY PROJECT, and THE CENTER FOR FOOD SAFETY,	)	
Petitioners,	)	No. 09-1017
v.	)	
U.S. ENVIRONMENTAL PROTECTION AGENCY and GINA MCCARTHY, Administrator, U.S. Environmental Protection Agency,	)	
Respondents.	)	

PETITIONERS' RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rules 21 and 26.1, petitioners make the following disclosures:

Waterkeeper Alliance: Waterkeeper Alliance has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Waterkeeper Alliance.

Waterkeeper Alliance, a corporation organized and existing under the laws of the State of New York, is a nonprofit organization dedicated to the international preservation and protection of water bodies and their associated communities.

Sierra Club: Sierra Club has no parent companies, and there are no publicly held companies that have a 10 percent 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.

The Humane Society of the United States (HSUS): HSUS has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in the HSUS.

HSUS, a corporation organized and existing under the laws of the State of Delaware, is a national nonprofit organization dedicated to fostering the protection and humane treatment of all animals, including protecting, conserving, and enhancing the nation's wildlife and wildlife habitat.

Environmental Integrity Project: Environmental Integrity Project has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in Environmental Integrity Project.

Environmental Integrity Project, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization dedicated to strengthening environmental laws and improving their enforcement.

The Center for Food Safety (CFS): CFS has no parent companies, and there are no publicly held companies that have a 10 percent or greater ownership interest in CFS.

CFS, a corporation organized and existing under the laws of the District of Columbia, is a national nonprofit organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and promoting sustainable alternatives.

DATED: April 15, 2015

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