ORAL ARGUMENT NOT YET SCHEDULED

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

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 09-1322 (consolidated with Nos. 10-1024, 10-1025, 10-1026, 10-1030, 10-1035, 10-1036, 10-1037, 10-1038, 10-1039, 10-1040, 10-1041, 10-1042, 10-1044, 10-1045, 10-1046, and 10-1049)**
COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1073**
SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1083 (consolidated with No. 10-1099)**

AMERICAN IRON & STEEL INSTITUTE, ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1109 (consolidated with Nos. 10-1110, 10-1114, 10-1115, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, and 10-1129)

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1092 (consolidated with Nos. 10-1094, 10-1134, 10-1143, 10-1144, 10-1152, 10-1156, 10-1158, 10-1159, 10-1160, 10-1161, 10-1162, 10-1163, 10-1164, 10-1166, 10-1172, and 10-1182)

SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1131 (consolidated with Nos. 10-1132, 10-1145, 10-1147, 10-1148, and 10-1199)

GEORGIA COALITION FOR SOUND ENVIRONMENTAL POLICY, INC. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1200 (consolidated with Nos. 10-1201, 10-1202, 10-1203, 10-1205, 10-1206, 10-1207, 10-1208, 10-1209, 10-1210, 10-1211, 10-1212, 10-1213, 10-1215, 10-1216, 10-1218, 10-1219, 10-1220, 10-1221, and 10-1222)**
COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1234 (consolidated with Nos. 10-1235, 10-1239, and 10-1245)**

MOTION FOR COORDINATION OF RELATED CASES

MOTION FOR COORDINATION OF RELATED CASES

Pursuant to Federal Rules of Appellate Procedure 2 and 27, Circuit Rules 2 and 27, and this Court's inherent authority to issue scheduling and briefing orders as a function of managing its docket, Southeastern Legal Foundation, Inc. *et al*. ("SLF"), the Chamber of Commerce of the United States ("U.S. Chamber"), Competitive Enterprise Institute, FreedomWorks, and SEPP (collectively "CEI"), and the Portland Cement Association ("PCA"), together with the petitioners listed in Attachment A, respectfully request that the cases listed in Attachment B be designated "complex," be assigned to a single three-judge panel, and be briefed, argued, and decided in coordinated fashion. On August 3, 2010, a group of petitioners' counsel initiated communications with the Department of Justice seeking EPA's position on this motion for coordination. Those discussions were subsequently broadened to include representatives of respondent-intervenors. On August 25, 2010, respondents and respondent-intervenors indicated that they could not agree to coordinate the cases in this fashion at the present time.

The rules at issue in these cases, perhaps the most significant set of administrative law challenges this Court has ever confronted, achieve a stark result — the imposition of controls on carbon dioxide and other greenhouse gas ("GHG") emissions on the national economy. In contrast, the question of whether the Clean Air Act and the record compiled by the U.S. Environmental Protection Agency

("EPA") authorize EPA to impose such controls is complex, not only because of the legal and factual issues it presents, but also because EPA spread its reasoning across four separate rules, while failing to provide a direct and adequate explanation of its reasons in any single proceeding. The confusion EPA has generated as to which of four separate review proceedings is the appropriate forum for litigating the many legal challenges now pending in this Court threatens to lead to duplicative briefing and risks conflicting decisions as this Court reviews the common questions the cases collectively present. As explained below, coordination of these closely interrelated cases would advance judicial economy by eliminating this confusion and the unnecessary complexity EPA has spawned.

BACKGROUND

Since April 2007 EPA has been tasked with responding to the remand ordered by the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007). As this Court is aware, *Massachusetts* narrowly addressed whether EPA had properly supported its decision to deny a rulemaking petition seeking to regulate mobile-source GHG emissions. EPA's post-*Massachusetts* deliberations thus encompass the specific question of the proper disposition of the 1999 rulemaking petition filed by the International Center for Technology Assessment ("ICTA") under Clean Air Act ("CAA" or "Act") Section 202(a), 42 U.S.C. § 7521(a), which seeks to impose controls on GHG emissions from new motor vehicles.

But EPA's post-*Massachusetts* deliberations and rulings also encompass much broader questions, including EPA's underlying authority to impose GHG emissions controls on stationary and agricultural emissions sources; the necessary prerequisites for invoking that authority; and whether or not EPA's multiple rulemaking records provide the necessary "rational connection between the facts found and the choice made." *Motor Vehicle Mfrs Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). EPA's answers to those questions are spread out over four final rules that collectively constitute the most expensive suite of administrative regulations ever promulgated by any agency or scrutinized on judicial review by any court.[†] Nonetheless, it remains unclear which of these four final rules, or combination of final rules, will be the locus and focus for resolving the central legal issues presented by EPA's initiative to regulate stationary-source GHG emissions.

A. EPA'S POST–*MASSACHUSETTS* ANPRM

EPA's ultimate decision in favor of a four-rule splintering of its GHG

[†] *See* Portia M.E. Mills & Mark P. Mills, *A Regulatory Burden: The Compliance Dimension of Regulating CO_2 as a Pollutant* (U.S. Chamber Sept. 2008) (study addressing costs of EPA GHG proposals), *available at* http://www.uschamber.com/assets/env/regulatory_burden0809.pdf; Ben Lieberman, *Small Business Impact of the Endangerment Finding* at 2-3 (Jan. 20, 2010), *available at* http://thf_media.s3.amazonaws.com/2010/pdf/wm_2766.pdf; OMB Memorandum at 2, posted to EPA-HQ-OAR-2009-0171-0124 (posted Apr. 22, 2009) ("Making the decision to regulate CO2 under the CAA for the first time is likely to have serious economic consequences for regulated entities throughout the U.S. economy, including small businesses and small communities."), *available at* http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480965abd.

controls proceedings represents something of a departure from the Agency's original intentions. After *Massachusetts*, EPA initially opened a single regulatory docket to deal with GHG emissions regulation, issuing a unified Advance Notice of Proposed Rulemaking ("ANPRM") to deal comprehensively with questions of GHG emissions control. *Regulating Greenhouse Gas Emissions Under the Clean Air Act*, Advance Notice of Proposed Rulemaking, 73 Fed. Reg. 44,354 (July 30, 2008) ("GHG ANPRM"). Ultimately, however, the Agency proceeded in a more piecemeal fashion, issuing a four-rules answer to the questions presented in the *Massachusetts* remand. Consequently, the Agency never fully acknowledged or addressed the contradictions between the Clean Air Act's statutory structure and attempts to regulate stationary-source GHG emissions under the Act.

Shortly after the *Massachusetts* decision, a May 2007 Executive Order that remains effective today recognized the benefits of regulatory coordination, not only across Clean Air Act programs, but also across agencies. *See* Executive Order No. 13,432, *Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions from Motor Vehicles, Nonroad Vehicles, and Nonroad Engines*, 72 Fed. Reg. 13,432 (May 14, 2007). In implementing this Executive Order, EPA stated unequivocally in its July 2008 GHG ANPRM that the 1999 ICTA rulemaking petition, although limited by its terms to seeking new motor vehicle controls, could not be granted without

considering the possibility of triggering a cascade of expensive and potentially unintended regulatory consequences:

> The provisions of the CAA are interconnected in multiple ways such that a decision to regulate one source category of GHGs could [potentially] lead to regulation of other source categories of GHGs . . . . In addition, CAA standards applicable to GHGs for one category of sources could trigger PSD requirements for other categories of sources that emit GHGs.

GHG ANPRM, 73 Fed. Reg. at 44,418 (July 30, 2008).

Along similar lines, the Department of Energy ("DOE") admonished EPA that the ICTA petition should be considered in light of its potential to trigger a new and expensive round of stationary-source regulation under the Act's Prevention of Significant Deterioration ("PSD") program. Under the PSD program, certain new and modified stationary sources are required to implement the "best available control technology." CAA § 165(a)(4), 42 U.S.C. § 7475(a)(4). In the context of controls on carbon-dioxide emissions, this effectively means controls on the use of fossil fuels or energy consumption.

According to DOE, EPA staff had up to that point failed to "explain in clear, understandable terms the extraordinary costs, burdens and other adverse consequences, and the potentially limited benefits, of the United States unilaterally using the Clean Air Act to regulate GHG emissions," through a mismatched regulatory scheme "forced into the Clean Air Act's legal and regulatory mold." GHG ANPRM, 73 Fed. Reg. at 44,371.

A January 2009 change in Presidential administrations brought new personnel and new thinking to EPA. But that changeover did not and could not alter the fundamental tension between the nature of controls on GHGs and the legal framework of the Act's stationary source emissions programs — most importantly, the PSD program and extensive stationary source permitting requirements of the Act's Title V. 42 U.S.C. §§ 7470-79; 42 U.S.C. §§ 7661-7661f. Nor could EPA free itself of the obligation to consider whether there were alternatives to triggering the PSD program. As described by the new EPA Administrator in October 2009, "[a]pplying the PSD thresholds to sources of GHG emissions literally results in a PSD program that is so contrary to what Congress had in mind — and that in fact so undermines what Congress attempted to accomplish with the PSD requirements — that it should be avoided under the 'absurd results' doctrine." *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule*, Proposed Rule, 74 Fed. Reg. 55,292, 55,310 (Oct. 27, 2009). EPA similarly concluded that the Act's Title V permitting requirements could not apply to GHG emissions without producing a legal absurdity contrary to Congress's intentions. *Id.* at 55,310-11.

B. EPA'S FOUR FINAL RULES

Despite EPA's immediate recognition of the benefits of coordinated regulatory strategies, and its later recognition of the fundamental mismatch

between its Clean Air Act legal authority and regulating GHG emissions from stationary sources, the Agency ultimately decided both to seek to control such emissions and to disperse its affirmative decision across four rules (each of which is now under review in this Court). Taken together, these dozens of challenges (those listed in Attachment B) are the subject of this motion for coordination.

As its ***first*** regulatory step, EPA finalized an Endangerment Rule on December 7, 2009 under CAA Section 202(a). EPA's Endangerment Rule finds that six GHGs indirectly endanger the public health and welfare by creating a worldwide risk of higher temperatures, and that new motor vehicles are contributing to that "endangerment." *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*, 74 Fed. Reg. 66,496 (Dec. 15, 2009) ("Endangerment Rule"). A total of seventeen petitions were timely filed in this Court seeking review of the Endangerment Rule. In addition, ten petitions seeking the Rule's reconsideration were filed before EPA. On June 16, 2010, this Court placed the Endangerment Rule review proceedings in abeyance pending the outcome of the EPA's agency reconsideration proceedings. Acting on a recently filed EPA motion, on August 16, 2010, the Court extended the abeyance until at least September 15, 2010, when motions to govern proceedings are due. On August 13, 2010, EPA published its decision denying reconsideration of its Endangerment Rule. *See EPA's Denial of the Petitions to Reconsider the*

Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 75 Fed. Reg. 49,556 (Aug. 13, 2010). EPA's denial of reconsideration has subsequently been challenged by SLF, the U.S. Chamber, and other parties.

Second, on March 29, 2010, EPA issued its PSD Triggering Rule. *See Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs*, 75 Fed. Reg. 17,004 (Apr. 2, 2010) ("PSD Triggering Rule"). In this decision, EPA determined that on the initial day of the first model year in which manufacturers would have to meet the new Section 202(a) motor vehicle standards, those standards would, by operation of law as EPA sees it, in turn trigger PSD controls on GHG emissions from stationary sources — the sources which DOE had earlier highlighted as inappropriate for regulation as a matter of both cost-benefit and climate policy analysis. EPA set that trigger date as January 2, 2011. A total of eighteen petitions have been filed in this Court seeking review of EPA's PSD Triggering Rule. Fifteen of those eighteen petitions have been consolidated together, and EPA has moved to consolidate the remaining three petitions and to extend procedural deadlines to August 30, 2010 for docketing statements and statements of issues, September 15 for initial submissions and procedural motions, and September 30 for dispositive motions and the certified index to the administrative record. By

orders in Case Nos. 10-1073 and 10-1083, and by operation of the Court's rules in the remaining cases (*see* D.C. Cir. R. 27(h)(4)), procedural deadlines have been suspended pending the Court's decision on EPA's motion.

Third, on April 1, 2010, EPA finalized a joint rule with NHTSA, in which NHTSA fulfilled its obligations under the Energy Policy and Conservation Act of 1975 to adopt a new round of CAFE standards, and EPA chose to use its Endangerment Finding to convert those CAFE standards to GHG limits on tailpipe emissions under Section 202(a) of the CAA (applying EPA adjustments). *See Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards*, 75 Fed. Reg. 25,324, 25,371 (May 7, 2010) ("Tailpipe Rule"). Seventeen petitions for review have been filed in this Court seeking direct review of the Tailpipe Rule (all of which have been consolidated under lead case No. 10-1092) or review of their constructive re-opening of past EPA rulemakings. Initial submissions were filed on August 20, 2010, procedural motions are due on September 15, 2010, and dispositive motions and the certified index are due September 30, 2010.

Fourth, on May 13, 2010, EPA issued its Absurdity / Tailoring Rule. *See Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule*, 75 Fed. Reg. 31,514 (June 3, 2010) ("Absurdity / Tailoring Rule"). This final rule expressly recognizes that applying the Clean Air Act's PSD and Title V

permitting programs to GHG emissions will produce an absurd mismatch with the Clean Air Act's plain language. *Id.* at 31,554-62 (PSD program); *id.* at 31,562-66 (Title V program). The Absurdity / Tailoring Rule purports to address this absurdity, not by adopting an alternative construction of the statute that would forgo the regulation of stationary source GHG emissions altogether, as normal rules of statutory construction would suggest, but by administratively rewriting (or "tailoring") the terms of the Clean Air Act. *See, e.g.*, *id.* at 31,554 ("although our revised regulations do not accord with a literal reading of the statutory provisions for PSD applicability . . . we have concluded that based on the 'absurd results' doctrine, a literal adherence to the terms of these definitions is not required"); *id.* at 31,562 (same with respect to Title V). The Absurdity / Tailoring Rule thus reinforces EPA's determination to set in motion a regulatory cascade leading ineluctably to controls on stationary-source GHG emissions.

A total of twenty-six petitions have been filed in this Court seeking review of EPA's Absurdity / Tailoring Rule. Six of those petitions have been consolidated together under Case No. 10-1131, and the remaining twenty have been consolidated together under Case No. 10-1200. EPA has moved to consolidate all twenty-six petitions, and to adjust procedural deadlines in these cases to August 30, 2010 for docketing statements and statements of issues, September 15, 2010 for initial submissions and procedural motions, and September 30, 2010 for dispositive

motions and the certified index to the administrative record.

After issuing what amounts to a single policy approach dispersed across four separate rulemakings, EPA most recently appears to be acknowledging that the four rules are intimately connected and thus must be "taken together":

> In recent months, EPA has taken four related actions that, taken together, trigger PSD applicability for GHG sources on and after January 2, 2011, but limit the scope of PSD. . . . . Taken together, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines, determined that such regulations, when they take effect on January 2, 2011, will subject GHGs emitted from stationary sources to PSD requirements, and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Proposed Rule, *available at* http://www.epa.gov/airquality/nsr/documents/20100810FinalGHGSIPCallProposal.pdf (Aug. 10, 2010) (publication in *Federal Register* forthcoming) (footnotes omitted).

C. EPA OVERLOOKS THE BIG PICTURE

EPA was under no legal compulsion to paint itself into its present situation. In March of this year, the Agency was asked by two different reconsideration petitions to stay the legal effects of its first rule, the Endangerment Rule, on grounds that EPA improperly failed to grapple with the incompatibility between the Clean Air Act's plain terms and the regulation of stationary-source GHG

emissions. One of these petitions was filed by the Southeastern Legal Foundation, Inc. on behalf of numerous members of Congress and private companies and the other was filed by the U.S. Chamber. *See* http://www.epa.gov/climatechange/endangerment/petitions.html (petitions of the U.S. Chamber and SLF). EPA was thus invited at the very outset of its four-final-rule sequence to remove the legal "absurdity" entailed by embracing its proposed approach. EPA declined that invitation.

While putting an immense economy-wide regulatory machinery into motion, EPA thus far has declined to step back and comprehensively review the overall costs of, benefits of, legal authority for, and explanation for its regulatory program as a whole. On the theory that its legal and policy judgments could be characterized as an empirical question of science, EPA issued the Endangerment Rule without looking in the direction of the "absurd" consequences that could ultimately be entailed by its selected policy or even the costs and benefits of its determination. EPA stated: "To use an analogy, the question of whether the cure is worse than the illness is different than the question of whether there is an illness in the first place." Endangerment Rule, 74 Fed. Reg. at 66,515.

Turning to the Tailpipe Rule, EPA analyzed questions of costs and benefits and legal authority narrowly, as they relate to regulating GHG emissions solely from new motor vehicles, but still identified more than $51 billion in new costs to

that limited segment of the economy alone. *See* 75 Fed. Reg. at 25,342-48. EPA's PSD Triggering Rule likewise focused on *when* PSD permitting requirements should take effect, as opposed to *whether* such requirements are authorized by the Act at all. The decision concluded that, although the PSD Triggering Rule would require that thousands of stationary sources be "swept into the PSD program," GHG ANPRM, 73 Fed. Reg. at 44,367, here again EPA contended no review of Clean Air Act legal authority or toting up of costs was appropriate or needed. PSD Triggering Rule, 75 Fed. Reg. at 17,019-23 (omitting any analysis under E.O. 12,866 (Sept. 30, 1993), *as modified by* E.O. 13,497 (January 30, 2009)).

Lastly, EPA's Absurdity / Tailoring Rule purports to change numerical, statutorily codified, thresholds for applying the PSD program to stationary sources of GHG emissions. Nonetheless, this rulemaking failed to take seriously the no-stationary-source-regulation-at-all alternative, or to confront the economic effects of its course of action, remarkably characterizing the decision to regulate stationary sources for the first time under the Clean Air Act as "deregulatory." *See* Absurdity / Tailoring Rule, 75 Fed. Reg. at 31,599 ("This final rulemaking does not impose economic burdens or costs on any sources or permitting authorities, but should be viewed as regulatory relief for smaller GHG emission sources and for permitting authorities"). As a result of EPA's approach, none of the Agency's four rules contains a discussion of their overall legal basis or a cost-benefit analysis of

their non-auto industry impacts, nor has EPA conducted the analysis required under Section 317 of the Clean Air Act.

ARGUMENT

This Court regularly grants coordinated briefing in appropriate cases. *See, e.g., Davis v. DOJ*, No. 09-5189, 2009 WL 3570220 (D.C. Cir. Oct. 14, 2009) (denying motion for summary affirmance and ordering that the case be assigned to the same panel as a different pending case); *Noramco of Del. v. DEA*, No. 03-1060, 2003 WL 21384616 (June 5, 2003) (same). In one notably complex set of recent cases involving the Clean Air Act's new source review ("NSR") program, the Court denied a motion to consolidate the cases, but granted coordinated treatment and assignment to the same panel. *See New York v. EPA*, No. 02-1387, 2003 WL 25706732 (Dec. 24, 2003) (per curiam); *see also In re TMI Litig.*, 193 F.3d 613, 724 (3d Cir. 1999) (purpose of similar device under Federal Rule of Civil Procedure 42(a) is to "avoid duplication of effort" and "prevent conflicting outcomes" in interconnected cases (citation omitted)).

Like those NSR cases, these cases are especially appropriate for coordinated treatment. They are complex and interconnected, yet distinct. SLF, the U.S. Chamber, PCA, and multiple other petitioners have challenged all four final rules to ensure a hearing for the core questions regarding EPA's decision to trigger CAA regulation of GHGs, including under the PSD and Title V stationary-source

programs. Indeed, a total of 12 groups of petitioners are similarly four-rule GHG challengers. Most of these groups are four-rule challengers for the same reasons as SLF, the U.S. Chamber, and PCA — they contest EPA's legal authority to regulate stationary-source GHGs on the present record but are uncertain as to which one(s) out of four different sets of review proceedings will decide that question.

As explained in detail below, coordination is essential in order to pull together into one set of proceedings the interconnected strands of *the* over-riding question presented by these related cases: Has or has not EPA met all statutory requirements for regulating GHG emissions in the respective rules, and, if so, has EPA's regulatory authority properly been invoked and explained on this record?

A. COORDINATION WOULD PROMOTE EFFICIENT MERITS BRIEFING.

Under any scenario, to ensure adequate treatment of the vital issues in this case, the briefing would be complex. Absent coordination, however, briefing of merits issues will likely be repetitive and inefficient and lead to potentially conflicting decisions. As this Court has seen in exercising judicial review over "nationally applicable" Clean Air Act regulations plus other regulations EPA finds to have "nationwide scope or effect," 42 U.S.C. § 7607(b)(1), Clean Air Act cases can be exceedingly complex. Here, if one panel is assigned all four sets of interrelated cases, that single, designated panel would be spared having to fit its own deliberations into any larger mesh of deliberations being simultaneously

conducted by three other panels. One and only one panel would be asked to master the present dispute over the statutory interactions between Title I and Title II of the Clean Air Act; the particulars of the PSD program; and the bewildering interconnections and feedback effects among and between EPA's four separate rulemakings. *See Lora v. Board of Educ. of City of N.Y.*, 623 F.2d 248, 251 (2d Cir. 1986) (Pollack, D.J., sitting by designation) ("in the interests of judicial husbandry" it becomes necessary to "centralize[]"certain cases).

Most importantly, coordinating these cases would make briefing, oral argument, and this Court's decisions at once more streamlined, more efficient, and more consistent. ***First***, case coordination could spare the Court the need to brief the core questions of EPA's legal authority and record support for that authority four separate times. ***Second***, coordination would eliminate the risk of different panels issuing conflicting decisions on those core questions, obviating any need for the otherwise daunting task of reconciling multiple answers to the same underlying question. Given the costs of uncoordinated treatment — leaving four sets of cases on a parallel time track to be litigated in random order by different panels — the balance of considerations tips decidedly in favor of coordination.

B. ABSENT COORDINATION, JUSTICIABILITY DIVERSIONS ARE A REALISTIC POSSIBILITY.

Absent coordination, the intervenors supporting EPA (or perhaps even EPA itself) may well be tempted to challenge one or more petitions for review on one or

more spurious and diversionary justiciability grounds. This distinct possibility arises solely from EPA's splintered decisionmaking. An important side benefit of coordinated judicial treatment is therefore that arguments that would otherwise senselessly chew through reams of paper and hours of judicial and party attention would simply go by the wayside at no cost to the proceedings. Because administrative agencies should not "use shell games to elude review," *Tesoro v. FERC*, 234 F.3d 1286, 1293-94 (D.C. Cir. 2000), using coordinated treatment to dissuade parties from raising unmeritorious justiciability arguments is appropriate.

To see how a linked series of seemingly plausible justiciability contentions might be strung together as a "shell game" to support an utterly implausible justiciability conclusion — that the petitioners' core arguments contesting EPA's authority to regulate stationary-source GHG emissions are non-justiciable in any particular case — consider the following outline:

> In the Endangerment Case: Justiciability challengers may be tempted to contend that no party has standing because the Endangerment Rule itself purportedly does not set required standards of conduct or prohibitions, but instead is the prerequisite needed for the other rules to do so, and hence should be challenged in the cases involving the other rules.
>
> In the Tailpipe Rule Case: Justiciability challengers may be tempted to contend that because the rule directly regulates automobile manufacturers, stationary sources impacted by its requirements should have to pursue their grievances in the PSD Triggering Rule case, rather than attack the "trigger" of the Auto Standards Rule itself and its prerequisite Endangerment Rule.
>
> In the PSD Triggering Case: Justiciability challengers may be tempted to contend that parties lack standing because the PSD Triggering Rule, if

considered in isolation from the Endangerment Rule, purportedly does not regulate anyone, but instead simply sets out the date as of which EPA will deem the Tailpipe Rule to have triggered PSD requirements.

In the Absurdity / Tailoring Case: Justiciability challengers may be tempted to contend that parties lack standing because, in the wake of the three other rules, and if considered apart from them, this fourth one purportedly imposes no additional injury on regulated businesses and over-burdened States, even though those businesses and States are left much worse off on net even after EPA's "absurdity tailoring" than they would have been if the other three rules did not exist at all.

As the above outline sketches, in the absence of coordination, disconnected and conflicting contentions may well be invoked in an attempt to artificially truncate the litigating rights of SLF, the U.S. Chamber, CEI, PCA, and other petitioners by persistently contending that legal challenges be brought "somewhere else." On the one hand, it is absurd to contend that EPA and its allies may rewrite numerical thresholds embedded in statute; create the most expensive regulatory imposition in history; and then challenge the ability of States, businesses, policy groups, and others to obtain review of that Agency action. On the other hand, those nonsensical arguments may look tempting when considered in isolation, even though they are readily unmasked when considered in coordinated fashion. Absent coordination, it is likely that one or more parties supporting EPA will find the justiciability temptation irresistible and succumb to arguing that the petitioners' core legal challenges should always be dealt with in some docket other than the one at hand. With coordination, it is likely that this otherwise significant risk of a

judicial review shell game will be altogether avoided.

C. COORDINATION IS BETTER THAN FULL CONSOLIDATION.

To be clear, the SLF, the U.S. Chamber, and the other petitioners joining this motion are not requesting that these cases be consolidated, even though under the consolidation procedure, "[e]ach case retains some of its individual identity." United States Court of Appeals for the District of Columbia Circuit, HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES, 23 (as amended through May 10, 2010). Full consolidation would not be appropriate here because, in addition to the core question of EPA's authority to impose GHG controls on stationary sources, each case presents important particularized questions. *Cf. Fafarman v. EPA*, No. 96-1392, 1997 WL 215951 (D.C. Cir. Apr. 25, 1997) (denying motion for consolidation though ordering coordinated treatment). Under present circumstances, judicial economy is best promoted by one set of briefs addressing at some length the common, cross-cutting questions such as the validity of EPA's imposition of GHG emissions controls on stationary sources, plus *separate* briefing for other issues.

Admittedly, this coordination motion is not a proper vehicle for asserting that the splintering of EPA's decisionmaking itself constitutes reversible error. Nor is this the place for urging that, despite the undoubted importance of EPA's four interconnected rules, EPA has failed to articulate a satisfactory legal basis for

its authority to regulate stationary-source GHG emissions. Nor is now the time to explore how EPA's decisional splintering may have obscured the consequences of EPA's epic decisions concerning GHG regulation; or to say that EPA has failed adequately to support those decisions by providing a "rational connection between the facts found and the choice made." *State Farm*, 463 U.S. at 43.

But now surely is the time to take structural action so that EPA's unusual embrace of a four-way decisional split does not impede effective judicial review. Absent coordination, EPA's divided decisionmaking will require duplicative briefing; could well induce conflicting decisions on the core questions of whether and when the Act envisions EPA stationary-source GHG controls; and will hold out a perhaps irresistible temptation for parties supporting EPA to raise extended, unmeritorious justiciability arguments that they would otherwise forgo. All criteria for efficiency and fairness point to coordinated treatment of these cases.

CONCLUSION

For the foregoing reasons, the Court should designate the aforementioned collections of pending cases "complex"; coordinate (but not consolidate) briefing across these complex cases; and assign the management and resolution of the cases to a single, three-judge panel for all purposes.

Respectfully submitted,

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August 26, 2010

ATTACHMENT A—Petitioners Requesting Coordination

1. Chamber of Commerce of the United States of America (petitioner in Nos. 10-1030, 10-1123, 10-1160, 10-1199, and 10-1235)

2. Clean Air Implementation Project (petitioner in Nos. 10-1099 and 10-1216)

3. Competitive Enterprise Institute, Freedom Works, and Science and Environmental Policy Project (petitioners in Nos. 10-1045 and 10-1143)

4. Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation (petitioner in Nos. 10-1114, 10-1158, and 10-1206)

5. Mark R. Levin and Landmark Legal Foundation (petitioners in Nos. 10-1152 and 10-1208)

6. Portland Cement Association (petitioners in Nos. 10-1046, 10-1129, 10-1159, and 10-1220)

7. Southeastern Legal Foundation, John Linder (U.S. Representative) (GA-7th); Dana Rohrabacher (U.S. Representative) (CA-46th); John Shimkus (U.S. Representative) (IL-19th); Phil Gingrey (U.S. Representative) (GA-11th); Lynn Westmoreland (U.S. Representative) (GA-3rd); Tom Price (U.S. Representative) (GA-6th); Paul Broun (U.S. Representative) (GA-10th); Steve King (U.S. Representative) (IA-5th); Jack Kingston (U.S. Representative) (GA-1st); Michele Bachmann (U.S. Representative) (MN-6th); Kevin Brady (U.S. Representative) (TX-8th); The Langdale Company; Langdale Forest Products Company; Georgia

Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc.; Southeast Trailer Mart, Inc.; Georgia Agribusiness Council, Inc. (petitioners in Nos. 10-1035, 10-1083, 10-1094, 10-1131, and 10-1239); Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet-Pontiac, Inc.; Langdale Ford Company; Langboard, Inc.— MDF; Langboard, Inc.— OSB (petitioners in Nos. 10-1035, 10-1083, 10-1131, and 10-1239); Nathan Deal (U.S. Representative) (GA-5th) (petitioner in Nos. 10-1035, 10-1083, and 10-1094); John Shadegg (U.S. Representative) (AZ-3rd) and Dan Burton (U.S. Representative) (IN-5th) (petitioners in Nos. 10-1083, 10-1094, 10-1131, and 10-1239)

ATTACHMENT B—Cases for Which Coordination is Requested

The signatory petitioners identified above respectfully request the following groups of cases, identified by type and docket number below, be coordinated for purposes of briefing, argument, and disposition before the same panel: (1) all petitions challenging the Endangerment Rule; (2) all petitions challenging the Tailpipe Rule, (3) all petitions challenging the PSD Triggering Rule; (4) all petitions challenging the Absurdity / Tailoring Rule; and (5) all current or future petitions challenging Agency decisions on reconsideration regarding these four rules.

1. Petitions Challenging the Endangerment Rule

The following seventeen cases, all of which have been consolidated under lead case No. 09-1322**:**

a) *Coalition for Responsible Regulation, et al. v. EPA*, No. 09-1322

b) *National Mining Association v. EPA*, No. 10-1024

c) *Peabody Energy Co. v. EPA*, No. 10-1025

d) *American Farm Bureau Federation v. EPA*, No. 10-1026

e) *Chamber of Commerce of the United States of America v. EPA et al.*, No. 10-1030

f) *Southeastern Legal Foundation, Inc., et al. v. EPA*, No. 10-1035

g) *Commonwealth of Virginia v. EPA*, No. 10-1036

h) *Gerdau Ameristeel Corp. v. EPA*, No. 10-1037

i) *American Iron & Steel Institute v. EPA*, No. 10-1038

j) *Ohio Coal Association v. EPA*, No. 10-1040

k) *State of Texas, et al. v. EPA*, No. 10-1041

l) *Utility Air Regulatory Group v. EPA*, No. 10-1042

m) *National Association of Manufacturers, et al. v. EPA et al.*, No. 10-1044

n) *Competitive Enterprise Institute, et al. v. EPA*, No. 10-1045

o) *Portland Cement Association v. EPA*, No. 10-1046

p) *Alliance for Natural Climate Change Science, et al. v. EPA et al.*, No. 10-1049

2. Petitions Challenging the PSD Triggering Rule

a) *Coalition for Responsible Regulation, Inc., et al. v. EPA*, No. 10-1073

b) *Southeastern Legal Foundation, Inc., et al. v. EPA*, No. 10-1083, consolidated with *Clean Air Implementation Project v. EPA*, No. 10-1099

c) The following fifteen cases, which have been consolidated under lead case No. 10-1109:

i. *American Iron & Steel Institute v. EPA*, No. 10-1109

ii. *Gerdau Ameristeel US, Inc. v. EPA*, No. 10-1110

iii. *Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation v. EPA*, No. 10-1114

iv. *Center for Biological Diversity v. EPA*, No. 10-1115

v. *Peabody Energy Company v. EPA*, No. 10-1118

vi. *American Farm Bureau Federation v. EPA*, No. 10-1119

vii. *National Mining Association v. EPA*, No. 10-1120

viii. *Utility Air Regulatory Group v. EPA*, No. 10-1122

ix. *Chamber of Commerce of the United States of America v. EPA, et al.*, No. 10-1123

x. *Missouri Joint Municipal Electric Utility Commission v. EPA*, No. 10-1124

xi. *National Environmental Development Association's Clean Air Project v. EPA*, No. 10-1125

xii. *Ohio Coal Association v. EPA*, No. 10-1126

xiii. *National Association of Manufacturers, et al. v. EPA, et al.*, No. 10-1127

xiv. *State of Texas et al. v. EPA*, No. 10-1128

xv. *Portland Cement Association v. EPA*, No. 10-1129

3. Petitions Challenging the Tailpipe Rule

The following seventeen cases, all of which have been consolidated under lead case No. 10-1092:

a) *Coalition for Responsible Regulation, et al. v. EPA*, No. 10-1092

b) *Southeastern Legal Foundation, Inc., et al. v. EPA and NHTSA*, No. 10-1094

c) *American Iron & Steel Institute v. EPA*, No. 10-1134

d) *Competitive Enterprise Institute, et al. v. EPA and NHTSA*, No. 10-1143

e) *Ohio Coal Association v. EPA*, No. 10-1144

f) *Mark R. Levin, et al. v. EPA*, No. 10-1152

g) *Gerdau Ameristeel US, Inc. v. EPA*, No. 10-1156

h) *Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation v. EPA*, No. 10-1158

i) *Portland Cement Association v. EPA*, No. 10-1159

j) *Chamber of Commerce of the United States of America v. EPA et al.,* No. 10-1160

k) *Utility Air Regulatory Group v. EPA*, No. 10-1161

l) *National Mining Association v. EPA*, No. 10-1162

m) *Peabody Energy Co. v. EPA*, No. 10-1163

n) *American Farm Bureau Federation v. EPA*, No. 10-1164

o) *National Association of Manufacturers, et al. v. EPA, et al.*, No. 10-1166

p) *American Forest & Paper Association, Inc.*, No. 10-1172

q) *State of Texas, et al. v. EPA*, No. 10-1182

4. Petitions Challenging the Absurdity / Tailoring Rule

a) The following six cases, which have been consolidated under lead case No. 10-1131:

i. *Southeastern Legal Foundation, Inc. et al. v. EPA*, No. 10-1131

ii. *Coalition for Responsible Regulation, Inc., et al. v. EPA*, No. 10-1132

iii. *Ohio Coal Association v. EPA*, No. 10-1145

iv. *American Iron & Steel Institute v. EPA*, No. 10-1147

v. *Gerdau Ameristeel US, Inc. v. EPA*, No. 10-1148

vi. *Chamber of Commerce of the United States of America v. EPA, et al.,* No. 10-1199

b) The following twenty cases, which have been consolidated under lead case No. 10-1200:

i. *Georgia Coalition for Sound Environmental Policy v. EPA*, No. 10-1200

ii. *National Mining Association v. EPA*, No. 10-1201

iii. *American Farm Bureau Federation v. EPA*, No. 10-1202

iv. *Peabody Energy Company v. EPA*, No. 10-1203

v. *Center for Biological Diversity v. EPA*, No. 10-1205

vi. *Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation v. EPA*, No. 10-1206

vii. *South Carolina Public Service Authority v. EPA*, No. 10-1207

viii. *Mark R. Levin, et al. v. EPA*, No. 10-1208

ix. *National Alliance of Forest Owners, et al. v. EPA*, No. 10-1209

x. *National Environmental Development Association's Clean Air Project v. EPA*, No. 10-1210

xi. *State of Alabama, et al. v. EPA*, No. 10-1211

xii. *Utility Air Regulatory Group v. EPA*, No. 10-1212

xiii. *Missouri Joint Municipal Electric Utility Commission v. EPA*, No. 10-1213

xiv. *Sierra Club v. EPA*, No. 10-1215

xv. *Clean Air Implementation Project v. EPA*, No. 1216

xvi. *National Association of Manufacturers, et al. v. EPA, et al.*, No. 10-1218

xvii. *National Federation of Independent Business v. EPA, et al.*, No. 10-1219

xviii. *Portland Cement Association v. EPA*, No. 10-1220

xix. *Louisiana Department of Environmental Quality v. EPA*, No. 10-1221

xx. *State of Texas, et al. v. EPA*, No. 10-1222

5. Current (or Any Future Petitions) Challenging Agency Decisions on Reconsideration Regarding the Four Rules

The following four cases, all of which have been consolidated under lead case No. 10-1234, and also any future cases challenging the Agency decisions on reconsideration regarding the four Rules:

a) *Coalition for Responsible Regulation, et al. v. EPA*, No. 10-1234

b) *Chamber of Commerce of the United States of America v. EPA, et al.*, No. 10-1235

c) *Southeastern Legal Foundation, Inc., et al. v. EPA*, No. 10-1239

d) *Peabody Energy Co. v. EPA*, No. 10-1245

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2010, I electronically filed the foregoing with the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. As to non-CM/ECF users, I have caused a copy of the foregoing document to be sent to the following non-CM/ECF users via First-Class Mail, postage-prepaid:

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ORAL ARGUMENT NOT YET SCHEDULED

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

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 09-1322 (consolidated with Nos. 10-1024, 10-1025, 10-1026, 10-1030, 10-1035, 10-1036, 10-1037, 10-1038, 10-1039, 10-1040, 10-1041, 10-1042, 10-1044, 10-1045, 10-1046, and 10-1049)**
COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1073**
SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1083 (consolidated with No. 10-1099)**

AMERICAN IRON & STEEL INSTITUTE, ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1109 (consolidated with Nos. 10-1110, 10-1114, 10-1115, 10-1118, 10-1119, 10-1120, 10-1122, 10-1123, 10-1124, 10-1125, 10-1126, 10-1127, 10-1128, and 10-1129)

COALITION FOR RESPONSIBLE REGULATION, INC., ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1092 (consolidated with Nos. 10-1094, 10-1134, 10-1143, 10-1144, 10-1152, 10-1156, 10-1158, 10-1159, 10-1160, 10-1161, 10-1162, 10-1163, 10-1164, 10-1166, 10-1172, and 10-1182)

SOUTHEASTERN LEGAL FOUNDATION, INC., ET AL.
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Respondent.

No. 10-1131 (consolidated with Nos. 10-1132, 10-1145, 10-1147, 10-1148, and 10-1199)

GEORGIA COALITION FOR SOUND ENVIRONMENTAL POLICY, INC. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1200 (consolidated with Nos. 10-1201, 10-1202, 10-1203, 10-1205, 10-1206, 10-1207, 10-1208, 10-1209, 10-1210, 10-1211, 10-1212, 10-1213, 10-1215, 10-1216, 10-1218, 10-1219, 10-1220, 10-1221, and 10-1222)**
COALITION FOR RESPONSIBLE REGULATION, INC., ET AL. **Petitioners,** **v.** **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** **Respondent.**	**No. 10-1234 (consolidated with Nos. 10-1235, 10-1239, and 10-1245)**

CERTIFICATE AS TO PARTIES AND *AMICI*

CERTIFICATE AS TO PARTIES AND *AMICI*

Pursuant to Rule 27(a)(4) and 28(a)(1)(A) of the Rules of this Court, the Southeastern Legal Foundation, Inc. *et al*.; the Chamber of Commerce of the United States; Competitive Enterprise Institute, FreedomWorks, and SEPP; the Portland Cement Association; the Clean Air Implementation Project; the Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation; and Mark R. Levin and Landmark Legal Foundation, (collectively "Movants") state as follows:

1. As to Case No. 09-1322 and consolidated cases:

Pursuant to D.C. Cir. Rule 27(a)(4), Movants state that the required certificate of parties and *amici* has previously been filed with the Court.

2. As to Case No. 10-1073:

Petitioners: Coalition for Responsible Regulation, Inc.; Industrial Minerals Association—North America; National Cattlemen's Beef Association; Great Northern Project Development, L.P.; Rosebud Mining Co.; Alpha Natural Resources, Inc.

Respondent: The respondent is the United States Environmental Protection Agency.

Intervenors: The Court has not granted any motions to intervene at this time.

Amici: The Court has not granted any motions to participate in this case as *amicus curiae*.

3. As to Case No. 10-1083 (consolidated with No. 10-1099):

Petitioners: Southeastern Legal Foundation, Inc.; John Linder (U.S. Representative) (GA-7th); Dana Rohrabacher (U.S. Representative) (CA-46th); John Shimkus (U.S. Representative) (IL-19th); Phil Gingrey (U.S. Representative) (GA-11th); Lynn Westmoreland (U.S. Representative) (GA-3rd); Tom Price (U.S. Representative) (GA-6th); Paul Broun (U.S. Representative) (GA-10th); Steve King (U.S. Representative) (IA-5th); Nathan Deal (U.S. Representative) (GA-9th); Jack Kingston (U.S. Representative) (GA-1st); Michele Bachmann (U.S. Representative) (MN-6th); Kevin Brady (U.S. Representative) (TX-8th); John Shadegg (U.S. Representative) (AZ-3rd) ; Marsha Blackburn (U.S. Representative) (TN-7th); Dan Burton (U.S. Representative) (IN-5th); The Langdale Company; Langdale Forest Products Company; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet-Pontiac, Inc.; Langdale Ford Company; Langboard, Inc.—MDF; Langboard, Inc.—OSB; Georgia Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc.; Southeast Trailer Mart, Inc.; Georgia Agribusiness Council, Inc. (No. 10-1083)

Clean Air Implementation Project (No. 10-1099)

Respondent: The respondent in both cases is the United States Environmental Protection Agency.

Intervenors: The Court has not granted any motions to intervene at this time.

Amici: The Court has not granted any motions to participate in this case as *amicus curiae*.

4. As to Case No. 10-1109 and consolidated cases:

Pursuant to D.C. Cir. Rule 27(a)(4), Movants state that the required

certificate of parties and *amici* has previously been filed with the Court.

5. As to Case No. 10-1092 and consolidated cases:

Pursuant to D.C. Cir. Rule 27(a)(4), Movants state that the required certificate of parties and *amici* has previously been filed with the Court.

6. As to Case No. 10-1131 and consolidated cases:

Petitioners:

Southeastern Legal Foundation, Inc.; John Linder (U.S. Representative) (GA-7th); Dana Rohrabacher (U.S. Representative) (CA-46th); John Shimkus (U.S. Representative) (IL-19th); Phil Gingrey (U.S. Representative) (GA-11th); Lynn Westmoreland (U.S. Representative) (GA-3rd); Tom Price (U.S. Representative) (GA-6th); Paul Broun (U.S. Representative) (GA-10th); Steve King (U.S. Representative) (IA-5th); Jack Kingston (U.S. Representative) (GA-1st); Michele Bachmann (U.S. Representative) (MN-6th); Kevin Brady (U.S. Representative) (TX-8th); John Shadegg (U.S. Representative) (AZ-3rd); Marsha Blackburn (U.S. Representative) (TN-7th); Dan Burton (U.S. Representative) (IN-5th); The Langdale Company; Langdale Forest Products Company; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet-Pontiac, Inc.; Langdale Ford Company; Langboard, Inc.—MDF; Langboard, Inc.—OSB; Georgia Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc.; Southeastern Trailer Mart, Inc.; Georgia Agribusiness Council, Inc. (No. 10-1131)

Coalition for Responsible Regulation, Inc.; Industrial Minerals Association—North America; National Cattlemen's Beef Association; Great Northern Project Development, L.P.; Rosebud Mining Co.; Alpha Natural Resources, Inc. (No. 10-1132)

The Ohio Coal Association (No. 10-1145)

American Iron & Steel Institute (No. 10-1147)

Gerdau Ameristeel US Inc. (No. 10-1148)

Chamber of Commerce of the United States of America (No. 10-1199)

Respondent: United States Environmental Protection Agency (all cases); Lisa P. Jackson, Administrator, United States Environmental Protection Agency (No. 10-1199)

Intervenors: The Court has not granted any motions to intervene at this time.

Amici: The Court has not granted any motions to participate in this case as *amicus curiae*.

7. As to Case No. 10-1200 and consolidated cases:

Petitioners:

Georgia Coalition for Sound Environmental Policy (No. 10-1200)

National Mining Association (No. 10-1201)

American Farm Bureau Federation (No. 10-1202)

Peabody Energy Company (No. 10-1203)

Center for Biological Diversity (No. 10-1205)

Energy-Intensive Manufacturers' Working Group (No. 10-1206)

South Carolina Public Service Authority (No. 10-1207)

Mark R. Levin; Landmark Legal Foundation (No. 10-1208)

National Alliance of Forest Owners; American Forest & Paper Association (No. 10-1209)

National Environmental Development Association's Clean Air Project (No. 10-1210)

State of Alabama; State of North Dakota; State of South Dakota; Mississippi Governor Haley Barbour; State of South Carolina; State of Nebraska (No. 10-1211)

Utility Air Resources Group (No. 10-1212)

Missouri Joint Municipal Electric Utility Commission (No. 10-1213)

Sierra Club (No. 10-1215)

Clean Air Implementation Project (No. 10-1216)

National Association of Manufacturers; American Frozen Food Institute; American Petroleum Institute; Brick Industry Association; Corn Refiners Association; Glass Association of North America; Glass Packaging Institute; Michigan Manufacturers Association; Mississippi Manufacturers Association; National Association of Home Builders; National Oilseed Processors Association; National Petrochemical and Refiners Association; Tennessee Chamber of Commerce & Industry; Western States Petroleum Association; West Virginia Manufacturers Association; Wisconsin Manufacturers & Commerce (No. 10-1218)

National Federation of Independent Business (No. 10-1219)

Portland Cement Association (No. 10-1220)

Louisiana Department of Environmental Quality (No. 10-1221)

State of Texas; Governor Rick Perry; Attorney General Greg Abbott; Texas Commission on Environmental Quality; Texas Agriculture Commission; Texas Public Utilities Commission; Texas Railroad Commission; Texas General Land Office (No. 10-1222)

Respondent: United States Environmental Protection Agency (all cases); Lisa P. Jackson, Administrator, United States Environmental Protection Agency (Nos. 10-1218 and 10-1219)

Intervenors: The Court has not granted any motions to intervene at this time.

Amici: The Court has not granted any motions to participate in this case as *amicus curiae*.

8. As to Case No. 10-1234 and consolidated cases:

Petitioners: Coalition for Responsible Regulation, Inc.; Industrial Minerals Association—North America; National Cattlemen's Beef Association; Great

Northern Project Development, L.P.; Rosebud Mining Co.; Alpha Natural Resources, Inc. (No. 10-1234)

Chamber of Commerce of the United States of America (No. 10-1235)

Southeastern Legal Foundation, Inc.; John Linder (U.S. Representative) (GA-7th); Dana Rohrabacher (U.S. Representative) (CA-46th); John Shimkus (U.S. Representative) (IL-19th); Phil Gingrey (U.S. Representative) (GA-11th); Lynn Westmoreland (U.S. Representative) (GA-3rd); Tom Price (U.S. Representative) (GA-6th); Paul Broun (U.S. Representative) (GA-10th); Steve King (U.S. Representative) (IA-5th); Jack Kingston (U.S. Representative) (GA-1st); Michele Bachmann (U.S. Representative) (MN-6th); Kevin Brady (U.S. Representative) (TX-8th); John Shadegg (U.S. Representative) (AZ-3rd) ; Marsha Blackburn (U.S. Representative) (TN-7th); Dan Burton (U.S. Representative) (IN-5th); The Langdale Company; Langdale Forest Products Company; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet—Pontiac, Inc.; Langdale Ford Company; Langboard, Inc.—MDF; Langboard, Inc.—OSB; Georgia Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc.; Southeast Trailer Mart, Inc.; Georgia Agribusiness Council, Inc. (No. 10-1239)

Peabody Energy Company (No. 10-1245)

Respondent: United States Environmental Protection Agency (all cases); Lisa P. Jackson, Administrator, United States Environmental Protection Agency (No. 10-1235)

Intervenors: The Court has not granted any motions to intervene at this time.

Amici: The Court has not granted any motions to participate in this case as *amicus curiae*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2010, I electronically filed the foregoing with the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. As to non-CM/ECF users, I have caused a copy of the foregoing document to be sent to the following non-CM/ECF users via First-Class Mail, postage-prepaid:

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