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February 5, 2009

By Federal Express

Mark Langer
Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, NW
Washington, D.C. 20001
Tel: (202) 216-7300

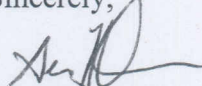
Re: *American Road & Transp. Builders Ass'n v. EPA, et al.*, 08-1381

Dear Mr. Langer:

Enclosed for filing please find the original and four copies of the motion of the American Lung Association, the National Association of Clean Air Agencies, Northeast States for Coordinated Air Use Management, and the Environmental Defense Fund for leave to participate as amici curiae in the above-captioned case, together a Rule 26.1 Disclosure Statement for these organizations. As indicated on the certificate of service, copies have been served on counsel.

Please contact me if you have any questions.

Sincerely,



Sean H. Donahue

Enclosures

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-1381

* Petitioner ARTBA does not consent to this motion. Respondents EPA and the EPA Administrator take no position on the motion. Intervenor Association of American Railroads, California Air Resources Board, and South Coast Air Quality Management District consent to the motion, and intervenor Natural Resources Defense Council does not oppose it.

Petitioner American Road and Transportation Builders Association (ARTBA) seeks review of an EPA decision denying ARTBA's administrative petition requesting that EPA amend its regulations and interpretive rule regarding preemption of state and local requirements that impose in-use and operational controls or fleet-wide purchase, sale, or use standards on nonroad engines. ARTBA had requested that EPA construe the Clean Air Act to more broadly preempt state and local laws and regulations that seek to control the emission of air pollutants from nonroad engines.

Proposed amici are organizations dedicated to reducing air pollution and protecting public health:

- a. ALA, a corporation organized and existing under the laws of the State of Maine, is a national nonprofit organization dedicated to saving lives through the improvement of lung health and the prevention of lung disease.
- b. NACAA is the association of air pollution control agencies in 53 states and territories and over 165 major metropolitan areas across the United States. State and local air pollution control officials formed NACAA (formerly STAPPA/ALAPCO) over 30 years ago to improve their effectiveness as managers of air quality programs. NACAA serves to encourage the exchange of information among air pollution control officials, to enhance communication and cooperation among federal, state, and local regulatory agencies, and to promote good management of air resources. NACAA submitted comments in the proceedings before EPA opposing ARTBA's petition.
- c. NESCAUM is an association of the air quality agencies of Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and

Vermont. NESCAUM's purpose is to provide scientific, technical, analytical, and policy support to the air quality and climate programs of the eight Northeast states. NESCAUM submitted comments to EPA opposing ARTBA's petition for rulemaking.

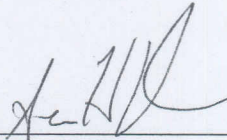
- d. EDF is a leading national nonprofit organization representing more than 500,000 members. Since 1967, EDF has linked science, economics and law to create innovative, equitable and cost-effective solutions to society's most urgent environmental problems. EDF also submitted comments in the proceedings before EPA opposing ARTBA's proposals.

Movants respectfully submit that their participation as amici would assist the Court in its consideration of this case. Proposed amici and the institutions and officials they represent have extensive knowledge and experience concerning air quality control, and concerning the interaction of federal pollution control law with state and local environmental policy and with the impacts of air pollution on public health. Three of the proposed amici submitted comments regarding the preemption issues in the proceedings before EPA, and urged that the agency deny ARTBA's petition on the basis that the broad preemption of state law that ARTBA sought was unsupported by the relevant provisions of the Clean Air Act and inconsistent with this Court's decision in *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 1075 (D.C. Cir. 1996), and that ARTBA's approach would seriously impair state and local governments' efforts to control harmful air pollutants and satisfy their own obligations under the Clean Air Act. As representatives of state and local air pollution agencies and officials charged with protecting local air quality and ensuring attainment of federal air quality standards, proposed amici NACAA and

NESCAUM are particularly well situated to address the impact of petitioner's requested expansion of preemption on states' and localities air pollution control efforts. Movants are also well qualified to address the public health implications of the expanded preemption that ARTBA seeks.

Proposed amici would file a single brief and would coordinate with the parties to avoid duplication of argument.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2009, I caused copies of the foregoing motion, together with the accompanying Disclosure Statement Pursuant to Circuit Rule 26.1, to be served, by first-class United States mail, postage prepaid, upon the following counsel:

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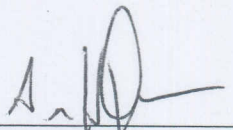
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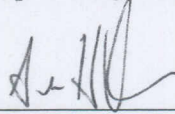
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Respondents.

No. 08-1381

Proposed amici curiae the American Lung Association, the National Association of Clean Air Agencies, Northeast States for Coordinated Air Use Management, and the Environmental Defense Fund state that none of them has a parent corporation and that no publicly-held company owns an interest of 10 percent or more in any of them.

Respectfully submitted,



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