

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

COMPETITIVE ENTERPRISE
INSTITUTE, *et al.*,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC
SAFETY ADMINISTRATION, *et al.*,

Respondents.

No. 20-1145

**MOTION OF INGEVITY CORPORATION TO INTERVENE
IN SUPPORT OF RESPONDENTS**

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INTRODUCTION

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and D.C. Circuit Rules 15(b) and 27, Ingevity Corporation (“Ingevity”) respectfully moves for leave to intervene in the above-captioned proceedings, in support of Respondents. Ingevity seeks to protect its substantial interests in the final agency actions being challenged through the underlying petitions for review, namely the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles, 83 Fed. Reg. 16,077 (Apr. 13, 2018), and the Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks (the “SAFE Rule”), 85 Fed. Reg. 24,174 (Apr. 30, 2020).

This motion is timely under Fed. R. App. P. 15(d) and D.C. Circuit Rule 15(b) because it is being filed within 30 days of the filing of petitions for review of these challenged agency actions in Case Nos. 20-1167, 20-1168, 20-1169, 20-1173, 20-1174, 20-1176, and 20-1177. These cases are now consolidated with Case No. 20-1145.¹ This motion is also timely under this Court’s Order of May 22, 2020, which sets the deadline for procedural motions for June 22, 2020.²

BACKGROUND

In 2016, WestRock’s specialty chemicals division – a well-established, 100-year-old business – was divested to form Ingevity Corporation (“Ingevity”), an

¹ Clerk’s Order, ECF # 1844674 (May 28, 2020); Clerk’s Order, ECF # 1845111 (June 1, 2020).

² Clerk’s Order, ECF # 1844068 (May 22, 2020).

independent, publicly-traded company. Ingevity's Performance Materials segment is a global leader in the manufacture and sale of activated carbon that is used to control gasoline vapor emissions from gasoline-powered light-duty vehicles and to safely store natural gas in mobile and stationary applications. Ingevity also provides specialty chemicals and engineered polymers that are used in a variety of demanding applications, including asphalt paving, oil exploration and production, agrochemicals, adhesives, lubricants, publication inks, coatings, elastomers, and bioplastics. Headquartered in North Charleston, South Carolina, Ingevity operates in 25 locations around the world and employs approximately 1,850 people. Ingevity's U.S. manufacturing locations include North Charleston, South Carolina; Covington, Virginia; Crossett, Arkansas; DeRidder, Louisiana; Waynesboro, Georgia; and Wickliffe, Kentucky.

Ingevity's activated carbon technology for evaporative emissions control has been at the forefront of the cleaner automotive movement for decades. This activated carbon technology has been used in over a billion vehicles and saves over 8 million gallons of gasoline per day by controlling evaporative and refueling emissions for operating vehicles. Ingevity's adsorbed natural gas ("ANG") technology utilizes the same high-performance activated carbon products for storage of natural gas as an alternative fuel for vehicles. Operation of vehicles on natural gas produces 25 percent fewer greenhouse gas emissions than comparable gasoline-fueled vehicles and reduces

the United States' dependence on imported oil by utilizing domestically-produced natural gas and renewable natural gas.

Petitioners in the consolidated cases seek review of the 2018 Mid-Term Evaluation and the 2020 SAFE Rule, which worked in combination to modify the greenhouse gas emission standards and fuel economy standards established in a 2012 rulemaking.³ As part of the 2012 rulemaking establishing the model year 2017-2025 light-duty vehicle greenhouse gas standards, EPA made a commitment to conduct a Mid-term Evaluation of the standards for model years 2022-2025. This commitment reflected the fact that EPA recognized that the 2012 rule was setting standards, including related regulatory provisions, well into the future but that technology developments might warrant different conclusions. The 2018 Mid-Term Evaluation considered public comment on the appropriateness of the standards and related regulatory provisions in light of new information and new technology that became available since the 2012 rulemaking. The 2018 Mid-Term Evaluation concluded that multiple developments rendered the standards for model years 2022 to 2025 inappropriate, including advancements in natural gas vehicles. The SAFE Rule modified those future vehicle standards to reflect this new information and technological innovations.

³ 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,623 (Oct. 15, 2012).

The SAFE Rule is a joint action by the U.S. Environmental Protection Agency (“EPA”) and the National Highway Traffic Safety Administration (“NHTSA”) governing greenhouse gas emissions and the Corporate Average Fuel Economy (“CAFE”) program applicable to new passenger automobiles and light trucks sold in the United States. Through this joint action, EPA amended its greenhouse gas emissions standards for those vehicles beginning in model year 2021, and NHTSA amended its CAFE standards for the same vehicles in model year 2021 while also setting CAFE standards for vehicles in model years 2022-2026. Generally, the joint action aims to continue the progress of the United States’ vehicle fleet toward greater greenhouse gas reductions “while recognizing the realities of the marketplace and consumers’ interests in purchasing vehicles that meet all of their diverse needs.”⁴ New-vehicle manufacturers are subject to EPA’s greenhouse gas emission and NHTSA’s CAFE standards. In turn, suppliers such as Ingevity, that have invested to develop and manufacture the technology that automakers choose to use or not use as a result of the standards and the provisions of the agencies’ joint action, are also directly affected.

Ingevity supports the SAFE Rule as written because: (1) it removes uneconomical and technically impractical restrictions on driving range, design, and fuel use that previously applied to dual-fueled natural gas/gasoline vehicles thereby allowing those vehicles to apply utility factors that generate more favorable

⁴ 85 Fed. Reg. 24174 (Apr. 30, 2020).

greenhouse gas emission and fuel economy compliance values that in turn make these vehicles more attractive to vehicle manufacturers; (2) it enables the growth of innovative, environmentally-friendly adsorbed natural gas technology for dual-fueled natural gas/gasoline vehicles; and (3) it provides an additional alternative fuel option for large, light-duty vehicles, such as sport-utility vehicles, half-ton pickup trucks, and cargo vans that will reduce both greenhouse gases and petroleum consumption.

Of particular importance to Ingevity, the agencies' joint action contains three provisions, explained in more detail below, that are designed to encourage vehicle manufacturers to produce vehicles that are fueled entirely by natural gas, known as dedicated natural gas vehicles, and vehicles that can operate by using separate tanks of natural gas and gasoline, known as dual-fuel natural gas vehicles.

First, the joint action reinstates, for model years 2021 and beyond, a favorable 0.15 greenhouse gas emissions multiplier that applies to the half of vehicle operations using natural gas in dual-fuel natural gas vehicles.⁵ The rule better aligns EPA's provisions for calculating greenhouse gas emission rates with NHTSA's closely related CAFE provisions for calculating fuel economy in which the gallon equivalent of gaseous fuel used in a dual-fuel natural gas vehicle is deemed to contain just 0.15 gallons of fuel for purposes of calculating fuel economy.⁶

⁵ 85 Fed. Reg. 25272 (Apr. 30, 2020)(modifying 40 C.F.R. § 600.510-12(j)(2)(v)).

⁶ 40 C.F.R. § 600.510-12(c)(2)(vii)(A).

Second, the joint action adds a production multiplier of 2.0 for dedicated natural gas vehicles and dual-fuel natural gas vehicles for model years 2022-2026.⁷ This production multiplier allows vehicle manufacturers to count each natural gas fueled vehicle they sell as two vehicles for purposes of calculating the manufacturer's annual light-duty greenhouse gas emissions, which serves to incentivize manufacturers to invest in the production of these innovative vehicles.

Third, the joint action eliminates two fuel system design restrictions that previously did not allow the lower natural gas emissions and improved fuel economy of natural gas vehicles to be fully captured. Emissions for dual-fueled vehicles are measured separately for each fuel, such as gasoline and natural gas, after which those separate emission numbers are weighted using established utility factors. Previously (under the 2012 rule), in order for a dual-fuel natural gas vehicle to use a utility factor greater than 0.5, the vehicle was required to be able to drive twice as far using its natural gas fuel capacity compared to its gasoline fuel capacity. In addition, the rule included a "drive-to-empty" restriction that mandated that gasoline be used only when the natural gas tank was effectively empty, except when gasoline was required to initiate combustion. These requirements in the 2012 rule reflected a concern that the difficulty of natural gas refueling (due to a lack of natural gas refueling stations or home refueling options at the time) would mean that dual-fuel natural gas vehicles

⁷ *Id.* at 25,211 (modifying 40 C.F.R. § 86.1866-12(b)(2)(i)).

would primarily use gasoline. However, based largely on the development of Ingevity's low-pressure adsorbed natural gas technology and the accessibility that it brings to the natural gas refueling process, in the 2020 SAFE Rule the agencies removed the design criteria for dual-fuel natural gas vehicles, thereby allowing those vehicles to utilize higher utility factors when calculating greenhouse gas emissions⁸ and fuel economy.⁹ Overall, the SAFE Rule will incentivize manufacturers to produce these vehicles as a way to lower their overall fleet-wide emissions and reduce dependence on petroleum products.¹⁰

Ingevity has invested significant resources in the development and implementation of technology that is addressed by the challenged agency actions. Ingevity and its recently-acquired asset Adsorbed Natural Gas Products, Inc. participated in the Mid-Term Evaluation, demonstrating to EPA that the then current standards and related regulatory provisions were based on outdated information. The SAFE Rule recognizes these developments by removing regulatory restrictions that had previously hobbled the expansion of adsorbed natural gas in dedicated and dual-fuel natural gas vehicles.

Ingevity has dedicated years to the development and commercialization of adsorbed natural gas technology through both internal research and outside

⁸ 85 Fed. Reg. 25,272 (amending 40 C.F.R. § 600.510-12(j)(2)(vii)(A)).

⁹ *Id.* (amending 40 C.F.R. § 600.510-12(c)(2)(vii)(B)).

¹⁰ *Id.* at 25,211-25,212.

collaborations. Adsorbed natural gas technology reduces the storage pressure of natural gas without sacrificing the volume of gas that is stored. The ability to store natural gas at lower pressures means that on-board natural gas cylinders can be refilled at residences or work places without the need for large, costly compressed natural gas stations. Adsorbed natural gas technology is essential to commercializing dual-fuel natural gas vehicles, which can switch between natural gas and gasoline as a fuel source, by making the fuel conveniently available at home or place of business. Dual-fuel natural gas vehicles have numerous benefits over traditional gasoline powered vehicles, including lower fuel costs and lower greenhouse gas emissions. Compared to electric vehicles, dual-fueled natural gas vehicles do not experience declining driving ranges over time, and the adsorbed natural gas components do not need to be replaced after years of use, unlike electric vehicle battery packs.

On May 11, 2020, Ingevity acquired the assets of Adsorbed Natural Gas Products, Inc., which was a former collaborative partner that specializes in the design, certification, and sales of low-pressure natural gas kits to serve the dual-fuel natural gas vehicle market. This acquisition makes Ingevity the primary designer and seller of adsorbed natural gas technology for vehicles.

Additionally, Ingevity is a leading provider of activated carbon that is used in canisters installed at the vent of gasoline fuel tanks to reduce vapor emissions to meet EPA and California refueling and evaporative emission regulations. The amount of activated carbon that is needed for each gasoline powered vehicle is proportional to

the size of its fuel tank. As fuel economy standards increase, automobile manufacturers frequently reduce the capacity of fuel tanks because (1) doing so reduces the overall weight of the vehicle and therefore improves fuel economy; and (2) higher fuel economy allows the driving ranges demanded by consumers to be achieved with smaller tanks. Hence, there is a correlation between the challenged agencies' joint action pertaining to the fuel economy goals set in the 2012 rulemaking, and demand for Ingevity's activated carbon products. The relief Petitioners seek would hamper potential growth in Ingevity's activated carbon business.

While the underlying petitions for review do not detail the various Petitioners' specific objections to the final joint action of EPA and NHTSA, they ask to have the Mid-Term Evaluation and SAFE Rule set aside. Because the standards and provisions of the 2012 rulemaking extended so far into the future, a Mid-Term Evaluation was planned to consider new information and changes that would determine whether the 2022-2025 standards and provisions were appropriate based on any new technological developments and the state of the marketplace. During the public process of the 2016-2018 Mid-Term Evaluation and 2018 Notice of Proposed Rulemaking, Ingevity and its collaborator Adsorbed Natural Gas Products, Inc., which is now an asset of Ingevity, explained to EPA that their collaboration had produced substantial advances in technology warranting changes to the way dedicated and dual-fuel natural gas

vehicles were regulated.¹¹ Ultimately, EPA agreed that the 2012 rule was acting as a disincentive to natural gas vehicle development and that revisions were warranted.¹²

¹¹ See, e.g., Adsorbed Natural Gas Products, Inc. Comment Letter on Notice of Availability of Midterm Evaluation Draft Technical Assessment Report (Sept. 23, 2016), EPA-HQ-OAR-2015-0827-3641, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-3641> (explaining advancements in adsorbed natural gas storage technology and advocating for natural gas vehicle incentives to be comparable to those for electric vehicles and to be maintained beyond 2021); Adsorbed Natural Gas Products, Inc. Comment Letter on Notice of Determination: Appropriateness of the Model Year 2022-2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation (Dec. 30, 2016), EPA-HQ-OAR-2015-0827-6093, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-6093> (criticizing EPA's decision to make no changes to the 2012 Rule based on a finding of no changed circumstances despite receiving 200,000 public comments); Transcript of Public Hearing for Reconsideration of the Final Determination of the Mid-Term Evaluation (Sept. 6, 2017), EPA-HQ-OAR-2015-0827-10088, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-10088> (testimony by President and Chief Executive Officer of Adsorbed Natural Gas Products, Inc. asking EPA to review and reconsider comments provided to the agency explaining that adsorbed natural gas is a realistic technological concept for improving automobile efficiency that warrants incentives similar to electric vehicles); Adsorbed Natural Gas Products, Inc. Comment Letter on Reconsideration of Final Determination of Mid-Term Evaluation (Oct. 6, 2017), EPA-HQ-OAR-2015-0827-8078, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0827-8078> (explaining that adsorbed natural gas technology that enables home refueling of natural gas vehicles did not exist when the 2012 rule was developed and advocating for incentives for natural gas vehicles comparable to those for electric vehicles); Ingevity Corporation Comment Letter on proposed SAFE Rule (Oct. 19, 2018), EPA-HQ-OAR-2018-0283-3329, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-3329> (commenting on proposed joint rulemaking and incorporating by reference previous comments by Adsorbed Natural Gas Products, Inc.); Adsorbed Natural Gas Products, Inc. Comment Letter on proposed SAFE Rule (Oct. 22, 2018), EPA-HQ-OAR-2018-0283-3646, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-3646> (supporting the proposed rule and echoing regulatory changes requested by Ingevity's comment letter of October 19, 2020).

¹² See 85 Fed. Reg. 25,212 (“With the development of low-pressure natural gas

In contrast, the public comments filed by several of the Petitioners during the process for the SAFE Rule were at times hostile to the development of natural gas vehicles and sought to keep in place provisions that favored electric vehicles over natural gas (*e.g.* the driving range requirement on alternative fuel that is required for natural gas vehicles but not for electric vehicles). For example, the California Air Resources Board's ("CARB") comments on the SAFE Rule asserted that compliance flexibilities for natural gas vehicles are not appropriate at this time.¹³ In addition, the Union of Concerned Scientists ("UCS") commented on the SAFE Rule that they "strongly recommend the EPA eliminate all incentives for natural gas vehicles."¹⁴ Through their petitions for review, the non-governmental organization and state Petitioners seek to have the SAFE Rule set aside and a return to the 2012 standards. Petitioner Competitive Enterprise Institute, on the other hand, appears to desire freezing the fuel economy and greenhouse gas emission standards at the 2018 level,¹⁵ but also seeks to set aside the rule.

vehicle fueling system technology since the 2012 final rule, EPA's concerns regarding limited fueling infrastructure that led the agency to adopt the design criteria in the 2012 rule are significantly diminished. EPA believes that low-pressure fueling is a new advancement that offers the potential for more convenient refueling for individuals or businesses")

¹³ *Id.* at 25,288 ("CARB argued that flexibilities for natural gas vehicles . . . are not yet warranted.")

¹⁴ *Id.* at 25,211.

¹⁵ *See* Comments of the Competitive Enterprise Institute, Docket No. NHTSA-2018-0067-12015, at 2-8 (filed Oct. 26, 2018)

<https://www.regulations.gov/document?D=NHTSA-2018-0067-12015>.

Ingevity's substantial interests will be adversely impacted if Petitioners are successful in setting aside either of the challenged agency actions. The reopening of the 2012 rule as a result of the 2018 Mid-Term Evaluation was needed and appropriate, and an outcome in which the fuel economy goals are frozen at the 2018 levels might eliminate the current steady increase in fuel economy standards in coming years that otherwise will nudge vehicle manufacturers to consider the production of natural gas vehicles as a tool to achieve those standards. An outcome in which the joint action is vacated and the 2012 final rule once again has legal effect would cause the meaningful provisions for natural gas vehicles to be lost. Accordingly, Ingevity seeks to intervene in order to protect its interests and urge denial of the various petitions for review.

LEGAL STANDARD

Fed. R. App. P. 15(d) requires a person seeking intervention in a circuit court's review of an agency action to state its interests, the grounds for intervention, and whether it wishes to intervene as a petitioner in opposition to the agency order or as a respondent in support of the order.

While Fed. R. App. P. 15(d) does not provide criteria to determine when intervention is warranted, the Supreme Court has ruled that the policies underlying intervention under Fed. R. Civ. P. 24 "may be applicable in appellate courts." *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am., AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965).

Under Fed. R. Civ. P. 24(a), a court must permit a party to intervene if (1) “the motion for intervention [is] timely”; (2) “intervenors [] have an interest in the subject of the action”; (3) “the would-be intervenor’s interest [may] not be adequately represented by any other party”; and (4) “[its] interest [is] impaired or impeded as a practical matter absent intervention.” *In re Brewer*, 863 F.3d 861, 872-73 (D.C. Cir. 2017).

A court may also permit a party to intervene under Fed. R. Civ. P. 24(b) if it “has a claim or defense that shares with the main action a common question of law or fact.” “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

Ingevity satisfies this Court’s requirements for Rule 15(d) intervention as well as those that apply under Fed. R. Civ. P. 24.

ARGUMENT

I. Ingevity satisfies all the elements to intervene as a matter of right.

A. Ingevity’s motion for intervention is timely.

This motion is timely under Fed. R. App. P. 15(d) because it is being filed within 30 days of the filing of petitions for review of these challenged agency actions in Case Nos. 20-1167, 20-1168, 20-1169, 20-1173, 20-1174, 20-1176, and 20-1177, which were filed between May 27 and June 1, 2020. These petitions for review are now

consolidated with Case No. 20-1145,¹⁶ with the deadline for procedural motions and initial filings set for June 22, 2020.¹⁷

B. Ingevity has an interest in the subject of the action.

A party that has constitutional standing meets Rule 15(d)'s "interest" requirement. *Jones v. Prince George's Cty., Maryland*, 348 F.3d 1014, 1018 (D.C. Cir. 2003). This Circuit's cases "generally f[i]nd a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads Grassroots Policy Strategies v. Fed. Election Comm'n*, 788 F.3d 312, 317 (D.C. Cir. 2015).

Here, Ingevity has an interest in the subject of the action because it benefits from the final agency actions being challenged in this case and an unfavorable decision that delays, alters, or vacates those actions will remove those benefits. Indeed, certain Petitioners have opposed aspects of the SAFE Rule that benefit Ingevity. This Circuit has held that the interest in intervention is clear where the disposition of a claim in the favor of plaintiffs would directly impact the intervenor's interests. *See Dimond v. D.C.*, 792 F.2d 179, 192 (D.C. Cir. 1986).

Ingevity, and its former collaborative partner and recent acquisition Adsorbed Natural Gas Products, Inc., meaningfully participated in the rulemaking process for

¹⁶ Clerk's Order, ECF # 1844674 (May 28, 2020); Clerk's Order, ECF # 1845111 (June 1, 2020).

¹⁷ Clerk's Order, ECF # 1844068 (May 22, 2020).

the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light-Duty Vehicles¹⁸ and the joint action.¹⁹ In those comments, Ingevity and Adsorbed Natural Gas Products, Inc. advocated for the use of the 0.15 greenhouse gas emission multiplier for dual-fueled natural gas vehicles, the elimination of misguided design restrictions that at that time applied to dual-fueled natural gas vehicles, and the adoption of a production multiplier for every natural gas vehicle sold as a means to further encourage the widespread adoption of this technology. EPA and NHTSA were receptive to these targeted comments and these concepts were adopted into the joint action, which serves to make natural gas vehicles more attractive to vehicle manufacturers who are seeking ways to lower the emissions of their vehicle fleets.

The treatment of natural gas vehicles under the joint action represents a significant economic opportunity for Ingevity, which dedicated substantial resources and years of effort to developing its proprietary adsorbed natural gas technology. If the underlying agency actions are vacated, then Ingevity's ability to market its adsorbed natural gas technology will be significantly curtailed. Thus, Ingevity satisfies the second factor of the four-factor test.

¹⁸ *See supra* note 11 (detailing various rulemaking comments filed by Ingevity and Adsorbed Natural Gas Products, Inc.)

¹⁹ 85 Fed. Reg. 25,227 (Apr. 30, 2020) (citing Ingevity Corporation, Detailed Comments, NHTSA-2018-0067-8666).

C. EPA and NHTSA do not adequately represent Ingevity's interests.

While Ingevity supports the agencies' joint action, it cannot depend on the agencies to fully protect its unique interests in the underlying litigation. The burden of showing the inadequacy of the current representative is minimal, such that an intervenor "need not prove that representation . . . is inadequate but need show merely that it *may* be" *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972). The "general alignment" of positions between a proposed intervenor and a party to the litigation is insufficient to demonstrate that the representation is adequate. *Crossroads*, 788 F.3d at 321. This Court "look[s] skeptically on government entities serving as adequate advocates for private parties." *Crossroads*, 788 F.3d at 321. Government entities are charged with "representing the public interest of its citizens," whereas private parties typically have "narrower" interests not shared by all citizens. *See Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 737 (D.C. Cir. 2003).

To date, Ingevity is the sole participant before this Court advocating for the treatment of natural gas vehicles in the underlying agencies' actions. While the fate of natural gas vehicles under the final agency actions is of the utmost importance to Ingevity, it almost certainly is of lower importance to the agencies given the overall scope of the rulemaking. *See Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (holding association's interests to be "more narrowly focused" than the government interest). As noted by this Circuit on numerous occasions, where the government does not have a financial stake in the outcome of a challenge it will not

necessarily adequately represent the interests of private parties. *See Dimond*, 792 F.2d at 192 (noting the “large class of cases in this circuit recognizing the inadequacy of governmental representation of the interests of private parties in certain circumstances”). A mere “shared general agreement” with the agencies that the underlying actions are lawful “does not necessarily ensure agreement in all particular respects about what the law requires.” *Nat. Res. Def. Council*, 561 F.2d at 912.

As Ingevity cannot rely on the agencies to fully and adequately represent its interests in the underlying litigation, it satisfies the third factor of the four-part test for intervention.

D. Ingevity’s interest is impaired as a practical matter absent intervention.

In setting standards for fuel economy and greenhouse gas emissions, EPA and NHTSA frequently exercise their authority to take steps that the agencies reasonably believe will encourage vehicle manufacturers to produce cleaner and more efficient vehicles. One regulatory tool that is frequently used allows the emissions and fuel economy associated with innovative products such as electric vehicles or natural gas vehicles to be calculated in a manner that incentivizes the manufacture of those vehicles. Without these incentives within the framework of the greenhouse gas emissions and fuel economy regulatory programs, many of these innovative products and approaches might take longer to be adopted in the marketplace or might never be adopted.

Under the challenged joint action, Ingevity's products are poised to benefit from several provisions that make them more attractive to vehicle manufacturers. The remand or vacatur of the joint action would undoubtedly lead to decreased demand for Ingevity's adsorbed natural gas products and technology. This certain economic harm absent intervention satisfies the final factor of the four-part test for intervention. *See United States v. Am. Tel. & Telegraph*, 642 F.2d 1285, 1291-92 (D.C. Cir. 1980) (intervention aims to protect interests of a direct and immediate character that will be won or lost as a result of the judgment).

II. Ingevity satisfies the standards for permissive intervention.

A party seeking to intervene under Fed. R. Civ. P. 24(b) must demonstrate that it "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). The court should also consider whether intervention would delay or prejudice the adjudication of the other parties' rights. Fed. R. Civ. P. 24(b)(3). The D.C. Circuit reads that rule broadly and has "eschewed strict readings of the phrase 'claim or defense.'" *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998).

Here, Ingevity has a defense that "shares with the main action a common question of law": whether the agencies' underlying final actions, including the provisions specific to natural gas vehicles, were lawfully promulgated and have a rational basis.

Allowing Ingevity to intervene will not delay or prejudice any other parties, as Ingevity's motion to intervene was filed well within the 30-day window provided by Fed. R. App. P. 15(d) and Circuit Rule 15(b) and the parties have not yet made any preliminary filings outside of the petitions for review.

Accordingly, Ingevity satisfies the criteria for permissive intervention under Fed. R. Civ. P. 24(b).

CONCLUSION

For the foregoing reasons, Ingevity respectfully requests that the Court grant its motion for leave to intervene.

Respectfully submitted,

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Dated: June 19, 2020

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, Ingevity makes the following disclosure:

Ingevity Corporation is a publicly traded company organized under the laws of Delaware, with its corporate headquarters in North Charleston, South Carolina. Ingevity Corporation is registered on the New York Stock Exchange under the trading symbol NGVT. Ingevity Corporation has no parent corporation, and no publicly held company has ten percent or greater ownership in Ingevity Corporation.

Ingevity Corporation develops, manufactures, and brings to market specialty chemicals, high-performance carbon materials and engineered polymers that are used in a wide variety of applications. With regards to the underlying petition for review, Ingevity Corporation is a leading supplier of high-performance carbon materials for automotive components that reduce gasoline vapor emissions and store natural gas.

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 4,455 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14- point font.

/s/ Rafe Petersen

Rafe Petersen

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Rafe Petersen
Rafe Petersen