Nos. 23-3581, 23-3583

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SIERRA CLUB,
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency,
Respondents,

On Petition for Review of Final Rules of the
United States Environmental Protection Agency
88 Fed. Reg. 32,584 (May 19, 2023) and 88 Fed. Reg. 32,594 (May 19, 2023)

BRIEF OF *AMICI CURIAE* AMERICAN PETROLEUM INSTITUTE, AMERICAN CHEMISTRY COUNCIL, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, MICHIGAN CHAMBER OF COMMERCE, NATIONAL ASSOCIATION OF MANUFACTURERS, AND NATIONAL MINING ASSOCIATION IN SUPPORT OF RESPONDENTS

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CORPORATE DISCLOSURE STATEMENTS

Pursuant to Fed. R. App. P. 26.1 and Sixth Circuit Rule 26.1, *Amici Curiae* in support of Respondents American Petroleum Institute, American Chemistry Council, American Fuel & Petrochemical Manufacturers, Chamber of Commerce of the United States of America, Michigan Chamber of Commerce, National Association of Manufacturers, and National Mining Association hereby file the following corporate disclosure statements:

The American Petroleum Institute (API) certifies that it is incorporated under the laws of the District of Columbia. API has no parent entity, and no publicly held corporation or similarly situated legal entity has 10 percent or greater ownership of API.

The American Chemistry Council (ACC) is a non-profit national trade association. ACC certifies that it has no parent corporation, and no publicly held company has 10 percent or greater ownership in ACC.

The American Fuel & Petrochemical Manufacturers (AFPM) is a non-profit national trade association. AFPM certifies that it has no parent corporation, and no publicly held company has 10 percent or greater ownership of AFPM.

The Chamber of Commerce of the United States of America (U.S. Chamber) certifies that it is a non-profit, tax-exempt organization incorporated in the District

of Columbia. The U.S. Chamber has no parent corporation, and no publicly held company has 10 percent or greater ownership in the U.S. Chamber.

The Michigan Chamber of Commerce (Michigan Chamber) states that it is a non-profit, tax-exempt organization incorporated in the State of Michigan. The Michigan Chamber has no parent corporation, and no publicly held company has 10 percent or greater ownership in the Michigan Chamber.

The National Association of Manufacturers (NAM) states that it is a non-profit, tax-exempt organization incorporated in New York. The NAM has no parent corporation, and no publicly held company has 10 percent or greater ownership in the NAM.

The National Mining Association (NMA) is a non-profit national trade association. NMA certifies that it is not a publicly held corporation and has no parent corporation. No publicly held company has 10 percent or greater ownership in NMA.

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INTEREST OF *AMICI*[1]

Members of *Amici Curiae* American Petroleum Institute (API), American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), Chamber of Commerce of the United States of America (U.S. Chamber), Michigan Chamber of Commerce (Michigan Chamber), National Association of Manufacturers (NAM), and National Mining Association (NMA) have worked for many years with the United States Environmental Protection Agency (EPA or Agency), states, and local authorities to provide for attainment of National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA or Act), 42 U.S.C. §§ 7401-7671q, while preserving the viability of local industries, including those in the Detroit area. Petitioner Sierra Club and Respondents EPA and Michael S. Regan have consented to the filing of this brief by these *amici.*

API represents all aspects of American's oil and natural gas industry, which supports more than 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API's nearly 600 members produce, process, and distribute the majority of the Nation's energy, and participate in API Energy Excellence®, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting.

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental health and safety performance through Responsible Care®, commonsense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a $639 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for fourteen percent of all U.S. goods exported.

AFPM is the leading trade association representing the makers of the fuels that keep us moving, the petrochemicals that are the essential building blocks for modern life, and the midstream companies that get our feedstocks and products where they need to go. AFPM's mission is to advocate for public policy that benefits members, consumers, and the nation; to educate policymakers, the media and the public on the value that its members and their products provide to the nation and the world; and to be the most trusted voice of the petroleum refining and petrochemical sectors.

The U.S. Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the

U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Michigan Chamber, a nonprofit corporation, is the leading voice of business in Michigan. The Chamber advocates for job providers in the legislative and legal forums and represents approximately 5,000 employers, trade associations, and local chambers of commerce of all sizes and types in every county of the state. The Michigan Chamber's member firms employ over 1 million Michiganders. To further this objective, the Michigan Chamber frequently participates in litigation as both a party and *amicus curiae* to ensure that courts fully understand the impact of their decisions on policy in the State of Michigan.

The NAM is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.85 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

NMA is a nonprofit national trade association that represents the interests of the mining industry, including the producers of most of the nation's coal, metals, and agricultural and industrial minerals. The NMA has over 280 members, whose interests it represents before Congress, the administration, federal agencies, courts, and the media.

Under the CAA, *amici*'s members face costly and burdensome requirements to limit their emissions of air pollutants in areas that are designated nonattainment for NAAQS. These emission limitations are made even more onerous if used to offset air pollution from unexpected and non-industrial sources, including wildfires. Recognizing such scenarios, the CAA provides vital, if limited, relief from such added emission limitations through its exceptional events provision. The provision has allowed EPA and the states to develop a program for excluding air quality monitoring data affected by a qualifying event for purposes of attainment calculations. *Amici*'s participation will assist the Court in understanding the importance of the exceptional events program to industrial sources as they meet their obligations under the Act.

SUMMARY OF THE ARGUMENT

Congress established the exceptional events program in the CAA, 42 U.S.C. § 7619(b), for several important purposes. By authorizing the exclusion of monitoring data influenced by exceptional events, the statutory provision sought to

avoid imposing unnecessary and burdensome controls on local industrial sources that are not responsible for a NAAQS exceedance. Furthermore, in adding the exceptional events provision to the Act, Congress struck an important balance between the CAA's goal of reducing and controlling air pollution to protect human health, *id.* § 7401(b)(1), and the reality that air quality monitoring data is sometimes affected by unusual and uncontrollable events, including natural events such as wildfires. At the same time, Congress advanced another goal of the Act – enhancing the nation's productive capacity. *Id.* Congress sought to protect local, job-producing industrial activities from control requirements to address pollution for which they are not responsible.

The Court should deny Sierra Club's petitions here. Sierra Club challenges: (1) EPA's acceptance of the Michigan Department of Environment, Great Lakes, and Energy's (EGLE's) demonstration that an exceptional event – a Canadian wildfire – caused the elevated level of ozone measured on two occasions, and (2) EPA's resulting Clean Data Determination for the Detroit area, 88 Fed. Reg. 32,584 (May 19, 2023), JA001, and redesignation of the area to attainment for that standard. 88 Fed. Reg. 32,594 (May 19, 2023), JA346. But, contrary to Sierra Club's assertions, EPA's actions are consistent with both the terms and purpose of section 319(b) of the CAA, 42 U.S.C. § 7619(b), and with EPA's implementing regulations. By recognizing that the ozone concentrations measured on June 24 and 25, 2022,

were due to an exceptional event, EPA's actions properly prevented imposition of onerous regulatory requirements that fail to address the wildfire-related ozone on those days and that would be ineffective at preventing future elevated ozone levels attributable to forest fire.

ARGUMENT

I. Congress enacted the exceptional events provision in recognition of the futility of requiring states and sources to redress pollution that results from certain activities beyond their control.

The CAA requires EPA to set NAAQS at levels protective of public health and welfare, 42 U.S.C. § 7409(b), and in turn requires states containing an area in which a NAAQS is not met – a "nonattainment area" – to adopt plans to bring these areas into compliance with them within specified time limits. *Id.* § 7502(b). These plans, known as State Implementation Plans (SIPs), require states to impose control measures on existing air pollutant sources and to implement permitting requirements for new or modified major stationary sources within the nonattainment area. *Id.* § 7502(c).[2] The Act specifies consequences, including potential sanctions, if a state fails to adopt a satisfactory SIP. *Id.* § 7509(a), (b). It also requires the state to adopt

[2] In addition to these general nonattainment area requirements, the Act sets forth specific requirements for ozone nonattainment areas that vary according to the severity of the nonattainment classification. *See* 42 U.S.C. § 7511a. These requirements are summarized in the Brief for Respondents EPA, *et al*., at 7-8, ECF No. 39. (ECF Nos. refer to the docket for *Sierra Club v. EPA*, No. 23-3581 (6th Cir.).)

additional measures, including additional controls on sources in the nonattainment area, if the SIP fails to bring the area into attainment by the applicable deadline. *Id.* § 7509(d).

Measures required in nonattainment areas can have staggering costs. For example, when it promulgated the 2015 ozone NAAQS, EPA estimated the present value of meeting that standard in most of the country as $2.2 billion.[3] Because ozone is not directly emitted from industrial sources, but forms in the air as a result of emissions of nitrogen oxides (NOx) and volatile organic compounds (VOC),[4] this estimate reflected EPA's recognition that identified controls for NOx emissions cost as much as $19,000 per ton and those for VOC emissions as much as $33,000 per ton.[5] It also included highly uncertain estimated costs for unknown controls.[6]

Such costly controls are sometimes required for areas to meet NAAQS. But not always. The Act's narrowly focused exceptional events provision, and EPA's regulations implementing it, addresses some of those occasions. The exceptional

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[3] *See* EPA, EPA-452/R-15-007, Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone at ES-15,Tbl. ES-5 ($1.4 billion in costs outside of California); ES-18,Tbl. ES-9 ($0.8 billion in costs in California) (Sept. 2015), https://www.epa.gov/sites/default/files/2016-02/documents/20151001ria.pdf (RIA). Together, these costs total $2.2 billion.

[4] EPA, How does ground-level ozone form?, https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics#formation (last visited May 2, 2024).

[5] RIA at 4-12.

[6] *Id*. at 8-19.

events program permits EPA to depart from the normal CAA planning and regulatory process in instances when nonattainment is affected by unusual and uncontrollable events. The exceptional events program thereby provides regulated entities and local businesses important relief from mandates for control measures that would be unproductive and thus unnecessarily burdensome.

A. The exceptional events program focuses appropriately on monitored air quality resulting from emissions beyond the control of sources in the area where the monitor is located.

The NAAQS are designed to protect public health and welfare and can require certain emission controls. But EPA has long recognized that requiring such controls on local industrial sources because an area exceeds a NAAQS due to pollution caused by an event unrelated to those sources – such as a distant international forest fire – would make little sense. As far back as 1977, EPA provided informal guidance that pollutants emitted as a result of exceptional events need not be included in state reports on pollution levels. *See Nat. Res. Def. Council v. EPA*, 896 F.3d 459, 462 (D.C. Cir. 2018) ("Since 1977, EPA has recognized that … counting emissions caused by 'exceptional events' inflates reported levels of pollutants, which sometimes pushes an area otherwise in attainment to be designated as nonattainment.").

For that reason, Congress enacted the exceptional events provision of the CAA in 2005, 42 U.S.C. § 7619(b), as part of the Safe, Accountable, Flexible,

Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, § 6013, 119 Stat. 1144, 1882-84 (2005). And EPA promulgated regulations interpreting and implementing that provision in 2007, 72 Fed. Reg. 13,560 (Mar. 22, 2007), and amended those regulations in 2016. 81 Fed. Reg. 68,216 (Oct. 3, 2016), codified at 40 C.F.R. §§ 50.1(j), 50.14 & 51.930. Section 319(b) of the Act, together with EPA's regulations, eliminates any requirement for controls in response to monitoring data recording a NAAQS exceedance caused by an exceptional event.

By statute, Congress carefully limited exceptional events to those that are "not reasonably controllable or preventable" and that are "natural" or "caused by human activity that is unlikely to recur at a particular location." *Id.* § 7619(b)(1)(A)(ii) & (iii). Congress made clear that source noncompliance, stagnation of air masses, meteorological inversions, and meteorological events involving high temperatures or lack of precipitation cannot be exceptional events. 42 U.S.C. § 7619(b)(1)(B). Moreover, for air quality data to be excluded from consideration in assessing NAAQS compliance, a "clear causal relationship" must exist between the exceptional event and a monitored NAAQS exceedance. *Id.* § 7619(b)(3)(B)(ii).

EPA's regulations provide further specificity by defining the universe of regulatory actions to which the exceptional events program applies. One such action is redesignation of an area from nonattainment to attainment "pursuant to Clean Air Act section 107(d)(3)," 40 C.F.R. § 50.14(a)(1)(i)(A), which is the action at issue

here. *See* 88 Fed. Reg. at 32,613, JA365. Moreover, the regulations require that data "shall" be excluded from consideration only "where a State demonstrates to the Administrator's satisfaction that an exceptional event caused a specific air pollution concentration at a particular air quality monitoring location." 40 C.F.R. § 50.14(b)(1). In this case, EPA found that causal requirement satisfied because the EGLE "adequately demonstrated that wildfire smoke from Northern Canada traveled to the East 7-Mile monitor on June 24 and 25, 2022." 88 Fed. Reg. at 32,586, 32,592, JA003, JA009.

The exceptional events program thus represents a measured response by both Congress and EPA to specific phenomena that contribute to a NAAQS exceedance in a certain area but are beyond the control of both the emission sources in that area and the relevant state or states. As EPA observed, the CAA through the exceptional event provision:

> recognizes that it may not be appropriate to use the monitoring data influenced by "exceptional" events that are collected by the ambient air quality monitoring network when making certain regulatory determinations. When "exceptional" events cause exceedances or violations of the national ambient air quality standards (NAAQS) that subsequently affect certain regulatory decisions, the normal planning and regulatory process established by the CAA may not be appropriate.

81 Fed. Reg. at 68,216.

In other words, "[e]vents such as forest fires or volcanic eruptions, should not influence whether a region is meeting its Federal air quality goals." Safe,

Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, H.R. REP. NO. 109-203, at 1066 (2005) (Legis. Hist.). Of course, Congress was necessarily aware that people living in such areas would be exposed to elevated pollution concentrations resulting from these exceptional events. But it also recognized that it would be unreasonable and unfair to mandate *source-based emission* controls to compensate for these events.

B. Regulatory recognition and appropriate treatment of exceptional events, such as events caused by wildfire, will remain important for the foreseeable future.

Amici anticipate that the exceptional events program will remain important to implementation of the CAA in the future. For example, EPA anticipates that wildfires may increase in frequency, size, duration, and destructiveness,[7] which would likely mean more instances of NAAQS exceedances influenced by wildfire. Last summer, Canadian wildfires caused unusually high levels of particulate matter

[7] *See* Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, 89 Fed. Reg. 16,202, 16,367 (Mar. 6, 2024) (noting "the growing frequency and severity of wildfire events"); Memorandum of Understanding Between the United States of Department of Agriculture Forest Service and the United States Department of the Interior and the United States Environmental Protection Agency and the United States Centers for Disease Control and Prevention, Wildland Fire and Air Quality Coordination (Nov. 8, 2023), https://www.usda.gov/sites/default/files/documents/usda-epa-doi-cdc-mou.pdf ("Wildfires have been growing in size, duration, and destructivity, with millions of people at risk from wildfire and wildfire smoke.").

pollution in many parts of the U.S.[8] At the same time, more stringent NAAQS, like the NAAQS for fine particulate matter that will become effective on May 6, 2024, 89 Fed. Reg. 16,202 (Mar. 6, 2024),[9] mean less headroom between the NAAQS and baseline air quality. That, by itself, necessarily increases the likelihood of wildfire smoke leading to a NAAQS violation.

The exceptional events program will thus remain important for the foreseeable future. It will be the only way to avoid nonattainment determinations that would result in emission control requirements that can do nothing to address the actual cause of the nonattainment, such as pollution due to wildfires. States and the regulated community depend on that program to avoid highly costly controls that would serve no good purpose.

II. EPA complied with the exceptional events program in this case.

The Court should reject the arguments raised by Sierra Club and its supporting *amici* challenging EPA's application of the exceptional events provision of the

[8] *See* Zhe Wang, *et al.*, *Severe Global Issues Caused by Canada's Record-Breaking Wildfires in 2023*, 41 ADVANCES IN ATMOS. SCI. 565, 566, 570 (Apr. 2024), https://link.springer.com/article/10.1007/s00376-023-3241-0 (noting that on June 7, 2023, Canadian wildfires caused New York City to experience its worst air quality in more than fifty years and that such wildfires "caused severe air pollution" in the north-central U.S. between July 12 and July 19, 2023). *See also* Ian Livingston, *Canada's astonishing and record fire season finally slows down*, WASHINGTON POST (Oct. 18, 2023), https://www.washingtonpost.com/weather/2023/10/18/canada-historic-2023-wildfire-season-end/.

[9] Some *amici* on this brief have sought judicial review of this rule. *Chamber of Commerce v. EPA*, No. 24-1051 (D.C. Cir. filed Mar. 6, 2024).

statute. EPA's reliance on the exceptional events program in this instance is actually a prime illustration of how that program appropriately relieves *amici*'s members from being regulated for conditions for which they are not responsible and being subjected to unnecessary and controls.

Sierra Club's contention that EPA's actions were arbitrary and capricious is based on EPA's alleged failure to follow the Agency's guidance for preparing exceptional event demonstrations for ozone data that is influenced by wildfire. *See* Pet'r's Br. at 41-56, ECF No. 19. However, this guidance is "non-binding" on its face. Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions 1-10, at 1 (Sept. 16, 2016), *in* EPA, EPA-457/B-16-001, Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations, (Sept. 2016), https://www.epa.gov/system/files/documents/2023-12/guidance-on-the-preparation-of-ee-wf-ozone.pdf, JA012 (Wildfire Guidance). Accordingly, both states and EPA are free to deviate from the guidance as long as their actions are otherwise consistent with the CAA and EPA's regulations. Here, they were.

In any event, the Wildfire Guidance *was* followed. The Guidance states that it is not a listing of requirements for a state's demonstration that a wildfire

contributed to monitored ozone levels on a particular day. It expressly permits analyses "not listed or explained in this guidance":

> While this guidance contains example analyses that air agencies may use in their demonstrations, air agencies can also prepare analyses or present documentation not listed or explained in this guidance provided the information is well-documented, appropriately applied, technically sound, and supports the weight of evidence showing for the Exceptional Events Rule regulatory criteria.

Wildfire Guidance at 2, JA018. Likewise, the Guidance does not say that EPA will follow any particular analyses. Instead, it says EPA will conduct a case-by-case, weight-of-evidence review:

> The EPA reviews exceptional events demonstrations on a case-by-case basis using a weight of evidence approach considering the specifics of the individual event. This means the EPA considers all relevant evidence submitted with a demonstration or otherwise known to the EPA and qualitatively "weighs" this evidence based on its relevance to the Exceptional Events Rule criterion being addressed, the degree of certainty, the persuasiveness, and other considerations appropriate to the individual pollutant and the nature and type of event before acting to approve or disapprove an air agency's request to exclude data.

Id. at 3-4, JA19-20.

Both the state and EPA complied with those directions. EGLE gave a well-documented exceptional event demonstration. And EPA, in its Clean Data Determination Final Rule and associated Technical Support Document, reasonably explained its review of, and conclusions concerning, that demonstration using the recommended weight-of-evidence approach. 88 Fed. Reg. at 32,586, JA003. Sierra Club errs in complaining that the Wildfire Guidance was not followed.

As for the *amici* that support Sierra Club, they argue that EPA erroneously excluded the monitoring data from June 24 and 25, 2022, because the excluded *values* themselves were not atypical. Br. of Amici Curiae Michigan Clinicians for Climate Action & MI Air MI Health in Supp. of Pet'rs, at 22, ECF No. 22 ("The ozone data that EGLE and EPA excluded from the design value is not exceptional…") (Clinicians Br.). But this misses the point. The exceptional events program does not provide for exclusion of only uncommon pollution concentrations. The term exceptional event as used in Section 319(b) of the Act is a term of art. *Ukeiley v. EPA*, 896 F.3d 1158, 1165 (10th Cir. 2018) ("In § 7619, 'exceptional event' functions as a two-word term of art."). So the question is simply whether the monitored pollution on the days at issue meets the statutory definition of being influenced by an exceptional event. If so, the monitored air quality on those days was properly excluded. And here, Sierra Club's a*mici* do not contest that the pollution from the wildfire influenced whether the ozone NAAQS was exceeded in the Detroit area.

Petitioner's *amici* also argue that the exceptional events program cannot be used to exclude "multiple days of high ozone levels." Br. for Detroit Hamtramck Coalition for Advancing Healthy Environments, *et al*. as *Amicus Curiae* in Supp. of Sierra Club Urging Reversal, at 12, ECF No. 27 ("The Agencies should not be permitted to reclassify the Detroit region as reaching attainment levels by excluding

multiple days of high ozone levels."). But the Act places no limit on the number of times that a natural event may occur and still qualify as an exceptional event. *See Ukeiley*, 896 F.3d at 1165 ("Congress did not exclude recurring natural variations from its definition of 'exceptional event.'"). Courts have accepted the exclusion of many more than two days or two pieces of monitoring data due to natural events when determining an area has attained a NAAQS. *See id.* at 1163 (accepting EPA's exclusion of 34 days of data influenced by high wind exceptional events in determining Lamar, Colorado attained a NAAQS for particulate matter); *Bahr v. Regan*, 6 F.4th 1059, 1075, 1085 (9th Cir. 2021) (accepting EPA's exclusion of exceedances of the ozone NAAQS at six monitors in the Phoenix region as attributable to a wildfire exceptional event); *Bahr v. EPA*, 836 F.3d 1218, 1232 (9th Cir. 2016) (accepting EPA's exclusion of 135 days of particulate matter data as influenced by high wind exceptional events). And that makes sense, of course, because exceptional events like wildfires can continue for multiple days and even weeks.

Finally, Sierra Club's *amici* argue that, regardless of EPA's acceptance of Michigan's exceptional events demonstration, EPA should have exercised discretion not to redesignate the Detroit area as attainment because doing so eliminated the requirement for additional emission controls. Clinicians Br. at 14-16. But Congress's explicit purpose in enacting Section 319(b) was to prevent monitoring data

influenced by exceptional events from affecting determinations about whether air quality standards such as NAAQS are met. Congress surely did not intend that the goal of imposing additional control requirements could provide EPA with justification for avoiding determining that an area has attained a NAAQS. Allowing this would eviscerate the exceptional events program. EPA's redesignation of the Detroit area to attainment for the 2015 ozone NAAQS is completely consistent with the Act.

CONCLUSION

For the foregoing reasons, the Court should deny Sierra Club's petitions.

Dated: June 21, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing final form brief complies with the length limitation of Fed. R. App. P. 32(a)(7) because it contains 3,886 words, excluding the items exempted by Fed. R. App. P. 32(f). The brief also 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 14-point Times New Roman font using Microsoft Word.

Dated: June 21, 2024

Respectfully submitted,

s/ Elbert Lin

CERTIFICATE OF SERVICE

I certify that on June 21, 2024, an electronic copy of this Final Form Brief of *Amici Curiae* American Petroleum Institute, American Chemistry Council, American Fuel & Petrochemical Manufacturers, Chamber of Commerce of the United States of America, Michigan Chamber of Commerce, National Association of Manufacturers, and National Mining Association in Support of Respondents was filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the Court's CM/EMF system. Further, I certify that all participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

Dated: June 21, 2024

Respectfully submitted,

s/ Elbert Lin