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October 23, 2024

Via ECF

Scott S. Harris, Clerk
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Diamond Alternative Energy, LLC, et al. v. EPA, et al., No. 24-7*

Dear Mr. Harris:

I write to update the Court on a recent development relevant to the pending petition in *Diamond Alternative Energy, LLC v. EPA*, No. 24-7. In the decision below, the D.C. Circuit held that petitioners—producers of liquid fuel and its component parts—did not have standing to challenge EPA’s grant of a Clean Air Act preemption waiver for California’s vehicle-emission standards, which are designed to reduce liquid-fuel consumption. Pet. App. 22a-25a. EPA and State respondents have defended that decision in this Court, asserting that petitioners’ injuries are not redressable because it is supposedly unclear whether the reinstatement of California’s waiver had any real-world effect. *See, e.g.*, EPA Br. 10-14; Cal. Br. 13.

EPA recently confirmed that, far from having no effect, its waiver for California’s greenhouse-gas vehicle-emission standards will depress demand for petitioners’ products into the next decade. On October 11, 2024, EPA published a proposal to approve California’s request to incorporate its greenhouse-gas standards into its state implementation plan for achieving EPA’s National Ambient Air Quality Standards. 89 Fed. Reg. 82,553, 82,558 (Oct. 11, 2024). In so doing, EPA found “reasonable and adequately supported” California’s estimates that the greenhouse-gas emission standards at issue in this case will reduce nitrogen-oxide and particulate-matter emissions in California *through at least 2037*. *Ibid.*; *see id.* at 82,557 & n.19, 20. EPA based this finding on California’s assessment of the “emissions reductions that would result from the avoided production and delivery of gasoline” due to the very standards covered by the reinstated waiver, which the

court below said never had any effect on liquid-fuel consumption. Memorandum to Docket EPA-R09-OAR-2024-0370, “Evaluation of CARB’s Criteria Pollutant Emissions Estimates from the Greenhouse Gas Related Provisions of the Advanced Clean Cars Program,” Jeffrey Buss, Environmental Protection Specialist, EPA Region 9 (August 2, 2024).

EPA’s acknowledgement that California’s standards will be directly responsible for reducing fuel consumption—and thus harming petitioners—for at least the next 13 years, 89 Fed. Reg. at 82,558, demonstrates that the D.C. Circuit’s decision is patently incorrect. Indeed, EPA’s recent findings appear to confirm its admission in its brief in opposition (at 12-13) that its waiver lasts in perpetuity, which directly contradicts the premise underlying the court of appeals’ standing decision: that the supposedly “short duration” of the waiver undermined redressability. Pet. App. 22a. Simply put, there would be no reason for EPA to incorporate California’s greenhouse-gas standards into the State’s implementation plan if those standards have no effect.

Respectfully submitted,

/s/ Jeffrey B. Wall

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