

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

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA;
NATIONAL ASSOCIATION OF
MANUFACTURERS; AMERICAN FUEL &
PETROCHEMICAL MANUFACTURERS;
NATIONAL FEDERATION OF
INDEPENDENT BUSINESS; AMERICAN
CHEMISTRY COUNCIL; AMERICAN COKE
AND COAL CHEMICALS INSTITUTE;
AMERICAN FOUNDRY SOCIETY;
AMERICAN FOREST & PAPER
ASSOCIATION; AMERICAN IRON & STEEL
INSTITUTE; AMERICAN WOOD COUNCIL;
BRICK INDUSTRY ASSOCIATION;
ELECTRICITY CONSUMERS RESOURCE
COUNCIL; LIGNITE ENERGY COUNCIL;
NATIONAL LIME ASSOCIATION;
NATIONAL OILSEED PROCESSORS
ASSOCIATION; and PORTLAND CEMENT
ASSOCIATION,
Petitioners,
v.
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; and GINA
MCCARTHY, ADMINISTRATOR, UNITED
STATES ENVIRONMENTAL PROTECTION
AGENCY,
Respondents.

No. 15-1382
Consolidated with Lead Case No. 15-1363
December 18, 2015

NON-BINDING STATEMENT OF ISSUES

Petitioners Chamber of Commerce of the United States of America, National
Association of Manufacturers, American Fuel & Petrochemical Manufacturers,

National Federation of Independent Business, American Chemistry Council, American Coke and Coal Chemicals Institute, American Foundry Society, American Forest & Paper Association, American Iron & Steel Institute, American wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and Portland Cement Association submit this non-binding Statement of Issues to be raised:

1. Whether the United States Environmental Protection Agency's Rule, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Rule*, 80 Fed. Reg. 64662 (Oct. 23, 2015) (the "Rule"), is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act ("CAA"), the Administrative Procedure Act ("APA"), or other law.

2. Whether EPA's Rule is unlawful and otherwise not in accordance with the CAA because the Rule's standards are premised on and attempt to regulate activities beyond those taken at individual sources, contrary to the text, structure, and history of the CAA.

3. Whether EPA's Rule is unlawful because it attempts to establish standards of "non-performance" by forcing sources to curtail operations or shutter entirely, rather than the "standards of performance" required by Section 111(d) of the CAA, 42 U.S.C. § 7411(d).

4. Whether EPA's Rule is unlawful because it deprives States of their statutory authority to consider the remaining useful life of existing sources to adjust "standards of performance."

5. Whether the Rule exercises authority to set standards of performance Congress vested with the States in the first instance.

6. Whether EPA's Rule violates the Constitution of the United States of America, including the Tenth Amendment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25, I hereby certify that on this 18th day of December, 2015, I caused the foregoing documents to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system. The following counsel will be served by Federal Express:

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