

THE NATIONAL ASSOCIATION OF)
MANUFACTURERS, AMERICAN FROZEN FOOD)
INSTITUTE, AMERICAN PETROLEUM INSTITUTE,)
BRICK INDUSTRY ASSOCIATION, CORN)
REFINERS ASSOCIATION, GLASS PACKAGING)
INSTITUTE, MICHIGAN MANUFACTURERS)
ASSOCIATION, MISSISSIPPI MANUFACTURERS)
ASSOCIATION, NATIONAL ASSOCIATION OF)
HOME BUILDERS, NATIONAL FEDERATION OF)
INDEPENDENT BUSINESS, NATIONAL OILSEED)
PROCESSORS ASSOCIATION, NATIONAL)
PETROCHEMICAL AND REFINERS ASSOCIATION,) Case No. 10-1166
SPECIALTY STEEL INDUSTRY OF NORTH) (With 10-1092, 10-
AMERICA, TENNESSEE CHAMBER OF) 1094, 10-1134, 10-
COMMERCE AND INDUSTRY, WEST VIRGINIA) 1143, 10-1144, 10-
MANUFACTURERS ASSOCIATION, and) 1152, 10-1156, 10-
WISCONSIN MANUFACTURERS & COMMERCE,) 1158, 10-1159, 10-
) 1160, 10-1161, 10-
Petitioners,) 1162, 10-1163, 10-
) 1164, 10-1172, 10-
v.) 1182)
)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY and LISA P. JACKSON,)
Administrator, U.S. Environmental)
Protection Agency,)
)
Respondents.)
)

PETITIONERS' NON-BINDING STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court's Orders of July 14, 2010, and August 5, 2010, in consolidated Case No. 10-1092, Petitioners the National Association of

Manufacturers, American Frozen Food Institute, American Petroleum Institute, Brick Industry Association, Corn Refiners Association, Glass Packaging Institute, Michigan Manufacturers Association, Mississippi Manufacturers Association, National Association of Home Builders, National Federation of Independent Business, National Oilseed Processors Association, National Petrochemical and Refiners Association, Specialty Steel Industry of North America, Tennessee Chamber of Commerce and Industry, West Virginia Manufacturers Association, and Wisconsin Manufacturers & Commerce hereby submit the following Non-Binding Statement of Issues to be Raised in this proceeding to review the “Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule,” (“Tailpipe Rule”) 75 Fed. Reg. 25,324 (May 7, 2010), promulgated by the U.S. Environmental Protection Agency (“EPA”) and Lisa P. Jackson, the Administrator of the EPA (collectively, “Respondents”). *See* 74 Fed. Reg. 66,496 (Dec. 15, 2009).

- I. Whether the Tailpipe Rule is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, the Administrative Procedure Act, or other law because Respondents:
 - A. misconstrued the terms, standards, and requirements of the Clean Air Act;
 - B. violated the plain language of the Clean Air Act;

- C. adopted an unreasonable interpretation of the Clean Air Act;
- D. failed to conduct reasoned decision-making;
- E. failed to consider the full costs of their actions, including direct and indirect costs to stationary sources;
- F. failed to define the benefits arising from measures that apply, directly or indirectly, to stationary sources as a result of the rule;
- G. failed to fully consider reasonable alternatives to their actions;
- H. failed to comply with the Clean Air Act Section 202's requirement that EPA give appropriate consideration to cost of compliance;
- I. failed to comply with the Unfunded Mandate Reform Act, 2 U.S.C. § 1535;
- J. failed to comply with the Regulatory Flexibility Act, 5 U.S.C. §§ 603(a) & 605(b);
- K. failed to comply with the Paperwork Reduction Act, 44 U.S.C. §§ 3501–3521;
- L. failed to comply with pertinent Executive Orders, including but not limited to Executive Orders 12866 and 13211; and
- M. failed to comply with other provisions of the Clean Air Act.

II. Whether Respondents' determinations that

A. the Clean Air Act's Prevention of Significant Deterioration program and Title V apply to greenhouse gases; and

B. greenhouse gases become subject to permitting requirements under the Clean Air Act as a result of the Tailpipe Rule;

are arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

III. Whether Respondents' interpretations of:

A. the Clean Air Act's Prevention of Significant Deterioration and Title V permitting requirements; and

B. the regulations in 40 C.F.R. parts 51, 52, and 70;

are arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

This is a preliminary listing of issues that Petitioners may raise. Petitioners reserve the right to modify the list of issues addressed, as well as to address these and other issues in more detail in future pleadings.

Dated August 20, 2010

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing statement of issues has been served via the Court's ECF system upon all registered counsel this 20th day of August, 2010.

Dated August 20, 2010

Respectfully submitted,

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