

**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,)

No. 15-1469

January 25, 2016

Petitioners,)

v.)

UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY; and GINA)
 MCCARTHY, ADMINISTRATOR, UNITED)
 STATES ENVIRONMENTAL PROTECTION)
 AGENCY,)

Respondents.)

**PETITIONERS' PRELIMINARY STATEMENT OF ISSUES TO BE
RAISED**

In accordance with this Court's Order of December 24, 2015, Petitioners submit this non-binding, preliminary statement of issues to be raised regarding the

final rule of the United States Environmental Protection Agency, “Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,” 80 Fed. Reg. 64510 (Oct. 23, 2015) (“the Rule”):

1. Whether the Rule violates Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b), or is arbitrary and capricious, because it establishes standards of performance for new, modified, and reconstructed electric utility generating units based on technologies, including carbon capture and sequestration, that have not been “adequately demonstrated” and are not the “best system of emission reduction.”

2. Whether the Rule’s reliance on alleged “demonstrations” of individual components of the technologies violates Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b), is arbitrary and capricious, or constitutes an abuse of discretion.

3. Whether the Rule is arbitrary and capricious or contrary to law under Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b), because it imposes a *de facto* ban on new coal-fired electric utility generating units.

4. Whether the Rule violates the Energy Policy Act of 2005 by setting the performance standards for new coal-fired electric utility generating units based on technologies, including carbon capture and sequestration, that were installed at government-funded demonstration projects under 42 U.S.C. § 15962 or 26 U.S.C. § 48A.

5. Whether the Rule is arbitrary and capricious or contrary to law because the agency failed properly to consider the Rule's cost and energy impacts.

6. Whether the Environmental Protection Agency failed to make a lawful endangerment finding under Section 111 of the Clean Air Act, 42 U.S.C. § 7411.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January, 2016, I electronically filed the foregoing Petitioners' Preliminary Statement of Issues with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Peter D. Keisler

Peter D. Keisler