

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

CITY OF AMES, IOWA

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Respondent.

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) **Docket No. 16-1438**
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PETITIONER’S NONBINDING STATEMENT OF ISSUES

Pursuant to this Court’s December 27, 2016 Order (Doc. # 1653019),
Petitioner City of Ames, Iowa (“the City” or “Ames”) submits the following
nonbinding statement of issue in this challenge to a final action by the Respondent
United States Environmental Protection Agency (“U.S. EPA”) published in the
Federal Register at 81 Fed. Reg. 74,504 (October 26, 2016), entitled “Cross-State
Air Pollution Rule Update for the 2008 Ozone NAAQS (Final Rule).”

1. Whether Respondent’s Final Rule is arbitrary and capricious or
inconsistent with law because it is based on a finding that a downwind receptor
“may have trouble” maintaining attainment of the National Ambient Air Quality
Standard for Ozone (Ozone NAAQS) in future years?

2. Whether Respondent’s Final Rule is arbitrary and capricious or
inconsistent with law because it is based on U.S. EPA’s finding that a downwind

receptor may not be able to maintain attainment of the Ozone NAAQS in the future is based on predictions of nonattainment air quality at a location over Lake Michigan instead of potential nonattainment at the on-land monitoring receptor at issue.

3. Whether Respondent's Final Rule is arbitrary and capricious or inconsistent with law because it is based on erroneous assumptions?

4. Whether Respondent's Final Rule is arbitrary and capricious or inconsistent with law because Respondent did not provide adequate notice to the public and opportunity to file comments on the technical foundation for the final rule?

Respectfully Submitted,



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COUNSEL FOR CITY OF AMES, IOWA

January 25, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of January 2017, I served the foregoing **STATEMENT OF NONBINDING ISSUES** on all registered counsel through the Court's electronic filing system (ECF)

/s/Leslie Sue Ritts
Leslie Sue Ritts

DATED: January 25, 2017