

“Petitioners”) hereby submit the following Preliminary and Nonbinding Statement of Issues to be raised in this proceeding, challenging the final action by the United States Environmental Protection Agency (EPA) published at 81 Fed. Reg. 74,504 (Oct. 26, 2016), titled “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS” (Final Rule). The Final Rule is arbitrary, capricious, an abuse of discretion or otherwise unlawful for the following reasons:

1. EPA impermissibly relied upon flawed or unjustified modeling assumptions and conditions to impose erroneous and disproportionate emission reduction requirements on Wisconsin.
2. EPA failed to properly consider actual ozone monitoring data and trends.
3. EPA failed to properly account for the transport of ozone and ozone precursor emissions originating outside the United States.
4. EPA improperly applied the same standard for defining significant contribution to both non-attainment areas and maintenance areas.
5. EPA failed to provide adequate relief for downwind States that cannot achieve compliance with the NAAQS due to ozone that is generated outside the borders of those States.

6. EPA improperly requires Wisconsin to reduce emissions beyond what is required under 42 U.S.C. § 7410(a)(2) and to offset other states' contributions to downwind pollution.
7. EPA improperly requires Wisconsin to reduce NOx emissions in a manner inconsistent with 42 U.S.C. § 7511a(f).

Petitioners retain the right to modify or supplement this statement of issues, including issues that may arise through EPA's reconsideration process.

Dated: January 25, 2017

Respectfully submitted,

/s/ Todd E. Palmer

Todd E. Palmer, DC Circuit Bar # 46148
Valerie L. Green, DC Circuit Bar # 53659
Jordan J. Hemaïdan, D.C. Cir. Bar # 53728
Michael, Best & Friedrich LLP
601 Pennsylvania Ave. NW, Suite 700
Washington, DC 20004-2601
(202) 747-9560 (telephone)
(202) 347-1819 (facsimile)
tepalmer@michaelbest.com
vlgreen@michaelbest.com
jjhemaidan@michaelbest.com

*Attorneys for Wisconsin Paper Council,
Wisconsin Manufacturers and Commerce,
Wisconsin Industrial Energy Group, and
Wisconsin Cast Metals Association*

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, the undersigned certifies that on January 25, 2017, the foregoing Preliminary and Nonbinding Statement of Issues of Petitioners, the Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, Wisconsin Industrial Energy Group, and the Wisconsin Cast Metals Association, was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Valerie L. Green

Valerie L. Green, DC Cir. Bar # 53659