

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

MURRAY ENERGY CORP.,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	No. 15-1385 (consolidated with Nos.
	)	15-1392, 15-1490, 15-1491, 15-1494)
U.S. ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
<i>Respondent.</i>	)	

**PUBLIC HEALTH AND ENVIRONMENTAL PETITIONERS’ NON-BINDING STATEMENT OF ISSUES**

Pursuant to this Court’s Order of December 28, 2015, Petitioners in case No. 15-1490, Sierra Club, Physicians for Social Responsibility, National Parks Conservation Association, Appalachian Mountain Club, and West Harlem Environmental Action, Inc., (collectively, “Public Health and Environmental Petitioners”), hereby submit the following non-binding Statement of Issues to be raised.

Whether EPA acted unlawfully, arbitrarily, or capriciously by:

1. Adopting a revised primary (health) standard for ozone that fails to protect against adverse health effects that occur at and below 0.070 parts per million (“ppm”)?

2. Failing to rationally explain its departure from the scientific finding of its own science advisors that there is substantial scientific certainty that adverse health effects occur at and below ozone levels of 0.070 ppm?

3. Employing a test for determining whether health effects are adverse that conflicts with prior EPA practice and advice from the agency's science advisors, and that, as the nation's leading medical societies found, allows substantial harmful effects to persist in sensitive populations?

4. Setting a combination of level and form for the health standard that allows repeated exceedances of ambient ozone levels that EPA concedes are dangerous?

5. Rejecting the advice of its staff, its science advisors, and the National Park Service that a secondary (welfare) standard identical to the primary standard was not scientifically justified and would not assure requisite protection of trees and plants from ozone damage?

6. Failing to adopt a secondary standard in the form recognized by its science advisors and the National Park Service as the correct metric necessary to characterize the impacts to vegetation?

7. Finding that a cumulative seasonal limit of 17 ppm-hours ozone, averaged over three years, would provide requisite protection against adverse welfare impacts on tree and plant growth?

8. Finding that EPA's selected primary standard of 0.070 ppm (8-hour average) would provide equivalent protection of trees and vegetation to that provided by a cumulative seasonal limit of 17 ppm-hours?

9. Refusing to specify a level of ozone requisite to protect against visible foliar injury in trees commonly found in National Parks and other treasured natural places?

10. For certain proposed new or modified major factories and power plants, waiving the statutory requirement that such sources show they will not cause or contribute to an exceedance of the revised ozone standard?

DATED: January 27, 2015

Respectfully submitted,

/s/David S. Baron

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*Environmental Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of January, 2016, I have served the foregoing **Public Health and Environmental Petitioners' Non-Binding Statement of Issues** on all registered counsel through the court's electronic filing system (ECF).

/s/David S. Baron  
David S. Baron