

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

Interstate Natural Gas Association of America,	)	
Petitioner,	)	No. 10-1337
	)	(consolidated with 10-1331)
v.	)	
	)	
United States Environmental Protection Agency,	)	
Respondent.	)	

**NONBINDING STATEMENT OF ISSUES OF PETITIONER  
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA**

Pursuant to this Court’s Order of October 20, 2010, the Interstate Natural Gas Association of America, petitioner in No. 10-1337, submits this Nonbinding Statement of Issues to be raised in this proceeding to review the final action of Respondent, the United States Environmental Protection Agency (“EPA”), published at 75 Fed. Reg. 51570 (August 20, 2010) and entitled “National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines” (hereinafter “August 2010 RICE NESHAP Rule”):

1. Whether EPA’s establishment of continuous parametric monitoring system (“CPMS”) requirements for area sources was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of section 553 of the Administrative Procedure Act (“APA”) and *City of Waukesha v. EPA*, 320 F.3d 228, 245 (D.C. Cir. 2003), because they were not contained in or published with the proposed rule that preceded the August 2010 RICE NESHAP Rule.

2. Whether EPA acted in contravention of the provisions and intent of the Clean Air Act (“CAA”), abused its discretion, or otherwise acted in an arbitrary and capricious manner in other significant respects in finalizing and promulgating the

hazardous air pollutant emission standards and requirements applicable to spark-ignited, four-stroke, rich-burn engines.

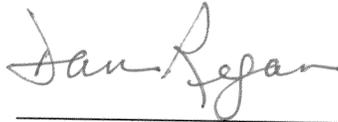
3. Whether the maximum achievable control technology (“MACT”) floors in the August 2010 RICE NESHAP Rule fail to comply with section 112(d)(3)(B) of the Clean Air Act and *Mossville Environmental Action Now v. EPA*, 370 F.3d 1232 (D.C. Cir. 2004) in that they (a) derive from emissions test data that do not reflect the pertinent engine population, (b) misapply emissions test data between categories of engines and (c) assess variability using a statistical tool that described emissions from incinerators, a class of sources and an associated data set with materially different emission characteristics.

4. Whether, in accounting for variability and in setting the MACT floors, EPA failed to comply with notice-and-comment procedures of the APA section 553 by relying upon engine emission databases and statistical tools that were not contained in or published with the proposed rule that preceded the August 2010 RICE NESHAP Rule.

5. Whether EPA’s cost-benefit analysis for the “beyond the floor” standards was arbitrary, capricious, an abuse of discretion, or otherwise contrary to APA section 706(2) because it assumed emissions reductions that are not required and are speculative, and because it included “co-benefits” that materialize only within a very narrow set of engine operating conditions.

This non-binding statement is preliminary. INGAA reserves the right to revise its issues and to raise additional issues, particularly after EPA rules on INGAA's pending petition for administrative reconsideration.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dan Regan". The signature is written in black ink and is positioned above a horizontal line.

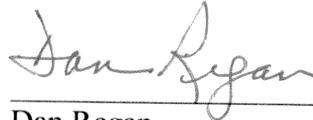
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Dated: November 19, 2010

## CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2010, a copy of the foregoing Nonbinding Statement of Issues was served electronically through the Court's CM/ECF system on all registered counsel in Case Nos. 10-1331, 10-1334, 10-1335, 10-1336 and 10-1338.



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