

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,
Petitioners,
v.
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; and GINA
MCCARTHY, ADMINISTRATOR, UNITED
STATES ENVIRONMENTAL PROTECTION
AGENCY,
Respondents.

No. 15-1382

October 23, 2015

PETITION FOR REVIEW

Pursuant to Federal Rule of Appellate Procedure 15(a) and Clean Air Act

§ 307(b)(1), 42 U.S.C. § 7607(b)(1), the Chamber of Commerce of the United States

of America, the National Association of Manufacturers, the American Fuel & Petrochemical Manufacturers, the National Federation of Independent Business, the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Foundry Society, the American Forest & Paper Association, the American Iron and Steel Institute, the American Wood Council, the Brick Industry Association, the Electricity Consumers Resource Council, the Lignite Energy Council, the National Lime Association, the National Oilseed Processors Association, and the Portland Cement Association hereby petition this Court for review of a nationally applicable rule of respondent the United States Environmental Protection Agency. The Agency adopted the final rule, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,” on August 3, 2015, and it was published in the Federal Register on October 23, 2015. 80 FR 64662 (Oct. 23, 2015).

Respondents issued this rule pursuant to Clean Air Act § 111(d), 42 U.S.C. § 7411(d); it is to be codified in 40 C.F.R. Part 60, subpart UUUU.

Petitioners seek review of the final rule on the grounds, *inter alia*, that it is arbitrary and capricious, contrary to the United States Constitution and the Clean Air Act and regulations promulgated thereunder, and is otherwise contrary to law.

Petitioners request that this Court hold unlawful, vacate, enjoin, and set aside the final rule, and that the Court provide such additional relief as may be necessary and appropriate.

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

The following information is provided pursuant to D.C. Circuit Rule 28(a)(1):

**(A) Parties and *Amici***Petitioners

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 Iron and Steel Institute

American Foundry Society

American Forest & Paper Association

American Wood Council

Brick Industry Association

Electricity Consumers Resource Council

Lignite Energy Council

National Lime Association

National Oilseed Processors Association

Portland Cement Association

Respondents

United States Environmental Protection Agency

Gina McCarthy, Administrator, United States Environmental Protection Agency

**(B) Rulings Under Review**

This petition challenges EPA's final rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 FR 64662 (Oct. 23, 2015).

**(C) Related Cases**

This case has never appeared before this or any other Court. Counsel is aware of five related cases that, as of the time of filing, have appeared before this Court:

- (1) *In re: Murray Energy Corporation*, No. 14-1112
- (2) *Murray Energy Corporation v. EPA*, No. 14-1151 (consolidated with No. 14-1112)
- (3) *State of West Virginia v. EPA*, No. 14-1146
- (4) *In re: State of West Virginia*, No. 15-1277
- (5) *In re: Peabody Energy Corp.*, No. 15-1284 (consolidated with No. 15-1277)

Counsel understands that other petitioners are today filing petitions for review of the same final rule.

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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,

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UNITED STATES ENVIRONMENTAL
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PROTECTION AGENCY,

Respondents.

No. 15-1382

October 23, 2015

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and L.R. 26.1, the Chamber of Commerce of
the United States of America, the National Association of Manufacturers, the

American Fuel & Petrochemical Manufacturers, the National Federation of Independent Business, the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Foundry Society, the American Forest & Paper Association, the American Iron and Steel Institute, the American Wood Council, the Brick Industry Association, the Electricity Consumers Resource Council, the Lignite Energy Council, the National Lime Association, the National Oilseed Processors Association, and the Portland Cement Association respectfully submit this Corporate Disclosure Statement and state as follows:

1. The Chamber of Commerce of the United States of America (the “Chamber”) states that it is the world’s largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than 3 million companies, state and local chambers, and trade associations of every size, in every industry sector, and from every region of the country. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

2. The National Association of Manufacturers (“NAM”) states that it is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than \$1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful

voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. The NAM has no parent corporation, and no publicly held company has 10% or greater ownership in the NAM.

3. The American Fuel & Petrochemical Manufacturers (“AFPM”) states that it is a national trade association whose members comprise more than 400 companies, including virtually all United States refiners and petrochemical manufacturers. AFPM’s members supply consumers with a wide variety of products that are used daily in homes and businesses. AFPM has no parent corporation, and no publicly held company has 10% or greater ownership in AFPM.

4. The National Federation of Independent Business (“NFIB”) states that it is a nonprofit mutual benefit corporation that promotes and protects the rights of its members to own, operate, and grow their businesses across the fifty States and the District of Columbia. NFIB has no parent corporation, and no publicly held company has 10% or greater ownership in NFIB.

5. The American Chemistry Council (“ACC”) states that it represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health, and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research



and product testing. The business of chemistry is an \$801 billion enterprise and a key element of the nation's economy. ACC has no parent corporation, and no publicly held company has 10% or greater ownership in ACC.

6. The American Coke and Coal Chemicals Institute (“ACCCI”) states that, founded in 1944, it is the international trade association that represents 100% of the U.S. producers of metallurgical coke used for iron and steelmaking, and 100% of the nation’s producers of coal chemicals, who combined have operations in 12 states. It also represents chemical processors, metallurgical coal producers, coal and coke sales agents, and suppliers of equipment, goods, and services to the industry. ACCCI has no parent corporation, and no publicly held company has 10% or greater ownership in ACCCI.

7. The American Foundry Society (“AFS”) states that, founded in 1896, it is the leading U.S. based metalcasting society, assisting member companies and individuals to effectively manage their production operations, profitably market their products and services, and equitably manage their employees. The association is comprised of more than 7,500 individual members representing over 3,000 metalcasting firms, including foundries, suppliers, and customers. AFS has no parent corporation, and no publicly held company has 10% or greater ownership in AFS.

8. The American Forest & Paper Association (“AF&PA”) states that it is the national trade association of the paper and wood products industry, which accounts for approximately 4 percent of the total U.S. manufacturing gross domestic

product. The industry makes products essential for everyday life from renewable and recyclable resources, producing about \$210 billion in products annually and employing nearly 900,000 men and women with an annual payroll of approximately \$50 billion. AF&PA has no parent corporation, and no publicly held company has 10% or greater ownership in AF&PA.

9. The American Iron and Steel Institute (“AISI”) states that it serves as the voice of the North American steel industry and represents 19 member companies, including integrated and electric furnace steelmakers, accounting for the majority of U.S. steelmaking capacity with facilities located in 41 states, Canada, and Mexico, and approximately 125 associate members who are suppliers to or customers of the steel industry. AISI has no parent corporation, and no publicly held company has 10% or greater ownership in AISI.

10. The American Wood Council (“AWC”) states that it is the voice of North American traditional and engineered wood products, representing over 75% of the industry that provides approximately 400,000 men and women with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. AWC has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in AWC.

11. The Brick Industry Association (“BIA”) states that, founded in 1934, it is the recognized national authority on clay brick manufacturing and construction,

representing approximately 250 manufacturers, distributors, and suppliers that historically provide jobs for 200,000 Americans in 45 states. BIA has no parent corporation, and no publicly held company has 10% or greater ownership in BIA.

12. The Electricity Consumers Resource Council (“ELCON”) states that it is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of industrial commodities and consumer goods from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities in all regions of the United States. Many ELCON members also cogenerate electricity as a by-product to serving a manufacturing steam requirement. ELCON has no parent corporation, and no publicly held company has 10% or greater ownership in ELCON.

13. The Lignite Energy Council (“LEC”) states that it is a regional, non-profit organization whose primary mission is to promote the continued development and use of lignite coal as an energy resource. The LEC’s membership includes: (1) producers of lignite coal who have an ownership interest in and who mine lignite; (2) users of lignite who operate lignite-fired electric generating plants and the nation’s only commercial scale “synfuels” plant that converts lignite into pipeline-quality natural gas; and (3) suppliers of goods and services to the lignite coal industry. LEC has no parent corporation, and no publicly held company has 10% or greater ownership in LEC.

14. The National Lime Association (“NLA”) states that it is the national

trade association of the lime industry and that it is comprised of U.S. and Canadian commercial lime manufacturing companies, suppliers to lime companies, and foreign lime companies and trade associations. NLA's members produce more than 99% of all lime in the U.S., and 100% of the lime manufactured in Canada. NLA provides a forum to enhance and encourage the exchange of ideas and technical information common to the industry and to promote the use of lime and the business interests of the lime industry. NLA is a non-profit organization. It has no parent corporation, and no publicly held company has 10% or greater ownership in NLA.

15. The National Oilseed Processors Association ("NOPA") states that it is a national trade association that represents 12 companies engaged in the production of vegetable meals and vegetable oils from oilseeds, including soybeans. NOPA's member companies process more than 1.6 billion bushels of oilseeds annually at 63 plants in 19 states, including 57 plants which process soybeans. NOPA has no parent corporation, and no publicly held company has 10% or greater ownership in NOPA.

16. The Portland Cement Association ("PCA") states that it is a not-for-profit "trade association" within the meaning of Circuit Rule 26.1(b). It represents companies responsible for more than 80 percent of cement-making capacity in the United States. PCA members operate manufacturing plants in 35 states, with distribution centers in all 50 states. PCA conducts market development, engineering, research, education, technical assistance, and public affairs programs on behalf of its members. Its mission focuses on improving and expanding the quality and uses of

cement and concrete, raising the quality of construction, and contributing to a better environment. PCA has no parent corporation, and no publicly held company owns a 10% or greater interest in PCA.

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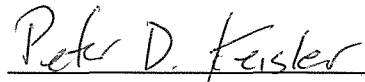
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of October 2015, I will cause to be served one copy of the foregoing Petition for Review, along with associated Corporate Disclosure Statement and Certificate as to Parties, Rulings, and Related Cases, upon the following:

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