

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF CALIFORNIA, *et al.*

Petitioners,

v.

ANDREW R. WHEELER, in his official  
capacity as Administrator, United States  
Environmental Protection Agency; UNITED  
STATES ENVIRONMENTAL PROTECTION  
AGENCY

Respondents.

No. 20-1357  
*Consolidated with  
Nos. 20-1359 and  
20-1363*

**STATE PETITIONERS' NON-BINDING  
STATEMENT OF ISSUES**

Pursuant to the Court's Scheduling Order of September 14, 2020, the undersigned State Petitioners in *State of California, et al. v. Andrew R. Wheeler, et al.*, Case No. 20-1357,<sup>1</sup> submit the following non-binding, preliminary statement of

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<sup>1</sup> The undersigned petitioners are the State of California, by and through Attorney General Xavier Becerra, and the California Air Resources Board; the State of Colorado, by and through Attorney General Philip J. Weiser and the Colorado Department of Public Health and Environment; the States of Connecticut, Delaware, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey, New

issues to be raised in this case regarding the final action taken by Respondents United States Environmental Protection Agency and Administrator Andrew R. Wheeler, in his official capacity (collectively, “EPA”), titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” 85 Fed. Reg. 57,018 (Sept. 14, 2020) (hereinafter, “Rescission Rule”).

Without waiving their right to modify these issues or raise additional issues in this matter, State Petitioners intend to raise the following issues with regard to EPA’s Rescission Rule:

1. Whether EPA’s elimination of standards of performance for components in the transmission and storage segment of the oil and natural gas source category is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, because, *inter alia*:

- a. EPA relied upon an unsupportable interpretation of Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b)(1)(A), in determining that transmission and storage cannot be part of the oil and natural gas source category;

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Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts, Pennsylvania, and Virginia; the City of Chicago; the District of Columbia; and the City and County of Denver (collectively, “State Petitioners”).

- b. EPA failed to adequately consider and reasonably weigh relevant factors in determining that transmission and storage cannot be part of the oil and natural gas source category, including alternatives to total rescission and impacts that the emission of air pollutants caused by EPA's action will have on public health and welfare, and also improperly considered and/or gave undue weight to non-statutory factors;
  - c. EPA failed to adequately consider and reasonably weigh the evidence before it, failed to consider important aspects of the problem the regulations were intended to address, and failed to consider the significant reliance interests engendered by four years of emissions controls on components in the transmission and storage segment; and
  - d. The analyses underlying EPA's decision were flawed, ignored contrary evidence, and contained errors that render EPA's decision unsupported, arbitrary and capricious, and otherwise unlawful.
2. Whether EPA's elimination of methane controls on the production and processing segments of the oil and natural gas source category is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, because, *inter alia*:

- a. EPA relied upon an unsupportable interpretation of Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b)(1)(A), in determining that EPA was required to have used unspecified “established criteria” in 2016 for judging the significance of emissions from the oil and natural gas source category;
- b. EPA’s reversal of its legal position to require that it make a pollutant-specific significance finding under Section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b)(1)(A), before regulating emissions from sources already regulated under that section is not in accordance with the statute, arbitrary and capricious, or otherwise contrary to law;
- c. EPA failed to adequately consider and reasonably weigh relevant factors including emissions from the oil and natural gas source category as a whole and impacts that the emission of methane caused by EPA’s action will have on public health and welfare, improperly considered and/or gave undue weight to non-statutory factors, and improperly based its action on the rationale that such standards are “redundant”;
- d. EPA failed to adequately consider and reasonably weigh the evidence before it and failed to consider important aspects of the problem the rule was intended to address, and/or the effects of its elimination of

methane controls, including on methane emissions from existing sources; and

- e. The analyses underlying EPA's decision were flawed, ignored contrary evidence, and contained errors that render EPA's decision unsupported, arbitrary and capricious, and otherwise unlawful.

Dated: Oct. 14, 2020

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 14, 2020, I filed the foregoing “State Petitioners’ Non-Binding Statement of Issues” using the Court’s CM/ECF system, and that service was thereby accomplished upon counsel of record registered with the Court’s system.

/s/ Caitlan McLoon  
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