

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

AIR ALLIANCE HOUSTON, et al.,

Petitioners,

V.

Case No. 25-1143

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and LEE

ZELDIN, Administrator, U.S.

Environmental Protection Agency,

Respondents.

STATEMENT OF ISSUES

Pursuant to the Court’s June 13, 2025 order, Petitioners in Case No. 25-1143 submit this non-binding, preliminary statement of issues to be raised regarding Respondents’ final action entitled “Annex I Stationary Sources List,” published on April 14, 2025.

1. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 air toxics rule, 89 Fed. Reg. 38508 (May 7, 2024) (“2024 Rule”), where “technology to implement such standard” is available and so the listed power plants cannot be exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).

2. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 Rule, where certain requirements of the 2024 Rule rested on authority under 42 U.S.C. § 7414(a)(1)(C), so the listed power plants cannot be exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).
3. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 Rule, where those exemptions extend “more than 2 years” – until July 8, 2029 – and so the listed power plants have not been properly exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).
4. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 Rule, where the President did not make a factual determination as to “any stationary source” that a particular technology is not available for that “stationary source,” and so the listed power plants have not been properly exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).
5. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 Rule, where the President did not make a factual determination as to “any stationary source” that an exemption for that “stationary source” is in

the “national security interests of the United States,” and so the listed power plants have not been properly exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).

6. Whether EPA has acted arbitrarily, capriciously, contrary to law, or *ultra vires* by adopting and publishing a list of power plants to be exempted from its 2024 Rule, where the President has not made and cannot make a factual determination that technology “is not available” and/or that exemption “is in the national security interests of the United States” with respect to the future period “beginning July 8, 2027, and concluding July 8, 2029,” and so the listed power plants have not been properly exempted from the 2024 Rule under 42 U.S.C. § 7412(i)(4).
7. Whether EPA violated 42 U.S.C. § 7607(d)(7)(B) by staying the compliance deadlines adopted in its 2024 Rule by more than three months by adopting and publishing the Annex I Stationary Sources List.
8. Whether EPA violated 42 U.S.C. § 7607(d) or 5 U.S.C. § 553 by amending the compliance deadlines adopted in its 2024 Rule without proper procedure, including publication of a notice of a proposed rulemaking, establishment of a public docket, and provision of an opportunity for public hearing and public comment.

DATED: July 14, 2025

Respectfully submitted,

/s/ Chloe H. Kolman

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Statement of Issues has been filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit this 14th day of July, 2025, using the CM/ECF System. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ *Chloe H. Kolman*

Chloe H. Kolman