

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

_____)	
ELECTRIC ENERGY, INC., <i>et al.</i> ,)	
)	
Petitioners,)	No. 22-1058
)	(Consolidated with 22-1056)
v.)	
)	
U.S. ENVIRONMENTAL PROTECTION)	
AGENCY, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**NON-BINDING STATEMENT OF ISSUES FOR PETITIONER
UTILITY SOLID WASTE ACTIVITIES GROUP**

Pursuant to this Court’s Order dated May 6, 2022, Petitioner Utility Solid Waste Activities Group (“USWAG”) hereby submits its non-binding Statement of Issues to be raised in the above-captioned proceeding. The Statement of Issues is as follows:

- (1) Whether EPA’s revision of the closure performance standard at 40 C.F.R. § 257.102(d)(1) to prohibit any liquid passing into or through a coal combustion residuals (“CCR”) unit by filtering or permeating from any direction, including the sides and bottom of a CCR unit, was issued without notice and comment in violation of the Administrative Procedure

- Act, 5 U.S.C. § 551 *et seq.* (“APA”) or otherwise not in accordance with law;
- (2) Whether EPA’s revision of the closure performance standard at 40 C.F.R. § 257.102(d)(2) to require the removal of all groundwater from a CCR unit prior to installation of a final cover system was issued without notice and comment in violation of the APA or otherwise not in accordance with law;
- (3) Whether EPA’s revision of the definition of “inactive CCR surface impoundment” at 40 C.F.R. § 257.53 to encompass units that were removed from service and drained of liquids prior to October 19, 2015 but remained in contact with groundwater was issued without notice and comment in violation of the APA or otherwise not in accordance with law;
- (4) Whether EPA’s revision of the definition of “CCR surface impoundment” at 40 C.F.R. § 257.53 to encompass self-supporting tank systems was issued without notice and comment in violation of the APA or otherwise not in accordance with law.

Petitioners may raise issues in addition to those described above.

Respectfully submitted,

/s/Douglas Green

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*Counsel for Petitioner Utility Solid
Waste Activities Group*

Dated: June 13, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day, June 13, 2022, filed the foregoing Non-Binding Statement of Issues electronically with the Clerk of the Court using the Electronic Court Filing System, which sends notification of such filing to the Counsel of Record in the above-captioned action.

Dated: June 13, 2022

s/ Douglas H. Green

Douglas H. Green

*Counsel for Utility Solid Waste
Activities Group*