

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

VINYL INSTITUTE, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	Case No. 22-1089
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	
)	
)	
)	
)	

PETITIONER’S STATEMENT OF ISSUES

Pursuant to this Court’s Order dated May 24, 2022, Petitioner through its undersigned counsel hereby submits the following preliminary and non-binding statement of issues to be raised in this proceeding.

Petitioner seeks judicial review of the United States Environmental Protection Agency’s (“EPA”) *Order Under Section 4(a)(2) of the Toxic Substances Control Act* (“Test Order”), issued on March 24, 2022, and particularly the requirement for an Avian Reproduction Test.

Petitioner reserves the right to amend the following statement of issues and to address other issues, including those raised by Respondent.

1. Whether the Test Order: (i) violates the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §

2601, *et seq.*, and EPA's regulations promulgated thereunder; (ii) is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law; (iii) is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (iv) is without observance of procedure required by law; (v) is unsupported by substantial evidence (*see* 15 U.S.C. § 2618(c)); and (vi) is otherwise contrary to law, because:

a. EPA failed to adequately explain based on all available information and data, *inter alia*: (i) why the Avian Reproduction Test is necessary for EPA to perform a risk evaluation of 1,1,2-trichloroethane; (ii) why the Avian Reproduction Test is required despite TSCA provisions seeking to reduce vertebrate testing; (iii) why the issuance of a test order, as opposed to a rule or consent agreement, was warranted; and (iv) how information and data specifically cited in the Test Order justify the requirement for an Avian Reproduction Test;

b. EPA failed to consider all available information and data regarding, *inter alia*: (i) structural analogues to 1,1,2-trichloroethane, including associated acute and chronic toxicity studies showing low toxicity to avian species; and (ii) more recent information demonstrating rare and low detections of 1,1,2-trichloroethane in environmental media;

- c. EPA failed to cite reliable and representative information and data in support of the Avian Reproduction Test, despite TSCA's requirement that EPA use best available science and to make decisions based on the weight of scientific evidence;
- d. EPA failed to adequately justify the need for the Avian Reproduction Test without first requiring screening level testing; and
- e. EPA failed to consider the relative costs of the Avian Reproduction Test protocols required under the Test Order and the reasonably foreseeable availability of the facilities and personnel needed to perform the required testing.

Dated June 23, 2022

/s/ Eric P. Gotting
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CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2022, I electronically filed the forgoing document with the Court by using the CM/ECF system. All parties to the case have been served through the CM/ECF system.

/s/ Eric P. Gotting