**I BACKGROUND**

**A. Concern that PM CEMS not suitable for cement kilns and EPA Response**

1. HWC MACT 1999

2. PS-11 Rule 2004

3. PC MACT 2010 and 2013

**B. *UARG CKRC PCA v. EPA* (D.C. Cir. 04-1077)**

- Challenge to PS-11 Rule

- Filed and in abeyance since 2004

- *CKRC v. EPA* as of June 2019

**II ISSUE: SHOULD CKRC CONTINUE ITS PS-11 CHALLENGE?**

**A. Technological issues with PS-11 and PM CEMS (separate discussion led by technical expert)**

**B. Litigation Options and Implications**

**1. Withdraw the DC Circuit Petition jointly with PCA**

- Legal effect: ends challenge to PS-11 but later PS-11 Rule with different features could be challenged

- EPA position re PM CEMS and kilns

- EPA position re currently inoperable PM CEMS requirement in HWC MACT

- Rarely used grounds-arising-after legal doctrine

**2. Remain in the Case and continue to file 90-day status reports**

- Legal effect: CKRC solely responsible for pursing case; immediate action needed to define end-game, litigation or settlement strategy, engage with DOJ/EPA

- DOJ/EPA may be unwilling to continue filing joint status reports

**3. Remain in the Case and Attempt to Resolve the Case with DOJ/EPA**

**-** Move to Dismiss Petition without prejudice

- Preserve CKRC’s right to challenge elements of PS-11 that harm CKRC if PS-11 is ever made applicable to HWCs

- Re-state the regulatory precondition of an HWC-specific rulemaking before PM CEMS can be required, and that PS-11 Rule is not such a rule

**III PORTLAND CEMENT NESHAP / NSPS**

**A. History of PC MACT and PM CEMS**

1. 2010 Rule: PM CEMS

DC Circuit remanded to EPA to fix dataset and PM standard

2. 2013 Rule: PM CPMS, revised PM Standard w/o CISWI data

DC Circuit upheld PM standard and compliance provisions

**B. Potential Precedential Value for CKRC**

**IV SUMMARY AND CONCLUDING OBSERVATIONS**