

FILED

FEB 16 2023

**MICHAEL GANS
CLERK OF COURT**

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF ARKANSAS and ARKANSAS)
DEPARTMENT OF ENERGY AND ENVIRONMENT,)
DIVISION OF ENVIRONMENTAL QUALITY,)

Petitioners,)

Case No. 23-1320

v.)

UNITED STATES ENVIRONMENTAL PROTECTION)
AGENCY and MICHAEL S. REGAN,)
ADMINISTRATOR, UNITED STATES)
ENVIRONMENTAL PROTECTION AGENCY,)

Respondents.)

PETITION FOR REVIEW

Pursuant to Clean Air Act Section 307(b)(1), 42 U.S.C. 7607(b)(1), the Administrative Procedure Act, 5 U.S.C. 702, and Federal Rule of Appellate Procedure 15(a), Petitioners the State of Arkansas and the Arkansas Department of Energy and Environment, Division of Environmental Quality hereby petition this Court for review of the Respondents United States Environmental Protection Agency (“EPA”) and Administrator Michael S. Regan’s disapproval of Arkansas’s state implementation plan, included as part of the final rule of EPA titled “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” published in the Federal Register at 88 Fed. Reg. 9,336 (February 13, 2023). *See* Fed. R. App. P. 15(a)(2)(C) (reflecting that a petition for review may challenge only a “part” of an agency order). A copy of EPA’s final rule is attached to this Petition as Exhibit A.

This Court has jurisdiction, and is the proper venue for this action, under 42 U.S.C. 7607(b)(1) because Petitioners are seeking review of only the portion of the final rule

disapproving Arkansas’s state implementation plan, which is a “locally or regionally applicable” action not “based on a determination of nationwide scope or effect.” 42 U.S.C. 7607(b)(1). *See Nat’l Parks Conservation Ass’n v. McCarthy*, 816 F.3d 989, 993 (8th Cir. 2016) (“EPA’s action in approving or promulgating any implementation plan is the prototypical locally or regionally applicable action that may be challenged only in the appropriate regional court of appeals.”) (internal quotation marks omitted). This Petition for review is timely filed within sixty days of the date of publication in the Federal Register. 42 U.S.C. 7607(b)(1).

Dated: February 16, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I caused a true and correct copy of this petition for review to be served on February 16, 2023, by United States first-class mail, on the following:

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