

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

STATE OF WEST VIRGINIA,

Petitioner,

v.

UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY and
MICHAEL S. REGAN,
Administrator, United States
Environmental Protection Agency,

Respondents.

No. 23-_____

PETITION FOR REVIEW

Under [42 U.S.C. § 7607\(b\)\(1\)](#), [5 U.S.C. §§ 702](#) and [706](#), [Federal Rule of Appellate Procedure 15\(a\)](#), and Fourth Circuit Local Rule 15(b), the State of West Virginia petitions this Court for review of the final agency action taken by Respondents United States Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency, entitled “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” [88 Fed. Reg. 9336](#) (Feb. 13, 2023). The State has attached a copy of that final rule.

Specifically, the State seeks review of the Administrator's disapproval of West Virginia's proposed state-implementation plan for the interstate transport requirements of [42 U.S.C. § 7410\(a\)\(2\)\(d\)\(i\)\(I\)](#) relating to the 2015 eight-hour ozone national ambient air quality standards. See [Fed. R. App. P. 15\(a\)\(2\)\(C\)](#) (allowing challenges to parts of agency orders).

This Court has jurisdiction and venue under [42 U.S.C. § 7607\(b\)\(1\)](#). The EPA's disapproval of West Virginia's state-implementation plan is a "locally or regionally applicable" action and is not "based on a determination of nationwide scope or effect." *Id.*; see also, e.g., *Am. Rd. & Transp. Builders Ass'n v. EPA.*, [705 F.3d 453, 455](#) (D.C. Cir. 2013) (Kavanaugh, J.) (explaining that an action concerning a state implementation plan is "the prototypical 'locally or regionally applicable' action that may be challenged only in the appropriate regional court of appeals"). This petition for review is also timely because the State has filed it within 60 days of the date of the challenged action's publication in the Federal Register. [42 U.S.C. § 7607\(b\)\(1\)](#).

Petitioner asks that this Court declare unlawful and vacate the Administrator's final action disapproving West Virginia's state-implementation plan.

Respectfully submitted,

PATRICK MORRISEY
ATTORNEY GENERAL

Lindsay S. See
Solicitor General

/s/ Michael R. Williams
Michael R. Williams
Senior Deputy Solicitor General

OFFICE OF THE ATTORNEY
GENERAL OF WEST VIRGINIA
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
(304) 558-2021

Dated: April 14, 2023

*Counsel for Petitioner
State of West Virginia*

CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of this Petition to be served on the following Respondents by certified mail, return receipt requested:

Hon. Michael S. Regan
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-00001

/s/ Michael R. Williams
Michael R. Williams