

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

STATE OF WYOMING,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Petition for Review

On February 13, 2023, the United States Environmental Protection Agency (EPA) provided notice in the Federal Register of its final action to defer action on the State of Wyoming’s state implementation plan for ozone transport. *See* Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 9336. The State of Wyoming hereby petitions the Court for review of EPA’s action under 42 U.S.C. § 7607(b)(1)-(2); 5 U.S.C. §§ 702, 706; Federal Rule of Appellate Procedure 15(a); and Tenth Circuit Rule 15.

Under 42 U.S.C. § 7607(b)(2), “[w]here a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to [§ 7607(b)(1)].” The EPA has deferred

performance of a nondiscretionary statutory action in a final rule. Accordingly, this Court has jurisdiction and is the proper venue since the State of Wyoming is petitioning for review of only the portion of the final rule deferring action on Wyoming's State Implementation Plan.

On March 14, 2023, the State petitioned EPA to reconsider its deferral of the State's plan. A copy of the Federal Register notice (Exhibit 1), the State's petition for reconsideration (Exhibit 2), and EPA's response to the State's petition for reconsideration (Exhibit 3) are attached to this Petition.

Dated: April 5, 2023.

Respectfully submitted,

/s/ Shannon Leininger

D. David DeWald (Wyo. Bar No. 7-5538)

Deputy Attorney General

Shannon Leininger (Wyo. Bar No. 8-6932)

Assistant Attorney General

Wyoming Attorney General's Office

109 State Capitol

Cheyenne, Wyoming 82002

(307) 777-7895

(307) 777-3542 *facsimile*

david.dewald@wyo.gov

shannon.leininger@wyo.gov

Counsel for Petitioner State of Wyoming

CERTIFICATE OF SERVICE

On April 5, 2023, undersigned counsel is causing this petition to be electronically filed with the United States Court of Appeals for the Tenth Circuit. Pursuant to Fed. R. App. Proc. 15, Petitioners request the clerk serve this Petition for Review as follows:

Hon. Michael S. Regan
Office of the Administrator (1101A)
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

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

/s/ Shannon Leininger
Shannon Leininger
Assistant Attorney General