

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

COMMONWEALTH OF )  
KENTUCKY, ENERGY AND )  
ENVIRONMENT CABINET )

Petitioner, )

v. )

Case No. \_\_\_\_\_

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, and )  
MICHAEL S. REGAN, Administrator, )  
U.S. EPA )

Respondents. )

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**PETITION FOR REVIEW**

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The Petitioner, Commonwealth of Kentucky, Energy and Environment Cabinet (“Cabinet”), hereby petitions the Court for review of the Final Rule of the United States Environmental Protection Agency, and Michael S. Regan, Administrator, of the United States Environmental Protection Agency (“EPA”), for the Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards (“NAAQS”), published in the Federal Register on June 5, 2023. 88 Fed. Reg. 36,654-36918 (June 5, 2023); Docket ID No. EPA-HQ-OAR-2021-0668.

Specifically, the Cabinet seeks review of the EPA Administrator's Final Rule imposing a Federal Implementation Plan ("FIP") for the interstate transport obligations of 23 states, including Kentucky, under the "Good Neighbor Provision" of the Clean Air Act, §110(a)(2)(D)(i)(I). This Final Rule is based upon EPA's unsupported conclusion that sources and emissions activities within the Commonwealth are significantly contributing to nonattainment of the NAAQS in another state, and interfere with maintenance of the NAAQS in another state. The FIP imposed by EPA ignores the environmental justice considerations raised by the Cabinet, and will force economically distressed citizens of the Commonwealth, who are already struggling to provide the most basic needs for their families, to bear the cost of EPA's exorbitant emissions reductions imposed on the Commonwealth's Electric Generating Units ("EGUs").

EPA's FIP utilizes modeling data that was updated after Kentucky submitted its Infrastructure State Implementation Plan ("I-SIP") for the revised 2015 8-Hour Ozone NAAQS on January 11, 2019. Not only was the modeling data revised or updated after Kentucky's I-SIP submission, but the "downwind" monitoring sites and level of "significant contribution" changed with each iteration of the modeling data. EPA reversed prior guidance on allowing states to use alternative contribution thresholds for identifying downwind impacts, and utilized inaccurate modeling tools and data to guesstimate what emissions reductions would be necessary to bring downwind sites into attainment. EPA's imposed FIP expands nitrogen oxides "NOx" emission controls to

industries other than EGUs, and EPA's rushed rulemaking did not allow for meaningful comment from the state, the newly regulated industries, or the citizens who will be affected by this sweeping Final Rule.

EPA did not conduct adequate cost analyses, or consider the availability or effectiveness of the control equipment necessary to meet the ordered emissions reductions. EPA's Final Order imposing this FIP is arbitrary, capricious, and represents an abuse of discretion by the Agency through Administrator Regan. Jurisdiction and venue are appropriate in this Court pursuant to 42 U.S.C. §7607(b)(1), Federal Rule of Appellate Procedure 15, and Sixth Circuit Rule 15. EPA's Final Order imposing this FIP will greatly impact distressed communities in the Commonwealth, unfairly impose emissions reductions on Kentucky facilities with no discernible downwind emissions benefit, and usurp the Cabinet's permitting authority under the Act's cooperative federalism mandate.

Respectfully submitted,