

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

COMMONWEALTH OF
KENTUCKY

Petitioner

v.

No. _____

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

Respondents

PETITION FOR REVIEW

In accordance with 42 U.S.C. § 7607(b)(1), Federal Rule of Appellate Procedure 15, and Sixth Circuit Rule 15, Petitioner the Commonwealth of Kentucky petitions this Court for review of the final action taken by Respondents United States Environmental Protection Agency and Michael S. Regan, Administrator, United States Environmental Protection Agency, entitled “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards,” published at 88 Fed. Reg. 36,654 (June 5, 2023), and attached as Exhibit 1. Specifically, the Commonwealth seeks review of the promulgation of a federal implementation plan (“FIP”) as to Kentucky. *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 promulgation of a FIP as to Kentucky following its disapproval of Kentucky’s state implementation plan is a “locally or regionally applicable” action and is not “based on a determination of nationwide scope or effect.” 42 U.S.C. § 7607(b)(1); *see, e.g.*, 88 Fed. Reg. at 36,677 (noting EPA “evaluated each state’s contribution”), *id.* at 36,686 (noting EPA “will determine each state’s dynamic budget” based on state-specific information), *id.* at 36,709 (noting EPA used “state-by-state source apportionment model” to quantify each state’s contributions). In related litigation, a panel of this Court held that the Sixth Circuit is the proper venue when EPA’s action is based on “intensely factual determinations.” Order 6, *Kentucky v. EPA*, No. 23-3216, Exhibit 2 (6th Cir. July 25, 2023) (citation omitted). The same is true of EPA imposing a FIP as to Kentucky. Given this companion litigation, a motion to hold this petition in abeyance is forthcoming.

This petition for review is timely filed within 60 days of the date of publication in the Federal Register. 42 U.S.C. § 7607(b)(1).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of this Petition for Review to be served on July 27, 2023, by United States first-class mail on the following:

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