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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.)

PETITION FOR REVIEW

The Petitioner, Commonwealth of Kentucky, Energy and Environment Cabinet (“Cabinet”), hereby petitions the Court for review of the Final Action of the United States Environmental Protection Agency, and Michael S. Regan, Administrator, of the United States Environmental Protection Agency (“EPA”), for the Disapproval of Kentucky’s State Implementation Plan “Good Neighbor or Interstate Transport” Provisions for the 2015 8-Hour Ozone National Ambient Air Quality Standards (“NAAQS”), published in the Federal Register February 13, 2023. 88 Fed. Reg. 9336 (Feb. 13, 2023) (Docket ID No. EPA-HQ-OAR-2021-0663).

Specifically, the Cabinet seeks review of the EPA Administrator’s Final Action that Kentucky’s Infrastructure State Implementation Plan (“I-SIP”), submitted on January 11, 2019, failed to meet the requirements of Clean Air Act §110(a)(2)(D)(i)(I), concluding 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. EPA's untimely decision in disapproving the Commonwealth's I-SIP Good Neighbor provisions prevented the Cabinet from submitting a revised I-SIP utilizing EPA's updated modeling data to identify "downwind" sources being impacted by emissions originating in Kentucky.

EPA's final disapproval of Kentucky's I-SIP submission uses modeling data that was updated with both the proposed disapproval and final disapproval. Not only was the modeling data revised or updated with each EPA rulemaking, but the "downwind" monitoring sites and level of "significant contribution" changed with each published rulemaking as well. EPA reversed its published guidance allowing states to use an alternative ozone contribution threshold of 1 part per billion (ppb), rather than the more stringent standard of 0.70 ppb (or one percent (1%) of the 2015 8-hour ozone NAAQS standard), without any reasonable scientific justification.

Such untimely, inconsistent, and unforeseeable actions contradict EPA's delegated authority under the Clean Air Act. EPA's Final Order partially disapproving Kentucky's I-SIP submission 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 disapproving the Good Neighbor provisions of Kentucky's I-SIP submission will cause immediate and irreparable harm to Kentucky's continuing economic growth and development, result in utility rate increases for citizens across the Commonwealth, and create costly and unduly burdensome emissions controls for facilities, all without any discernable emissions reductions at the "downwind" monitoring sites per EPA's own emissions forecasting.

Respectfully submitted,



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CERTIFICATE OF SERVICE

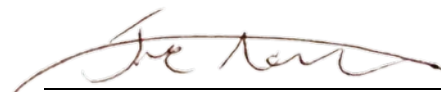
I hereby certify that I have caused a true and correct copy of the foregoing Petition for Review to be served on March 17, 2023, by first-class U.S. Mail upon the following:

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