

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

TEXAS LEHIGH CEMENT COMPANY  
L.P.,

*Petitioner,*

v.

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

*Respondents.*

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



**PETITION FOR REVIEW**

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**CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

- Abrams, Michael R. (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, Railroad Commission of Texas)
- Air Alliance Houston (Intervenor)
- Association of Electric Companies of Texas (Petitioner)

- Baker Botts L.L.P. (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Texas Chemical Council, Texas Oil & Gas Association, and Texas Lehigh Cement Company)
- Balch & Bingham LLP (Counsel for Petitioner, Mississippi Power Company)
- BCCA Appeal Group (Petitioner)
- Berge, Megan H. (Counsel for Texas Lehigh Cement Company)
- Brody, Elizabeth A. (Counsel for *Amici Curiae*)
- Burdette, Courtney (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Clean Air Task Force (Counsel for Intervenor Clean Wisconsin)
- Clean Wisconsin (Intervenor)
- Cole, William F. (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- Coletto Creek Power, L.L.C. (Petitioner)
- Davis, Bill (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- District of Columbia (*Amicus Curiae*)
- Downwinders at Risk (Intervenor)
- Eagle Materials Inc. (parent company of Petitioner Texas Lehigh Cement Company)

- Earthjustice Legal Defense Fund (Counsel for Intervenor Air Alliance Houston)
- Ennis Power Company, L.L.C. (Petitioner)
- Fabish, Zachary Max (Counsel for Intervenor Sierra Club)
- Garland, Merrick B., Attorney General, United States Department of Justice (Counsel for Respondents)
- Gidiere, P. Stephen (Counsel for Petitioners Luminant Generation Company LLC, Coleto Creek Power, LLC, Ennis Power Company, LLC, Hays Energy, LLC, Midlothian Energy, LLC, Oak Grove Management Company LLC, and Wise County Power Company LLC)
- Goho, Shaun (Counsel for Intervenor Clean Wisconsin)
- Hall, Jeffrey Aaron (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Harris County, Texas (*Amicus Curiae*)
- Hays Energy, L.L.C. (Petitioner)
- Johnson, Seth L. (Counsel for Intervenor Air Alliance Houston, Downwinders at Risk, Louisiana Environmental Action Network, and Sierra Club)
- Kim, Todd, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice (Counsel for Respondents)
- Kolman, Chloe H. (Counsel for Respondent U.S. Environmental Protection Agency)
- Kuryla, Matthew L. (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Texas Chemical Council, and Texas Oil & Gas Association)

- Little, J. Mark (Counsel for Texas Lehigh Cement Company)
- Louisiana Department of Environmental Quality (Petitioner)
- Louisiana Environmental Action Network (Intervenor)
- Luminant Generation Company, L.L.C. (Petitioner)
- Matheny, Justin Lee (Counsel for Petitioner State of Mississippi and Mississippi Department of Environmental Quality)
- Midlothian Energy, L.L.C. (Petitioner)
- Mississippi Department of Environmental Quality (Petitioner)
- Mississippi Power Company (Petitioner)
- Moore, C. Grady III (Counsel for Petitioner Mississippi Power Company)
- Murrill, Elizabeth Baker (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Oak Grove Management Company, L.L.C. (Petitioner)
- Public Utility Commission of Texas (Petitioner)
- Public Utility Commissions of Texas (Petitioner)
- Railroad Commission of Texas (Petitioner)
- Railroad Commission of Texas (Petitioner)
- Regan, Michael S., Administrator, United States Environmental Protection Agency (Respondent)

- Riley, Kathleen Lea (Counsel for Intervenors Air Alliance Houston, Downwinders at Risk, Louisiana Environmental Action Network, and Sierra Club)
- Shurden, Shawn S. (General Counsel for Petitioner Mississippi Power Company)
- Sierra Club (Intervenor)
- Smith, Joshua (Counsel for Intervenor Sierra Club)
- Southern Company (Parent Company of Petitioner Mississippi Power Company)
- St. John, Joseph Scott (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- State of Connecticut (*Amicus Curiae*)
- State of Delaware (*Amicus Curiae*)
- State of Illinois (*Amicus Curiae*)
- State of Louisiana (Petitioner)
- State of Maryland (*Amicus Curiae*)
- State of Mississippi (Petitioner)
- State of New Jersey (*Amicus Curiae*)
- State of New York (*Amicus Curiae*)
- State of Texas (Petitioner)

- Streett, Aaron Michael (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Texas Chemical Council, and Texas Oil & Gas Association)
- Stutts, Susan Scaggs (Counsel for Petitioner Mississippi Power Company)
- Texas Chemical Council (Petitioner)
- Texas Commission on Environmental Quality (Petitioner)
- Texas Oil & Gas Association (Petitioner)
- Tong, William (Counsel for *Amici Curiae*)
- United States Environmental Protection Agency (Respondent)
- Wise County Power Company, L.L.C. (Petitioner)

DATED: August 1, 2023

/s/ Megan Berge  
Megan H. Berge  
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**PETITION FOR REVIEW**

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), the Administrative Procedure Act, 5 U.S.C. § 702, and Federal Rule of Appellate Procedure Rule 15(a), Texas Lehigh Cement Company L.P. (“Texas Lehigh”) hereby petitions this Court for review of the final rule of respondents United States Environmental Protection Agency (“EPA”) and Michael S. Regan, EPA Administrator, entitled “Federal Good Neighbor Plan for the 2015 Ozone National Ambient Air Quality Standards,” published in the *Federal Register* at 88 Fed. Reg. 36,654 (Jun. 5, 2023). A copy of EPA’s final rule is attached as Exhibit A, in accordance with 5th Cir. R. 15.1.



EPA's final rule finalizing federal implementation plan requirements for Texas should be vacated and remanded because it is arbitrary, capricious, and not otherwise in accordance with law. This Court has jurisdiction, and is the proper venue for this action, under 42 U.S.C. § 7607(b)(1) because Texas Lehigh is petitioning for review of only the portion of the final rule imposing requirements for sources in Texas.

DATED: August 1, 2023

Respectfully submitted,

/s/ Megan Berge

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*Attorneys for Texas Lehigh Cement  
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## CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that on August 1, 2023, I served a true and correct copy of the foregoing Petition for Review and Certificate of Interested Parties by Certified Mail, return receipt requested, addressed to the following:

Hon. Michael S. Regan  
Office of the Administrator (1101A)  
United States Environmental  
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Hon. Merrick Garland  
Attorney General of the United States  
United States Department of Justice  
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Earthea Nance  
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