

23-2771

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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STATE OF MISSOURI,  
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY et al.  
Respondents.

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**FILED**

AUG 03 2023

MICHAEL GANS  
CLERK OF COURT

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**PETITION FOR REVIEW**

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AUG 03 2023

U.S. COURT OF APPEALS  
EIGHTH CIRCUIT

Pursuant to Clean Air Act Section 307(b)(1), 42 U.S.C. 7607(b)(1), the Administrative Procedure Act, 5 U.S.C. 702, and Federal Rule of Appellate Procedure 15(a), Petitioner the State of Missouri hereby petitions this Court for review of the Respondents United States Environmental Protection Agency (“EPA”) and Administrator Michael S. Regan’s promulgation of a Federal Implementation Plan (“FIP”) against the State of Missouri, included as part of the final rule of EPA titled “Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” published in the Federal Register at 88 Fed. Reg. 36,654 (June 5, 2023). *See* Fed. R. App. P. 15(a)(2)(C) (a petition for review may challenge only part of a final rule). A copy of EPA’s final rule is attached to this Petition as Exhibit 1.

Jurisdiction and venue properly lie in this Court under 42 U.S.C. § 7607(b)(1). Missouri is challenging only the portions of the final rule promulgating a FIP against Missouri. Missouri’s challenge 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). As this Court previously recognized, EPA’s disapproval of Missouri’s State Implementation Plan (“SIP”) with respect to the interstate-transport

requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS was a locally or regionally applicable action that was not based on a determination of nationwide scope or effect. *See Order, Missouri v. EPA*, No. 23-1719 (8th Cir. May 26, 2023). The same is true of this related action. Additionally, EPA's publication of the final rule promulgating a FIP against Missouri in the Federal Register after this Court stayed EPA's disapproval of Missouri's SIP directly relates to the inherent power and authority of this Court to enforce its own orders. This Petition for Review is timely filed within sixty days of the date of publication in the Federal Register. 42 U.S.C. 7607(b)(1).

Dated: August 3, 2023

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I further hereby certify that I caused a true and correct copy of the foregoing to be served on August 3, 2023, by United States first-class mail on the following:

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