

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NACCO NATURAL RESOURCES)
CORPORATION and MISSISSIPPI LIGNITE)
MINING COMPANY)
))
Petitioners,)
))
v.)
))
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and MICHAEL S.)
REGAN, Administrator, United States)
Environmental Protection Agency)
))
Respondents.)



Case No. 23-

PETITION FOR REVIEW

Laura D. Heusel, Bar No. 105470
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Counsel for Petitioners
NACCO Natural Resources Corporation and
Mississippi Lignite Mining Company

CERTIFICATE OF INTERESTED PERSONS

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 in order 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)
- Brookfield Asset Management Inc. (together with its affiliates and managed entities may own 10% or more of Vistra Corp.'s stock)
- Brody, Elizabeth A. (Counsel for Amici Curiae)
- Burdette, Courtney (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Butler Snow LLP (Counsel for Petitioners NACCO Natural Resources Corporation and Mississippi Lignite Mining Company)
- 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)
- District of Columbia (*Amicus Curiae*)
- Downwinders at Risk (Intervenor)
- Davis, Bill (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- 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, Coletto 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)

- Heusel, Laura D. (Counsel for Petitioner, NACCO Natural Resources Corporation and Mississippi Lignite Mining Company)
- Johnson, Seth L. (Counsel for Intervenors 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)
- Mississippi Lignite Mining 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)
- NAACO Natural Resources Corporation (formerly known as The North American Coal Corporation)
- North American Coal, LLC (Parent Company of Petitioner Mississippi Lignite Mining Company)
- Oak Grove Management Company, L.L.C. (Petitioner)
- Public Utility Commission of Texas (Petitioner)
- Railroad Commission of Texas (Petitioner)
- Regan, Michael S., Administrator, United States Environmental Protection Agency (Respondent)
- Red Hills Property Company, LLC (Parent Company of Petitioner Mississippi Lignite Mining Company)
- 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)

Respectfully submitted,

/s/ Laura D. Heusel

Laura D. Heusel

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Case No. 23-_____

PETITION FOR REVIEW

In accordance with 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, NACCO Natural Resources Corporation and Mississippi Lignite Mining Company¹ petition for review of the U.S. Environmental Protection Agency’s (“EPA”) action promulgating a Federal Implementation Plan (“FIP”) for Mississippi regarding

¹ On June 21, 2022, The North American Coal Corporation submitted comments on behalf of Mississippi Lignite Mining Company related to the EPA’s Federal Implementation Plan addressing regional zone transport for the 2015 Ozone National Ambient Air Quality Standard.

Subsequent to these comments, The North American Coal Corporation changed its name to NACCO Natural Resources Corporation. Pursuant to an internal reorganization implemented on June 30, 2023, NACCO Natural Resources Corporation (f/k/a The North American Coal Corporation) assigned its 25% interest in MLMC to North American Coal, LLC, a Nevada limited liability company that is wholly owned by NACCO Natural Resources Corporation (f/k/a as The North American Coal Corporation). As a result, North American Coal, LLC owns a 25% interest in MLMC, while Red Hills Property Company, L.L.C. owns the remaining 75% interest in MLMC. Red Hills Property Company, L.L.C. is wholly owned by North American Coal, LLC.

Mississippi’s interstate-transport requirements under 42 U.S.C. §7410(a)(2)(D)(i)(I) for the 2015 8-hour ozone national ambient air quality standards (“NAAQS”). This final EPA action is included in the notice entitled “*Federal ‘Good Neighbor Plan’ for the 2015 8-Hour Ozone National Ambient Air Quality Standards*, 88 Fed. Reg. 36,654 (June 5, 2023). See Fed. R. App. P. 15(a)(2)(C) (“The petition must ... specify the order or part thereof to be reviewed.”).

Jurisdiction and venue for this petition are proper in this Court under 42 U.S.C. §7607(b)(1). The agency action being challenged by NACCO Natural Resources Corporation and Mississippi Lignite Mining Company is the FIP for Mississippi, a “locally or regionally applicable” action which is not “based on a determination of nationwide scope or effect.” See 42 U.S.C. §7607(b)(1); *Texas v. EPA*, 829 F.3d 405, 418-24 (5th Cir. 2016). This petition for review is timely filed within 60 days of the date of publication in the Federal Register. A copy of the Federal Register notice containing the final action is attached in accordance with Fifth Circuit Rule 15.1(b).

Dated: August 3, 2023

Respectfully submitted,

/s/ Laura D. Heusel

Laura D. Heusel

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Counsel for Petitioners NACCO Natural Resources Corporation and Mississippi Lignite Mining Company

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Appellate Procedure 15(c), I hereby certify that I have this day caused the foregoing documents to be served by first-class mail, postage prepaid, on August 3, 2023, upon the following:

Michael S. Regan, Administrator
United States Environmental Protection
Agency Office of the Administrator
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Correspondence Control
Unit Office of General
Counsel (2311)
United States Environmental Protection
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The Honorable Merrick B. Garland
Attorney General of the United States
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950 Pennsylvania Avenue, NW
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/s/ Laura D. Heusel
Laura D. Heusel