

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

KINDER MORGAN, INC.,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY and MICHAEL S. REGAN,
Administrator, U.S. EPA,

Respondents.



Case No. _____

PROTECTIVE 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 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.

- Kinder Morgan, Inc. (Petitioner)
- Hogan Lovells US LLP (Counsel for Petitioner)
- Catherine E. Stetson (Counsel for Petitioner)
- Ana Maria Gutiérrez (Counsel for Petitioner)
- David A. Willner (Counsel for Petitioner)
- Michael D. Miller (Counsel for Petitioner)

- United States Environmental Protection Agency (Respondent)
- Michael S. Regan, Administrator, United States Environmental Protection Agency (Respondent)
- Merrick B. Garland, Attorney General, United States Department of Justice (Counsel for Respondents)

Kinder Morgan, Inc. is a publicly held corporation. Kinder Morgan does not have a parent corporation, and no publicly held corporation holds 10% or more of Kinder Morgan, Inc.'s stock.

/s/ Catherine E. Stetson
Catherine E. Stetson
Attorney of record for Petitioner

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Pursuant to Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1); the Administrative Procedure Act, 5 U.S.C. § 702; Federal Rule of Appellate Procedure 15(a); and Fifth Circuit Rule 15, Kinder Morgan, Inc. hereby files this protective petition for review of the United States Environmental Protection Agency’s (EPA) and Administrator Michael S. Regan’s final action promulgating a federal implementation plan intended to address the interstate transport requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I) for the 2015 8-hour ozone national ambient air quality standards. Respondents’ final action is the *Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality*, 88 Fed. Reg. 36,654 (June 5, 2023) (EPA

Docket No. EPA-HQ-OAR-2021-0668). A copy of Respondents' final action is attached as Exhibit A.

This Court has jurisdiction over this Petition under 42 U.S.C. § 7607(b)(1). However, Kinder Morgan already filed a petition for review with the United States Court of Appeals for the D.C. Circuit, Case Number 23-1181. Kinder Morgan files this protective petition solely to preserve Kinder Morgan's rights should venue be deemed improper in the D.C. Circuit. Kinder Morgan intends to confer with EPA and request that this petition either (1) be held in abeyance pending litigation in the D.C. Circuit, or (2) be dismissed if Respondents consent to venue in the D.C. Circuit.

Respectfully submitted,

August 4, 2023

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Counsel for Kinder Morgan, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2023, I caused a copy of the foregoing to be delivered by first-class mail, postage prepaid to the following:

Michael S. Regan
Office of the Administrator (1101A)
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1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Office of General Counsel (2310A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

/s/ Catherine E. Stetson
Catherine E. Stetson