UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PACIFICORP, DESERET GENERATION & TRANSMISSION CO-OPERATIVE, UTAH MUNICIPAL POWER AGENCY, and UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Case No. _____

PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and Federal Rule of Appellate Procedure 15(a), Petitioners PacifiCorp, Deseret Generation & Transmission Co-Operative, Utah Municipal Power Agency, and Utah Associated Municipal Power Systems hereby petition the United States Court of Appeals for the Tenth Circuit for review of the final action of Respondent United States Environmental Protection Agency, which final action is titled "Air Plan

Partial Approval and Partial Disapproval; Utah; Regional Haze State Implementation Plan for the Second Implementation Period; Air Plan Disapproval; Utah; Prong 4 (Visibility) for the 2015 8-Hour Ozone National Ambient Air Quality Standard," attached to this Petition as Attachment A and published at 89 Fed. Reg. 95,117 (Dec. 2, 2024).

This Petition for Review is timely filed within 60 days of the December 2, 2024 final action in accordance with Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1). This Court has jurisdiction and is a proper venue for this action under 42 U.S.C. § 7607(b)(1). Petitioners will show that the final action is in excess of the agency's statutory authority and is otherwise arbitrary, capricious, an abuse of discretion, and not in accordance with law. *See* 5 U.S.C. § 706(2); 42 U.S.C. § 7607(d)(9). Accordingly, Petitioners ask this Court to hold unlawful and set aside the final action, and to order such other relief as might be appropriate. *See* 5 U.S.C. § 706(2); 42 U.S.C. § 7607(d)(9).

Dated: January 31, 2025

Respectfully Submitted,

/s/Misha Tseytlin

STEVEN J. CHRISTIANSEN
DAVID C. REYMANN
PARR BROWN GEE & LOVELESS
101 South 200 East
Suite 700
Salt Lake City, Utah 84111
(801) 532-7840
schristiansen@parrbrown.com
dreymann@parrbrown.com

Attorneys for Petitioner Deseret Generation & Transmission Co-Operative

ALAN I. ROBBINS
DEBRA D. ROBY
WASHINGTON ENERGY LAW LLP
900 17th St. NW
Suite 500-A
Washington, D.C. 20006
(703) 785-9270
arobbins@washingtonenergylaw.com
droby@washingtonenergylaw.com

Attorneys for Petitioner Utah Municipal Power Agency

MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
TROUTMAN PEPPER LOCKE LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240 (MT)
(312) 759-1938 (KL)
(312) 759-1939 (fax)
misha.tseytlin@troutman.com
kevin.leroy@troutman.com

MARIE BRADSHAW DURRANT
Vice President and General Counsel
CHRISTIAN C. STEPHENS
Senior Attorney
PACIFICORP
1407 North Temple
Suite 310
Salt Lake City, UT 84116
(801) 220-4707 (MD)
(801) 220-4526 (CS)
marie.durrant@pacificorp.com
christian.stephens@pacificorp.com

Attorneys for Petitioner PacifiCorp

H. MICHAEL KELLER
ARTEMIS D. VAMIANAKIS
FABIAN VANCOTT
95 South State Street
Suite 2300
Salt Lake City, UT 84111
(801) 531-8900
mkeller@fabianvancott.com
avamianakis@fabianvancott.com

EMILY L. WEGENER
General Counsel
UTAH ASSOCIATED MUNICIPAL
POWER SYSTEMS
155 North 400 West
Suite 480
Salt Lake City, UT 84103
(801) 566-3938
emily@uamps.com

Attorneys for Petitioner Utah Associated Municipal Power Systems

CARROLL WADE MCGUFFEY
TROUTMAN PEPPER LOCKE LLP
600 Peachtree St. N.E.
Suite 3000
Atlanta, GA 30308
(404) 885-3698
mack.mcguffey@troutman.com

Attorney for Petitioner PacifiCorp

CERTIFICATE OF FILING AND SERVICE

I certify that on January 31, 2025, I caused this Petition to be filed with the United States Court of Appeals for the Tenth Circuit.

I further certify that on January 31, 2025, a true and accurate copy of this Petition was served via certified mail, return receipt requested, on the following addresses:

James Payne, Acting Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, D.C. 20004

Office of the General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Avenue N.W. #4000
Washington, D.C. 20004

James R. McHenry III, Acting Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dated: January 31, 2025

/s/Misha Tseytlin

MISHA TSEYTLIN
TROUTMAN PEPPER LOCKE LLP
227 W. Monroe Street
Suite 3900
Chicago, IL 60606
(608) 999-1240
(312) 759-1939 (fax)
misha.tseytlin@troutman.com

ATTACHMENT A

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2024–0389; FRL–12173–02–R8]

Air Plan Partial Approval and Partial Disapproval; Utah; Regional Haze State Implementation Plan for the Second Implementation Period; Air Plan Disapproval; Utah; Prong 4 (Visibility) for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a regional haze state implementation plan (SIP) revision submitted by the State of Utah on August 2, 2022 (Utah's regional haze SIP submission), to address applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the regional haze program's second implementation period. Additionally, the EPA is disapproving the visibility transport ''Prong 4'' portion of Utah's infrastructure SIP submission submitted on January 9, 2020, for the 2015 Ozone National Ambient Air Quality Standard (NAAQS). The EPA is taking these actions pursuant to the CAA.

DATES: This rule is effective on January 2, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2024–0389. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Clayton Bean, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, telephone number: (303) 312–6143, email address: *bean.clayton@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

Table of Contents

I. What is being addressed in this document?

The EPA is partially approving and partially disapproving Utah's regional haze plan for the second implementation period. As required by section 169A of the CAA, the RHR calls for State and Federal agencies to work together to improve visibility in 156 national parks and wilderness areas, known as mandatory Class I Federal areas.[1] The rule requires the States, in coordination with the EPA, the National Park Service, the Fish and Wildlife Service, the Forest Service, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). As discussed in further detail in our proposed rule, this document, and the accompanying Response to Comments (RTC) document, the EPA finds that Utah submitted a regional haze SIP that does not meet all of the statutory and regulatory requirements for the regional haze second implementation period.

Additionally, the EPA is disapproving a portion of Utah's January 9, 2020, infrastructure SIP submission for the 2015 ozone NAAQS that addresses interstate transport of visibility impairing pollutants. Utah submitted this SIP submission to address the applicable requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS. We are disapproving the portion of the infrastructure SIP submission addressing interstate transport of visibility impairing pollutants for not meeting the requirements of CAA section 110(a)(2)(D)(i)(II) (''Prong 4''). The State's submissions, the proposed rule, and the RTC document can be found in the docket for this action.

II. Summary of the Proposed Action, Public Comments, and the EPA's Rationale for Final Action

Our notice of proposed rulemaking was published on August 19, 2024. 89 FR 67208. Our public comment period closed on September 18, 2024. During the public notice and comment period, we received more than 5,600 comments on our proposal. The full text of comments received is included in the publicly posted docket associated with this action at *https://www.regulations.gov.* Our RTC document, which is also included in the docket, provides full, detailed responses to all significant comments received and further explains the basis for our final action.

A. Regional Haze Plan for the Second Implementation Period

On August 2, 2022, Utah submitted a revision to its SIP to address regional haze for the second implementation period, in accordance with the requirements of the CAA's regional haze program established by CAA sections 169A and 169B and 40 CFR 51.308.

On August 19, 2024, the EPA proposed to disapprove certain provisions of Utah's regional haze SIP submission.[2] Specifically, we proposed to disapprove the portions of Utah's regional haze SIP submission relating to 40 CFR 51.308(f)(2): long-term strategy; 40 CFR 51.308(f)(3): reasonable progress goals; and 40 CFR 51.308(i): Federal Land Manager (FLM) consultation. We also proposed to approve the portions of Utah's regional haze SIP submission relating to 40 CFR 51.308(f)(1): calculations of baseline, current, and natural visibility conditions, progress to date, and the uniform rate of progress; 40 CFR 51.308(f)(4): reasonably attributable visibility impairment; 40 CFR 51.308(f)(5) and 40 CFR 51.308(g): progress report requirements; and 40 CFR 51.308(f)(6): monitoring strategy and other implementation plan requirements. Consistent with section 110(k)(3) of the CAA, the EPA may partially approve portions of a submittal if those elements meet all applicable requirements and may disapprove the remainder so long as the elements are fully separable.

Our August 19, 2024, proposed rule provided background on the requirements of the CAA and RHR, a summary of Utah's regional haze SIP submittals and related EPA actions, and

[1] *See* 40 CFR part 81, subpart D.

[2] 89 FR 67208 (August 19, 2024).

the EPA's rationale for its proposed action. That background and rationale will not be restated in full here, although we briefly summarize the reasons for our partial disapproval of Utah's regional haze SIP submission in the paragraphs that follow.

In CAA section 169A(a)(1), Congress established the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas that results from manmade (anthropogenic) air pollution. The core component of a regional haze SIP submission for the second implementation period is a long-term strategy for making reasonable progress toward meeting that national goal. CAA section 169A(b)(2)(B), 40 CFR 51.308(f)(2). A state's long-term strategy must address regional haze in each Class I area within the state's borders and each Class I area outside the state that may be affected by emissions originating from within the state. It ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on consideration of the four statutory factors in CAA section 169A(g)(1)—the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources [3]—in an evaluation of potential control measures for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. In developing its long-term strategy, the state must document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which it is relying to determine the measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2)(iii).

As detailed in section 3.A. of the RTC document, the CAA authorizes the EPA to substantively review states' SIP submissions for compliance with the statute and EPA's regulations to ensure progress towards the national visibility goal for Class I areas. Congress charged the EPA with exercising ''federal oversight'' over SIP submissions and ''review[ing] all SIPs to ensure that the plans comply with the statute.'' *Oklahoma* v. *EPA,* 723 F.3d 1201, 1204 (10th Cir. 2013). The ''EPA is left with more than the ministerial task of routinely approving SIP submissions.'' *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013). Instead, the Agency's ''review of a SIP extends not only to whether the state considered the necessary factors in its determination, but also to whether the determination is one that is reasonably moored to the CAA's provisions'' and is ''based on 'reasoned analysis.' '' *Id.* at 761, 766 (citing *Alaska Dep't of Envt. Conservation* v. *EPA,* 540 U.S. 461 (2004)); *see also Wyoming* v. *EPA,* 78 F.4th 1171, 1180–81 (10th Cir. 2023) (noting that ''the Act provides for substantive and careful EPA review'' of SIP submissions and that ''the EPA does not have to accept unreasonable analyses''). For the reasons stated in the proposed rule, this document, and in the RTC document, the EPA concludes that Utah's regional haze SIP submission does not meet all of the requirements of the CAA and RHR.

As detailed at length in our proposed rule and in the RTC document, we conclude that Utah's long-term strategy does not meet the requirements of CAA section 169A(b)(2) and 40 CFR 51.308(f)(2) on three independent grounds. Our first basis for disapproval of Utah's long-term strategy is the State's unreasonable rejection of NO_X emission reduction measures at the Hunter and Huntington power plants. Based on its evaluation of the four statutory factors, Utah concluded that installation of selective catalytic reduction (SCR) or other physical NO_X pollution controls is not necessary to achieve reasonable progress toward Congress's national visibility goal. Instead, Utah established plantwide mass-based NO_X emission limits, which cap the total amount of NO_X the Hunter and Huntington power plants can emit during a 12-month rolling period at levels that are similar to the status quo.[4]

Utah's determination that the plantwide mass-based NO_X emission limits for Hunter and Huntington are all that is necessary to make reasonable progress is not grounded in a reasoned evaluation of the four statutory factors or a defensible technical analysis. Utah's assessment of the costs of compliance, one of the four statutory factors, hinged on its finding that physical controls that cost more than $5,750/ton are not cost-effective for the plants; a determination that likely reductions in the future utilization of Hunter and Huntington would reduce the cost-effectiveness of SCR; and concern about various affordability considerations associated with the installation of SCR, including an unsubstantiated conclusion that a requirement to install SCR may cause the plants to close early. As detailed in the proposed rule and in the RTC document,[5] Utah did not provide adequate support for its analysis of and conclusions regarding the costs of compliance. Therefore, we find that Utah did not justify its conclusion that the costs of compliance favored mass-based emission limits over SCR for the Hunter and Huntington power plants.

We also find that Utah's evaluation of the other three statutory factors (the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment) was unreasonable. Utah did not take into consideration the factual information supplied by the operator of the plants or the regulation governing how time necessary for compliance may be considered when concluding that the time necessary for compliance favored mass-based emission limits over SCR.[6] For the energy and non-air quality impacts of SCR, Utah provided no analysis or documentation to support its assertion that because Hunter and Huntington are projected to assist in a transition toward intermittent renewable energy generation (*e.g.,* wind and solar), a requirement to install SCR could lead to early plant closures and thereby negatively affect renewable energy deployment. In considering the plants' remaining useful lives, Utah did not adequately substantiate its concerns about early plant closures or its assessment that Hunter and Huntington would retire before the 30-year amortization period for SCR, further reducing SCR's cost-effectiveness. Utah also relied on the plants' projected retirement dates from the owner's resource plans, which frequently change and are not federally enforceable. For the reasons detailed in the proposed

[3] CAA section 169A(g)(1); 40 CFR 51.308(f)(2)(i).

[4] 89 FR at 67234–37. Table 13 and figures 2–3 in the proposed rule show that both power plants' recent actual (2014–2021) NO_X emissions were, in many years, lower than the initial (2022), interim (2025), and/or final (2028) mass-based emission limits. Table 12 shows that the final (2028) mass-based emission limits, which are the most stringent, will result in a net increase in NO_X emissions of 8 tons per year from Hunter and Huntington combined, compared to the emissions projections based on an ''on the books'' (no additional controls) scenario for 2028 that Utah relied on in its SIP development.

[5] 89 FR at 67240–43; RTC document, section 5.C.iv.

[6] 40 CFR 51.308(f)(2)(i) provides that if a state concludes that a control measure cannot reasonably be installed and become operational until after the end of the implementation period, the state may not consider this fact in determining whether the measure is necessary to make reasonable progress.

rule and in the RTC document,[7] we find that Utah unreasonably concluded that the remaining three statutory factors support its determination that plantwide mass-based emission limits for the Hunter and Huntington power plants, instead of SCR, are all that is necessary to make reasonable progress toward the national visibility goal.

Furthermore, the specific parameters of the mass-based emission limits that Utah established do not reflect reasoned analysis. In rejecting SCR, Utah relied on its unsupported conclusion that future utilization of Hunter and Huntington was likely to decrease, thereby eroding the cost-effectiveness of SCR.[8] However, Utah then set the mass-based emission limits at levels premised on *increased* plant utilization, without acknowledging or reconciling the conflict in its treatment of plant utilization within its SIP submission.[9] Nor did Utah adequately support its determination that mass-based emission limits that apply over the course of a 12-month rolling period, as opposed to a shorter time period such as monthly or seasonally, are sufficient to make reasonable progress.[10] For all of these reasons, and as further detailed in our proposed rule and RTC document,[11] we are disapproving Utah's long-term strategy because the State did not reasonably evaluate the NO_X emission reduction measures for Hunter and Huntington that are necessary to make reasonable progress toward Congress's national visibility goal. *See* CAA section 169A(g)(1); 40 CFR 51.308(f)(2).

Our second basis for disapproval of Utah's long-term strategy is the State's unjustified decision not to evaluate whether emission reduction measures at CCI Paradox Lisbon Natural Gas Plant are necessary for reasonable progress. Utah relied on inaccurately calculated 2020 emissions data and an incorrect determination that anomalously high SO_2 emissions in 2014 and 2015 had caused the facility to exceed Utah's Q/d threshold [12] for requiring four-factor analysis. In its comments on the proposed rule, Utah conceded that it had erroneously calculated the facility's Q/d value based on incorrect 2020 emissions data and noted its intention to submit a SIP revision or SIP supplement to address this issue. Because this deficiency has not been rectified, and as further detailed in our proposed rule and in the RTC document,[13] we are disapproving Utah's long-term strategy because the State did not consider the emission reduction measures at CCI Paradox Lisbon Natural Gas Plant that are necessary to make reasonable progress toward the national visibility goal, as required by CAA section 169A(g)(1) and 40 CFR 51.308(f)(2).

Our third basis for disapproval of Utah's long-term strategy is the State's unreasonable rejection of SO_2 emission reduction measures at Sunnyside Cogeneration and its incorporation of unsupported emission limits for that facility into its SIP. As explained in our proposed rule and in the RTC document, Utah unreasonably rejected dry scrubbing (also known as dry sorbent injection), a technically feasible SO_2 control, without providing adequate technical documentation.[14] After rejecting dry scrubbing, Utah determined that the facility's existing emission limits are necessary to achieve reasonable progress and incorporated those emission limits into its SIP.[15] However, the SIP incorporates two separate emission limits for both NO_X and SO_2: one that applies during normal boiler operation and a higher limit that applies during startup, shutdown, and malfunction (SSM) events. Utah did not include a definition of the term ''normal boiler operations'' and did not provide any documentation of the frequency of normal boiler operations versus SSM events. Utah also did not explain how often the facility operates at the higher SSM emission limits and did not provide adequate technical documentation addressing how those higher limits relate to the State's obligation to make reasonable progress. In sum, due to Utah's unreasonable rejection of SO_2 emission reduction measures and its inclusion of unsupported emission limits for Sunnyside Cogeneration into its SIP, we cannot conclude that the State's long-term strategy includes all the measures necessary to make reasonable progress.

Our proposed rule identified a fourth basis for disapproval of Utah's long-term strategy: Utah's improper inclusion of automatic exemptions for SSM events in the emission restrictions for Intermountain power plant.[16] After careful consideration of comments, we are not relying on this issue as a basis for our disapproval of Utah's long-term strategy in our final rule. Section 5.F.i. of the RTC document sets forth our rationale and contains our full responses to the comments we received regarding the SSM provisions for Intermountain power plant.

Finally, in addition to disapproving the State's long-term strategy, we are disapproving Utah's reasonable progress goals under 40 CFR 51.308(f)(3) and its consultation with FLMs under 40 CFR 51.308(i). As detailed in our proposed rule and in the RTC document,[17] compliance with these requirements is dependent on compliance with the long-term strategy provisions in 40 CFR 51.308(f)(2).

B. Prong 4 (Visibility) of the 2015 Ozone NAAQS Infrastructure SIP

On January 9, 2020, Utah submitted its infrastructure SIP for the 2015 ozone NAAQS to address the applicable requirements of CAA section 110(a)(2). Subsequently, on August 19, 2024, the EPA proposed to disapprove the portion of Utah's January 9, 2020, infrastructure SIP submission for the 2015 ozone NAAQS that addressed interference with visibility protection (''Prong 4'').[18] Our public comment period closed on September 18, 2024.

Our August 19, 2024, proposed rule provided background on the requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS, a summary of the portion of Utah's infrastructure SIP submittal being acted on and related EPA actions, and the EPA's rationale for its proposed action. That background and rationale will not be restated here. For the reasons stated in the proposed rule [19] and in section 12 of the accompanying RTC document, the EPA concludes that the Prong 4 portion of Utah's January 9, 2020, infrastructure SIP submission does not meet the requirements of CAA section 110(a)(2)(D)(i)(II).

III. Final Action

For the reasons stated in the proposed rule, in the RTC document, and in this document, we are partially approving

[7] 89 FR at 67244; RTC document, sections 5.C.iv-v.

[8] All else equal, lower plant utilization results in physical controls such as SCR becoming relatively less cost-effective, because the cost per ton of emissions reduced increases as plant utilization decreases.

[9] 89 FR at 67241–43; RTC document, section 5.C.iv.b.

[10] 89 FR at 67244; RTC document, section 5.C.vi.

[11] 89 FR at 67240–44; RTC document, section 5.C.

[12] Q/d values represent the ratio of an individual source's annual emissions of visibility-impairing emission precursors (NO_X, SO_2, and PM_{10}) in combined tons (''Q'') divided by the distance in kilometers (''d'') between the source and a Class I area. The larger the Q/d value, the greater the source's expected effect on visibility impairment in that Class I area.

[13] 89 FR at 67245–48; RTC document, sections 4.B., 11.

[14] 89 FR at 67249–50; RTC document, section 5.D.i.

[15] 89 FR at 67250; RTC document, section 5.D.iii.

[16] 89 FR at 67248–49.

[17] 89 FR at 67251; RTC document, sections 3.B., 6 (reasonable progress goals). 89 FR at 67253; RTC document, sections 3.C., 7 (FLM consultation).

[18] 89 FR 67208 (August 19, 2024).

[19] 89 FR at 67253–54.

and partially disapproving Utah's regional haze SIP submission.[20]

We are disapproving the following components of Utah's regional haze SIP submission relating to CAA section 169A:

- Long-term strategy (40 CFR 51.308(f)(2));
- Reasonable progress goals (40 CFR 51.308(f)(3)); and
- FLM consultation (40 CFR 51.308(i)).

We are approving the following components of Utah's regional haze SIP submission relating to CAA section 169A:

- Calculations of baseline, current, and natural visibility conditions, progress to date, and uniform rate of progress (40 CFR 51.308(f)(1));
- Reasonably attributable visibility impairment (40 CFR 51.308(f)(4));
- Progress report requirements (40 CFR 51.308(f)(5) and 40 CFR 51.308(g)); and
- Monitoring strategy and other implementation plan requirements (40 CFR 51.308(f)(6)).

Additionally, as a consequence of our partial disapproval of Utah's regional haze SIP submission for the second implementation period, the EPA is disapproving the Prong 4 portion of Utah's January 9, 2020, infrastructure SIP for the 2015 ozone NAAQS, pursuant to CAA section 110(a)(2)(D)(i)(II).

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of R307–110–28, excluding long-term strategy, reasonable progress goals, and FLM consultation. The EPA has made, and will continue to make, this material generally available through *https://www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, this material has been approved by the EPA for inclusion in Utah's SIP, has been incorporated by reference by the EPA into that plan, is fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[21]

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action partially approves and partially disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. Executive Order 14096 (Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, April 26, 2023) builds on and supplements E.O. 12898 and defines EJ as, among other things, the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, or Tribal affiliation, or disability in agency decision-making and other Federal activities that affect human health and the environment.

Utah evaluated EJ considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. A summary of Utah's EJ considerations is contained in section VIII. of the proposed rule. The EPA also performed an EJ analysis, as described in the proposed rule. Both Utah's and the EPA's analyses were done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. The EPA is taking action under the CAA on bases independent of Utah's evaluation of EJ. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 2025. Filing a

[20] Based on Utah's specific titles in the regional haze SIP submission, we are disapproving: (1) Section IX.H.21: General Requirements: Control measures for Area and Point Sources, Emission Limits and Operating Practices, Regional Haze Requirements; (2) Section IX.H.23. Source Specific Emission Limitations Regional Haze Requirements, Reasonable Progress Controls; and (3) R307–110–17. General Requirements: State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits. Additionally, based on Utah's specific titles in the regional haze SIP submission, and identified by the bullet list below, we are partially approving and partially disapproving: (1) Section XX.A: Regional Haze Second Implementation Period; and (2) R307–110–28. General Requirements: State Implementation Plan, Regional Haze.

[21] 62 FR 27968 (May 22, 1997).

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2024.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

■ 2. Amend § 52.2320 by

■ a. In the table in paragraph (c) revising the entry ''R307–110–28''; and

■ b. In the table in paragraph (e) revising the entry ''Section XX.A. Executive Summary''.

The revisions read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*	*
R307–110. General Requirements: State Implementation Plan				
*	*	*	*	*
R307–110–28	Regional Haze	1/6/2022	[insert **Federal Register** citation], 12/2/2024.	Except for long-term strategy, reasonable progress goals, and FLM consultation.
*	*	*	*	*

* * * * *

(e) * * *

Rule title	State effective date	Final rule citation, date	Comments
*	*	*	*
XX. Regional Haze			
Section XX.A. Regional Haze Second Implementation Plan.	1/6/2022	[insert **Federal Register** citation], 12/2/2024.	Except for long-term strategy, reasonable progress goals, and FLM consultation.
*	*	*	*

[FR Doc. 2024–27941 Filed 11–29–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2023–0489; FRL–12135–02–R8]

Air Plan Partial Approval and Partial Disapproval; Wyoming; Regional Haze Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving a regional haze state implementation plan (SIP) revision submitted by the State of Wyoming on August 10, 2022 (Wyoming's 2022 SIP submission), to address applicable requirements under the Clean Air Act (CAA) and the EPA's Regional Haze Rule (RHR) for the regional haze program's second implementation period. The EPA is taking this action pursuant to the CAA.

DATES: This rule is effective on January 2, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2023–0489. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jaslyn Dobrahner, Air and Radiation

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

January 31, 2025

Steven John Christiansen
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111

Homer Michael Keller
Fabian VanCott
95 South State Street, Suite 2300
Salt Lake City, UT 84111

Kevin Michael Leroy
Troutman Pepper Locke
227 West Monroe Street, Suite 3900
Chicago, IL 60606

David C Reymann
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, UT 84111

Alan I. Robbins
Debra D. Roby
Washington Energy Law
900 17th Street NW, Suite 500-A
Washington, DC 20006

Christian Stephens
PacifiCorp Energy
1407 West North Temple, Suite 320
Salt Lake City, UT 84116

Misha Tseytlin
Troutman Pepper Locke
111 South Wacker Drive, Suite 4100
Chicago, IL 60606

Artemis D. Vamianakis

Fabian VanCott
95 South State Street, Suite 2300
Salt Lake City, UT 84111

Emily L. Wegener
General Counsel
Utah Associated Municipal Power Systems
155 North 400 West, Suite 480
Salt Lake City, UT 84103

RE: 25-9518, PacifiCorp, et al v. EPA, et al
Dist/Ag docket: EPA-R08-OAR-2024-0389

Dear Counsel:

Your petition for review has been docketed, and the case number is above. **Within 14 days** from the date of this letter, Petitioner's counsel must electronically file:

- **An entry of appearance and certificate of interested parties** per 10th Cir. R. 46.1(A) and (D).
- **A docketing statement** per 10th Cir. R. 3.4.

In addition, any counselled entities that are required to file a Federal Rule of Appellate Procedure 26.1 disclosure statement must do so **within 14 days of the date of this letter**. All parties must refer to Federal Rule of Appellate Procedure 26.1 and Tenth Circuit Rule 26.1 for applicable disclosure requirements. All parties required to file a disclosure statement must do so even if there is nothing to disclose. Rule 26.1 disclosure statements must be promptly updated as necessary. *See* 10th Cir. R. 26.1(A).

Also within 14 days, Respondent's counsel must electronically file an entry of appearance and certificate of interested parties. **Attorneys that do not enter an appearance within the specified time frame will be removed from the service list.**

Within 40 days from the date of service of the petition for review, the respondent agency shall file the record or a certified list. *See* Fed. R. App. P. 17. If a certified list is filed, the entire record, or the parts the parties may designate, must be filed on or before the deadline set for filing the respondent's brief. *See*10th Cir. R. 17.1.

We have served the petition for review on the respondent agency via electronic notice using the court's ECF system. Petitioner must serve a copy of the petition for review on all parties, other than the respondent(s), who participated in the proceedings before the agency. *See* Fed. R. App. P. 15(c).

The Federal Rules of Appellate Procedure, the Tenth Circuit Rules, and forms for the aforementioned filings are on the court's website. The Clerk's Office has also created a

set of quick reference guides and checklists that highlight procedural requirements for appeals filed in this court.

Please contact this office if you have questions.

Sincerely,

Christopher M. Wolpert
Clerk of Court

cc: James R. McHenry III
Office of General Counsel
Lee Zeldin

CMW/jm