

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

July 27, 2023

Christopher M. Wolpert
Clerk of Court

STATE OF UTAH, by and through its
Governor, Spencer J. Cox, and its Attorney
General, Sean D. Reyes,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency,

Respondents.

No. 23-9509
(EPA No. EPA-R08-OAR-2022-315)
(Environmental Protection Agency)

PACIFICORP; DESERET GENERATION
& TRANSMISSION CO-OPERATIVE;
UTAH MUNICIPAL POWER AGENCY,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency,

Respondents.

No. 23-9512
(EPA No. EPA-R08-OAR-2022-315)
(Environmental Protection Agency)

UTAH ASSOCIATED MUNICIPAL
POWER SYSTEMS,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency,

Respondents.

STATE OF OKLAHOMA, by and through its Attorney General; GENTNER F DRUMMOND; OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency,

Respondents.

OKLAHOMA GAS & ELECTRIC COMPANY,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; MICHAEL S. REGAN, Administrator, United States Environmental Protection Agency,

No. 23-9520
(EPA No. EPA-R08-OAR-2022-315)
(Environmental Protection Agency)

No. 23-9514
(EPA No. EPA-RO6-OAR-2021-0801)
(Environmental Protection Agency)

No. 23-9521
(EPA No. EPA-HQ-OAR-2021-0663)
(Environmental Protection Agency)

Respondents.

TULSA CEMENT LLC, d/b/a Central
Plains Cement Company LLC; REPUBLIC
PAPERBOARD COMPANY LLC,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency,

Respondent.

WESTERN FARMERS ELECTRIC
COOPERATIVE,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; MICHAEL S.
REGAN, Administrator, United States
Environmental Protection Agency,

Respondents.

No. 23-9533
(EPA No. EPA-HQ-OAR-2021-0663)
(Environmental Protection Agency)

No. 23-9534
(EPA No. EPA-HQ-OAR-2021-0663)
(Environmental Protection Agency)

ORDER

Before **TYMKOVICH** and **CARSON**, Circuit Judges.

Petitioners have filed motions to stay EPA’s final disapproval of Oklahoma’s and Utah’s respective state implementation plans regarding their Good Neighbor obligations under the 2015 ozone NAAQS. EPA has responded and petitioners have replied.

In deciding whether to grant a stay pending these petitions for review, we consider the traditional factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks omitted).

We conclude petitioners have satisfied their burden as to each of these factors. We therefore stay EPA’s final disapproval of Oklahoma’s and Utah’s respective Good Neighbor state implementation plans for the 2015 ozone NAAQS. This stay will remain in place until the disposition of these petitions for review on their merits, or until further order of this court. Because EPA may not enforce a federal implementation plan without first disapproving a state implementation plan, EPA may not enforce its federal Good Neighbor plan for the 2015 ozone NAAQS against Oklahoma or Utah while the stay remains in place.

Entered for the Court



CHRISTOPHER M. WOLPERT, Clerk