

MAR 15 2016

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
MAR 15 2016
CLERK

RECEIVED IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB, CITIZENS FOR A
GREATER DENVER, ELYRIA AND
SWANSEA NEIGHBORHOOD
ASSOCIATION, CROSS
COMMUNITY COALITION,

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and GINA
McCARTHY, Administrator, U.S.
Environmental Protection Agency,

Respondents.

No. 16-1097

ORIGINAL

PETITION FOR REVIEW

The Sierra Club, Citizens for a Greater Denver, Elyria and Swansea Neighborhood Association, and Cross Community Coalition (“petitioners”) petition for review of a final agency action of the United States Environmental Protection Agency (“EPA”) entitled “Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM_{2.5} and PM₁₀ Nonattainment and Maintenance Areas” (US EPA, EPA-420-B-15-084, November 2015) [“Hot-spot Guidance”]. Final agency action was taken by posting revisions to this Guidance on the Transportation Conformity website maintained by EPA’s Office of Transportation

and Air Quality at the following location:

<https://www3.epa.gov/otaq/stateresources/transconf/documents/420b15084.pdf>.

EPA's Hot-spot Guidance applies to all transportation hot-spot analyses required by 40 C.F.R. Part 93, and is "nationally applicable" "final agency action." Accordingly, this Court has exclusive jurisdiction to review such Hot-spot Guidance pursuant to section 307(b)(1) of the Clean Air Act ("Act"). 42 U.S.C. § 7607(b)(1).

In particular, the revised method for combining the modeled expected future concentrations in the ambient air of particulate emissions from proposed transportation projects with background concentrations to determine the design value to be compared with the applicable National Ambient Air Quality Standard (NAAQS) for the purpose of deciding whether a project meets the statutory tests for conformity in Clean Air Act section 176(c)(1)(B), 42 U.S.C. § 7506(c)(1)(B), violates procedural and substantive requirements of the Act, fails to comply with applicable NAAQS, and is arbitrary, capricious or not in accordance with law. Petitioners request that the applicable provisions of the Hot-spot Guidance be vacated and remanded for further agency action consistent with the Act.

This petition is timely filed because it is filed within 60 days following actual notice to petitioners of the revised Hot-spot Guidance. EPA's final action to revise the Hot-spot Guidance has not been published in the Federal Register. The

EPA staff manager responsible for the Hot-spot Guidance, Laura Berry, confirmed to petitioners' counsel in a phone conversation on March 10, 2016, that notice of this Guidance has not been published in the Federal Register.

Petitioners were informed of the Hot-spot Guidance only after release on January 15, 2016, of a proposed Conformity Determination for the proposed expansion of I-70 from six to fourteen lanes through the densely populated neighborhoods of north Denver that relies on the revised method for determining conformity. The proposed Conformity Determination was made available by the Colorado Department of Transportation (CDOT) as part of the environmental documentation for the proposed highway expansion posted on the CDOT I-70 Project website. Evidence presented in the proposed Conformity Determination demonstrates that, but for the unlawful revision to EPA's Hot-spot Guidance, the I-70 Project would not meet applicable statutory and regulatory requirements for conformity.

Petitioners bring this action on behalf of their members, board members and staff who reside, work, recreate and travel, or whose children attend schools, in the neighborhoods adjacent to the I-70 Project where the transportation conformity provisions of the Act apply. These neighborhoods are included in a previously designated non-attainment area for particulate matter. 42 U.S.C. § 7506(c)(5).

Petitioner Sierra Club is a nonprofit corporation with more than 645,000 members nationwide organized under California law. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Petitioner Citizens for a Greater Denver is a nonprofit organization organized under the laws of Colorado. Its members are dedicated to protecting and improving the livability of Denver neighborhoods, including but not limited to, protecting residents from environmental hazards such as air pollution.

Petitioner Elyria and Swansea Neighborhood Association is a neighborhood organization recognized by the City of Denver as representing the interests of residents in the Elyria and Swansea neighborhoods. These two neighborhoods are densely populated, low-income Hispanic neighborhoods where the most residences are located in health impact exposure zone adjacent to the highway, where the expansion of I-70 will result in taking the most residences, and where the proposed highway will be lowered from an elevated viaduct into a 40 feet deep open trench that will divide the neighborhoods by cutting off most surface streets that currently provide pedestrian access among resident neighbors and families.

Petitioner Cross Community Coalition is a neighborhood organization recognized by the City of Denver as representing the interests of residents in the Globeville, Elyria, and Swansea neighborhoods. Globeville is the neighborhood where the east–west I-70 intersects the north–south I-25. This is the neighborhood where the highest pollutant concentrations resulting from the expansion of I-70 are likely to occur as demonstrated by the air quality modeling performed by CDOT for the Hot-spot analysis.

Some members of each of these petitioner organizations reside, work, or recreate within the health hazard zone 300 meters on either side of I-70 where exposure to air pollution from the highway is significantly greater than in other areas of the City, or whose children attend Swansea Elementary School or Garden Place Elementary School located within the health hazard zone adjacent to the interstate highway.

Petitioner organizations, their members, and staff will be adversely affected by provisions in, and omissions from, EPA’s final Hot-spot Guidance that will allow greater levels of aggregate motor vehicle emissions compared to levels that would be allowed if the Hot-spot Guidance had not been revised, and if it complied with the Act and applicable conformity regulations. Petitioners are harmed by, but harm is not limited to, the following:

(1) The revised procedures for determining whether emissions from new or enlarged transportation projects will not cause or contribute to new, more frequent or more severe violations of, or delay timely attainment of a particulate matter (PM) NAAQS in violation of Clean Air Act section 176(c)(1)(B)(i)–(iii); and

(2) EPA's failure to promulgate such criteria and procedures that prescribe the methods to be used by transportation agencies when determining whether PM emissions from a transportation project will meet the statutory and regulatory requirements for a conformity determination by notice and comment procedures required by law.

The revised Hot-spot Guidance will allow increased exposure to motor vehicle emissions not reduced to levels necessary to ensure attainment and maintenance of applicable NAAQS for PM. The revised Hot-spot Guidance will cause increased risk of harm to the health of petitioners' members. The increased exposure to harmful pollutants, and increased risk of harm to health associated with increased exposure, provides the standing for petitioners to bring this Petition for Review of EPA's revised Hot-spot Guidance

DATED: March 15, 2016

Respectfully submitted,



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*Counsel for Petitioners Sierra Club,
Citizens for a Greater Denver, Elyria
and Swansea Neighborhood
Association and Cross Community
Coalition*

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No. **16-1097**

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CORPORATE DISCLOSURE STATEMENT

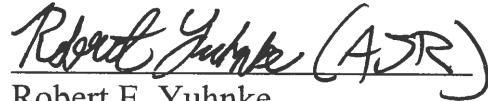
Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Sierra Club and Citizens for a Greater Denver, Inc., make the following disclosures:

Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment. Sierra Club has no parent corporation, and no publicly held corporation owns any of its stock.

Citizens for a Greater Denver, Inc., is a non-profit corporation organized and existing under the laws of the State of Colorado. It is dedicated to providing a vehicle for citizens to create a greater Denver by collective action. Citizens for a Greater Denver has no parent corporation, it is owned by its citizen membership, and no publicly held corporation has any ownership in it.

DATED: March 15, 2016

Respectfully submitted,



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Citizens for a Greater Denver, Elyria
and Swansea Neighborhood
Association and Cross Community
Coalition*

CERTIFICATE OF SERVICE

I, Kelly Chang, hereby certify that I have served the foregoing **Petition for Review and Corporate Disclosure Statement** on Respondents by sending a copy via First Class Mail to each of the following addresses on this 15th day of March, 2016:

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March 15, 2016


Kelly Chang