



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 1, 2023

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Notice of Forthcoming EPA Action to Address Judicial Stay Orders

FROM: Joseph Goffman
Principal Deputy Assistant Administrator
Office of Air and Radiation

On February 13, 2023, EPA published a final action fully or partially disapproving state implementation plans (SIPs) submitted by 21 states to address the states' obligations under Clean Air Act section 110(a)(2)(D)(i)(I), commonly referred to as the "good neighbor" provision, with respect to the 2015 national ambient air quality standards (NAAQS) for ozone. *See* "Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards," 88 Fed. Reg. 9,336 (February 13, 2023). Following that action, on March 15, 2023, EPA signed a separate final action, the "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards," establishing federal implementation plan (FIP) requirements to address the states' good neighbor obligations consistent with EPA's obligation under Clean Air Act section 110(c)(1). A pre-publication version of this rule was made available on EPA's website¹ and the rule will soon publish in the *Federal Register*. The Good Neighbor Plan's requirements are set to take effect 60 days after the date of publication.

In May 2023, the United States Courts of Appeals for the Fifth and Eighth Circuits issued orders staying, pending judicial review, EPA's SIP disapproval action with respect to the SIPs submitted by Arkansas, Louisiana, Missouri, and Texas.² The United States Court of Appeals for the Sixth Circuit issued an administrative stay of EPA's SIP disapproval, staying EPA's action with respect to the SIP submitted by Kentucky pending a decision on Kentucky's motion for stay pending judicial review.³ EPA's authority to establish the Good Neighbor Plan's requirements for sources in Arkansas, Kentucky, Louisiana, Missouri, and Texas stems from the disapproval of the states' SIPs. Accordingly, in recognition of the orders staying the SIP disapproval action as to Arkansas, Kentucky, Louisiana, Missouri, and Texas, EPA will take action in the near future that will ensure the Good Neighbor Plan's requirements issued to implement good neighbor obligations for the 2015 ozone NAAQS as to sources in Arkansas, Kentucky, Louisiana, Missouri and Texas will not take effect while the stays of the SIP disapproval action with respect to those states remain in place. This forthcoming action will become effective by no later than the effective date of the Good Neighbor Plan's requirements for sources in other states.

¹ *See* <https://www.epa.gov/csapr/good-neighbor-plan-2015-ozone-naaqs>.

² *See* Unpublished Order, *Texas, et al. v. EPA, et al.*, No. 23-60069 (5th Cir. May 1, 2023) (staying SIP disapprovals for Louisiana and Texas), Unpublished Order, *Arkansas, et al. v. EPA, et al.*, No. 23-1320 (8th Cir. May 25, 2023) (staying SIP disapproval for Arkansas), and Unpublished Order, *Missouri v. EPA, et al.*, No. 23-1719 (8th Cir. May 26, 2023) and Unpublished Order, *Union Elec. Co. d/b/a Ameren Missouri v. EPA, et al.*, No. 23-1751 (8th Cir. May 26, 2023) (staying SIP disapproval for Missouri).

³ *See* Unpublished Order, *Kentucky v. EPA*, No. 23-3216 (6th Cir. May 31, 2023) (administrative stay of SIP disapproval for Kentucky).