

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FILED

JUN 03 2024

HYBAR LLC

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND MICHAEL S.
REGAN, ADMINISTRATOR, UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

U.S. Court of Appeals
Eighth Circuit

Case No. **24-2145**

PETITION FOR JUDICIAL REVIEW

Hybar LLC petitions pursuant to 42 U.S.C. § 7607(b)(1) and Federal Rule of Appellate Procedure 15 for review of the Respondents United States Environmental Protection Agency and Administrator Michael S. Regan’s final action partially denying Hybar LLC’s administrative petition for reconsideration (“Hybar’s Reconsideration Petition”), submitted to EPA on August 4, 2023, which requested reconsideration of EPA’s imposition of a federal implementation plan on the State of Arkansas, included as part of the prior final action styled “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards” published in the Federal Register, 88 *Fed. Reg.* 36654, on June 5, 2023 (“Good Neighbor Plan”).

Notice of EPA’s partial denial of Hybar’s Reconsideration Petition was published in the Federal Register on April 4, 2024 at 89 *Fed. Reg.* 23526, as part

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of a final action styled “Partial Denial of Petitions for Reconsideration: Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards” (EPA Partial Denial). A copy of the foregoing EPA Partial Denial is attached to this petition as Appendix A.

EPA’s partial denial only addressed one of the four grounds for reconsideration raised in Hybar’s Reconsideration Petition—namely, the fact that EPA lacked authority to impose the Good Neighbor Plan on Arkansas, because EPA’s prerequisite disapproval action had already been stayed by this Court in *Arkansas v. EPA*, Case No. 23-1320 (8th Cir., Order dated May 25, 2023). Accordingly, this petition for review concerns only EPA’s denial of that basis for reconsideration, and Hybar LLC may be entitled to file a subsequent petition for review when EPA acts upon the other independent grounds raised in Hybar’s Reconsideration Petition.

This Court has jurisdiction, and is the proper venue for this action, under 42 U.S.C. § 7607(b)(1) because Petitioner is seeking review of EPA’s partial denial of Hybar’s Reconsideration, and the only ground EPA denied in this challenged final action related specifically and only to the lawfulness of imposing the Good Neighbor Plan on the state of Arkansas in light of this Court’s judicial stay of EPA’s underlying disapproval of Arkansas state implementation plan. Since the only reconsideration basis denied by EPA at this time with respect to Hybar’s Reconsideration Petition relates only to Arkansas and industrial sources within Arkansas, it is necessarily a “locally or regionally applicable” action, and is also not “based on a determination of nationwide scope or effect.” 42 U.S.C. §

7607(b)(1). This Petition for review is timely filed within sixty days of the date of publication of the notice of EPA's Partial Denial in the Federal Register. 42 U.S.C. 7607(b)(1).

For the sake of administrative convenience, Hybar LLC requests that this petition be consolidated with Hybar LLC's related petition for review of EPA's imposition of the Good Neighbor Plan on the state of Arkansas, currently pending before this Court in case number 23-2782.

Respectfully submitted,



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June 3, 2024

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Judicial Review and Corporate Disclosure Statement will be served this day by United State first-class mail upon the following:

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June 3, 2024