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# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



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U.S. Environmental Protection Agency  
EPA Docket Center  
Docket ID Number: EPA-HQ-OAR-2023-0402  
Mail Code 28221T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: U.S. Environmental Protection Agency's "Supplemental Air Plan Actions: Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards and Supplemental Federal 'Good Neighbor Plan' Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards", Docket ID Number: EPA-HQ-OAR-2023-0402

To Whom It May Concern:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to comment on the Environmental Protection Agency's (EPA) proposed "Supplemental Air Plan Actions: Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards and Supplemental Federal 'Good Neighbor Plan' Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards".<sup>1</sup>

ADEQ was established under the Environmental Quality Act of 1986 by the Arizona State Legislature as the state's cabinet-level environmental agency. ADEQ carries out several core functions including: planning, permitting, compliance, management, monitoring, assessments, cleanups, and outreach. ADEQ's mission is to protect and enhance public health and the environment.

This comment letter will briefly describe the background of the proposed rule and addresses both ADEQ's support for the rule and main concerns. ADEQ supports EPA's goals to reduce interstate transport of ozone.

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<sup>1</sup> 89 FR 12666 (Feb. 16, 2024).

ADEQ is concerned that: EPA’s proposed rule does not adequately provide for downwind attainment and noninterference; would impose a regulatory approach that does not adequately consider Western issues; overlooks certain aspects for implementing its proposed rule; does not include a “safety valve” to protect reliability of the electricity grid; could impact electric utilities’ ability to meet peak energy demand during summer months, which could endanger public health and safety; and EPA should consider the implications of on-going litigation before the Supreme Court.

## **I. Background**

On October 26, 2015, EPA promulgated the 2015 ozone (8-hour) National Ambient Air Quality Standard (NAAQS).<sup>2</sup> Section 110(a)(1) of the Clean Air Act (CAA) requires states to submit, within three years after promulgation of a new or revised standard, state implementation plan (SIP) submissions meeting the applicable requirements of CAA §110(a)(2). One of these applicable requirements is found in CAA §110(a)(2)(D)(i)(I), otherwise known as the “good neighbor” or “interstate transport” provision, which generally requires that SIPs contain adequate provisions to prohibit in-state emissions activities from having certain effects on other states due to interstate transport of pollution.

On June 24, 2022, EPA initially proposed approval of ADEQ’s Good Neighbor SIP revision.<sup>3</sup> Subsequently, EPA conducted additional ozone modeling, and discussed this modeling in its Good Neighbor Plan (GNP).<sup>4</sup> Based on this additional modeling, EPA withdrew its proposed approval. Now, EPA proposes to partially approve and partially disapprove SIP revision submissions for Arizona, Iowa, Kansas, New Mexico, and Tennessee regarding interstate transport for the 2015 8-hour ozone NAAQS. Additionally, EPA proposes a federal implementation plan (FIP) for these states.

## **II. ADEQ supports EPA’s efforts to protect human health by addressing interstate transport of ozone for the 2015 ozone NAAQS.**

ADEQ agrees with the good neighbor provision’s statutory objective for upwind states to not contribute significantly to nonattainment or interfere with maintenance of the NAAQS in downwind states as this will protect human health and the environment from the negative health impacts associated with exposure to ozone. As a downwind state, Arizona supports EPA’s goals to reduce interstate transport of ozone pollution from upwind states through the GNP. While a downwind state, Arizona realizes that emissions from sources within Arizona may impact other downwind states. Reducing ozone pollution is consistent with ADEQ’s mission to protect public health and the environment through consistent, science-based environmental regulations.

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<sup>2</sup> 80 FR 65292 (Oct. 26, 2015).

<sup>3</sup> 87 FR 37776 (June 24, 2022).

<sup>4</sup> 88 FR 36654 (June 5, 2023).

However, as will be detailed below, ADEQ is concerned that EPA's national, one-size-fits-all approach does not adequately address the circumstances in Arizona. ADEQ wants to ensure that the appropriate sources are being controlled to reduce downwind transport of ozone which significantly interferes with attainment or maintenance of the 2015 ozone NAAQS. Nonetheless, ADEQ is concerned that EPA's approach may impose controls on sources that are not necessary to reduce significant contributions to downwind nonattainment or interference with maintenance. Based on ADEQ's analysis of EPA's modeling data, ADEQ believes that EPA's controls may not reduce downwind emissions below EPA's significant contribution threshold. Therefore, ADEQ requests EPA to consider a state-specific approach for Arizona.

**III. The proposed rule does not adequately provide for downwind attainment and noninterference because the proposed regulation of industrial sources may not have an impact on the 1% threshold.**

Based on ADEQ's detailed analysis using EPA's modeling data, EPA's FIP requirements for EGU and non-EGU sources are unlikely to achieve EPA's goal of decreasing Arizona's anthropogenic emissions impact below the 1% threshold in the neighboring states. According to this analysis, the combined impact of EGU and other industrial facilities on ozone design values at monitors in neighboring states ranges from 0.11 ppb to 0.57 ppb. Without the contribution from these sectors, the impact of other anthropogenic emissions in Arizona is still above the threshold value of 0.7 ppb at most of the monitors of interest. This highlights that EPA's "one-size-fits-all" approach does not adequately fit the needs or circumstances of Western states. The source sectors selected, and controls EPA seeks to impose, will not yield the same result as in Eastern states. Therefore, as will be described in Section IV.B, *infra*, EPA should give Arizona additional time to develop its own SIP revision to address downwind contributions.

It should also be noted that a significant portion of the states' total contribution to downwind areas include emissions that states have limited authority to regulate, or no authority at all, including those emissions that are federally regulated. Without significant and timely action at the federal level to reduce emissions where the state has limited to no authority, it is unlikely that downwind conditions will fall below the threshold prior to the deadline.

**IV. Imposing a regulatory scheme designed for the East coast does not adequately reflect the realities of the West.**

**A. EPA's program was not developed for the Western U.S.**

ADEQ objects to EPA's imposition of a program developed for the East Coast as it is not well suited to challenges faced in the West. Arizona is faced with a combination of circumstances that make addressing ozone pollution challenging.

These challenges include substantially elevated background levels of ozone, with contributions from wildfire events,<sup>5</sup> significant biogenic contributions,<sup>6</sup> as well as the international transport of ozone.<sup>7</sup> Additionally, Arizona is well known for its abundance of sunshine and dry heat during the summer months; two factors that can contribute to ozone formation. Arizona is also a state with a growing population and economy, unlike many Eastern states.<sup>8</sup>

EPA's proposed Cross State Air Pollution Rule (CSAPR) expansion was built upon EPA's experience on previous eastern-focused efforts to address interstate transport. EPA's previous rules including the NO<sub>x</sub> Budget Trading Program<sup>9</sup>, the Clean Air Interstate Rule<sup>10</sup> (CAIR), and the original CSAPR rulemaking.<sup>11</sup> Notably, these programs did not extend westward beyond Texas. EPA's programs developed without any consideration of Western ozone challenges. For example, the emissions from wildfires in the West play a large role in ambient concentrations. EPA's Eastern programs were not developed to account for this geographic difference. Western states have limited tools to prevent emissions of ozone and ozone precursors from wildfires.

Arizona was not considered in the development of EPA's proposed FIP.<sup>12</sup> Rather, the FIP focused on 23 states EPA determined were significantly contributing to downwind nonattainment or interfering with the maintenance of the 2015 ozone NAAQS.<sup>13</sup> At its core, EPA's FIP is an expansion of a program that has only applied to Eastern states, until this current plan. During the development of its FIP, EPA had the opportunity to fully consider its approach to reducing ozone transport. However, there are limitations in the modeling analysis that present substantial regional challenges in the Western U.S.

With this background in mind, EPA could develop a state-specific FIP that would address the specific circumstances in Arizona, rather than including Arizona in a plan not designed for Western realities.

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<sup>5</sup> Buchholz, R.R., Park, M., Worden, H.M. et al. New seasonal pattern of pollution emerges from changing North American wildfires. *Nature Communications* 13, 2043 (2022). <https://doi.org/10.1038/s41467-022-29623-8>

<sup>6</sup> Influence of Fires on O<sub>3</sub> Concentrations in the Western U.S.; Dan Jaffe, Duli Chand, Will Hafner, Anthony Westerling, and Dominick Spracklen; *Environmental Science & Technology* 2008 42 (16), 5885-5891. DOI: 10.1021/es800084k

<sup>7</sup> Entrainment of stratospheric air and Asian pollution by the convective boundary layer in the southwestern U.S.; Langford, A.O. et al. (2017), *J. Geophys. Res. Atmos.*, 122, 1312-1337, doi:10.1002/2016JD025987

<sup>8</sup> See Arizona Office of Economic Opportunity, Population Estimates (July 1, 2023), available at <https://oeo.az.gov/population/estimates>; see also Arizona Office of Economic Opportunity, Arizona 2023-2025 Projected Employment Report (Feb. 22, 2024), available at <https://oeo.az.gov/sites/default/files/data/press-release/projections-report.pdf>

<sup>9</sup> 63 FR 57356 (Oct. 27, 1998).

<sup>10</sup> 70 FR 25162 (May 12, 2005).

<sup>11</sup> 76 FR 48208 (Aug. 8, 2011).

<sup>12</sup> 87 FR 20036, 20038 (Apr. 6, 2022).

<sup>13</sup> *Id.*

As described above, ADEQ's analysis shows that EPA's FIP requirements for EGU and non-EGU sources are not expected to bring Arizona's impact on downwind receptors below EPA's 1% threshold. This highlights that EPA's national approach does not actually address the interstate transport to downwind receptors. EPA's proposed FIP would not reduce ozone transport from Arizona below the 1% threshold when applied in Arizona. While this approach has worked for Eastern states, ADEQ's analysis shows that it will not have the same success in Arizona. Therefore, EPA's rule would impose burdensome regulation on a wide range of sources without effectively addressing contributions of ozone to downwind states.

ADEQ urges EPA to take a more state-specific approach for Arizona to identify sources that would have a more direct reduction in ozone transport to down wind receptors. This may entail different or additional controls for sources in Arizona, enabling EPA to take a more focused approach on sources of ozone that are contributing significantly to the downwind receptors. Instead, EPA is seeking to apply its uniform approach, without adequately considering the efficacy of its approach.

**B. EPA had the opportunity to develop a state-specific FIP, but failed to consider it.**

ADEQ submitted its ozone infrastructure SIP revision addressing the Good Neighbor element, among other requirements, in 2018. EPA proposed approval of this SIP revision in 2022.<sup>14</sup> Arizona did not appear in EPA's proposed GNP.<sup>15</sup> EPA indicated that it would be reconsidering its proposed approval only in the final GNP that did not apply to Arizona.<sup>16</sup> Given the timing, EPA had sufficient time to consult with the state to develop a state-specific plan for Arizona. Alternatively, EPA could have encouraged ADEQ to begin development of a SIP revision that could have avoided the need to promulgate a FIP. Instead of exploring this possibility, EPA merely states that it was unaware of any unique factors to Arizona that would warrant applying a different approach.<sup>17</sup> If EPA had initiated a dialogue, consistent with the cooperative federalism in the CAA, with ADEQ, this could have represented an additional 8 months to a SIP revision.

EPA's proposed rule states:

The EPA maintains that it is reasonable, appropriate, and consistent with the EPA's prior decisions to extend the Federal Good Neighbor Plan's contribution analysis and emissions control requirements to include the five states covered in this action. The EPA has not identified any factors unique to these five states that would warrant applying a different approach.

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<sup>14</sup> 87 FR 37776 (June 24, 2022).

<sup>15</sup> 87 FR 20036 (Apr. 6, 2022).

<sup>16</sup> 88 FR 36654 (June 5, 2023).

<sup>17</sup> 89 FR 12666, 12669 (Feb. 16, 2023).

These five states were not addressed in the Federal Good Neighbor Plan because the EPA was not positioned to take final rulemaking action to disapprove SIPs, error correct prior approvals to disapprovals, or promulgate FIPs for these states at that time. To maintain consistency across all states such that the allocation of responsibility for eliminating states' significant contribution and interference with maintenance of the NAAQS in downwind states is done on an equitable basis, the EPA proposes to apply to five additional states the nationwide findings and determinations contained in the Federal Good Neighbor Plan as to the original 23 states which will, if finalized, eliminate these additional states' significant contribution.<sup>18</sup>

EPA seeks to apply the same Step 3 analysis to Arizona that it applied for the 23 states in the GNP.<sup>19</sup> As EPA summarized, EPA's Step 3 test is one that looks at multiple factors including: "cost, available emissions reductions, downwind air quality impacts, and other factors (e.g., controls that have been widely adopted by like sources in other upwind states and/or in downwind areas with ozone attainment problems) to determine the appropriate level of control stringency that would eliminate significant contribution to downwind nonattainment or maintenance receptors."<sup>20</sup> EPA selected a uniform level of NOx emissions stringency across all the 23 states, based on representative cost per ton of emissions reductions.<sup>21</sup>

As described above, ADEQ's analysis of the impact of EPA's proposal on downwind contributions shows that the measures selected are inadequate to resolve contributions above the 1% threshold. Therefore, EPA's Step 3 analysis of downwind air quality impacts is flawed to the extent that EPA's one-size-fits-all approach will not address downwind contribution to EPA's modeled receptors. Therefore, based on ADEQ analysis, *supra*, EPA's proposed FIP did not adequately assess the air quality improvements at downwind receptors based on its level of uniform control stringency.

While EPA's proposed rule would allow states to develop and submit SIP revisions that do not utilize either EPA's trading program or the requirements for non-EGU industrial sources, the time frame contemplated (e.g. compliance by the 2025 ozone season (May 1 through September 30 for a given year)) is not realistic.<sup>22</sup> EPA's proposed timeframe is even less reasonable when viewed through the lens of EPA's 2022 proposed approval of Arizona's SIP. Based on the proposed approval, ADEQ believed that no additional controls would be necessary. Under Arizona administrative law, it would be challenging, if not impossible, to develop the control measures that would become effective before the 2025 ozone season. Therefore, ADEQ requests that EPA grant the State two additional years to develop a SIP revision that would address EPA's revised modeling results, before EPA imposes its FIP.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 12689.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 12711.

Additionally, ADEQ requests that EPA conduct a state-specific analysis to identify sources that more directly contribute to downwind contributions that exceed the 1% threshold, rather than applying over-broad requirements that will not address downwind transport.

**V. EPA has not addressed several practical concerns about the implementation of the proposed rule.**

This section discusses ADEQ's practical concerns with implementation of the rule. First, ADEQ requests EPA commit to providing technical assistance to state, local, and tribal permitting authorities that are new to the CSAPR Group 3 Trading program. Second, ADEQ is concerned about the timing and practical availability of materials and expertise to install the necessary control technology.

**A. EPA should commit to provide technical support for permitting agencies.**

This section discusses ADEQ's practical concerns with implementation of the rule. First, ADEQ requests EPA commit to providing technical assistance to state, local, and tribal permitting authorities that are new to the CSAPR Group 3 Trading program. Second, ADEQ is concerned about the use of historical heat rate data to determine the NOx budget for the state.

The expansion of EPA's NOx trading program will require development of new institutional knowledge for Western states that are new to the program.

ADEQ understands that the requirements of the FIP (if finalized) would become "applicable requirements" as defined in EPA's title V rules.<sup>23</sup> As EPA anticipates that sources subject to the FIP will already be subject to Title V, it will not constitute any additional burden on permitted sources.

Permit writers at state and local permitting authorities in Arizona do not have experience drafting CSAPR permit conditions, unlike many of the states already part of the CSAPR program.

Therefore, ADEQ urges EPA to commit resources to providing technical support and assistance to states that are new to the CSAPR Group 3 trading program. Training state, tribal, and local air agencies will be critical to ensure smooth implementation of EPA's FIP requirements into the appropriate title V permits.

**B. EPA should provide for an adequate compliance period**

**1. The start of the compliance period does not adequately provide sufficient time to enable a smooth transition to EPA's program.**

ADEQ believes that EPA should consider providing additional time for sources to commence implementing the controls required in EPA's FIP. Specifically, ADEQ is concerned there may not be sufficient time between when EPA's rule is finalized and when sources will have to begin compliance with the rule. The comment period for this rulemaking ends in May 2024.

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<sup>23</sup> *Id.* at 12712.

However, it is not clear when EPA would anticipate the issuance of a final rule. It is likely that sources will only commit resources once the rule is finalized. ADEQ urges EPA to provide sources a sufficient amount of time to implement the controls.

**2. EPA’s national approach may limit available supply of equipment and experts.**

Due to the national uniformity of EPA’s control approach, ADEQ is concerned about the availability of the necessary staff and technical expertise to install the necessary control equipment. As many of the states have the same compliance dates, this might result in unplanned scarcity for facilities to purchase and install the necessary equipment. EPA should account for potential delays due to this demand in its schedule for compliance.

**VI. EPA should adopt a “safety valve” that states can rely on in the case of reduced reliability of the electricity grid.**

ADEQ urges EPA to include a provision that allows states to seek flexibility in the case that the rule’s preset or dynamic budgets are too low to preserve reliability of the grid for health and safety purposes. Typical constraints on the electric grid, coupled with the new limitations proposed in this rule, could result in outages without built-in flexibility for EGUs.

The ozone season falls at a time when extreme heat in Arizona is a serious threat to health and safety. In 2023, the Phoenix area experienced its hottest and driest summer on record.<sup>24</sup> Phoenix Sky Harbor Airport recorded 31 consecutive days of at least 110 degrees from June 30 to July 31, 2023 as the longest heatwave ever recorded in the city. Over a record-setting 19 days, overnight lows were at or above 90 degrees with an all-time record warm low temperature of 97 degrees. During this same time, a record-setting 17 days had highs at or above 117 degrees in July.<sup>25</sup> These temperatures can result in heat-related illness such as heat exhaustion, heat stroke, and even death.

During the 2023 heat season, 579 confirmed heat-associated deaths occurred.<sup>26</sup> Another 56 deaths remained under investigation as of the time of the weekly report.<sup>27</sup>

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<sup>24</sup> Jessica Boehm, *Phoenix experienced its hottest and driest summer on record*, Axios (Oct. 10, 2023), available at <https://www.axios.com/local/phoenix/2023/10/10/2023-hottest-driest-summer-monsoon>.

<sup>25</sup> *Id.*

<sup>26</sup> Maricopa County Department of Public Health Epidemiology & Informatics, Report for Week Ending November 2023, available at <https://www.maricopa.gov/Archive.aspx?ADID=5734>.

<sup>27</sup> *Id.*



On August 11, 2023, the Arizona Governor declared an extreme heat emergency.<sup>28</sup> Additionally, the Governor signed an executive order that opened two cooling centers.<sup>29</sup> Given the health risks from such extreme heat, a reliable electrical grid is vital for the health and safety of Arizonans. To that end, ADEQ urges EPA to consider implementing a mechanism in the Arizona portion of the FIP that would account for heat emergencies during the ozone season.

The eastern United States does not grapple with the same degree of extreme heat that occurs in the Southwest. As discussed *supra*, ADEQ believes that EPA's FIP was designed for the East Coast and does not adequately consider unique circumstances of the Southwest. Specifically, EPA's proposed inclusion of Arizona in the Good Neighbor Plan gives no consideration to heat-related health and safety. As the ozone season overlaps with the hottest months of the year, this is a pressing concern for Arizona. Therefore, ADEQ urges EPA to give consideration for an approach that would safeguard the reliability of the power grid, while achieving the objectives of the good neighbor requirement.

EPA implemented emergency waiver provisions in other contexts, namely fuel emergencies, that allows states flexibility. CAA § 211(c). EPA should explore its authority under the CAA to create an effective response to heat emergencies that would not penalize electric providers delivering a critical service that is necessary to prevent illness and death. Such a waiver could be narrowly tailored to exigent circumstances and allow utilities to keep cooling available, without risking penalties. As EPA notes in its response to comments in the GNP, under EPA's trading program no EGU is required to cease operation. However, if NO<sub>x</sub> limits exceed the state's assurance level, there can be substantial penalties that might severely discourage EGUs to operate as they might without such a penalty. Under EPA's theory, the purpose of this system is to encourage sources that can more easily reduce emissions to do so. However, ADEQ is concerned that this approach is not flexible enough to respond to heat emergencies, and risks destabilizing the grid during the hottest months.

To that end, ADEQ suggests that EPA could implement a rule that would allow it to waive the 3-for-1 allowance surrender ratio if the emissions are above the state's assurance level or other mechanism during heat emergencies.<sup>30</sup> Such an approach would allow regulated sources to have the flexibility to operate during heat emergencies without risking a regulatory penalty.

## **VII. The proposed FIP's impact on electric utilities' ability to meet peak energy demand during summer months in Arizona is a public health and safety concern.**

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<sup>28</sup> Office of the Governor of Ariz., Governor Katie Hobbs Declares Heat State of Emergency (Aug. 11, 2023), available at <https://azgovernor.gov/office-arizona-governor/news/2023/08/governor-katie-hobbs-declares-heat-state-emergency>.

<sup>29</sup> Ariz. Exec. Order No. 2023-16 (Aug. 11, 2023), available at <https://azgovernor.gov/office-arizona-governor/executive-order/2023-16>.

<sup>30</sup> 88 FR 36654, 36786 (June 5, 2023).

One of ADEQ's stakeholder groups, the Arizona Utility Group (AUG) which is an *ad hoc* unincorporated association of individual electric generating utilities, raised concerns regarding the potential impacts on electric generation under EPA's proposed rule. Electric generating units (EGUs), under the proposed rule, are subject to allowance caps that would restrict EGU utilization during the summer months. AUG asserts that EGUs would face the "untenable" choice of curtailing operations from certain EGUs to avoid incurring significant capital costs to install or optimize controls. Such curtailments could be detrimental.

The state, as a whole, relies heavily on the electrical grid to provide relief from extreme heat. The hotter it is in Arizona, the more electricity is needed to provide the air conditioning that keeps residents healthy and safe. Arizona is growing rapidly, experiencing an increase in the number of days with extreme heat, and facing compounding challenges from supply chain disruptions impacting energy generation capacity. EPA's proposed rule is likely to worsen an already precarious situation.

It is not clear that EPA has considered the public health impacts and projected costs that could result from the additional stress on the electric grid.

#### **VIII. EPA should consider the potential implications of the upcoming Supreme Court decision.**

In 2023, EPA disapproved 21 of the 23 state plans and issued the Good Neighbor Plan in their place.<sup>31</sup> Various parties have since filed lawsuits challenging the EPA's disapproval of states' plans as well as the Good Neighbor Plan.

Lawsuits challenging the SIP approvals are currently pending in the Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits. EPA has sought to transfer the petitions for review of the SIP disapprovals to the D.C. Circuit. Four courts have denied EPA's motions to transfer or dismiss the SIP disapproval petitions. The remaining courts have not ruled on those motions. All seven circuit courts with pending cases have stayed EPA's SIP disapprovals for a total of twelve states: Alabama, Arkansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nevada, Oklahoma, Texas, Utah, and West Virginia.<sup>32</sup> To date, no court has ruled on the merits of the disapprovals. Because such a disapproval is a necessary prerequisite to the implementation of the Good Neighbor Plan, EPA issued interim rules to stay the Good Neighbor Plan's requirements for states subject to stay orders at that time.<sup>33</sup>

Regional courts of appeals have stayed EPA's disapprovals of 12 state plans, but the U.S. Court of Appeals for the D.C. Circuit declined to stay the Good Neighbor Plan while litigation is pending.

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<sup>31</sup> 88 FR 9336 (March 15, 2023).

<sup>32</sup> Environmental Protection Agency, EPA's "Good Neighbor Plan" Response to Comply with Stay Orders Pending Judicial Review: Overview Fact Sheet (2023).

<sup>33</sup> See 88 FR 49295 (Aug. 4, 2023); 88 FR 67102 (Sept. 29, 2023).

No court has issued a final ruling on the validity of EPA's state plan disapprovals or its Good Neighbor Plan, and the Supreme Court took the case following the stay applications and without briefing on the merits.


Several states, trade associations, and individual companies challenged the Good Neighbor Plan in the D.C. Circuit. Various petitioners asked the D.C. Circuit to stay the Good Neighbor Plan pending judicial review. On September 25, 2023, a divided panel of the court denied the stay motions without analysis.<sup>34</sup> After this, the states, natural gas pipeline companies, industry associations, and a steel producer sought an emergency stay from the Supreme Court. On December 20, 2023, the Supreme Court issued an order setting the stay applications for oral argument and deferring a decision on the applications. The Supreme Court heard oral argument on applications to postpone implementation of the Good Neighbor Plan in February 2024.

Only the 23 states included in the initial Good Neighbor Plan have had their applications for stay heard. If the Supreme Court stays another portion of the Good Neighbor Plan, EPA should consider implementing an administrative stay, similar to the two interim rules published in June and September of 2023.<sup>35</sup> Unfortunately, this supplemental plan proposes adding additional states to the Good Neighbor Plan, including Arizona. To have standing to request a stay, Arizona would have to wait for a final rulemaking. For national consistency, it would make the most sense to delay the enforcement of the Good Neighbor Plan to the additional states, as well.

## IX. Conclusion

ADEQ appreciates the opportunity to provide these comments on EPA's proposal. ADEQ supports EPA's goals of reducing downwind contributions of ozone that significantly interfere with maintenance or attainment of the 2015 ozone NAAQS. This will improve public health and the environment in downwind states, including Arizona. However, ADEQ requests two additional years to develop a SIP revision that would address EPA's revised modeling results and urges EPA to consider a state specific approach for its FIP emission controls. EPA's one-size-fits-all approach will not accomplish its goal of addressing interstate transport of ozone pollution in the West. If you have any questions, please contact me at (602)771-4684 or at [czecholinski.daniel@azdeq.gov](mailto:czecholinski.daniel@azdeq.gov). Thank you for your consideration of ADEQ's comments.

Sincerely,

DocuSigned by:  
  
4D858E29B49B4E2  
Daniel Czecholinski, CHMM  
Director, Air Quality Division

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<sup>34</sup> *Utah v. EPA*, Nos. 23-1157, 23-1181, 23-1183, 23-1190, 23-1191, 23-1193, 23-1195, 23-1199, 23-1200, 23-1201, 23-1202, 23-1203, 23-1205, 23-1206, 23-1207, 23-1208, 23-1209, 23-1211, 2023 U.S. App. LEXIS 25335 (D.C. Cir. Sep. 25, 2023).

<sup>35</sup> *See* 88 FR 49295 (Aug. 4, 2023); 88 FR 67102 (Sept. 29, 2023).