

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATE OF IOWA and STATE OF)	
NEBRASKA,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 4:23-cv-0284-RGE-SBJ
)	
MICHAEL S. REGAN and UNITED)	
STATES ENVIRONMENTAL)	DEFENDANTS’ MOTION FOR
PROTECTION AGENCY,)	SUMMARY JUDGMENT
)	
Defendants.)	
_____)	

COMES NOW the Defendants, Michael S. Regan and the United States Environmental Protection Agency (hereinafter Defendants) by and through their attorney Benjamin Grillot, an Attorney for the United States Department of Justice, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, and respectfully moves for summary judgment against the Plaintiffs on their claims that EPA failed to promulgate regulations under 42 U.S.C. § 7545(h)(5), and as grounds therefore states:

1. That on August 7, 2023, the Plaintiff filed a Complaint [Docket 1] in federal district court for the Southern District of Iowa claiming the Defendants had failed to promulgate regulations under 42 U.S.C. § 7545(h)(5) and seeking an injunction requiring EPA to promulgate a final rule “more than six months before the first day of the 2024 high ozone season.”

2. That on October 17, 2023, the Defendants filed an Answer to Plaintiff’s Complaint. Dkt. 6. In the Answer the Defendants did not contest liability, but asked the Court to deny Plaintiff’s requested injunctive relief for equitable reasons.

3. That as shown by the pleadings and memoranda herein and the Declaration of Joseph Goffman there is no genuine issue as to any material fact in this cause and the Defendants are entitled to summary judgment on remedy.

4. The Defendants therefore move for summary judgment, and in support of this motion refer the Court to their Statement of Undisputed Facts and Brief in Support of the Motion filed contemporaneously with this motion.

WHEREFORE, the Court should grant the Defendants' motion for summary judgment against the Plaintiff.

Respectfully submitted,

Dated: November 29, 2023

Benjamin J. Grillo

BENJAMIN J. GRILLOT

U.S. Department of Justice

Environment & Natural Resources

Division

Environmental Defense Section

U.S. Department of Justice

P.O. Box 7611

Washington, DC 20044

(202) 305-0303

benjamin.grillot@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **November 29, 2023**, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and a true copy of the foregoing was served electronically, by the CM/ECF system.

/s/ Benjamin J. Grillot
Benjamin J. Grillot

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATE OF IOWA and STATE OF)
NEBRASKA,)
)
Plaintiffs,)
v.)
)
MICHAEL S. REGAN and UNITED)
STATES ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Defendants.)
_____)

Civil Action No. 4:23-cv-0284-RGE-SBJ

**BRIEF IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

EPA does not contest that the Governors of Iowa and Nebraska, among other states, have submitted administrative petitions requesting that EPA promulgate a regulation under the Clean Air Act. EPA further does not contest that the Clean Air Act requires EPA to promulgate that regulation within 90 days after the receipt of those petitions. While EPA does not contest liability on the single claim in the Complaint, this Court should exercise its equitable powers and set a reasonable deadline that takes into account the relevant facts and circumstances for EPA to issue the regulation.

EPA published a proposed rule on March 6, 2023, and sought public comment through April 20, 2023. Since that time EPA has received numerous administrative petitions seeking to delay the effective date of the final rule. EPA is required to consider such petitions and to consult with the Secretary of Energy on them. Accordingly, taking into account the relevant

facts and circumstances, EPA currently intends to issue a final rule by March 28, 2024. This date is reasonable and should be adopted by the Court.

STATUTORY AND REGULATORY BACKGROUND

The Clean Air Act was enacted to “protect and enhance the quality of the Nation’s air resources” so as to “promote the public health and welfare and the productive capacity” of the country. 42 U.S.C. § 7401. To achieve this, the Act authorizes EPA to regulate fuels and fuel additives. 42 U.S.C. § 7545.

Specifically, the Act prohibits the sale of gasoline with a Reid Vapor Pressure (RVP)¹ of greater than 9.0 psi during the high ozone season (May 1 to September 15) to reduce emissions that contribute to the formation of smog (ground-level ozone). 42 U.S.C. § 7545(h)(1); 40 C.F.R. § 1090.80, 1090.215.

In 1990, Congress amended the Clean Air Act to allow a 1-psi RVP “ethanol waiver” – that is, it allowed the sale of gasoline with an RVP of 10.0 psi during the high ozone season if the gasoline contained 10 percent ethanol (E10).² 42 U.S.C. § 7545(h)(4). When enacted, the ethanol waiver applied to a relatively small portion of gasoline sold in the United States; however, today almost all gasoline sold in the United States is E10. Request from States for

¹ Reid Vapor Pressure is a common measure of fuel volatility. It is defined as the absolute vapor pressure of fuel at 100 degrees Fahrenheit. Compl. ¶ 13.

² This provision does not apply to gasoline with higher amounts of ethanol, such as E15.

Removal of Gasoline Volatility Waiver (Proposed Rule), 88 Fed. Reg. 13758, 13760 (Mar. 6, 2023) (“Volatility Rule”).

The 2005 amendments to the Clean Air Act also contained a provision allowing states to apply for an exclusion from the “ethanol waiver.” The Act provides that Governors may notify EPA that the RVP limit for E10 will increase air pollutant emissions in that state. 42 U.S.C. § 7545(h)(4). If they do so, and provide supporting documentation, the Act states that “the Administrator shall, by regulation, apply” the 9.0 psi limitation for that area. *Id.* at 7545(h)(5).

The Act also provides that if EPA determines – after consultation with the Department of Energy – that promulgation of such regulations would “result in an insufficient supply of gasoline in the State” then it may extend the effective date of the regulations for up to one year, and then may renew that extension for up to two additional periods of up to one year each. 42 U.S.C. § 7545(h)(5)(C)(ii).

The Complaint in this case is a CAA citizens’ suit claim involving EPA’s duty to make a decision on the States’ administrative petitions, *see* 42 U.S.C. § 7604(a)(2); the content or substance of EPA’s future final decisions is not at issue in this case.

FACTUAL BACKGROUND

On April 28, 2022, eight governors submitted a letter to EPA, requesting removal of the 1-psi waiver for E10 in their states. Compl. Ex. 5 at 4.³ Subsequently, the Governors of Ohio

³ Solely for purposes of this Motion for Summary Judgment the United States does not contest any material facts in the Complaint. The sole remaining issue in this case concerns remedy. The CAA gives the Court “jurisdiction . . . to order the Administrator to perform” a non-discretionary

and Missouri also submitted requests. *Id.* at 6, 8. Two states – Kansas and North Dakota – rescinded their requests. Compl. ¶ 32. The letters from the States included modeling results showing that the ethanol waiver increased certain pollutant emissions. 88 Fed. Reg. at 13760.

On March 6, 2023, EPA published a proposed rule in the Federal Register seeking to remove the 1-psi waiver for E10 for the petitioning states beginning on April 28, 2024. *See* Volatility Rule, 88 Fed. Reg. 13758. EPA solicited the submission of public comment on the proposed rule through April 20, 2023. *Id.*

PROCEDURAL HISTORY

On August 7, 2023, the States of Iowa and Nebraska filed the Complaint in this case under the citizen suit provision of the Clean Air Act seeking to compel the performance of a non-discretionary duty under the Act. Dkt. 1. The United States answered the Complaint on October 17, 2023. Dkt. 6. On November 8, 2023, this Court ordered the parties to file dispositive motions by November 29, 2023. Dkt. 10.

STANDARD OF REVIEW

The Clean Air Act authorizes a district court to order EPA to “perform any act or duty” under the Act which is “not discretionary.”⁴ 42 U.S.C. § 7604(a)(2); *see Nucor Steel-Arkansas v.*

duty, 42 U.S.C. § 7604(a)(2), and that exercise of injunctive relief authority should take into account the relevant facts and circumstances, and equitable considerations.

⁴ The Clean Air Act’s waiver of sovereign immunity should be interpreted *in pari materia* with the judicial review provisions of the Administrative Procedure Act. *See Wachovia Bank v. Schmidt*, 546 U.S. 303, 316 (2006) (“statutes addressing the same subject matter generally should be read as if they were one law”); *see also Murray Energy Corp. v. EPA*, 861 F.3d 529,

Big River Steel, LLC, 93 F. Supp. 3d. 983, 985 (E.D. Ark. 2015), *aff'd*, 825 F.3d 444 (8th Cir. 2016). Federal Courts, however, are not required to issue injunctions. Remedial injunctive relief orders in this setting generally should be designed to achieve compliance with the Act, and if such an order is issued the Court should consider all of the relevant facts and circumstances, and equitable considerations, in developing a reasonable remedy. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982).

ARGUMENT

I. Defendants acknowledge that EPA has not met the Clean Air Act’s statutory deadline to promulgate the Volatility Rule.

Section 304(a)(2) of the Clean Air Act provides for citizen enforcement of the Act under certain circumstances, which includes an agency’s failure to perform a duty which is not discretionary. 42 U.S.C. § 7604(a)(2). This limited waiver of sovereign immunity “empowers a court only to compel an agency to perform a ministerial or non-discretionary action, or to take action upon a matter, without directing *how* it shall act.” *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (cleaned up).

The Clean Air Act provides that Governors may notify EPA, and provide accompanying documentation, showing that the established Reid Vapor Pressure limitation will increase emissions in any area in the State under 42 U.S.C. § 7545(h)(5)(A). Once a Governor does so, the Clean Air Act provides that the Administrator of EPA “shall promulgate regulations”

535 (4th Cir. 2017) (CAA citizen suits construed in the same manner as review of agency action under the APA).

applying a lower Reid Vapor Pressure limitation during the summer high-ozone season. *Id.* § 7545(h)(5)(B). The Act requires the Administrator to promulgate the regulations “not later than 90 days after the date of receipt of a notification from a Governor. ...”. *Id.*

Defendants do not contest that this requirement provides the type of statutory duty that is enforceable under the CAA citizens’ suit provision. *See Norton*, 542 U.S. at 63 (noting a “failure to promulgate a rule or take some decision by a statutory deadline” as an example of a “failure to act” under the APA). Because more than 18 months have passed since EPA received the Governors’ notification, with accompanying documentation, the Court could compel agency action under section 304(a) of the CAA.

II. The sole remedy available in this case is to compel performance of the statutory duty in question by a reasonable deadline.

It is well settled that a court need not mechanically impose an injunction requiring an agency to act anytime it is determined that agency action has been unlawfully withheld. *See Weinberger v. Romero-Barcelo*, 456 U.S. at 313 (“a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law.”). Rather, equitable principles continue to govern the remedy inquiry, and any remedial order should take full account of the relevant facts and circumstances. *See Nat’l Wildlife Fed’n v. Espy*, 45 F.3d 1337, 1343 (9th Cir. 1995) (decision to grant or deny injunctive relief is controlled by principles of equity.)

The sole remedy available is to “compel the agency to act” without “specify[ing] what the action must be.” *Norton*, 542 U.S. at 65; see also *Frey v. EPA*, 751 F.3d 461, 469 (7th Cir. 2014). In determining the appropriate timeline for agency action, the proper standard is reasonableness. *Env’t Def. Ctr. v. Babbitt*, 73 F.3d 867, 872 (9th Cir. 1995).

Here, EPA published the proposed Volatility Rule on March 6, 2023, and solicited public comment on the proposed rule. The public comment period closed on April 20, 2023, and EPA received more than 40 public comments. In addition, as contemplated by 42 U.S.C. § 7545(h)(5)(C), EPA received 10 administrative petitions seeking extensions to the effective date of the final rule – including a petition as submitted as recently as November 15, 2023. Goffman Decl. ¶ 8; Appendix at 8. Those petitions require consultation with the Department of Energy to determine if promulgation of the regulations will result in an insufficient supply of gasoline. 42 U.S.C. § 7545(h)(5)(C)(ii)(I).

EPA is actively working to finalize the proposed Volatility Rule, including responding to public comments as required by law, evaluating incoming petitions, coordinating with other federal agencies, and resolving technical issues associated with the proposed rulemaking. Goffman Decl. ¶ 10; Appendix at 8-9. This rulemaking is the first time EPA has promulgated a final rule under this provision of the Clean Air Act, and while the rule will be applicable in only eight states, it will impact the fuel system throughout much of the United States. *Id.* The final rule will likely address the production of new additional grades of gasoline at refineries, and thus requires extensive coordination between parties in the fuel distribution system to distribute these new additional grades, and ultimately make them available at retail outlets in the petitioning states. *Id.* Further, EPA must coordinate its final rulemaking action with not only the Department of Energy as required, but also with other entities within the Administration. In addition, EPA staff continue to support other agency actions while this work continues. *Id.* Taking into account all of the considerations, EPA has determined that it will require until March 28, 2024, to complete this work and to sign a final rule. *Id.*

This timeframe is reasonable because it ensures sufficient time for EPA to address the 10 subsequent administrative petitions received to delay the effective date of the final rule and coordinate, as required by statute, with the Department of Energy with respect to its fuel supply implications, as well as other Administration offices prior to it being finalized.

CONCLUSION

For the foregoing reasons, this Court should grant the United States' Motion for Summary Judgment and implement a reasonable timeline for EPA to finalize the Volatility Rule here, setting a deadline for EPA to sign a final rule by March 28, 2024.

Respectfully submitted,

Dated: November 29, 2023

*Benjamin J. Grillot*_____

BENJAMIN J. GRILLOT
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 305-0303
benjamin.grillot@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATE OF IOWA and STATE OF)	
NEBRASKA,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 4:23-cv-0284-RGE-SBJ
)	
MICHAEL S. REGAN and UNITED)	
STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendants.)	
_____)	

**CONCISE STATEMENT OF MATERIAL FACTS IN SUPPORT OF
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 56(a)(3), Defendants submit this concise statement of undisputed material facts in support of its Motion for Summary Judgment.

1. On April 28, 2022, Governors from six states submitted a petition to EPA pursuant to section 211(h)(5) of the Clean Air Act seeking removal of the volatility waiver provided under section 211(h)(4) of the Clean Air Act. Subsequently, Governors from Ohio and Missouri also petitioned, while Governors from Kansas and North Dakota rescinded their requests. Compl. ¶ 32; Appendix at 2.
2. The petition from the states included supporting documentation showing that the Governors’ requested waiver would decrease emissions that contribute to air pollution in their states. Compl. ¶¶ 34-38; Appendix at 2-4.
3. On March 6, 2023, EPA issued a proposed rule entitled “Request from States for Removal of Gasoline Volatility Waiver” (“Volatility Rule”). Compl. ¶ 40; Appendix at 4.
4. EPA has not issued a Final Rule. Compl. ¶ 44; Appendix at 5.

5. Since EPA issued the proposed rule, EPA has reviewed over 40 comments submitted by stakeholders. Goffman Decl. ¶ 8; Appendix at 8.

6. EPA has received 10 petitions requesting that EPA delay the effective date of the Volatility Rule on the basis of insufficient supply of gasoline. The most recent such petition was submitted on November 15, 2023. Goffman Decl. ¶ 8; Appendix at 8.

7. EPA is actively working on the Volatility Rule final rulemaking, including responding to comments, evaluating incoming petitions, consulting with the Department of Energy and other agencies. Goffman Decl. ¶ 10; Appendix at 8.

8. The Volatility Rule is likely to have significant fuel system impacts, including the production of new additional grades of gasoline at refineries, coordination between parties in the fuel distribution system to distribute these new additional grades. Goffman Decl. ¶ 10; Appendix at 8.

9. EPA staff must also support other agency actions and priorities while work on the Volatility Rule continues. Goffman Decl. ¶ 10; Appendix at 8-9.

10. EPA requires until March 28, 2024 to issue the final rule. Goffman Decl. ¶ 10; Appendix at 9.

Respectfully submitted,

Dated: November 29, 2023

Benjamin J. Grillo
BENJAMIN J. GRILLOT
U.S. Department of Justice
Environment & Natural Resources
Division
Environmental Defense Section
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044
(202) 305-0303
benjamin.grillot@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF IOWA
 CENTRAL DIVISION

STATE OF IOWA and STATE OF)	
NEBRASKA,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 4:23-cv-0284-RGE-SBJ
)	
MICHAEL S. REGAN and UNITED)	
STATES ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Defendants.)	
_____)	

APPENDIX – TABLE OF CONTENTS

Document	Pages
Complaint for Declaratory and Injunctive Relief, <i>Iowa v. Regan</i> , No. 23-cv-00284-RGE-SBJ (Dkt. 1).	1-5
Declaration of Joseph Goffman	6-9

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATE OF IOWA; STATE OF
NEBRASKA,

Plaintiffs,

v.

MICHAEL S. REGAN, in his
official capacity as Administrator
of the U.S. Environmental
Protection Agency; UNITED
STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendants.

Case No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

The Clean Air Act imposes many duties upon the U.S. Environmental Protection Administration. Among those is a mandate to promulgate regulations in response to particular requests from State governors. Iowa’s and Nebraska’s governors, along with the governors of 6 other States, made the required request last year, triggering the EPA’s duty to promulgate the required regulations in no more than 90 days. That deadline passed more than a year ago.

The federal government refuses to do its duty. The State of Iowa and the State of Nebraska now sue for an injunction compelling it to do so.

the States that seek that access, denying residents of those States the clean-burning and less expensive E15 that they seek for their cars.

32. On April 28, 2022, a bipartisan group of Governors from Iowa, Nebraska, Illinois, Kansas, Minnesota, North Dakota, and South Dakota sent a letter to the Administrator seeking the waiver contemplated in section 211(h)(5). Request from States for Removal of Gasoline Volatility Waiver, 88 Fed. Reg. at 13,760. This was the first section 211(h)(5) request submitted to EPA. *Id.* While the petition was pending, Kansas and North Dakota rescinded their requests while Ohio and Missouri lodged their own requests. *Id.*

33. The original Governors' letter requested that EPA promulgate a rule applying, rather than the 10-psi RVP limitation established by section 211(h)(4), the 9.0-psi RVP limitation established by section 211(h)(1) to all fuel blends containing gasoline and E10 that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in those states for the 2023 summer ozone control season. *Id.*

34. The letter cited a Health Effects Institute Panel on the health effects of traffic related air pollution to explain that high gasoline vapor pressures cause high emissions from motor vehicles and so should be a priority fuel quality issue. And that Panel explained that a reduction in vapor pressure is one of the more cost-effective, fuel-related approaches to reduce emissions.

35. Going beyond that high-quality evidence, the States attached supporting documentation to their letter, an academic analysis drafted by Janet Yanowitz, P.E., Ph.D, titled “Emissions Impacts of the Elimination of the 1-psi RVP Waiver for E10 in Eight States.” *Id.* at 13,761. That analysis used EPA’s Motor Vehicle Emissions Simulator Version 3.0.3 (“MOVES3”) model to estimate the impact on air emissions from onroad and nonroad vehicles that will follow from EPA’s issuance of the Governor’s requested waiver.

36. MOVES3 is a complex emission-modeling system intended to estimate air pollution emissions from mobile sources in the United States. The model is based on individual physical processes, which are then scaled up to emulate fleets, and a database that builds these hypothetical fleets based on vehicle and fuel data specific to those areas. MOVES3 also incorporates data involving meteorology, source-type populations, age distributions, vehicle type, and many other factors.

37. Dr. Yanowitz’s analysis ran the model for a July weekday in 2023 in each of the 8 States to understand the effect of during the summer high ozone season, when the E15 limits are in effect. *Id.* She kept many factors in the MOVES3 model constant to test the effect of a change from 9-psi for E10 fuels to 10-psi and estimated the effect of the requested waiver on air quality in Iowa, Nebraska, Kansas, Wisconsin, South Dakota, Minnesota, North Dakota, and Illinois.

38. Her conclusion estimated that the Governors' requested waiver will decrease in each State from all three tested pollutants: volatile organic compounds, nitrogen oxides, and carbon monoxide emissions.

C. EPA repeatedly misses the Clean Air Act's deadlines.

39. EPA acknowledged receipt of the Governors' April 28 letter. The high-ozone season began on or around May 1, 2022, without the requested waiver's going into effect. Despite the clear 90-day deadline set forth in the Clean Air Act, July 27, 2022, came and went without EPA's promulgating the required rules.

40. After follow-up letters from Governors and from a bipartisan group of Attorneys General, EPA on March 6, 2023, issued its proposed rule, "Request from States for Removal of Gasoline Volatility Waiver." 88 Fed. Reg. 13758. This was nearly a year after the Governors had first requested the waiver and more than eight months after EPA's deadline to promulgate the regulations.

41. EPA's proposed rule recognized that "the prescriptive statutory language 'shall' provides limited if any discretion for EPA" to consider impacts upon receipt of notification from Governors of their request for a waiver. *Id.* at 13,760. It accepted that the data the Governors highlighted indicated that the submissions "demonstrated reductions in emissions of CO, NO_x, and VOCs within the state upon removal of the 1-psi waiver." *Id.* at 13,761. EPA thus "propos[ed] to remove the 1-psi waiver in the

petitioning states based on the supporting documentation provided, as required by the [Act].” *Id.* at 13,762.

42. The Administrator found that, despite EPA’s being the cause of delay, that the waiver would go into effect for Iowa, Nebraska, Illinois, Minnesota, Missouri, Ohio, South Dakota, and Wisconsin on April 28, 2024. *Id.* at 13,770. That is precisely two years after the date of the Governors’ waiver request—and one year after the Clean Air Act’s deadline for the waiver to go into effect. 42 U.S.C. § 7545(h)(5)(C)(i)–(ii)

43. All comments on the proposed regulation were due on or before April 20, 2023. *Id.* at 13,758. Many Comments supported the proposed rule. Of the Comments critical of the proposed rule, many suggested those concerns could be ameliorated by the April 28, 2024, start date.

44. It is now more than 90 days after the end of the notice-and-comment period, and EPA has not issued a final rule— a final rule that the Clean Air Act required take effect more than two months ago; a final rule the Clean Air Act required EPA to promulgate last July.

HARM TO STATES FROM EPA’S FAILURE TO COMPLY WITH ITS MANDATORY STATUTORY DUTY

45. The bipartisan Governors attached to their April 28 letter evidence that failure to promulgate the rules as required by the Act would lead to increased emissions in their states during the summer driving season.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

STATE OF IOWA and STATE OF)
NEBRASKA,)
)
 Plaintiffs,)
 v.)
)
MICHAEL S. REGAN and UNITED)
STATES ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Defendants.)
_____)

Civil Action No. 4:23-cv-0284-RGE-SBJ

DECLARATION OF JOSEPH GOFFMAN

1. I, JOSEPH GOFFMAN, pursuant to 28 U.S.C. § 1746, declare, under penalty of perjury, that the following statements are true and correct based upon my personal knowledge or upon information provided to me by persons under my supervision.

2. Since January 20, 2021, I have served as Principal Deputy Assistant Administrator for the United States Environmental Protection Agency (“EPA” or the “Agency”) Office of Air and Radiation (“OAR”), which is located at 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

3. OAR is the EPA headquarters-based unit with primary responsibility for administration of the Clean Air Act (“CAA”). As the Principal Deputy Assistant Administrator for OAR, I serve as the principal advisor to the Administrator of EPA on matters pertaining to air and radiation programs, and I am responsible for managing these programs. These duties include overseeing program policy development and evaluation; development of emissions standards;

program policy guidance and overview; and technical support and evaluation of regional air and radiation program activities.

4. This declaration is filed in support of EPA’s motion for summary judgment in *State of Iowa, and State of Nebraska v. Michael S. Regan*, No. 4:23-cv-0284-RGE-SBJ (S.D. Iowa). My Office develops all regulations, policy, and guidance associated with Clean Air Act (“CAA”) Section 7545(h), 42 U.S.C. § 7545(h). As part of my duties as Principal Deputy Assistant Administrator of OAR, I oversee the development and implementation of these Section 7545(h) regulations, policy, and guidance. In this capacity, I have been responsible for overseeing the implementation of the applicable statutory provision, 42 U.S.C. § 7545(h)(5), and the action at issue in the above-captioned litigation, the “Request from States for Removal of Gasoline Volatility Waiver” Proposed Rule (88 Fed. Reg. 13758, March 6, 2023) (“Volatility Rule”).

5. The proposed Volatility Rule was issued in response to petitions submitted by Governors of several states requesting the removal of the ethanol waiver provided at CAA section 211(h)(4), pursuant to CAA section 211(h)(5).

6. The CAA provides that EPA is to evaluate the incoming petitions from the Governors and promulgate regulations removing the volatility waiver within 90 days. CAA section 211(h)(5).

7. EPA’s proposed rule for this action was published on March 6, 2023, and, under CAA Section 307(d), EPA then provided opportunity for public comment and the oral presentation of testimony on March 21, 2023. EPA further provided 30 additional days for public comment until April 20, 2023.

8. Since that time, EPA has reviewed over 40 comments submitted by stakeholders on the proposed Volatility Rule and continues to consider and respond to those comments. Additionally, EPA has received 10 petitions (hereinafter, “extension petitions”) from parties, including regulated entities and other states within the region, pursuant to CAA Section 7545(h)(C)(ii), with the most recent being submitted on November 15, 2023. These petitions request that EPA delay the effective date of the proposed Volatility Rule on the basis of insufficient supply of gasoline, and present data and information justifying such a delay on that basis.

9. To provide certainty to regulated entities and the states, we intend to resolve these extension petitions in the Volatility Rule final rulemaking. We are required to do so in consultation with the Department of Energy (“DOE”). 42 U.S.C. § 7545(h)(5)(C).

10. EPA is actively working on the Volatility Rule final rulemaking, including responding to comments, evaluating the incoming petitions, consulting with DOE, and resolving technical issues associated with the final rulemaking. This rulemaking requires the resolution of unique issues involving the fuel system throughout the nation. This is the first time EPA is promulgating a final rule under 42 U.S.C. § 7545(h)(5), and the rule will be applicable in eight states. This rule is likely to have significant fuel system impacts, including the production of new additional grades of gasoline at refineries, coordination between parties in the fuel distribution system to distribute these new additional grades, and ultimately ensuring the availability of the gasoline at retail stations in the petitioning states. Given these impacts, we must coordinate our final rulemaking action not only with DOE as required, but also with other entities within the Administration. We have also provided time for interagency review to facilitate the coordination between EPA and other federal agencies, including DOE. EPA staff also continue to support

other agency actions and priorities while this work continues. To provide sufficient time to evaluate these issues and allow for proper coordination, including on those issues raised in recent extension petitions, we require until March 28, 2024 to issue the final rule.

Executed this 29th day of November 2023.

Joseph Goffman