



# AAPCA Fall Meeting 2021

Legal Update from Emily Seidman, Assistant  
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# Recent SIP Decisions

## Contingency Measures

- *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021)
  - Held that that previously implemented measures cannot qualify as contingency measures
- *AIR v. EPA*, 10 F.4th 937 (9th Cir. 2021)
  - Found that “surplus” emissions reductions were not distinguishable from already implemented measures, and cannot make up the difference for a contingency measure that does not achieve sufficient reductions

# SSM in SIPs and Pending Litigation

- Memo issued by Deputy Administrator Janet McCabe on 9/30/2021
- *Environmental Committee of the Florida Electric Power Coordinating Group v. EPA*, D.C. Cir. Case No. 15-1239
  - Challenge to 2015 SSM SIP call
  - Final briefs filed in October 2016
  - On 11/3/2021, EPA filed an unopposed motion to schedule oral argument and set argument format, lift the abeyance, rescind the court's prior order and set a supplemental briefing scheduled
- *Sierra Club v. EPA*, D.C. Circuit Case No. 20-1115
- *Sierra Club v. EPA*, D.C. Circuit Case No. 20-1229
- *Sierra Club v. EPA*, D.C. Circuit Case No. 21-1022
  - Challenges to EPA's withdrawal of SIP calls previously issued to Texas, North Carolina and Iowa
  - On 11/3/2021, EPA filed unopposed motions in all three cases to remand the underlying actions to the Agency
- *Sierra Club v. Regan*, N.D. Cal. Case No. 21-cv-06956
  - Deadline suit regarding EPA action on submittals in response to the 2015 SSM SIP call and issuance of finding of failure to submit

# Pending Ozone Transport Litigation

- *Midwest Ozone Group v. EPA*, D.C. Cir. Case No. 21-1146
  - Challenge to the Revised CSAPR Update
  - EPA brief due 2/1/2022
- *Downwinders at Risk v. Regan*, N.D. Cal. No. 21-cv-03551
  - Deadline suit regarding EPA action on 32 2015 ozone NAAQS transport SIPs
  - CAA 113(g) comment period for draft Consent Decree closed 11/15/2021
- *New York et al. v. Regan*, S.D.N.Y. Case No. 1:21-cv-00252
  - Deadline suit regarding EPA action on six 2015 ozone NAAQS transport SIPs
  - Consent Decree entered on 11/15/2021
- *Our Children's Earth Foundation v. EPA*, S.D.N.Y. Case No. 20-8232
  - Deadline suit regarding, inter alia, EPA action on one 2015 ozone NAAQS transport SIP
  - CAA 113(g) public comment for draft Consent Decree closes 12/23/2021

# Pending Circuit Court Litigation

- *Sierra Club v. EPA*, D.C. Cir. Case No. 20-1121
  - Challenge to EPA's termination of anti-backsliding requirements for Houston-Galveston-Brazoria and Dallas-Forth Worth for the revoked ozone NAAQS
  - EPA brief filed 12/23/2020
  - EPA filed a motion seeking remand of its approval of the 185 fee equivalent alternative program for the Houston-Galveston-Brazoria area on 11/29/2021
- *Medical Advocates for Healthy Air v. EPA*, 9<sup>th</sup> Cir. Case No. 20-72780
  - Challenge to EPA approval of San Joaquin Valley attainment plan and extension of attainment date for 2006 24-hour PM2.5 NAAQS
  - EPA brief filed 10/15/2021; oral argument scheduled for 2/11/2022
- *Matusow v. EPA*, 9<sup>th</sup> Cir. Case No. 20-72279
  - Challenge to EPA approval of Phoenix-Mesa, AZ 2008 ozone NAAQS moderate area plan
  - EPA brief filed 12/6/2021

# Pending Circuit Court Litigation

- *State of Texas v. EPA*, 5<sup>th</sup> Cir. Case No. 17-60088
  - Challenge to 2010 SO<sub>2</sub> NAAQS nonattainment designations for Freestone and Anderson Counties, TX, Rusk and Panola Counties, TX, and Titus County, TX
  - EPA brief due 2/23/2022
- *Sierra Club v. EPA*, 6<sup>th</sup> Cir. Case No. 21-3057
  - Challenge to EPA error correction action to remove Ohio nuisance provision
  - No briefing schedule yet
- *Center for Biological Diversity v. EPA*, 3<sup>rd</sup> Cir. Case No. 21-3023
  - Challenge to EPA approval of PA RACT determinations for nine major sources of VOC and/or NO<sub>x</sub>
  - No briefing schedule yet

# Pending Circuit Court Litigation Regional Haze

- *HEAL Utah v. EPA*, 10<sup>th</sup> Cir. Case No. 21-9509
  - Challenge to EPA's approval of Utah's NO<sub>x</sub> BART alternative for the Hunter and Huntington power plants

# QUESTIONS?