

# Interstate Ozone/Environmental Groups Citizen Suit Notice to U.S. Environmental Protection Agency: Arkansas Is One of Twenty States Targeted

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A coalition of environmental groups represented by Earthjustice put the United States Environmental Protection Agency (EPA) on notice they intend to file a Clean Air Act citizen suit action over the agency's alleged failure to act on a non-discretionary federal Clean Air Act duty.

The coalition includes Downwinders at Risk, Appalachian Mountain Club, Sierra Club, Texas Environmental Advocacy Services, Air Alliance Houston, and Clean Wisconsin (collectively "coalition").

EPA is alleged to have failed to ensure that 20 states, including Arkansas, have plans in place to curb interstate transport of pollution to downwind states. These particular plans are necessary to limit the emissions of the 20 states so that affected downwind states can meet the 2008 ozone national ambient air quality standard (NAAQS), which was set at 75 parts per billion (ppb).

Two D.C. Circuit Court rulings precipitated the group's intent to sue. These rulings dealt blows to the program EPA had relied upon to determine the 20 states had no further obligations to downwind states for interstate emissions transport mitigation: the Cross-State Air Pollution Rule (CSAPR).

CSAPR was initially rolled out in 2011. It set caps on nitrogen oxides, an ozone precursor, in order to reduce upwind states' air pollution impacts on downwind states. The original was intended to help downwind states attain the 1997 ozone standard which was set at 84 ppb. EPA revised the emission caps downward in the 2016 update to aid states in meeting the 2008 ozone limit of 75 ppb.

The D.C. Circuit in a September 13, 2019 ruling remanded the 2016 CSAPR update to EPA. The Court held EPA failed to sync the update with ozone attainment standard deadlines. In a subsequent October 1, 2019 judgment, the D.C. Circuit vacated a companion to the 2016 CSAPR update, the CSAPR "close-out" rule.

The CSAPR "close-out" rule memorialized the findings of EPA's December 6, 2018 memo that the 2016 CSAPR update fully addressed certain upwind states' obligations under the Clean Air Act regarding interstate pollution transport for the 2008 ozone NAAQS. Because the 2016 CSAPR update is remanded and the CSAPR "close-out" rule vacated, those 20 upwind states are now temporarily left without a state or federal plan to address interstate transport for the 2008 ozone standard.

The current ozone standard was revised in 2015 to 70 ppb. On October 10, 2019, the Department of Energy and Environment, Division of Environmental Quality (DEQ), submitted a state plan to EPA addressing interstate transport of ozone precursors and visibility impairing pollutants to downwind states related to the 2015 ozone standard. EPA has not yet acted on that state plan submission.

The coalition's November 27, 2019 letter can be found [here](#).

A copy of the D.C. Circuit Court's September 13, 2019 Order can be downloaded [here](#).

A copy of the D.C. Circuit Court's October 1, 2019 Judgment can be downloaded [here](#).

A copy of EPA's December 6, 2018 memo can be downloaded [here](#).