

# Interstate Transport/Ozone: Arkansas Response to U.S. Environmental Protection Agency's Motion to Transfer Petition



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04/11/2023

Arkansas Attorney General Tim Griffin (“AG”) filed an April 6th response to a United States Environmental Protection Agency’s (“EPA”) motion to transfer the state’s petition challenging disapproval of the Arkansas State Implementation Plan (“SIP”) from the United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) to the District of Columbia Circuit (“D.C. Circuit”).

EPA had issued a final rule disapproving Arkansas’s and a number of other states SIPs regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards.

The State of Arkansas subsequently filed a petition before the Eighth Circuit challenging EPA’s disapproval of Arkansas’s SIP.

EPA has moved to transfer the petition to the D.C. Circuit. The Arkansas AG states that the federal agency had put forth the reasons for such transfer as including:

- Disapproval of Arkansas’s plan is a nationally applicable action exclusively reviewable in the D.C. Circuit
- Disapproval of Arkansas’s plan is at least based on a determination of nationwide scope

The AG’s brief counters that:

... EPA’s disapproval of Arkansas’s plan is not a nationally applicable action. The Clean Air Act’s venue provision says as much: “Any denial or disapproval” of a SIP is a “locally or regionally applicable” action, only reviewable in the appropriate regional circuit.

EPA has stated that the current disapproval is “different.” The AG responds that the federal agency’s rationale is because it was published in the Federal Register along with other SIP disapprovals.

The AG’s brief also addresses EPA’s common core argument (i.e., the need for consistent statutory interpretation of policy judgments applicable to all SIPs). It states that the exception for locally applicable actions (based on the determination of nationwide scope or affect) cannot:

... have so broad a meaning. Every EPA action on SIPs, absent profoundly arbitrary action, is based on some consistent statutory interpretation or policy choice; EPA may not interpret the Clean Air Act anew with each SIP it sees.

The venue statute is stated to be limited to nationwide determinations that “automatically preordain some mass up-or-down action on SIPs, without regard to state-specific considerations.

Instead of a “common core” of interpretation and policy choices, the AG argues that the states have individual emissions and circumstances that result in:

. . . 20-odd approvals and 20-odd disapprovals.

A copy of the brief can be downloaded [here](#).