

# Interstate Transport/Ozone: United State Supreme Court Issues Stay for D.C. Circuit Court of Appeals



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06/28/2024

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The United States Supreme Court issued on June 27th a stay on the Ozone Federal Implementation Plan (i.e., Good Neighbor Rule) while the District of Columbia Circuit Court of Appeals hears and decides the merits of the rule. See *Ohio et. al, v. EPA et al.*

The United States Supreme Court has therefore blocked further implementation of the United States Environmental Protection Agency (“EPA”) Good Neighbor Interstate Transport Ozone Rule pending a ruling on the merits in this Court.

United States Supreme Court Justice Neil Gorsuch wrote the majority opinion granting a request from various states and industry groups to stay the rule. The ruling was a 5-4 decision.

The petitioner states and industry groups were held in the majority opinion to be likely to succeed on their merits of the claims that EPA had not reasonably explained the rule. EPA was also stated to have not acknowledged the rule being stayed in 12 of the 23 states (including Arkansas).

In other words, the Federal Implementation Plan had already been stayed in the 12 states (including Arkansas) where the federal Circuit Courts of Appeals were considering the legality of EPA’s state implementation disapprovals.

The United States Court of Appeals, Eighth Circuit, had previously issued an Order granting the State of Arkansas’s Motion to Stay EPA’s Arkansas State Implementation Plan (“SIP”). The federal agency had issued a rule disapproving Arkansas’s, and a number of other states, SIPs regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards.

Arkansas’s Attorney General had filed a petition before the Eighth Circuit challenging EPA’s disapproval of Arkansas’s SIP. Further, a request to stay the EPA SIP disapproval was requested. Following the Eighth Circuit’s issuance of the stay, EPA issued a revision to the Good Neighbor Rule to exclude Arkansas from the Rule until the legal challenges to the SIP action were resolved.