



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

January 23, 2024

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Ohio, et al. v. EPA, et al., and consolidated applications, Nos. 23A349,
23A350, 23A351, 23A384

Dear Mr. Harris:

The above-captioned applications concern various challenges to EPA's final rule establishing an emissions-control program for large industrial polluters in certain States, after EPA concluded in a separate rule that each of those States had failed to submit a plan that complies with a statutory requirement to address their pollution affecting downwind States. On January 16, 2024, EPA Administrator Michael Regan signed a proposed rule that would address five additional States' obligations under the same statutory requirement and proposes federal implementation plans that would include those States in the program established by the rule at issue in this case. The proposed rule was made available on EPA's website today. See EPA, Supplemental Air Plan Actions: Interstate Transport of Air Pollution for the 2015 8-hour Ozone National Ambient Air Quality Standards and Supplemental Federal "Good Neighbor Plan" Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards, <https://perma.cc/T2RK-TS66>. The proposed rule was issued in compliance with a consent decree that obligates EPA to issue the proposal by February 12, 2024, and to sign a final rule by August 30. See Downwinders at Risk v. Regan, No. 21-cv-3551, Doc. 34 (N.D. Cal. Oct. 26, 2023).

To the extent that this Court's forthcoming decision on the pending applications affects the validity of the proposed rule, EPA will of course take that into account before finalizing the rule.

I would appreciate it if you could circulate this letter to Members of the Court.

Sincerely,

Elizabeth B. Prelogar
Solicitor General

cc: See Attached Service List

SERVICE LIST: 23A349, 23A350, 23A351, 23A384 – Ohio, et al. v. EPA, et al. consolidated cases.

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