

IN THE SUPREME COURT OF THE UNITED STATES

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Nos. 23A349, 23A350, 23A351, 23A384

OHIO ET AL. (No. 23A349)  
KINDER MORGAN, INC., ET AL. (No. 23A350)  
AMERICAN FOREST & PAPER ASSOCIATION, ET AL. (No. 23A351)  
UNITED STATES STEEL CORPORATION (No. 23A384)  
APPLICANTS

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL.

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ON APPLICATIONS FOR STAY OF AGENCY ACTION  
PENDING PETITIONS FOR REVIEW

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MOTION FOR DIVIDED ARGUMENT

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Pursuant to Rule 28.4 of the Rules of this Court, the Solicitor General, on behalf of the federal respondents, respectfully moves to divide oral argument for respondents in these cases as follows: 20 minutes for the federal respondents and 10 minutes for the state respondents. Counsel for the state respondents and counsel for the public interest respondents have authorized us to state that they join in this motion.

This case concerns various challenges to the EPA's final rule entitled Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 36,654 (June 5, 2023).

That Rule establishes an emissions-control program for large industrial polluters in certain States, after EPA concluded that each of those States had failed to comply with requirements to submit a plan that reduces pollution affecting downwind States. Numerous States and industry participants petitioned for review in the D.C. Circuit, arguing that the Rule is arbitrary and capricious and seeking a stay of its implementation pending the disposition of their petitions for review. The state respondents and public interest respondents intervened in support of the Rule and opposed the stay motions. The D.C. Circuit declined to enter a stay. Applicants then filed emergency applications in this Court seeking a stay of the Rule pending consideration of their petitions for review. This Court deferred consideration of the applications pending oral argument.

Dividing the argument time for respondents would be of material assistance to this Court. The federal respondents have a significant interest in these applications because they involve EPA rulemakings. The state respondents have a significant interest in these applications because the Rule and underlying statute are intended to address pollution that crosses state boundaries, causing injury to downwind States and their residents. The state respondents are among the downwind States protected by the Rule and underlying statute. Delaying the phase-in of emissions reductions for applicants would increase the economic and regulatory burdens of achieving healthy air quality on downwind

States and would prolong and exacerbate harms to their residents' health and welfare. We accordingly request that the Court grant this motion for divided argument.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

JANUARY 2024