



SCOTUS Stays Enforcement of EPA's "Good Neighbor Plan"

Client Advisories

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By: Thomas J. Tyrrell, Marc A. Rollo

On June 27, 2024, the United States Supreme Court curbed the regulatory power of the administrative state, temporarily halting the Environmental Protection Agency's "Good Neighbor Plan," intended to limit air pollution traveling across state lines. This decision comes after Ohio, Indiana, West Virginia, and a handful of power and manufacturing industry groups challenged the plan under the Administrative Procedure Act and Clean Air Act. As a result, the EPA cannot enforce its plan until the resolution of the underlying legal challenges.

The Good Neighbor Plan aims to protect downwind states that receive unwanted air pollution by significantly reducing emissions of nitrogen oxides from industrial facilities and power plants in twenty-three upwind states. Under the Good Neighbor Plan, each upwind state was given the opportunity to create a plan to reduce its downwind emissions. In 2023, the EPA decided that all twenty-three states had not provided sufficient plans and published its own federal plan for the states to follow.

Ohio, Indiana, West Virginia, U.S. Steel Corp., and natural gas and energy groups challenged the EPA's Good Neighbor Plan asserting that the nationwide plan takes possession of the state's authority to design their own policies for managing emissions and forces purportedly impractical standards on companies. The number of affected states has since dropped to eleven as many circuit courts have already stayed the use of the plan after lawsuits were brought in individual states.

The challengers of the Good Neighbor Plan claim that EPA's use of its own plan constitutes a government overreach and adds a financial burden for costly adjustments needed under the EPA's plan. They argue that the plan conflicts with the CAA's instruction, giving individual states the authority to control their emissions. They also claim that the plan violates the APA by failing to adequately address concerns raised in comments, overstepping public concern. The EPA argues that it has given a reasonable explanation for creating the nationwide plan to decrease power plant emissions, which the agency believes is crucial to reduce interstate

pollution and create a clean environment.

In June 2024, the United States Supreme Court sided with the states and temporarily blocked the Good Neighbor Plan, finding that the states were likely to succeed on their challenges in the lower courts. The Court held that although the plan would help improve air quality, it would also violate the states' interests in controlling their own manufacturing and residents. The Court further expressed that the EPA did not clarify or address the states' concerns regarding the plan, as required under the APA.

The fate of the Good Neighbor Plan will now be decided by the lower courts hearing the states' challenges. For any questions, please contact **Marc Rollo** at mrollo@archerlaw.com or 856.673.3932 or **Thomas Tyrrell** at ttyrrell@archerlaw.com or 856.673.7149.

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Related People



Marc A. Rollo

Partner

✉ mrollo@archerlaw.com

☎ 856.354.3061



Thomas J. Tyrrell

Associate

✉ ttyrrell@archerlaw.com

☎ 856.673.7149

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