

Supreme Court Bolsters EPA Discretion by Denying *Certiorari* in Regional Haze Cases

JUNE 2, 2014

On May 27, 2014, the Supreme Court denied *certiorari* in two regional haze cases, effectively upholding EPA's partial disapproval of the Oklahoma and North Dakota regional haze SIPs and promulgation of FIPs for both states. The petitioners in *Oklahoma v. EPA* argued that EPA abused its discretion by conducting *de novo* review of Oklahoma's regional haze SIP and substituting its judgment for that of the state in making BART determinations for affected sources. In *North Dakota v. EPA* the petitioner argued that the 8th Circuit applied the incorrect standard of review by deferring to EPA's determinations in disapproving North Dakota's regional haze SIP rather than deferring to the state's BART determinations. Justice Alito did not participate in the consideration of Oklahoma's petition.

The Court's denial of *certiorari* in *Oklahoma* and *North Dakota* validates EPA's aggressive approach in reviewing regional haze SIPs in western states. Industry and states are concerned that the Court's refusal to check the broad deference afforded to EPA by the 8th and 10th circuits could influence other circuit courts in which similar regional haze litigation is pending. The denial of *certiorari* could also embolden EPA to continue disapproving regional haze SIPs and subjecting states and industry to stringent and costly FIPs.

This pair of denials of *certiorari* is just the latest from the Supreme Court bolstering EPA's discretion: earlier this month, in *EPA v. EME Homer City Generation*, the Supreme Court overturned the D.C. Circuit's vacatur of the Cross-State Air Pollution Rule. Administrator McCarthy lauded the Court's decision, stating that it "provided a wonderful platform and boost to the agency as we're going into greenhouse gas rulemaking." EPA announced its proposed greenhouse gas performance standards for existing coal-fired power plants on June 2.

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