Interstate Transport/Ozone: Eighth Circuit Court of Appeals Rejects U.S. Environmental Protection Agency's Motion to Transfer Arkansas's Petition

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The United States Court of Appeals, Eighth Circuit ("Eighth Circuit") issued an Order on April 25th denying the United States Environmental Protection Agency's ("EPA") Motion to Transfer the State of Arkansas's petition challenging disapproval of the Arkansas State Implementation Plan ("SIP") from the Eighth Circuit to the District of Columbia Circuit ("D.C. Circuit").

EPA had issued a final rule disapproving Arkansas's and a number of other states' SIPs regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards.

Attorney General Tim Griffin subsequently filed a petition before the Eighth Circuit challenging EPA's disapproval of Arkansas's SIP.

EPA had moved to transfer the petition to the D.C. Circuit.

The Attorney General's brief in response to EPA's request stated in part:

. . . EPA's disapproval of Arkansas's plan is not a nationally applicable action. The Clean Air Act's venue provision says as much: "Any denial or disapproval" of a SIP is a "locally or regionally applicable" action, only reviewable in the appropriate regional Circuit Court.

The Eighth Circuit Order issued on April 25th states in response to EPA's request:

Respondent's motion to transfer or dismiss the petition for review is denied. The briefing schedule is removed from abeyance. Petitioner's brief is due May 25, 2023.

A copy of the Order can be downloaded here.