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# Supreme Court Clarifies Framework for Determining Venue in Clean Air Act Litigation

Client Alert | June 18, 2025

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***EPA v. Calumet Shreveport Refining, LLC*, No. 23-1229** – Decided June 18, 2025

**Today, the Supreme Court held 7-2 that, if EPA denies a Clean Air Act exemption as part of an "*en masse*" decision—applying one reasoning to multiple petitions—venue lies exclusively in the D.C. Circuit, even though the individual decisions are only locally or regionally applicable.** *"[A]n action is 'based on a determination of nationwide scope or effect' . . . if such a determination supplies a core justification for EPA's action . . . ."* Justice Thomas, writing for the Court

**Background:**

The Clean Air Act requires oil refiners to blend certain amounts of renewable fuel into transportation fuel sold within the United States. The Environmental Protection Agency (EPA) implements this requirement through the Renewable Fuel Standard program. The law permits small refineries to petition EPA for an exemption. Denial of a petition, like all EPA actions under the Clean Air Act, is reviewable in a federal court of appeals. 42 U.S.C. § 7607(b)(1). If EPA's decision is "locally or regionally applicable," venue lies in the refinery's regional court of appeals; if it's "nationally applicable" or "based on a determination of nationwide scope or effect," venue is in the D.C. Circuit. *Id.* In April and June 2022, EPA denied the exemption petitions of 105 small refineries in two omnibus notices that (1) described these *en masse* denials as a "new approach" to renewable-fuel exemptions and (2) stated that the denials were reviewable only in the D.C. Circuit. The refineries nevertheless sought review in their regional court—the Fifth Circuit. EPA moved to transfer to the D.C. Circuit on the ground that they were made *en masse* with respect to 105 refineries nationwide as part of a broader policy change so the denials qualified as "nationally applicable" or "based on a determination of nationwide scope and effect" under Section 7607(b)(1). A divided panel of the Fifth Circuit held that it had venue over Plaintiffs' claims. The Fifth Circuit held that EPA's exemption decisions were "locally or regionally applicable" because their "legal effect" was limited to the petitioning refineries and did not bind EPA in any future adjudication. On the merits, the Fifth Circuit held the challenged exemption decisions were unlawful. EPA sought certiorari, asserting that the Fifth Circuit's decision was inconsistent with the Eleventh Circuit's decision in a different case challenging the same *en masse* denial, as well as the decisions of several other circuits in similar circumstances.

**Issue:**

Under what circumstances is a decision by EPA "nationally applicable" or "based on a determination of nationwide scope or effect," such that it may only be reviewed by the U.S. Courts of Appeals for the D.C. Circuit?

**Court's Holding:**

An EPA "action" (defined by the Court to include only the enumerated acts Congress authorized EPA to take) is "nationally applicable" when "[o]n its face" it applies throughout the entire country. An EPA "determination" (defined by the Court to include

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any justification EPA gives for taking an action) is "of nationwide scope" if it applies throughout the country as a matter of law. An EPA "determination" is "of nationwide . . . effect" if it applies throughout the country as a matter of fact. In this case, the Court concluded that each denial of a single refinery's petition was a separate "action," but that the decisions were of nationwide scope or effect because EPA made each decision on the same legal basis. Venue accordingly lay in the D.C. Circuit.

**What It Means:**

- The opinion distinguishes between "actions," "determinations of national scope," and "determinations of national effect," establishing three different paths for EPA to lay exclusive venue in the D.C. Circuit.
- Courts analyzing venue in actions against EPA will need to walk through the two-step, tripartite system laid out in this opinion. First, a court will need to assess whether EPA's statutorily authorized "action" applies nationwide on its face. If it does, venue will lie exclusively in the D.C. Circuit. Even if it does not, however, a court will still need to determine whether EPA's reasoning for that act applies nationwide—"as a legal matter (de jure)" or "as a practical one (de facto)."
- This ruling reaffirms the special role of the D.C. Circuit, as distinct from the other Courts of Appeals, in reviewing certain agency actions.
- Litigants seeking to challenge EPA determinations may be more likely to find themselves limited to the D.C. Circuit—rather than potentially preferable courts in their own localities—when denials are made in *en masse* bundles supported by broad-reaching determinations.
- In a companion case also decided today, *Oklahoma v. EPA*, No. 23-1067, the Court applied the *Calumet* rule to hold that EPA's disapproval of state implementation plans could be challenged in regional circuit courts. There, states and industry groups challenged EPA's disapproval of state implementation plans for Oklahoma and Utah in the Tenth Circuit, which held that the challenges should have been brought in the D.C. Circuit. The Supreme Court reversed. Under the first step of *Calumet*'s two-step inquiry, the Court determined the relevant "action" is EPA's disapproval of the state implementation plans, which is a prototypical locally or regionally applicable action. Under the second step of *Calumet*, the Court concluded that the disapprovals "were not based on any determination of nationwide scope or effect" because, unlike in *Calumet*, the disapprovals were based on a "fact-intensive, state-specific analysis."
- The Court's decision in *Oklahoma v. EPA* provides practical guidance on the *Calumet* framework and resolves uncertainty over the venue rules governing challenges to disapprovals of state implementation plans. Challenges to disapprovals of state implementation based on state-specific analysis may be filed in regional circuit courts.

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The Court's opinions are available here (*Calumet*) and here (*Oklahoma*). Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders: **Appellate and Constitutional Law**


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