

# **AWMA, Louisiana Section January 2024 Dinner Meeting**

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Louisiana Chemical Association  
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# Industry Litigation Update

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- State of Louisiana v. EPA I (W.D. La.)
- State of Louisiana v. EPA II (W.D. La.)
- 2015 Interstate Ozone Transport SIP/Good Neighbor Plan FIP Litigation
- Petition for Review of EPA's MON RTR Reconsideration Rule

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# State of Louisiana v. EPA I (W.D. La.)

- April 2022: Environmental groups in St. James and St. John the Baptist parishes filed two Civil Rights complaints against LDEQ and LDH.
- EPA agreed to investigate the agencies and had 180 days to issue initial findings.
- October 12, 2022: EPA issued a letter of concern to LDEQ and LDH.
- The parties entered into an informal mediation process.
- May 24, 2023: The State of Louisiana filed a lawsuit against EPA seeking to challenge EPA and the federal government's underlying authority to enforce the Title VI of the Civil Rights Act.
- June 27, 2023: EPA closed the Title VI complaints, stating in part that proposed regulations would achieve its purpose in protecting vulnerable communities.
- The State amended the complaint, dropping references to the Title VI complaints, but still challenging EPA and other federal agencies' underlying authority to enforce the Civil Rights Act.
- EPA filed a response arguing the State's lawsuit should be dismissed, as there is no longer any alleged injury to the State after EPA dismissed the Title VI complaints.
- January 9, 2024: Oral arguments took place in front of Judge James Cain of the Western District of Louisiana.

## **State of Louisiana v. EPA II (W.D. La.)**

- December 19, 2023: Louisiana -filed a lawsuit against EPA for failing to respond to a Freedom of Information Act (FOIA) request seeking information related to EPA's Title VI claims from March 1, 2021, to present.

## 2015 Interstate Ozone Transport SIP/Good Neighbor Plan FIP Litigation (Fifth Circuit Litigation)

- November 12, 2019: LDEQ submitted its interstate ozone transport SIP.
- February 28, 2022: EPA proposed disapproval of LA's submittal along with 25 other states.
- April 6, 2022: EPA proposed a FIP.
- Industry submitted comments on both proposals.
- January 31, 2023: EPA finalized disapproval for 21 states, effective on March 15, 2023.
- March 16, 2023: AG filed suit on behalf of the state.
- April 14, 2023: Louisiana industry petitioners filed suit.
- May 1, 2023: Stay of the Louisiana SIP disapproval granted by the Fifth Circuit.
- May 30, 2023: Louisiana industry petitioners filed a brief.
- All briefing was completed by early September 2023.
- December 4, 2023: Oral argument took place at the Fifth Circuit.

## 2015 Interstate Ozone Transport SIP/Good Neighbor Plan FIP Litigation (D.C. Circuit Litigation)

- June 5, 2023: EPA finalized the Good Neighbor Plan (GNP)/FIP; did not acknowledge stay of SIP disapprovals.
- July 2023: Nearly one dozen states, including Louisiana, filed motions to stay the FIP for their states, to confirm venue in their respective Circuit Courts, and to hold the challenges in abeyance until the litigation over EPA's disapproval of the SIPs are resolved. Some states filed motions instead in the D.C. Circuit.
- July 31, 2023: EPA issues Interim Final Rule (IFR) excluding Louisiana and 5 other states from being subject to the FIP, pending judicial review.
- September 25, 2023: The D.C. Circuit declined to stay the GNP for other states where the SIP disapprovals are not currently stayed.
- October 16, 2023: Ohio, Indiana, and West Virginia petitioned the Supreme Court to stay the GNP in all 23 states initially covered under the rule.
- December 20, 2023: The Supreme Court issued an order, setting argument before the Court in February 2024. Per the order: "Arguing counsel should be prepared to address, among other issues related to the challenge based on the SIP disapprovals, whether the emissions controls imposed by the Rule are reasonable regardless of the number of States subject to the Rule."
- January 4, 2024: Ohio, Indiana, and West Virginia filed an emergency motion, asking the D.C. Circuit for a stay of the current briefing schedule, pending the Supreme Court's decision on whether to stay the GNP nationwide.

# Petition for Review of EPA's MON RTR Reconsideration Rule

- February 2, 2022: EPA proposes its MON RTR Reconsideration Rule.
- LCA submits comments in opposition to the proposal.
- December 21, 2022: EPA finalizes its MON RTR Reconsideration Rule.
- February 21, 2023: LCA and the American Chemistry Council (ACC) filed a joint petition for review of the final action. Huntsman filed separately. The suits have been consolidated.
- July 24, 2023: Petitioners filed their opening brief; final briefs were filed on January 16, 2024.
- Oral arguments will take place on February 16, 2024, at 9:30 am.



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**Thank you**

