

Justices Rewrite Rules For Challenging Enviro Agency Actions

By **Tim Sowecke and Tyler Self** (July 3, 2025)

In a trio of high-impact rulings issued in recent weeks — *Nuclear Regulatory Commission v. Texas*, *Oklahoma v. U.S. Environmental Protection Agency* and *EPA v. Calumet Shreveport Refining LLC* — the U.S. Supreme Court redefined key procedural boundaries that govern environmental and administrative law challenges.

From standing under the Hobbs Act to venue selection under the Clean Air Act, the court reaffirmed the power of federal agencies to channel review and insulate their decisions by carefully structuring both process and rationale.

This article breaks down how these decisions affect stakeholders seeking to challenge environmental regulations, and offers practical guidance for navigating judicial review pathways.

A Person Is Not a Party: Nuclear Regulatory Commission v. Texas

On June 18, the Supreme Court, in a 6-3 decision authored by Justice Brett Kavanaugh, reversed the U.S. Court of Appeals for the Fifth Circuit's 2023 vacatur of the NRC's 2021 license for Interim Storage Partners' private spent nuclear fuel facility not co-located with nuclear reactors in Andrews County, Texas.

The majority held that neither the state of Texas nor Fasken Land and Minerals qualified as "party[ies] aggrieved" under the Hobbs Act, because they were not license applicants and were never admitted as intervenors in the NRC's licensing proceeding.

Accordingly, the challengers lacked standing to seek judicial review, and the court declined to reach the merits of whether the Atomic Energy Act permits off-site private storage of spent nuclear fuel.

Under the Hobbs Act, only a "party aggrieved" by an NRC proceeding may later challenge the NRC's decision in court. The NRC argued this means a person must have been formally admitted as a party in the licensing process.

The challengers disagreed, claiming anyone — regardless of earlier participation — can challenge agency actions as unconstitutional or beyond statutory authority. The court rejected the challengers' view.

It found that "party aggrieved" under the Hobbs Act is narrower than "person aggrieved" under the Administrative Procedure Act, indicating Congress intended different standards. The court also pointed to the Atomic Energy Act, which requires the NRC to admit qualified "persons" as "parties" in proceedings — reinforcing that "party" is a distinct and more limited term.

Accordingly, the court held that the challengers were ineligible to bring the lawsuit, and thus did not need to reach the merits on the NRC's waste facility licensing authority.



Tim Sowecke



Tyler Self

Although the court did not rule on the NRC's licensing authority, the majority emphasized that the issue is not clearly against the NRC. It cited a 1983 Supreme Court case recognizing the NRC's role in regulating spent fuel storage under the Atomic Energy Act, reinforcing that nuclear waste disposal falls under federal authority.

The majority also noted that the NRC has licensed private, temporary off-site storage facilities since 1971, with about 10 such facilities currently operating away from reactors.

Thus, aside from its important person v. party distinction, the ruling effectively affirms the NRC's authority to license private, temporary, off-site storage sites, clearing the path not only for ISP's Texas facility but also for similar projects.

By reaffirming that procedural prerequisites, like formal party status, are "jurisdictional gatekeepers," the court bolsters agencies' reliance on statutory review schemes to insulate their decisions from collateral challenge.

It also marks one of the few recent high court decisions upholding, rather than curbing, federal agency power, coming on the heels of rulings that have limited deference to agencies such as the EPA and the U.S. Securities and Exchange Commission — e.g., *West Virginia v. EPA* in 2022, and *SEC v. Jarkesy* and *Loper Bright v. Raimondo* in 2024.

For environmental and administrative law more broadly, the decision underscores two key takeaways. First, participation in related NEPA processes, such as filing comments on a draft environmental impact statement, does not necessarily confer party status or automatic judicial review rights in an agency's underlying licensing proceeding.

Second, challengers must carefully preserve and litigate intervention rights at the agency level before the court, or risk forfeiting the ability to contest substantive regulatory decisions.

These lessons will likely shape future challenges under statutes such as the Clean Water Act and the Clean Air Act, as well as other environmental regimes that similarly channel review through specific administrative avenues.

Clean Air Act Jurisdictional Divide: Local vs. National

The Clean Air Act directs judicial review of EPA actions to either the U.S. Court of Appeals for the District of Columbia Circuit or a regional circuit, depending on the action's scope.

Section 307 of the act — Title 42 of the U.S. Code, Section 7607 — outlines three categories of final agency actions and the appropriate venue for challenging those actions:

1. "Nationally applicable" actions, reviewed in the D.C. Circuit;
2. "Locally or regionally applicable" actions reviewed in regional circuits; and
3. An exception for locally or regionally applicable actions that must be heard in the D.C. Circuit if the EPA determines the action has a nationwide scope or effect and publishes a finding to that effect.

In companion cases, *Oklahoma v. EPA* and *EPA v. Calumet Shreveport Refining*, the Supreme Court examined these venue dynamics in the context of EPA actions addressing

local issues under a claimed national standard.

Oklahoma v. Environmental Protection Agency

On June 18, in an 8-0 opinion by Justice Clarence Thomas, the court held that the EPA's disapproval of Oklahoma's and Utah's state implementation plans under the Clean Air Act are discrete "locally or regionally applicable" actions reviewable in the regional circuits.

Rejecting the U.S. Court of Appeals for the Tenth Circuit's transfer to the D.C. Circuit on the theory that an omnibus Federal Register rule covering 21 states made the SIP disapprovals nationwide, the court applied its two-step Section 7607(b)(1) test: first, identifying each SIP disapproval as its own action, and second, confirming that none rested on a determination of "nationwide scope or effect" but rather on fact-intensive, state-specific analyses.

This ruling sharpens the Clean Air Act's venue framework, preserving petitioners' ability to remain in regional circuits where localized expertise — and often more favorable precedent — may lie.

By reaffirming that only actions grounded in a core, nationwide policy determination trigger review in the D.C. Circuit, the decision reinstates the importance of a well-timed intervention and careful pleading at the agency level. Practitioners can now advise clients that challenges to SIP disapprovals will proceed regionally unless accompanied by an EPA finding of national effect, reducing forum shopping uncertainty.

More broadly, *Oklahoma v. EPA* underscores the cooperative federalism underpinnings of the Clean Air Act, and sends a clear signal to agencies and litigants alike: Venue provisions are jurisdictional gatekeepers, not mere technicalities.

This principle will resonate across other environmental statutes, such as the Clean Water Act and Safe Drinking Water Act, that similarly channel review through specific administrative and judicial pathways. Future challenges will turn as much on procedural posture as on substantive merits, making early strategic choices all the more critical.

Environmental Protection Agency v. Calumet Shreveport Refining

In a 7-2 companion ruling also by Justice Thomas, the Supreme Court held that the EPA's omnibus denials of small refinery exemption petitions under the Renewable Fuel Standard, though "locally or regionally applicable," nonetheless fell within the Clean Air Act's nationwide scope or effect exception, and thus must be challenged in the D.C. Circuit.

The court reasoned that the EPA's uniform "core justification," its interpretation of "disproportionate economic hardship," and its renewable identification numbers passthrough economic theory — i.e., that compliance costs are passed through to consumers — applied generically to all small refineries, giving the agency's decision both nationwide legal force and practical effect.

Calumet refines the Section 7607(b)(1) analysis by distinguishing between facial applicability and the underlying rationale driving agency action. Drawing on the court's new multistep test, judges must ask not only whether an action facially applies nationwide, but also whether its core reasoning is supported by law and as a matter of fact.

As a result, the EPA can steer challenges into the D.C. Circuit by anchoring decisions on uniform policy grounds, while petitioners must guard against more general omnibus notices

that foreground national determinations — even if they rest on refinery-specific facts.

Taken together, these companion opinions deliver a powerful lesson for environmental law and agency strategy: Venue is as much a function of an agency's framing of its rationale as of the geographic reach of its action.

Regulators seeking to insulate policy choices from fragmented regional challenges will now structure adjudications to emphasize uniform justifications, while challengers will scrutinize administrative records for signs of legitimate nationwide reasoning.

Conclusion

These three rulings constitute a jurisprudential watershed in administrative and environmental law, reaffirming that statutory standing and venue provisions are the backbone of coherent judicial review.

By resolving critical ambiguities over who may challenge agency actions and where challenges must be brought, the court has furnished agencies with clear procedural guardrails and litigants with definitive checklists for contesting regulatory decisions.

These rulings will reshape environmental litigation, calling for meticulous procedural planning and strategic foresight.

Tim Sowecke is a shareholder and Tyler Self is an associate at GableGotwals.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.