

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ENVIRONMENTAL PROTECTION AGENCY ET AL. *v.*
EME HOMER CITY GENERATION, L. P., ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12–1182. Argued December 10, 2013—Decided April 29, 2014*

Congress and the Environmental Protection Agency (EPA or Agency) have, over the course of several decades, made many efforts to deal with the complex challenge of curtailing air pollution emitted in upwind States, but causing harm in other, downwind States. As relevant here, the Clean Air Act (CAA or Act) directs EPA to establish national ambient air quality standards (NAAQS) for pollutants at levels that will protect public health. 42 U. S. C. §§7408, 7409. Once EPA settles on a NAAQS, the Agency must designate “nonattainment” areas, *i.e.*, locations where the concentration of a regulated pollutant exceeds the NAAQS. §7407(d). Each State must submit a State Implementation Plan, or SIP, to EPA within three years of any new or revised NAAQS. §7410(a)(1). From the date EPA determines that a State SIP is inadequate, the Agency has two years to promulgate a Federal Implementation Plan, or FIP. §7410(c)(1). Among other components, the CAA mandates SIP compliance with the Good Neighbor Provision, which requires SIPs to “contain adequate provisions . . . prohibiting . . . any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will . . . contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any . . . [NAAQS].” §7410(a)(2)(D)(i).

Several times over the past two decades, EPA has attempted to delineate the Good Neighbor Provision’s scope by identifying when

*Together with No. 12–1183, *American Lung Association et al. v. EME Homer City Generation, L. P., et al.*, also on certiorari to the same court.

Syllabus

upwind States “contribute significantly” to nonattainment downwind. The D. C. Circuit found fault with the Agency’s 2005 attempt, the Clean Air Interstate Rule, or CAIR, which regulated both nitrogen oxide (NO_x) and sulfur dioxide (SO₂) emissions, the gasses at issue here. The D. C. Circuit nevertheless left CAIR temporarily in place, while encouraging EPA to act with dispatch in dealing with problems the court had identified.

EPA’s response to that decision is the Cross-State Air Pollution Rule (Transport Rule), which curbs NO_x and SO₂ emissions in 27 upwind States to achieve downwind attainment of three NAAQS. Under the Transport Rule, an upwind State “contribute[d] significantly” to downwind nonattainment to the extent its exported pollution both (1) produced one percent or more of a NAAQS in at least one downwind State and (2) could be eliminated cost-effectively, as determined by EPA. Upwind States are obliged to eliminate only emissions meeting both of these criteria. Through complex modeling, EPA created an annual emissions “budget” for each regulated State upwind, representing the total quantity of pollution an upwind State could produce in a given year under the Transport Rule. Having earlier determined each regulated State’s SIP to be inadequate, EPA, contemporaneous with the Transport Rule, promulgated FIPs allocating each State’s emissions budgets among its in-state pollution sources.

A group of state and local governments (State respondents), joined by industry and labor groups (Industry respondents), petitioned for review of the Transport Rule in the D. C. Circuit. The court vacated the rule in its entirety, holding that EPA’s actions exceeded the Agency’s statutory authority in two respects. Acknowledging that EPA’s FIP authority is generally triggered when the Agency disapproves a SIP, the court was nevertheless concerned that States would be incapable of fulfilling the Good Neighbor Provision without prior EPA guidance. The court thus concluded that EPA must give States a reasonable opportunity to allocate their emission budgets before issuing FIPs. The court also found the Agency’s two-part interpretation of the Good Neighbor Provision unreasonable, concluding that EPA must disregard costs and consider exclusively each upwind State’s physically proportionate responsibility for air quality problems downwind.

Held:

1. The CAA does not command that States be given a second opportunity to file a SIP after EPA has quantified the State’s interstate pollution obligations. Pp. 13–18.

(a) The State respondents do not challenge EPA’s disapproval of any particular SIP. Instead, they argue that, notwithstanding these disapprovals, the Agency was still obliged to grant upwind States an

Syllabus

additional opportunity to promulgate adequate SIPs after EPA had set the State’s emission budget. This claim does not turn on the validity of the prior SIP disapprovals, but on whether the CAA requires EPA do more than disapprove a SIP to trigger the Agency’s authority to issue a FIP. Pp. 13–14.

(b) The CAA’s plain text supports the Agency: Disapproval of a SIP, without more, triggers EPA’s obligation to issue a FIP. The statute sets precise deadlines for the States and EPA. Once EPA issues any new or revised NAAQS, a State “shall” propose a SIP within three years, 42 U. S. C. §7410(a)(1), and that SIP “shall” include, *inter alia*, provisions adequate to satisfy the Good Neighbor Provision, §7410(a)(2). If the EPA finds a SIP inadequate, the Agency has a statutory duty to issue a FIP “at any time” within two years. §7410(c)(1). However sensible the D. C. Circuit’s exception to this strict time prescription may be, a reviewing court’s “task is to apply the text [of the statute], not to improve upon it.” *Pavelic & LeFlore v. Marvel Entertainment Group, Div. of Cadence Industries Corp.*, 493 U. S. 120, 126. Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Nor does the Act condition the duty to promulgate a FIP on EPA’s having first quantified an upwind State’s good neighbor obligations. By altering Congress’ SIP and FIP schedule, the D. C. Circuit allowed a delay Congress did not order and placed an information submission obligation on EPA Congress did not impose. Pp. 14–17.

(c) The fact that EPA had previously accorded upwind States a chance to allocate emission budgets among their in-state sources does not show that the Agency acted arbitrarily by refraining to do so here. EPA retained discretion to alter its course provided it gave a reasonable explanation for doing so. *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 42. Here, the Agency had been admonished by the D. C. Circuit to act with dispatch in amending or replacing CAIR. Endeavoring to satisfy that directive, EPA acted speedily, issuing FIPs and the Transport Rule contemporaneously. Pp. 17–18.

2. EPA’s cost-effective allocation of emission reductions among upwind States is a permissible, workable, and equitable interpretation of the Good Neighbor Provision. Pp. 18–31.

(a) Respondents’ attack on EPA’s interpretation of the Good Neighbor Provision is not foreclosed by §7607(d)(7)(B), which provides that “[o]nly an objection to a rule . . . raised with reasonable specificity during the period for public comment . . . may be raised during judicial review.” Even assuming that respondents failed to object to the Transport Rule with “reasonable specificity,” that lapse is not jurisdictional. Section 7607(d)(7)(B) is a “mandatory,” but not

Syllabus

“jurisdictional,” rule, see *Arbaugh v. Y & H Corp.*, 546 U. S. 500, 510, which speaks to a party’s procedural obligations, not a court’s authority, see *Kontrick v. Ryan*, 540 U. S. 443, 455. Because EPA did not press this argument unequivocally before the D. C. Circuit, it does not pose an impassable hindrance to this Court’s review. Pp. 18–19.

(b) This Court routinely accords dispositive effect to an agency’s reasonable interpretation of ambiguous statutory language. The Good Neighbor Provision delegates authority to EPA at least as certainly as the CAA provisions involved in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837. EPA’s authority to reduce upwind pollution extends only to those “amounts” of pollution that “contribute significantly to nonattainment” in downwind States. §7410(a)(2)(D)(i). Because a downwind State’s excess pollution is often caused by multiple upwind States, however, EPA must address how to allocate responsibility among multiple contributors. The Good Neighbor Provision does not dictate a method of apportionment. Nothing in the provision, for example, directs the proportional allocation method advanced by the D. C. Circuit, a method that works neither mathematically nor in practical application. Under *Chevron*, Congress’ silence effectively delegates authority to EPA to select from among reasonable options. See *United States v. Mead Corp.*, 533 U. S. 218, 229.

EPA’s chosen allocation method is a “permissible construction of the statute.” *Chevron*, 467 U. S., at 843. The Agency, tasked with choosing which among equal “amounts” to eliminate, has chosen sensibly to reduce the amount easier, *i.e.*, less costly, to eradicate. The Industry respondents argue that the final calculation cannot rely on costs, but nothing in the Good Neighbor Provision’s text precludes that choice. And using costs in the Transport Rule calculus is an efficient and equitable solution to the allocation problem the Good Neighbor Provision compels the Agency to address. Efficient because EPA can achieve the same levels of attainment, *i.e.*, of emission reductions, the proportional approach aims to achieve, but at a much lower overall cost. Equitable because, by imposing uniform cost thresholds on regulated States, EPA’s rule subjects to stricter regulation those States that have done less in the past to control their pollution. Pp. 20–28.

(c) Wholesale invalidation of the Transport Rule is not justified by either of the D. C. Circuit’s remaining objections: that the Transport Rule leaves open the possibility that a State might be compelled to reduce emissions beyond the point at which every affected downwind State is in attainment, so-called “over-control”; and that EPA’s use of costs does not foreclose the possibility that an upwind State would be required to reduce its emissions by so much that

Syllabus

the State would be placed below the one-percent mark EPA set as the initial threshold of “significan[ce].” First, instances of “over-control” in particular downwind locations may be incidental to reductions necessary to ensure attainment elsewhere. As the Good Neighbor Provision seeks attainment in *every* downwind State, however, exceeding attainment in one State cannot rank as “over-control” unless unnecessary to achieving attainment in *any* downwind State. Second, the EPA must have leeway in fulfilling its statutory mandate to balance the possibilities of over-control and “under-control,” *i.e.*, to maximize achievement of attainment downwind. Finally, in a voluminous record, involving thousands of upwind-to-downwind linkages, respondents point to only a few instances of “unnecessary” emission reductions, and even those are contested by EPA. Pp. 28–31.

696 F. 3d 7, reversed and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a dissenting opinion, in which THOMAS, J., joined. ALITO, J., took no part in the consideration or decision of the cases.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 12–1182 and 12–1183

ENVIRONMENTAL PROTECTION AGENCY ET AL.,
PETITIONERS

12–1182

v.

EME HOMER CITY GENERATION, L. P., ET AL.; AND

AMERICAN LUNG ASSOCIATION ET AL.,
PETITIONERS

12–1183

v.

EME HOMER CITY GENERATION, L. P., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April 29, 2014]

JUSTICE GINSBURG delivered the opinion of the Court.

These cases concern the efforts of Congress and the Environmental Protection Agency (EPA or Agency) to cope with a complex problem: air pollution emitted in one State, but causing harm in other States. Left unregulated, the emitting or upwind State reaps the benefits of the economic activity causing the pollution without bearing all the costs. See Revesz, *Federalism and Interstate Environmental Externalities*, 144 U. Pa. L. Rev. 2341, 2343 (1996). Conversely, downwind States to which the pollution travels are unable to achieve clean air because of the influx of out-of-state pollution they lack authority to control. See S. Rep. No. 101–228, p. 49 (1989). To tackle the

Opinion of the Court

problem, Congress included a Good Neighbor Provision in the Clean Air Act (Act or CAA). That provision, in its current phrasing, instructs States to prohibit in-state sources “from emitting any air pollutant in amounts which will . . . contribute significantly” to downwind States’ “nonattainment . . . , or interfere with maintenance,” of any EPA-promulgated national air quality standard. 42 U. S. C. §7410(a)(2)(D)(i).

Interpreting the Good Neighbor Provision, EPA adopted the Cross-State Air Pollution Rule (commonly and hereinafter called the Transport Rule). The rule calls for consideration of costs, among other factors, when determining the emission reductions an upwind State must make to improve air quality in polluted downwind areas. The Court of Appeals for the D. C. Circuit vacated the rule in its entirety. It held, 2 to 1, that the Good Neighbor Provision requires EPA to consider only each upwind State’s physically proportionate responsibility for each downwind State’s air quality problem. That reading is demanded, according to the D. C. Circuit, so that no State will be required to decrease its emissions by more than its ratable share of downwind-state pollution.

In *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), we reversed a D. C. Circuit decision that failed to accord deference to EPA’s reasonable interpretation of an ambiguous Clean Air Act provision. Satisfied that the Good Neighbor Provision does not command the Court of Appeals’ cost-blind construction, and that EPA reasonably interpreted the provision, we reverse the D. C. Circuit’s judgment.

I

A

Air pollution is transient, heedless of state boundaries. Pollutants generated by upwind sources are often transported by air currents, sometimes over hundreds of miles,

Opinion of the Court

to downwind States. As the pollution travels out of state, upwind States are relieved of the associated costs. Those costs are borne instead by the downwind States, whose ability to achieve and maintain satisfactory air quality is hampered by the steady stream of infiltrating pollution.

For several reasons, curtailing interstate air pollution poses a complex challenge for environmental regulators. First, identifying the upwind origin of downwind air pollution is no easy endeavor. Most upwind States propel pollutants to more than one downwind State, many downwind States receive pollution from multiple upwind States, and some States qualify as both upwind and downwind. See Brief for Federal Petitioners 6. The overlapping and interwoven linkages between upwind and downwind States with which EPA had to contend number in the thousands.¹

Further complicating the problem, pollutants do not emerge from the smokestacks of an upwind State and uniformly migrate downwind. Some pollutants stay within upwind States' borders, the wind carries others to downwind States, and some subset of that group drifts to States without air quality problems. "The wind bloweth where it listeth, and thou hearest the sound thereof, but canst not tell whence it cometh, and whither it goeth." The Holy Bible, John 3:8 (King James Version). In crafting a solution to the problem of interstate air pollution, regulators must account for the vagaries of the wind.

Finally, upwind pollutants that find their way downwind are not left unaltered by the journey. Rather, as the gases emitted by upwind polluters are carried downwind, they are transformed, through various chemical processes, into altogether different pollutants. The offending gases

¹For the rule challenged here, EPA evaluated 2,479 separate linkages between downwind and upwind States. Brief for Federal Petitioners 6.

Opinion of the Court

at issue in these cases—nitrogen oxide (NO_x) and sulfur dioxide (SO₂)—often develop into ozone and fine particulate matter (PM_{2.5}) by the time they reach the atmospheres of downwind States. See 76 Fed. Reg. 48222–48223 (2011). See also 69 Fed. Reg. 4575–4576 (2004) (describing the components of ozone and PM_{2.5}). Downwind air quality must therefore be measured for ozone and PM_{2.5} concentrations. EPA’s chore is to quantify the amount of upwind gases (NO_x and SO₂) that must be reduced to enable downwind States to keep their levels of ozone and PM_{2.5} in check.

B

Over the past 50 years, Congress has addressed interstate air pollution several times and with increasing rigor. In 1963, Congress directed federal authorities to “encourage cooperative activities by the States and local governments for the prevention and control of air pollution.” 77 Stat. 393, 42 U. S. C. §1857a (1964 ed.). In 1970, Congress made this instruction more concrete, introducing features still key to the Act. For the first time, Congress directed EPA to establish national ambient air quality standards (NAAQS) for pollutants at levels that will protect public health. See 84 Stat. 1679–1680, as amended, 42 U. S. C. §§7408, 7409 (2006 ed.). Once EPA settles on a NAAQS, the Act requires the Agency to designate “nonattainment” areas, *i.e.*, locations where the concentration of a regulated pollutant exceeds the NAAQS. §7407(d).

The Act then shifts the burden to States to propose plans adequate for compliance with the NAAQS. Each State must submit a State Implementation Plan, or SIP, to EPA within three years of any new or revised NAAQS. §7410(a)(1). If EPA determines that a State has failed to submit an adequate SIP, either in whole or in part, the Act requires the Agency to promulgate a Federal Implementation Plan, or FIP, within two years of EPA’s determina-

Opinion of the Court

tion, “unless the State corrects the deficiency” before a FIP is issued. §7410(c)(1).²

The Act lists the matters a SIP must cover. Among SIP components, the 1970 version of the Act required SIPs to include “adequate provisions for intergovernmental cooperation” concerning interstate air pollution. §110(a)(2)(E), 84 Stat. 1681, 42 U. S. C. §1857c–5(a)(2)(E). This statutory requirement, with its text altered over time, has come to be called the Good Neighbor Provision.

In 1977, Congress amended the Good Neighbor Provision to require more than “cooperation.” It directed States to submit SIPs that included provisions “adequate” to “prohibi[t] any stationary source within the State from emitting any air pollutant in amounts which will . . . prevent attainment or maintenance [of air quality standards] by any other State.” §108(a)(4), 91 Stat. 693, 42 U. S. C. §7410(a)(2)(E) (1976 ed., Supp. II). The amended provision thus explicitly instructed upwind States to reduce emissions to account for pollution exported beyond their borders. As then written, however, the provision regulated only individual sources that, considered alone, emitted enough pollution to cause nonattainment in a downwind State. Because it is often “impossible to say that any single source or group of sources is the one which actually prevents attainment” downwind, S. Rep. No. 101–228, p. 21 (1989), the 1977 version of the Good Neighbor Provision proved ineffective, see *ibid.* (noting the provision’s inability to curb the collective “emissions [of] multiple sources”).

Congress most recently amended the Good Neighbor Provision in 1990. The statute, in its current form, requires SIPs to “contain adequate provisions . . . prohibiting

²FIPs and SIPs were introduced in the 1970 version of the Act; the particular deadlines discussed here were added in 1990. See 104 Stat. 2409, 2422–2423, 42 U. S. C. §§7401(a)(1), 7410(c) (2006 ed.).

Opinion of the Court

... any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will ... contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any ... [NAAQS].” 42 U. S. C. §7410(a)(2)(D)(i) (2006 ed.). The controversy before us centers on EPA’s most recent attempt to construe this provision.

C

Three times over the past two decades, EPA has attempted to delineate the Good Neighbor Provision’s scope by identifying when upwind States “contribute significantly” to nonattainment downwind. In 1998, EPA issued a rule known as the “NO_x SIP Call.” That regulation limited NO_x emissions in 23 upwind States to the extent such emissions contributed to nonattainment of ozone standards in downwind States. See 63 Fed. Reg. 57356, 57358. In *Michigan v. EPA*, 213 F. 3d 663 (2000), the D. C. Circuit upheld the NO_x SIP Call, specifically affirming EPA’s use of costs to determine when an upwind State’s contribution was “significan[t]” within the meaning of the statute. *Id.*, at 674–679.

In 2005, EPA issued the Clean Air Interstate Rule, or CAIR. 70 Fed. Reg. 25162. CAIR regulated both NO_x and SO₂ emissions, insofar as such emissions contributed to downwind nonattainment of two NAAQS, both set in 1997, one concerning the permissible annual measure of PM_{2.5}, and another capping the average ozone level gauged over an 8-hour period. See *id.*, at 25171. The D. C. Circuit initially vacated CAIR as arbitrary and capricious. See *North Carolina v. EPA*, 531 F. 3d 896, 921 (2008) (*per curiam*). On rehearing, the court decided to leave the rule in place, while encouraging EPA to act with dispatch in dealing with problems the court had identified. See *North Carolina v. EPA*, 550 F. 3d 1176, 1178 (2008) (*per curiam*).

The rule challenged here—the Transport Rule—is EPA’s

Opinion of the Court

response to the D. C. Circuit's *North Carolina* decision. Finalized in August 2011, the Transport Rule curtails NO_x and SO₂ emissions of 27 upwind States to achieve downwind attainment of three different NAAQS: the two 1997 NAAQS previously addressed by CAIR, and the 2006 NAAQS for PM_{2.5} levels measured on a daily basis. See 76 Fed. Reg. 48208–48209.

Under the Transport Rule, EPA employed a “two-step approach” to determine when upwind States “contribute[d] significantly to nonattainment,” *id.*, at 48254, and therefore in “amounts” that had to be eliminated. At step one, called the “screening” analysis, the Agency excluded as *de minimis* any upwind State that contributed less than one percent of the three NAAQS³ to any downwind State “receptor,” a location at which EPA measures air quality. See *id.*, at 48236–48237.⁴ If all of an upwind State’s contributions fell below the one-percent threshold, that State would be considered not to have “contribute[d] significantly” to the nonattainment of any downwind State. *Id.*, at 48236. States in that category were screened out and exempted from regulation under the rule.

The remaining States were subjected to a second inquiry, which EPA called the “control” analysis. At this stage, the Agency sought to generate a cost-effective allocation of emission reductions among those upwind States “screened in” at step one.

The control analysis proceeded this way. EPA first calculated, for each upwind State, the quantity of emissions the State could eliminate at each of several cost

³With respect to each NAAQS addressed by the rule, the one-percent threshold corresponded to levels of 0.15 micrograms per cubic meter (µg/m³) for annual PM_{2.5}, 0.35 µg/m³ for daily PM_{2.5}, and 0.8 parts per billion (ppb) for 8-hour ozone. See 76 Fed. Reg. 48236–48237.

⁴If, for example, the NAAQS for ozone were 100 ppb, a contribution of less than 1 ppb to any downwind location would fall outside EPA’s criteria for significance.

Opinion of the Court

thresholds. See *id.*, at 48248–48249. Cost for these purposes is measured as cost per ton of emissions prevented, for instance, by installing scrubbers on powerplant smokestacks.⁵ EPA estimated, for example, the amount each upwind State’s NO_x emissions would fall if all pollution sources within each State employed every control measure available at a cost of \$500 per ton or less. See *id.*, at 48249–48251. The Agency then repeated that analysis at ascending cost thresholds. See *ibid.*⁶

Armed with this information, EPA conducted complex modeling to establish the combined effect the upwind reductions projected at each cost threshold would have on air quality in downwind States. See *id.*, at 48249. The Agency then identified “significant cost threshold[s],” points in its model where a “noticeable change occurred in downwind air quality, such as . . . where large upwind emission reductions become available because a certain type of emissions control strategy becomes cost-effective.” *Ibid.* For example, reductions of NO_x sufficient to resolve or significantly curb downwind air quality problems could be achieved, EPA determined, at a cost threshold of \$500 per ton (applied uniformly to all regulated upwind States). “Moving beyond the \$500 cost threshold,” EPA concluded, “would result in only minimal additional . . . reductions [in emissions].” *Id.*, at 48256.⁷

Finally, EPA translated the cost thresholds it had se-

⁵To illustrate, a technology priced at \$5,000 and capable of eliminating two tons of pollution would be stated to “cost” \$2,500 per ton.

⁶For SO₂, EPA modeled reductions that would be achieved at cost levels of \$500, \$1,600, \$2,300, \$2,800, \$3,300, and \$10,000 per ton eliminated. See *id.*, at 48251–48253.

⁷For SO₂, EPA determined that, for one group of upwind States, all downwind air quality problems would be resolved at the \$500 per ton threshold. See *id.*, at 48257. For another group of States, however, this level of controls would not suffice. For those States, EPA found that pollution controls costing \$2,300 per ton were necessary. See *id.*, at 48259.

Opinion of the Court

lected into amounts of emissions upwind States would be required to eliminate. For each regulated upwind State, EPA created an annual emissions “budget.” These budgets represented the quantity of pollution an upwind State would produce in a given year if its in-state sources implemented all pollution controls available at the chosen cost thresholds. See *id.*, at 48249.⁸ If EPA’s projected improvements to downwind air quality were to be realized, an upwind State’s emissions could not exceed the level this budget allocated to it, subject to certain adjustments not relevant here.

Taken together, the screening and control inquiries defined EPA’s understanding of which upwind emissions were within the Good Neighbor Provision’s ambit. In short, under the Transport Rule, an upwind State “contribute[d] significantly” to downwind nonattainment to the extent its exported pollution both (1) produced one percent or more of a NAAQS in at least one downwind State (step one) and (2) could be eliminated cost-effectively, as determined by EPA (step two). See *id.*, at 48254. Upwind States would be obliged to eliminate all and only emissions meeting both of these criteria.⁹

For each State regulated by the Transport Rule, EPA contemporaneously promulgated a FIP allocating that State’s emission budget among its in-state sources. See *id.*, at 48271, 48284–48287.¹⁰ For each of these States,

⁸In 2014, for example, pollution sources within Texas would be permitted to emit no more than 243,954 tons of SO₂, subject to variations specified by EPA. See *id.*, at 48269 (Table VI.F–1).

⁹Similarly, upwind States EPA independently determined to be “interfer[ing] with [the] maintenance” of NAAQS downwind were required to eliminate pollution only to the extent their emissions satisfied both of these criteria. See *id.*, at 48254.

¹⁰These FIPs specified the maximum amount of pollution each in-state pollution source could emit. Sources below this ceiling could sell unused “allocations” to sources that could not reduce emissions to the necessary level as cheaply. See *id.*, at 48271–48272. This type of “cap-

Opinion of the Court

EPA had determined that the State had failed to submit a SIP adequate for compliance with the Good Neighbor Provision. These determinations regarding SIPs became final after 60 days, see 42 U. S. C. §7607(b)(1)(2006 ed., Supp. V), and many went unchallenged.¹¹ EPA views the SIP determinations as having triggered its statutory obligation to promulgate a FIP within two years, see §7410(c), a view contested by respondents, see Part II, *infra*.

D

A group of state and local governments (State respondents), joined by industry and labor groups (Industry respondents), petitioned for review of the Transport Rule in the U. S. Court of Appeals for the D. C. Circuit. Over the dissent of Judge Rogers, the Court of Appeals vacated the rule in its entirety. See 696 F. 3d 7, 37 (2012).

. . . . [The Court recounted the D.C. Circuit's decision to vacate the Transport Rule because the Rule required upwind states to reduce their emissions beyond their proportionate share of pollution that they caused in downwind states.]

and-trade” system cuts costs while still reducing pollution to target levels.

¹¹ Three States did challenge EPA's determinations. See Petition for Review in *Ohio v. EPA*, No. 11–3988 (CA6); Petition for Review in *Kansas v. EPA*, No. 12–1019 (CAD6); Notice in *Georgia v. EPA*, No. 11–1427 (CAD6). Those challenges were not consolidated with this proceeding, and they remain pending (held in abeyance for these cases) in the Sixth and D. C. Circuits. See Twelfth Joint Status Report in *Ohio v. EPA*, No. 11–3988 (CA6); Order in *Kansas v. EPA*, No. 11–1333 (CAD6, May 10, 2013); Order in *Georgia v. EPA*, No. 11–1427 (CAD6, May 10, 2013).

Opinion of the Court

B

We routinely accord dispositive effect to an agency's reasonable interpretation of ambiguous statutory language. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is the pathmarking decision, and it bears a notable resemblance to the cases before us. *Chevron* concerned EPA's definition of the term "source," as used in the 1977 Amendments to the CAA. *Id.*, at 840, n. 1. Those amendments placed additional restrictions on companies' liberty to add new pollution "sources" to their factories. See *id.*, at 840. Although "source" might have been interpreted to refer to an individual smokestack, EPA construed the term to refer to an entire plant, thereby "treat[ing] all of the pollution-emitting devices within the [plant] as though they were encased within a single 'bubble.'" *Ibid.* Under the Agency's interpretation, a new pollution-emitting device would not subject a plant to the additional restrictions if the "alteration [did] not increase the total emissions [produced by] the plant." *Ibid.*

This Court held EPA's interpretation of "source" a reasonable construction of an ambiguous statutory term. When "Congress has not directly addressed the precise [interpretative] question at issue," we cautioned, a reviewing court cannot "simply impose its own construction o[f] the statute." *Id.*, at 843. Rather, the agency is charged with filling the "gap left open" by the ambiguity. *Id.*, at 866. Because "a full understanding of the force of the statutory policy . . . depend[s] upon more than ordinary knowledge" of the situation, the administering agency's construction is to be accorded "controlling weight unless . . . arbitrary, capricious, or manifestly contrary to the statute." *Id.*, at 844 (quoting *United States v. Shimer*, 367 U.S. 374, 382 (1961)). Determining that none of those terms fit EPA's interpretation of "source," the Court deferred to the Agency's judgment.

Opinion of the Court

We conclude that the Good Neighbor Provision delegates authority to EPA at least as certainly as the CAA provisions involved in *Chevron*. The statute requires States to eliminate those “amounts” of pollution that “contribute significantly to *nonattainment*” in downwind States. 42 U. S. C. §7410(a)(2)(D)(i) (emphasis added). Thus, EPA’s task¹⁵ is to reduce upwind pollution, but only in “amounts” that push a downwind State’s pollution concentrations above the relevant NAAQS. As noted earlier, however, the nonattainment of downwind States results from the collective and interwoven contributions of multiple upwind States. See *supra*, at 3. The statute therefore calls upon the Agency to address a thorny causation problem: How should EPA allocate among multiple contributing upwind States responsibility for a downwind State’s excess pollution?

A simplified example illustrates the puzzle EPA faced. Suppose the Agency sets a NAAQS, with respect to a particular pollutant, at 100 parts per billion (ppb), and that the level of the pollutant in the atmosphere of downwind State A is 130 ppb. Suppose further that EPA has determined that each of three upwind States—X, Y, and Z—contributes the equivalent of 30 ppb of the relevant pollutant to State A’s airspace. The Good Neighbor Provision, as just observed, prohibits only upwind emissions that contribute significantly to downwind *nonattainment*. EPA’s authority under the provision is therefore limited to eliminating a *total* of 30 ppb,¹⁶ *i.e.*, the overage caused by

¹⁵Though we speak here of “EPA’s task,” the Good Neighbor Provision is initially directed to upwind States. As earlier explained, see Part II–B, *supra*, only after a State has failed to propose a SIP adequate for compliance with the provision is EPA called upon to act.

¹⁶Because of the uncertainties inherent in measuring interstate air pollution, see *supra*, at 3–4, reductions of *exactly* 30 ppb likely are unattainable. See *infra*, at 30–31.

Opinion of the Court

the collective contribution of States X, Y, and Z.¹⁷

How is EPA to divide responsibility among the three States? Should the Agency allocate reductions proportionally (10 ppb each), on a per capita basis, on the basis of the cost of abatement, or by some other metric? See Brief for Federal Petitioners 50 (noting EPA's consideration of different approaches). The Good Neighbor Provision does not answer that question for EPA. Cf. *Chevron*, 467 U. S., at 860 (“[T]he language of [the CAA] simply does not compel any given interpretation of the term ‘source.’”). Under *Chevron*, we read Congress’ silence as a delegation of authority to EPA to select from among reasonable options. See *United States v. Mead Corp.*, 533 U. S. 218, 229 (2001).¹⁸

Yet the Court of Appeals believed that the Act speaks clearly, requiring EPA to allocate responsibility for reducing emissions in “a manner proportional to” each State’s “contributio[n]” to the problem. 696 F. 3d, at 21. Nothing

¹⁷For simplicity’s sake, the hypothetical assumes that EPA has not required any emission reductions by the downwind State itself.

¹⁸The statutory gap identified also exists in the Good Neighbor Provision’s second instruction. That instruction requires EPA to eliminate amounts of upwind pollution that “interfere with maintenance” of a NAAQS by a downwind State. §7410(a)(2)(D)(i). This mandate contains no qualifier analogous to “significantly,” and yet it entails a delegation of administrative authority of the same character as the one discussed above. Just as EPA is constrained, under the first part of the Good Neighbor Provision, to eliminate only those amounts that “contribute . . . to *nonattainment*,” EPA is limited, by the second part of the provision, to reduce only by “amounts” that “interfere with *maintenance*,” *i.e.*, by just enough to permit an already-attaining State to maintain satisfactory air quality. (Emphasis added.) With multiple upwind States contributing to the maintenance problem, however, EPA confronts the same challenge that the “contribute significantly” mandate creates: How should EPA allocate reductions among multiple upwind States, many of which contribute in amounts sufficient to impede downwind maintenance? Nothing in *either* clause of the Good Neighbor Provision provides the criteria by which EPA is meant to apportion responsibility.

Opinion of the Court

in the text of the Good Neighbor Provision propels EPA down this path. Understandably so, for as EPA notes, the D. C. Circuit's proportionality approach could scarcely be satisfied in practice. See App. in No. 11–1302 etc. (CADDC), p. 2312 (“[W]hile it is possible to determine an emission reduction percentage if there is a single downwind [receptor], most upwind states contribute to multiple downwind [receptors] (in multiple states) and would have a different reduction percentage for each one.”).

To illustrate, consider a variation on the example set out above. Imagine that States X and Y now contribute air pollution to State A in a ratio of one to five, *i.e.*, State Y contributes five times the amount of pollution to State A than does State X. If State A were the only downwind State to which the two upwind States contributed, the D. C. Circuit's proportionality requirement would be easy to meet: EPA could require State Y to reduce its emissions by five times the amount demanded of State X.

The realities of interstate air pollution, however, are not so simple. Most upwind States contribute pollution to multiple downwind States in varying amounts. See 76 Fed. Reg. 48239–48246. See also Brief for Respondent Calpine Corp. et al. in Support of Petitioners 48–49 (offering examples). Suppose then that States X and Y also contribute pollutants to a second downwind State (State B), this time in a ratio of seven to one. Though State Y contributed a relatively larger share of pollution to State A, with respect to State B, State X is the greater offender. Following the proportionality approach with respect to State B would demand that State X reduce its emissions by seven times as much as State Y. Recall, however, that State Y, as just hypothesized, had to effect five times as large a reduction with respect to State A. The Court of Appeals' proportionality edict with respect to *both* State A and State B appears to work neither mathematically nor in practical application. Proportionality as to one down-

Opinion of the Court

wind State will not achieve proportionality as to others. Quite the opposite. And where, as is generally true, upwind States contribute pollution to more than two downwind receptors, proportionality becomes all the more elusive.

Neither the D. C. Circuit nor respondents face up to this problem. The dissent, for its part, strains to give meaning to the D. C. Circuit's proportionality constraint as applied to a world in which multiple upwind States contribute emissions to multiple downwind locations. In the dissent's view, upwind States must eliminate emissions by "whatever minimum amount reduces" their share of the overage in each and every one of the downwind States to which they are linked. See *post*, at 8. In practical terms, this means each upwind State will be required to reduce emissions by the amount necessary to eliminate that State's largest downwind contribution. The dissent's formulation, however, does not account for the combined and cumulative effect of each upwind State's reductions on attainment in multiple downwind locations. See *ibid.* ("Under a proportional-reduction approach, State X would be required to eliminate emissions of that pollutant by whatever minimum amount reduces *both* State A's level by 0.2 unit and State B's by 0.7 unit." (emphasis added)). The result would be costly overregulation unnecessary to, indeed in conflict with, the Good Neighbor Provision's goal of attainment.¹⁹

¹⁹To see why, one need only slightly complicate the world envisioned by the dissent. Assume the world is made up of only four States—two upwind (States X and Y), and two downwind (States A and B). Suppose also, as the dissent allows, see *post*, at 9, that the reductions State X must make to eliminate its share of the amount by which State A is in nonattainment are more than necessary for State X to eliminate its share of State B's nonattainment. As later explained, see *infra*, at 29–30, this kind of "over-control," we agree with the dissent, is acceptable under the statute. Suppose, however, that State Y also contributes to pollution in both State A and State B such that the reductions it must

Opinion of the Court

In response, the dissent asserts that EPA will “simply be required to make allowance for” the overregulation caused by its “proportional-reduction” approach. *Post*, at 11. What criterion should EPA employ to determine which States will have to make those “allowance[s]” and by how much? The dissent admits there are “multiple ways” EPA might answer those questions. *Ibid.* But proportionality cannot be one of those ways, for the proportional-reduction approach is what led to the overregulation in the first place. And if a nonproportional approach can play a role in setting the final allocation of reduction obligations, then it is hardly apparent why EPA, free to depart from proportionality at the back end, cannot do so at the outset.

Persuaded that the Good Neighbor Provision does not dictate the particular allocation of emissions among contributing States advanced by the D. C. Circuit, we must next decide whether the allocation method chosen by EPA is a “permissible construction of the statute.” *Chevron*, 467 U. S., at 843. As EPA interprets the statute, upwind emissions rank as “amounts [that] . . . contribute significantly to nonattainment” if they (1) constitute one percent

make to eliminate its proportion of State B’s overage exceed the reductions it must make to bring State A into attainment. In this case, the dissent would have State X reduce by just enough to eliminate its share of State A’s nonattainment and more than enough to eliminate its share of State B’s overage. The converse will be true as to State Y: Under the dissent’s approach, State Y would have to reduce by the “minimum” necessary to eliminate its proportional share of State B’s nonattainment and more than enough to eliminate its proportion of State A’s overage. The result is that the total amount by which both States X and Y are required to reduce will exceed what is necessary for attainment *in all downwind States involved* (i.e., in both State A and State B). Over-control thus unnecessary to achieving attainment in all involved States is impermissible under the Good Neighbor Provision. See *infra*, at 30, n. 23. The problem would worsen were the hypothetical altered to include more than two downwind States and two upwind States, the very real circumstances EPA must address.

Opinion of the Court

or more of a relevant NAAQS in a nonattaining downwind State and (2) can be eliminated under the cost threshold set by the Agency. See 76 Fed. Reg. 48254. In other words, to identify which emissions were to be eliminated, EPA considered both the magnitude of upwind States' contributions and the cost associated with eliminating them.

The Industry respondents argue that, however EPA ultimately divides responsibility among upwind States, the final calculation cannot rely on costs. The Good Neighbor Provision, respondents and the dissent emphasize, "requires each State to prohibit only those '*amounts*' of air pollution emitted within the State that 'contribute significantly' to another State's nonattainment." Brief for Industry Respondents 23 (emphasis added). See also *post*, at 6. The cost of preventing emissions, they urge, is wholly unrelated to the actual "amoun[t]" of air pollution an upwind State contributes. Brief for Industry Respondents 23. Because the Transport Rule considers costs, respondents argue, "States that contribute identical '*amounts*' . . . may be deemed [by EPA] to have [made] substantially *different*" contributions. *Id.*, at 30.

But, as just explained, see *supra*, at 21–22, the Agency cannot avoid the task of choosing which among equal "*amounts*" to eliminate. The Agency has chosen, sensibly in our view, to reduce the amount easier, *i.e.*, less costly, to eradicate, and nothing in the text of the Good Neighbor Provision precludes that choice.

Using costs in the Transport Rule calculus, we agree with EPA, also makes good sense. Eliminating those amounts that can cost-effectively be reduced is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address. Efficient because EPA can achieve the levels of attainment, *i.e.*, of emission reductions, the proportional approach aims to achieve, but at a much lower overall cost. Equita-

Opinion of the Court

ble because, by imposing uniform cost thresholds on regulated States, EPA's rule subjects to stricter regulation those States that have done relatively less in the past to control their pollution. Upwind States that have not yet implemented pollution controls of the same stringency as their neighbors will be stopped from free riding on their neighbors' efforts to reduce pollution. They will have to bring down their emissions by installing devices of the kind in which neighboring States have already invested.

Suppose, for example, that the industries of upwind State A have expended considerable resources installing modern pollution-control devices on their plants. Factories in upwind State B, by contrast, continue to run old, dirty plants. Yet, perhaps because State A is more populous and therefore generates a larger sum of pollution overall, the two States' emissions have equal effects on downwind attainment. If State A and State B are required to eliminate emissions proportionally (*i.e.*, equally), sources in State A will be compelled to spend far more per ton of reductions because they have already utilized lower cost pollution controls. State A's sources will also have to achieve greater reductions than would have been required had they not made the cost-effective reductions in the first place. State A, in other words, will be tolled for having done more to reduce pollution in the past.²⁰ EPA's cost-based allocation avoids these anomalies.

Obligated to require the elimination of only those "amounts" of pollutants that contribute to the nonattainment of NAAQS in downwind States, EPA must decide how to differentiate among the otherwise like contributions of multiple upwind States. EPA found decisive the

²⁰The dissent's approach is similarly infirm. It, too, would toll those upwind States that have already invested heavily in means to reduce the pollution their industries cause, while lightening the burden on States that have done relatively less to control pollution emanating from local enterprises.

Opinion of the Court

difficulty of eliminating each “amount,” *i.e.*, the cost incurred in doing so. Lacking a dispositive statutory instruction to guide it, EPA’s decision, we conclude, is a “reasonable” way of filling the “gap left open by Congress.” *Chevron*, 467 U. S., at 866.²¹

C

The D. C. Circuit stated two further objections to EPA’s cost-based method of defining an upwind State’s contribution. Once a State was screened in at step one of EPA’s analysis, its emission budget was calculated solely with reference to the uniform cost thresholds the Agency selected at step two. The Transport Rule thus left open the possibility that a State might be compelled to reduce emissions beyond the point at which every affected downwind State is in attainment, a phenomenon the Court of Appeals termed “over-control.” 696 F. 3d, at 22; see *supra*, at 12. Second, EPA’s focus on costs did not foreclose, as the D. C. Circuit accurately observed, the possibility that an upwind State would be required to reduce its emissions by so much that the State no longer contributed one per-

²¹The dissent, see *post*, at 12–13, relies heavily on our decision in *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457 (2001). In *Whitman*, we held that the relevant text of the CAA “unambiguously bars” EPA from considering costs when determining a NAAQS. *Id.*, at 471. Section 7409(b)(1) commands EPA to set NAAQS at levels “requisite to protect the public health” with “an adequate margin of safety.” This mandate, we observed in *Whitman*, was “absolute,” and precluded any other consideration (*e.g.*, cost) in the NAAQS calculation. *Id.*, at 465 (internal quotation marks omitted). Not so of the Good Neighbor Provision, which grants EPA discretion to eliminate “amounts [of pollution that] . . . contribute significantly to nonattainment” downwind. On the particular “amounts” that should qualify for elimination, the statute is silent. Unlike the provision at issue in *Whitman*, which provides express criteria by which EPA is to set NAAQS, the Good Neighbor Provision, as earlier explained, fails to provide *any* metric by which EPA can differentiate among the contributions of multiple upwind States. See *supra*, at 21–22.

Opinion of the Court

cent or more of a relevant NAAQS to any downwind State. This would place the State below the mark EPA had set, during the screening phase, as the initial threshold of “significan[ce].” See *id.*, at 20, and n. 13.

We agree with the Court of Appeals to this extent: EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set. If EPA requires an upwind State to reduce emissions by more than the amount necessary to achieve attainment in *every* downwind State to which it is linked, the Agency will have overstepped its authority, under the Good Neighbor Provision, to eliminate those “amounts [that] contribute . . . to nonattainment.” Nor can EPA demand reductions that would drive an upwind State’s contribution to every downwind State to which it is linked below one percent of the relevant NAAQS. Doing so would be counter to step one of the Agency’s interpretation of the Good Neighbor Provision. See 76 Fed. Reg. 48236 (“[S]tates whose contributions are below th[e] thresholds do not significantly contribute to nonattainment . . . of the relevant NAAQS.”).

Neither possibility, however, justifies wholesale invalidation of the Transport Rule. First, instances of “over-control” in particular downwind locations, the D. C. Circuit acknowledged, see 696 F. 3d, at 22, may be incidental to reductions necessary to ensure attainment elsewhere. Because individual upwind States often “contribute significantly” to nonattainment in multiple downwind locations, the emissions reduction required to bring one linked downwind State into attainment may well be large enough to push other linked downwind States over the attainment line.²² As the Good Neighbor Provision seeks attainment

²²The following example, based on the record, is offered in Brief for Respondent Calpine Corp. et al. in Support of Petitioners 52–54. Ohio,

Opinion of the Court

in *every* downwind State, however, exceeding attainment in one State cannot rank as “over-control” unless unnecessary to achieving attainment in *any* downwind State. Only reductions unnecessary to downwind attainment *anywhere* fall outside the Agency’s statutory authority.²³

Second, while EPA has a statutory duty to avoid over-control, the Agency also has a statutory obligation to avoid “under-control,” *i.e.*, to maximize achievement of attainment downwind. For reasons earlier explained, see *supra*, at 3–4, a degree of imprecision is inevitable in tackling the problem of interstate air pollution. Slight changes in wind patterns or energy consumption, for example, may vary downwind air quality in ways EPA might not have anticipated. The Good Neighbor Provision requires EPA to seek

West Virginia, Pennsylvania, and Indiana each contribute in varying amounts to five different nonattainment areas in three downwind States. *Id.*, at 52. Implementation of the Transport Rule, EPA modeling demonstrates, will bring three of these five areas into attainment by a comfortable margin, and a fourth only barely. See *id.*, at 53, fig. 2. The fifth downwind receptor, however, will still fall short of attainment despite the reductions the rule requires. See *ibid.* But if EPA were to lower the emission reductions required of the upwind States to reduce over-attainment in the first three areas, the area barely achieving attainment would no longer do so, and the area still in nonattainment would fall even further behind. Thus, “over-control” of the first three downwind receptors is essential to the attainment achieved by the fourth and to the fifth’s progress toward that goal.

²³The dissent suggests that our qualification of the term “over-control” is tantamount to an admission that “nothing stands in the way of [a] proportional-reduction approach.” *Post*, at 9. Not so. Permitting “over-control” as to one State for the purpose of achieving attainment in another furthers the stated goal of the Good Neighbor Provision, *i.e.*, attainment of NAAQS. By contrast, a proportional-reduction scheme is neither necessary to achieve downwind attainment, nor mandated by the terms of the statute, as earlier discussed, see *supra*, at 21–25. Permitting “over-control” for the purpose of achieving proportionality would thus contravene the clear limits the statute places on EPA’s good neighbor authority, *i.e.*, to eliminate only those “amounts” of upwind pollutants essential to achieving attainment downwind.

Opinion of the Court

downwind attainment of NAAQS notwithstanding the uncertainties. Hence, some amount of over-control, *i.e.*, emission budgets that turn out to be more demanding than necessary, would not be surprising. Required to balance the possibilities of under-control and over-control, EPA must have leeway in fulfilling its statutory mandate.

Finally, in a voluminous record, involving thousands of upwind-to-downwind linkages, respondents point to only a few instances of “unnecessary” emission reductions, and even those are contested by EPA. Compare Brief for Industry Respondents 19 with Reply Brief for Federal Petitioners 21–22. EPA, for its part, offers data, contested by respondents, purporting to show that few (if any) upwind States have been required to limit emissions below the one-percent threshold of significance. Compare Brief for Federal Petitioners 37, 54–55, with Brief for Industry Respondents 40.

If any upwind State concludes it has been forced to regulate emissions below the one-percent threshold or beyond the point necessary to bring all downwind States into attainment, that State may bring a particularized, as-applied challenge to the Transport Rule, along with any other as-applied challenges it may have. Cf. *Babbitt v. Sweet Home Chapter, Communities for Great Ore.*, 515 U. S. 687, 699–700 (1995) (approving agency’s reasonable interpretation of statute despite possibility of improper applications); *American Hospital Assn. v. NLRB*, 499 U. S. 606, 619 (1991) (rejecting facial challenge to National Labor Relations Board rule despite possible arbitrary applications). Satisfied that EPA’s cost-based methodology, on its face, is not “arbitrary, capricious, or manifestly contrary to the statute,” *Chevron*, 467 U. S., at 844, we uphold the Transport Rule. The possibility that the rule, in uncommon particular applications, might exceed EPA’s statutory authority does not warrant judicial condemnation of the rule in its entirety.

Opinion of the Court

In sum, we hold that the CAA does not command that States be given a second opportunity to file a SIP after EPA has quantified the State's interstate pollution obligations. We further conclude that the Good Neighbor Provision does not require EPA to disregard costs and consider exclusively each upwind State's physically proportionate responsibility for each downwind air quality problem. EPA's cost-effective allocation of emission reductions among upwind States, we hold, is a permissible, workable, and equitable interpretation of the Good Neighbor Provision.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the D. C. Circuit is reversed, and the cases are remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of these cases.

SCALIA, J., dissenting

SUPREME COURT OF THE UNITED STATES

Nos. 12–1182 and 12–1183

ENVIRONMENTAL PROTECTION AGENCY ET AL.,
PETITIONERS

12–1182

v.

EME HOMER CITY GENERATION, L. P., ET AL.; AND

AMERICAN LUNG ASSOCIATION ET AL.,
PETITIONERS

12–1183

v.

EME HOMER CITY GENERATION, L. P., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[April 29, 2014]

JUSTICE SCALIA, with whom JUSTICE THOMAS joins,
dissenting.

Too many important decisions of the Federal Government are made nowadays by unelected agency officials exercising broad lawmaking authority, rather than by the people’s representatives in Congress. With the statute involved in the present cases, however, Congress did it right. It specified quite precisely the responsibility of an upwind State under the Good Neighbor Provision: to eliminate those *amounts of pollutants* that it contributes to downwind problem areas. But the Environmental Protection Agency was unsatisfied with this system. Agency personnel, perhaps correctly, thought it more efficient to require reductions not in proportion to the *amounts of pollutants* for which each upwind State is responsible, but on the basis of how *cost-effectively* each can decrease emissions.

SCALIA, J., dissenting

Today, the majority approves that undemocratic revision of the Clean Air Act. The Agency came forward with a textual justification for its action, relying on a farfetched meaning of the word “significantly” in the statutory text. That justification is so feeble that today’s majority does not even recite it, much less defend it. The majority reaches its result (“Look Ma, no hands!”) without benefit of text, claiming to have identified a remarkable “gap” in the statute, which it proceeds to fill (contrary to the plain logic of the statute) with cost-benefit analysis—and then, with no pretended textual justification at all, simply extends cost-benefit analysis beyond the scope of the alleged gap.

Additionally, the majority relieves EPA of any obligation to announce novel interpretations of the Good Neighbor Provision before the States must submit plans that are required to comply with those interpretations. By according the States primacy in deciding how to attain the governing air-quality standards, the Clean Air Act is pregnant with an obligation for the Agency to set those standards before the States can be expected to achieve them. The majority nonetheless approves EPA’s promulgation of federal plans implementing good-neighbor benchmarks before the States could conceivably have met those benchmarks on their own.

I would affirm the judgment of the D. C. Circuit that EPA violated the law both in crafting the Transport Rule and in implementing it.¹

. . . .

¹I agree with the majority’s analysis turning aside EPA’s threshold objections to judicial review. See *ante*, at 13–14, 18–19.