



Supreme Court Strikes Part of EPA Rule Regulating Greenhouse Gases, Affirms Balance of Rule

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In a 5-4 decision, the U.S. Supreme Court held that EPA acted unlawfully when it sought to impose a permit requirement on stationary sources solely on the basis of greenhouse gas emissions from those sources under programs authorized by Titles I and V of the Clean Air Act. In doing so, the Supreme Court distinguished the broad definition of "air pollutant" under the Act from the narrow definition of "air pollutant" historically adopted by EPA with respect to those programs. At the same time, the Court held that EPA acted lawfully when it determined that sources required to obtain permits due to emissions of conventional pollutants (referred to as "anyway sources") must also comply with so-called BACT (or best available control technology) for greenhouse gas emissions. The Court noted in its decision that, as a practical matter, the holding allows EPA to regulate the vast majority of stationary sources responsible for greenhouse gas emissions.

The litigation leading to the Court's decision arose in response to a series of rules promulgated by EPA to regulate mobile and stationary sources of greenhouse gas emissions following the Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007). Numerous parties, including several states, filed petitions for review of those rules in the United States Court of Appeals for the D.C. Circuit. That court dismissed some petitions for lack of jurisdiction and denied the balance of the petitions. Several parties sought Supreme Court review, and the Court granted review but limited only to the issue of whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

In its decisions rejecting EPA regulation of stationary sources under Titles I and V based solely on the emission of greenhouse gas emissions and affirming EPA regulation of so-called anyway sources, the Court

emphasized the practical implications of its holding. For example, with respect to the former, the Court noted that EPA's interpretation "would bring about an enormous and transformative expansion of EPA's authority without clear congressional authorization." In contrast, with respect to the latter, the Court opined that applying BACT to greenhouse gas emissions from anyway sources "is not so disastrously unworkable, and need not result in such dramatic expansion of EPA's authority, as to convince us EPA's interpretation is unreasonable." In arriving at these paired conclusions, the Court demonstrated awareness of both the separation of powers between Congress and the Executive and the extent of federal regulatory authority.