



EPA's Air Rules Must Consider Costs, Says U.S. Supreme Court

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On June 29, 2015, the [United States Supreme Court](#) announced its decision in *Michigan v. Environmental Protection Agency*, holding that EPA unreasonably interpreted a provision of the Clean Air Act regarding the regulation of power plants under the EPA's Mercury and Air Toxics Standard (MATS) (also referred to as the Utility MACT).

Under the Clean Air Act, EPA may only begin regulating certain air emissions from power plants upon a finding that such regulation is "appropriate and necessary." [42 U.S.C. § 7412\(n\)\(1\)\(A\)](#)(1999). EPA estimated that the MATS Rule would result in emissions reductions valued at between \$4 million and \$6 million a year. EPA estimated the costs of the regulations to power plants, however, to be \$9.6 *billion* a year. According to the Court, EPA ultimately ignored its own cost considerations and, in 2000, found that regulation of power plants is "appropriate and necessary." EPA reaffirmed this finding in 2012 and subsequently promulgated emissions standards for power plants. [77 Fed. Reg. 9304 \(Feb. 16, 2012\)](#).

In a five-to-four split decision, the Court held that the language "appropriate and necessary" requires cost consideration, overturning the D.C. Circuit's decision. Justice Scalia, writing on behalf of the majority, applied the deferential standard from *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which directs courts to defer to an agency's reasonable resolution of an ambiguity in a statute that the agency administers. Even under this deferential standard, the Court was unwilling to accept EPA's conclusion that the language "appropriate and necessary" does not require cost consideration.

The Court stressed the broad and all-encompassing definition normally attributed to the word "appropriate." Applying a broad reading of "appropriate," the Court stated that "[o]ne would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits." The Court also noted that agencies normally treat cost as a "centrally relevant factor" when deciding whether to regulate.

The Court did not find convincing EPA's argument that other Clean Air Act provisions expressly mention cost. Nor did the Court find it significant that EPA could consider cost at a later time, when deciding the quantity of regulation to apply.

The MATS Rule will now be remanded to the D.C. Circuit, which originally upheld the application of the rule to power plants. It is possible that the D.C. Circuit will vacate the MATS Rule as applied to power plants, or require its modification. It is also possible, however, that the D.C. Circuit will merely require EPA to perform cost considerations, and allow the rule to remain as it stands.

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