



THE ADMINISTRATIVE WATCH

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U.S. Supreme Court Clears Path to Regulate Greenhouse Gases From Mobile Sources

The U.S. Supreme Court issued a narrow 5 – 4 decision on April 2, 2007 in the Massachusetts et al. v. EPA case, which reversed and remanded a 2005 D.C. Circuit ruling that USEPA lacked statutory authority under the current Clean Air Act (“CAA”) to regulate greenhouse gas emissions from new vehicles. The case reached the Supreme Court after the D.C. Circuit ruled USEPA correctly denied a 1999 petition filed by a group of environmental plaintiffs that sought to force the Agency to regulate greenhouse gas emissions from new vehicles under Title II of the CAA. The Supreme Court’s majority opinion rejected USEPA’s argument that an act of Congress was required to authorize the regulation of such emissions from new vehicles.

The majority concluded greenhouse gases fit well within the CAA’s broad definition of “air pollutant,” therefore USEPA has the requisite statutory authority to regulate such emissions from new vehicles. The majority discounted USEPA’s argument that Congressional intent following enactment of the 1990 amendments to the CAA indicated intent to restrict the Agency’s statutory authority to regulate greenhouse gases. Similarly, the majority rejected USEPA’s argument that the regulation of greenhouse gases from new vehicles required it to encroach on the responsibility of other federal agencies, including the Department of Transportation, which sets mileage standards. The majority viewed such arguments by USEPA as an attempt to “shirk its duty to protect public health and welfare.”

The majority’s substantive analysis focused primarily on USEPA’s statutory obligation under the CAA to fully evaluate whether greenhouse gases are contributing to climate change and therefore “may reasonably be anticipated to endanger public health or welfare.” The majority concluded USEPA’s policy judgments regarding the regulation of greenhouse gases failed to satisfy this statutory obligation. Accordingly, the majority remanded the matter to the D.C. Circuit for further consideration.

The principal split between the majority and minority opinions was on the issue of standing and the merits. The minority argued strenuously that the generalized nature of harm alleged by the Petitioners from climate change was insufficient to establish standing before the Court, because there was no injury in fact. Furthermore, the minority argued the merits of regulating greenhouse gas emissions from new vehicles was a matter of Agency discretion, which must be respected by the judiciary.

BCCZ is actively tracking developments pertaining to climate change. For more information regarding this case or to discuss emerging climate change legislation, please contact Michael H. Winek at (412) 394-6538 or mwinek@bccz.com or Seth A. Rice at (412) 394-5490 or srice@bccz.com.

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