



LEGAL UPDATES

West Virginia v. EPA: Court Determines EPA Regulations Limited Under the Clean Air Act

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The United States Supreme Court released its opinion earlier today outlining the Environmental Protection Agency's (EPA's) authority to regulate greenhouse gases from existing power plants. The majority opinion, written by Justice Roberts, held that EPA's Clean Power Plan is not consistent with Section 111(d) of the Clean Air Act which allows EPA to regulate existing stationary sources of air pollution. The Court determined that under the Clean Air Act, EPA is limited to regulating at the power plant level.

History of the Clean Power Plan

In 2015, under the Obama administration, EPA released its Clean Power Plan which aimed to address climate change by imposing mandates for existing coal and natural gas power plants to reduce emissions. The Supreme Court halted enforcement of the Clean Power Plan in 2016 after it was challenged by over half of the states.

The Trump administration then repealed the Clean Power Plan standards and implemented new guidelines under its Affordable Clean Energy Rule for power plants. Twenty-two states challenged the repeal of the Clean Power Plan. In July of last year, the D.C. Circuit struck down the Trump administration's repeal of the Clean Power Plan and its replacement plan. Neither the Obama era nor the Trump administration plan ever went into effect.

The Supreme Court held today that EPA's Clean Power Plan is inconsistent with EPA's authority under the Clean Air Act and EPA must instead regulate at the power plant level. The Court made its decision by applying the "major questions doctrine."

Agency Power to Regulate

The Supreme Court's holding has the potential to impact how federal agencies interpret their authority. Under the *West Virginia v. EPA* decision, EPA and other agencies may not be able to implement regulations that have expansive impacts without specific Congressional approval. This would require Congress to create laws directly calling for EPA to implement regulations of this type. Under the

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"major questions doctrine," neither EPA nor any other agency may adopt rules that are economic and politically significant without express approval from Congress.

Future Impact

The Court's decision will impact the Biden administration's approach to developing greenhouse gas controls for power plants to address climate change, which the agency plans to propose by March 2023. It will also have far-reaching impacts on the ability of federal agencies to create regulations on "major questions" that are economically and politically significant.

For more information, please contact your regular Lathrop GPM attorney.