



Supreme Court stops EPA's overreach

Shannon L. Goessling • | July 6, 2014 | 6:00 am



The [Supreme Court's sweeping decision](#) in June against the [Environmental Protection Agency's](#) unprecedented [greenhouse gas](#) regulations slams the door on executive agencies that try to rewrite laws to fit its goals.

The court said the EPA had no authority to issue regulations that differed so radically from the Clean Air Act's plain language – and affirms that the EPA and every other executive agency is indeed subject to the court's jurisdiction, despite protests to the contrary. This is exactly the kind of precedent that will be used against current and future executive agency overreaches by the Obama administration.

Nevertheless, the EPA and their allies among the [environmental groups](#) claimed “victory” from the decision because the EPA retains some authority to regulate greenhouse gas emissions from a few hundred emitters across America. So, what does the decision actually mean?

First, the court's unanimous opinion means that the EPA greenhouse gas regulations cannot be enforced against millions of Americans – the local mom-and-pop store, the local bakery, your house of worship – because the new rules are outside the bounds of the Clean Air Act.

The justices wrote: “We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery. We reaffirm the core ... principle that an agency may not rewrite clear statutory terms to suit its own sense of how the statute should operate.”

Second, the decision means that the EPA – and every other executive agency – must adhere to the letter of the existing law when it enacts new regulations.

“EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear [Congressional](#)

authorization," the justices wrote. "We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance'."

Third, although some emitters will be subject to some ill-defined greenhouse gas emissions standards, the decision drastically limits the EPA's authority to invoke other sections of the Clean Air Act to accomplish those limits. Keep in mind that the EPA has admitted that its regulations would lead to "absurd results" and would have no measurable impact on global temperatures.

The so-called "[Tailoring Rule](#)," which created the structure by which the EPA would have regulated the vast number of entities, has been declared legally invalid. So, the EPA will have to design a new approach under a court decision that renders its past effort null and void - even for the few hundred emitters it regulates now.

Finally, the decision severely restricts the EPA's power to define the "best available control technologies" for reducing greenhouse gas emissions that the court acknowledged would govern for the few hundred emitters subject to regulation.

The BACT cannot be too costly to use, and must actually exist – not just as a "potential technology." The BACT cannot "order a fundamental redesign of the facility," nor can it require the facility to reduce its "demand for energy from the electric grid." In fact, the clear tone of the decision lays the groundwork for what the court's majority undoubtedly anticipated as future cases challenging the EPA's efforts in this arena.

The court's strident and comprehensive decision makes plain the stakes which are now regularly in play during the tenure of this administration. Just in the past two years, the court has struck down similar executive branch overreaches by the [Internal Revenue Service](#) and the [Food and Drug Administration](#).

Separation of powers, and limits on executive agency authority, are front and center as this case becomes important precedent for other challenges.

Shannon L. Goessling is executive director and chief legal counsel for Southeastern Legal Foundation, a constitutional public interest law firm that represented 12 members of Congress and 16 businesses in the case.