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## SCOTUS rejects EPA's rewrite of the Clean Air Act, but GHG regulation will go forward

By Jonathan H. Adler  
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This morning the Supreme Court decided *Utility Air Regulatory Group v. Environmental Protection Agency (UARG v. EPA)*, this term's most important and most awaited environmental case. I previewed the case here.

At issue in *UARG v. EPA* was the EPA's conclusion that its regulation of greenhouse gases from motor vehicles triggered mandatory regulation of GHGs from large stationary sources under the PSD (Prevention of Significant Deterioration) and Title V programs, and EPA's subsequent decision to rewrite the statutory emission thresholds for regulation under these portions of the Clean Air Act in order to facilitate GHG regulation.

Today the Supreme Court decided that the EPA is not obligated to regulate GHGs under the PSD and Title V programs and that the EPA is not permitted to rewrite the applicable statutory emission thresholds. The latter conclusion, in particular, is an important reaffirmation that agencies are not allowed to rewrite the statutes that they administer. But today's decision was not a total loss for the EPA, however, as the Court also concluded that it was reasonable for the EPA to interpret the Act to allow for the regulation of GHG emissions from sources already subject to regulation under the PSD and Title V program. What this means is that large stationary sources (think big power plants and industrial boilers) that are already regulated as major stationary sources under these programs will have to control GHG emissions when they control other emissions. But sources that only emit large amounts of GHGs will not become subject to EPA's regulatory authority under these provisions.

Justice Scalia wrote for the Court. The Chief Justice and Justice Kennedy joined him in full. Justice Alito wrote an opinion concurring in part and dissenting in part, joined by Justice Thomas. Justice Breyer also wrote an opinion concurring in part and dissenting in part, joined by Justices Ginsburg, Sotomayor, and Kagan. In short, Justices Alito and Thomas thought Justice Scalia was too accommodating of the EPA, and Justice Breyer thought Justice Scalia was not accommodating enough.

It's important to note that this decision only covers these specific portions of the Clean Air Act. Thus it does not limit the EPA's ability to proceed with other GHG regulations under other portions of the Act. In other words, today's holding does not bar the EPA from regulating GHGs from new or existing sources under Section 111 of the Act, as the EPA is proposing to do.

I will follow up with another post shortly after I've had more time to digest the opinion.

Disclosure: I participated in a law professor amicus brief in this case urging the Court to limit EPA's authority.

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