

## 12-1254 ENERGY-INTENSIVE MANUFACTURERS V. EPA

DECISION BELOW: 684 F.3d 102

LOWER COURT CASE NUMBER: 10-1073, et al.

### QUESTION PRESENTED:

In the course of a series of regulatory actions taken by the Environmental Protection Agency subsequent to *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Agency decided that a particular Clean Air Act program regulating "stationary sources," the Prevention of Significant Deterioration (PSD) program, must apply to greenhouse gases, as a matter of a *Chevron* "step-one" mandate, once the Agency regulated "mobile-source" greenhouse-gas emissions. The Agency referred to this as the "automatic triggering" of PSD greenhouse-gas regulation. In the EPA's view, the matter turned on the meaning of the term "any air pollutant" in the PSD provisions governing those emitters required to seek permits, *i.e.*, any "major emitting facility." 42 U.S.C. §§ 7475(a), 7479(1) (2013). By longstanding regulations, the Agency had defined "any air pollutant" to include any air pollutant "sub-ject to regulation" under any other part of the Act -- hence the "automatic triggering" once mobile sources were regulated. As part of a consolidated judgment addressing multiple challenges to the various Agency actions involved, a panel of the United States Court of Appeals for the D.C. Circuit upheld EPA's action. The questions presented are:

1. Whether the Court of Appeals erred in determining that regulating stationary-source greenhouse-gas emissions under the Clean Air Act's Prevention of Significant Deterioration program, and an associated program known as "Title V," is statutorily required as a matter of a *Chevron* "step-one" legislative command.
2. Whether, in determining that the Clean Air Act unambiguously requires application of the PSD program to greenhouse gases, the Court of Appeals and the EPA ignored required elements of statutory construction in cases of this type by failing to examine whether the various statutory components of that program were contradicted, nullified, or otherwise contravened by application to greenhouse gases, and, further, without considering whether alternative mechanisms exist for regulating stationary-source greenhouse-gas emissions under the Act that better serve the statute's dual concerns with the economy and the environment.
3. Whether a claimant may be barred from asserting a claim that applying the PSD program to greenhouse gases is not authorized by the Act because the claimant, or other large emitters of conventional pollutants, did not assert that claim at the time EPA promulgated decades-old regulations that involved conventional pollutants only, when, first, the claim at issue is uniquely and entirely limited to the application of the statute to greenhouse gases, and, second, the Agency, in any event, itself has modified the regulations to reflect a unique greenhouse-gas--specific definition of the key statutory term.

LIMITED TO THE FOLLOWING QUESTION: Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

CONSOLIDATED WITH 12-1146, 12-1248, 12-1268, 12-1269 and 12-1272 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/15/2013