

14-47 UTILITY AIR REGULATORY GROUP V. EPA

DECISION BELOW: 748 F.3d 1222

LOWER COURT CASE NUMBER: 12-1100, 12-1101, 12-1102, 12-1147, 12-1172, 12-1173, 12-1174, 12-1175, 12-1176, 12-1177, 12-1178, 12-1180, 12-1181, 12-1182, 12-1183, 12-1184, 12-1185, 12-1186, 12-1187, 12-1188, 12-1189, 12-1190, 12-1191, 12-1192, 12-1193, 12-1194, 12-1195, 12-1196

QUESTION PRESENTED:

Emissions from electric utility steam generating units (EGUs) were extensively regulated before the Clean Air Act Amendments in 1990. Because these Amendments required substantial additional reductions in EGU emissions of conventional pollutants (*e.g.*, sulfur dioxide and particulate matter) that would also collaterally reduce emissions of hazardous air pollutants (HAPs), Congress in 42 U.S.C. § 7412(n)(1)(A) called for regulation of only those EGU HAP emissions found to pose a hazard to public health *after* implementation of the other required control programs. For any remaining HAP emissions posing a residual health risk, Congress authorized only "such regulation" as was "appropriate and necessary." The court below affirmed EPA's use of this "appropriate and necessary" standard to expand EGU regulation to HAP emissions that pose *no* health risk and, over Judge Kavanaugh's dissent, to exclude cost from any consideration in making regulatory decisions. The question presented is:

Whether, under a statutory directive to regulate residual public health risks from EGU HAP emissions only as "appropriate and ~necessary," the Administrator (i) may regulate EGU HAP emissions that pose no hazard to public health, and (ii) may (or must as a *Chevron* Step One matter) ignore costs in determining "appropriate" regulation because more narrowly drawn decisional standards in the same statute require (or preclude) the Administrator from considering costs.

CONSOLIDATED WITH 14-46 AND 14-49 FOR ONE HOUR ORAL ARGUMENT.

GRANTED LIMITED TO THE FOLLOWING: QUESTION: WHETHER THE ENVIRONMENTAL PROTECTION AGENCY UNREASONABLY REFUSED TO CONSIDER COSTS IN DETERMINING WHETHER IT IS APPROPRIATE TO REGULATE HAZARDOUS AIR POLLUTANTS EMITTED BY ELECTRIC UTILITIES.

CERT. GRANTED 11/25/2014