West Virginia v. U.S. Environmental Protection Agency: U.S. Supreme Court Ruling Addressing Obama Clean Power Plan

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

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The United States Supreme Court ("Court") issued an Opinion today addressing a challenge to President Obama's Clean Power Plan ("CPP") Rule which was promulgated pursuant to Section 111 of the Clean Air Act. See West Virginia et al. v. Environmental protection Agency et al., No. 20-1530.

The CPP addressed carbon dioxide ("CO_2") from existing coal and natural-gas-fired power plants.

The Court held 6-3 that Section 111(d) of the Clean Air Act did not provide the United States Environmental Protection Agency ("EPA") the authority to place emission caps on what it describes as the "generation shifting approach" that was undertaken in the CPP.

The CPP was originally promulgated on October 23, 2015. See 80 Fed. Reg. 64,662. It was a component of President Obama's Climate Action Plan. The stated goal of the CPP was to cut CO_2 emissions from existing power plants. It was considered the first-ever national standards addressing CO_2 emissions from electric-generating units.

A number of states (including Arkansas) challenged the CPP. Other states argued in support of the CPP. The CPP was stayed by the Supreme Court on February 9, 2016.

The proponents of the CPP argued that its scope and breadth was necessary to reduce CO_2 emissions by encompassing the power industry grid system as opposed to facility boundaries. In contrast, CPP opponents argued that EPA's Clean Air Act authority limited it to mandating changes to a facility within its fence line.

EPA during the Trump Administration determined that the CPP exceeded its Clean Air Act statutory authority.

The Trump Administration promulgated in the CPP's place the Affordable Clean Energy ("ACE") Rule. The final ACE Rule was promulgated on June 19, 2018.

ACE utilized an emission guideline promulgated pursuant to Section 111(d) of the Clean Air Act. Affected sources were to comply with standards performance set by the states using the most appropriate technologies for techniques.

Opponents to the ACE Rule argued that it would reduce CO_2 by 2030 11 million short tons as opposed to the CPP's 450 million short tons. Proponents argued that EPA had the statutory authority to put this rule in place and the impact on energy costs would be much less severe.

The United States Court of Appeals for the D.C. Circuit vacated the ACE Rule on January 19, 2021. Its rationale included the concern that the ACE Rule required that EPA not consider more cost-effective methods on emission reduction.

West Virginia asked the Court to address the legality of the Obama CPP. The Court granted certiorari.

After rejecting EPA's contention that the petitioners did not have Article III standing, the Court held that federal agency was not provided authority in Section 111(d) of the Clean Air Act to devise emission caps based on the CPP's generation shifting approach. It framed the issue as to whether restructuring the United States:

. . . overall mix of electricity generation, to transition from 38% to 27% coal by 2030, can be the BSER within the meaning of Section 111.

BSER refers to the phrase "Best System of Emission Reduction."

The Court held that the question was subject to the "major question doctrine." It concluded that EPA is required to point to "clear Congressional authorization" to regulate in this manner (i.e., addressing issues of electricity transmission, distribution and storage).

BSER is therefore determined to not be within the authority granted to EPA in Section 111(d) of the Clean Air Act.

A copy of the Opinion can be downloaded here.