

D.C. Circuit Upholds MATS

APRIL 16, 2014

In a *per curiam* opinion decided on April 15, 2014, the D.C. Circuit upheld the Mercury and Air Toxics Standards (MATS) against challenges by states and industry. The court upheld EPA's determination that it was appropriate and necessary to regulate hazardous air pollutant emissions from power plants, holding that EPA "reasonably concluded it need not consider costs in making its ... determination under § 112(n)(1)(A)." In his dissent from that portion of the decision, Judge Brett Kavanaugh wrote that "it is entirely unreasonable for EPA to exclude consideration of costs in determining whether it is 'appropriate' to regulate electric utilities under the MACT program" because, as a matter of common sense, "whether it is 'appropriate' to regulate requires consideration of costs."

The court rejected claims that EPA improperly set the MATS mercury emission limit as "not supported by a review of the record," finding that "EPA's data-collection process was reasonable, even if it may not have resulted in a perfect dataset." The court further rejected industry's claim that EPA was required to create a separate subcategory for circulating fluidized bed units, holding that the Clean Air Act "gives EPA substantial discretion in determining whether subcategorization is appropriate." The court upheld EPA's decision not to distinguish between major sources and area sources of hazardous air pollutants. The court also denied environmentalists' challenges to the emissions averaging and stack testing provisions of the rule.

It is anticipated that the D.C. Circuit's decision will be appealed to the Supreme Court.

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