

Supreme Court Grants *Certiorari* in MATS Case

NOVEMBER 25, 2014

Today, the Supreme Court of the United States agreed to hear a group of three consolidated cases filed by states and industry groups challenging the D.C. Circuit's decision upholding the Mercury and Air Toxics Standards (MATS). The Court has limited its review 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."

Under § 112(n)(1)(A) of the Clean Air Act, EPA was required to make a finding that it was "appropriate and necessary" to regulate hazardous air pollutant emissions from electric utilities before promulgating MATS. The D.C. Circuit upheld EPA's conclusion that it was not required to consider costs in making its appropriate and necessary determination. In dissent, Judge 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 has not yet scheduled oral argument in the three consolidated cases. It appears unlikely that the Court will render its decision before the April 16, 2015, MATS compliance date for existing sources.

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