

Client Alert

Current Issues Relevant to Our Clients

July 1, 2015

Supreme Court Requires Reconsideration of EPA's Mercury Rule

On June 29, 2015, the Supreme Court issued a ruling declaring that the Environmental Protection Agency ("EPA") interpreted the Clean Air Act ("CAA") unreasonably in refusing to consider costs when deciding whether to regulate power plant emissions in relation to the EPA's Mercury and Air Toxics Standards ("MATS").

Under the Clean Air Act (42 U.S.C. §7412), the EPA is directed to regulate emissions of hazardous air pollutants from certain stationary sources. Congress established a specific procedure for applying the CAA to power plants. The EPA can regulate power plants under the CAA only if, after conducting studies to determine the hazards such plants present to public health as a result of their emissions, the regulation is both "appropriate and necessary." In yesterday's ruling, the Supreme Court found that the EPA was required, but failed, to consider the estimated \$9.6 billion in compliance costs associated with the MATS in deciding whether it was "appropriate and necessary" to issue the standards.

The fate of the MATS is unclear in light of the Supreme Court's ruling. Now that the Supreme Court has decided that costs must be analyzed before the EPA regulates emissions from power plants, it is up to the Court of Appeals for the D.C. Circuit to determine what this means for the MATS. The D.C. Circuit may choose to throw out the standards because the EPA did not appropriately consider the associated costs. Alternatively, the Court may simply order that additional cost analyses be performed for the standards to remain in place. Nonetheless, many power plants have already invested in capital improvements and installed the controls necessary to come into compliance with the MATS by the deadlines set forth in the final rule.

The Court's decision also raises questions of how courts will ultimately react to President Obama's upcoming climate change rules, which are expected to be finalized later this summer.

For More Information

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