

## 12-1248 AMERICAN CHEMISTRY COUNCIL V. EPA

DECISION BELOW: 684 F.3d 102

LOWER COURT CASE NUMBER: 10-1167, et al.

### QUESTION PRESENTED:

The Clean Air Act requires a "major emitting facility," defined as a source of "two hundred and fifty tons per year or more" of an air pollutant, to comply with the permitting requirements of the "prevention of significant deterioration" (PSD) program of Part C of the Act if the facility is "in any area to which this part applies." 42 U.S.C. §§ 7475(a)(1), 7479(1). The Environmental Protection Agency (EPA) claims the power to revise that statutory threshold to "one hundred thousand tons per year or more" for greenhouse gases because, it explains, applying the statutory threshold as written to greenhouse gases would produce "absurd results" that would be "inconsistent with congressional intent" and "severely undermine congressional purpose." Pet. App. 617a. These "absurd results" occur only because EPA has interpreted the PSD provision to cover sources of 250 tons per year of *any* pollutant regulated under *any* part of the Act - now including greenhouse gases, as a result of EPA's regulatory actions after *Massachusetts v. EPA*, 549 U.S. 497 (2007)-even though the PSD program "applies" only to six designated "NAAQS pollutants."

The question presented is: Whether EPA properly interpreted Part C of the Clean Air Act, requiring a pre-construction permit for a "major emitting facility ... in any area to which this part applies," 42 U.S.C. § 7475(a)(1), to apply to facilities emitting "*any* regulated air pollutant," when EPA's interpretation concededly produces absurd results, requiring (in the agency's view) that it rewrite separate statutory thresholds, and when an alternative construction - applying the provision only to sources of NAAQS pollutants subject to Part C - would avoid those results and would not require rewriting the statute.

LIMITED TO THE FOLLOWING QUESTION: Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

CONSOLIDATED WITH 12-1146, 12-1254, 12-1268, 12-1269 and 12-1272 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 10/15/2013