

Justices seem divided over EPA mercury limits (Update)

March 25 2015, by Mark Sherman

The Supreme Court's conservative justices cast doubt Wednesday on the Obama administration's first-ever regulations aimed at reducing power plant emissions of mercury and other hazardous air pollutants that contribute to respiratory illnesses, birth defects and developmental problems in children.

The court appeared to be divided over a challenge brought by industry groups and 21 Republican-led states to the Environmental Protection Agency's decision to take action against coal- and oil-fired power plants that are responsible for half the nation's output of mercury.

Several justices questioned whether EPA was required to take costs into account when it first decided to regulate hazardous air pollutants from power plants, or whether health risks are the only consideration under the Clean Air Act. The EPA did factor in costs at a later stage when it wrote standards that are expected to reduce the toxic emissions by 90 percent. The rules begin to take effect next month and are supposed to be fully in place in 2016.

Justice Antonin Scalia was critical of the agency's reading of the provisions of the anti-air pollution law at issue in the case throughout 90 minutes of arguments. "It's a silly way to read them," Scalia said.

The court's four liberal justices appeared more comfortable with EPA's position, leaving Justice Anthony Kennedy as the possible decisive vote.

Kennedy at one point said the law appeared to give EPA the leeway to regulate pollutants based only on their harm. But, ominously for the government, he later said that once a decision to regulate is made without consideration of cost, "at that point the game is over."

The administration and its state government and industry allies told the justices that EPA followed the same process in deciding whether to regulate other sources of emissions, including from motor vehicles.

The case is the latest in a string of attacks against the administration's actions to rein in pollution from coal-burning power plants that harms health and contributes to global warming. The administration is seeking to use the Clean Air Act for the first time to control mercury and carbon pollution from the nation's power plants.

But numerous states have already filed challenges to a proposed rule to curb the pollution linked to global warming from coal-burning plants. And Congress is working on a bill that would allow states to opt out of any rules clamping down on heat-trapping carbon dioxide.

The legal and political challenges ahead could undermine U.S. efforts to inspire other countries to control their emissions, as they head into negotiations in Paris on a new international treaty later this year.

The costs of installing and operating equipment to remove the pollutants before they are dispersed into the air are hefty—\$9.6 billion a year, the EPA found.

But the benefits are much greater, \$37 billion to \$90 billion annually, the agency said. The savings stem from the prevention of up to 11,000 deaths, 4,700 nonfatal heart attacks and 540,000 lost days of work, the EPA said. Mercury accumulates in fish and is especially dangerous to pregnant or breastfeeding women, and young children, because of

concern that too much could harm a developing brain.

A disproportionate share of the 600 affected power plants, most of which burn coal, are in the South and upper Midwest.

Shuttering older plants or installing pollution-control equipment also will reduce emissions of particulate matter, such as dust, dirt and other fragments associated with a variety of respiratory ailments. The administration said it properly took those benefits into account, but the challengers argued that they are not relevant to the case.

Chief Justice John Roberts called the inclusion of those other benefits an "end run" around more stringent procedures EPA would have to follow to try to reduce emissions of particulate matter.

Several utilities that already have installed the equipment, or that primarily rely on natural gas and nuclear power to make electricity, said the EPA rules are economically practical. Moreover, they said that until the rules take effect their competitors who haven't yet complied with the rules have an unfair advantage. Another 16 states and several large cities also are backing the administration.

The political and legal wrangling over the regulations has gone on for decades. The Obama administration issued final rules in 2012, and the appeals court in Washington, D.C., upheld them last year.

A decision is expected by the end of June.

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Citation: Justices seem divided over EPA mercury limits (Update) (2015, March 25) retrieved 20 March 2024 from <https://phys.org/news/2015-03-justices-arguments-epa-mercury-limits.html>

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