SUPREME COURT OF THE UNITED STATES

Nos. 12–1146, 12–1248, 12–1254, 12–1268, 12–1269, and 12–1272

UTILITY AIR REGULATORY GROUP, PETITIONER
12–1146 *v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.;

AMERICAN CHEMISTRY COUNCIL, ET AL., PETITIONERS
12–1248 *v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.;

ENERGY-INTENSIVE MANUFACTURERS WORKING GROUP ON GREENHOUSE GAS REGULATION,
ET AL., PETITIONERS
12–1254 *v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.;

SOUTHEASTERN LEGAL FOUNDATION, INC.,
ET AL., PETITIONERS
12–1268 *v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.;

TEXAS, ET AL., PETITIONERS
12–1269 *v.*
ENVIRONMENTAL PROTECTION AGENCY,
ET AL.; AND

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., PETITIONERS
12–1272 *v.*
ENVIRONMENTAL PROTECTION AGENCY, ET AL.;

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 23, 2014]

JUSTICE SCALIA announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II.

Acting pursuant to the Clean Air Act, 69 Stat. 322, as amended, 42 U. S. C. §§7401–7671q, the Environmental Protection Agency recently set standards for emissions of "greenhouse gases" (substances it believes contribute to "global climate change") from new motor vehicles. We must decide whether it was permissible for EPA to deter- mine that its motor-vehicle greenhouse-gas regulations automatically triggered permitting requirements under the Act for stationary sources that emit greenhouse gases.

{From page 10 of the decision.}

A. The PSD and Title V TriggersWe first decide whether EPA permissibly interpreted the statute to provide that a source may be required to obtain a PSD or Title V permit on the sole basis of its potential greenhouse-gas emissions.

1

EPA thought its conclusion that a source's greenhouse- gas emissions may necessitate a PSD or Title V permit followed from the Act's unambiguous language. The Court of Appeals agreed and held that the statute "compelled" EPA's interpretation. 684 F. 3d, at 134. We disagree. The statute compelled EPA's greenhouse-gas-inclusive interpretation with respect to neither the PSD program nor Title V.[4]

{From page 16 of the decision}

2

Having determined that EPA was mistaken in thinking the Act *compelled* a greenhouse-gas-inclusive interpreta- tion of the PSD and Title V triggers, we next consider the Agency's alternative position that its interpretation was justified as an exercise of its "discretion" to adopt "a rea- sonable construction of the statute." Tailoring Rule 31517. We conclude that EPA's interpretation is not permissible.

{From page 18 of the decision}

Like EPA, we think it beyond reasonable debate that requiring permits for sources based solely on their emis- sion of greenhouse gases at the 100- and 250-tons-per-year levels set forth in the statute would be "incompatible" with "the substance of Congress' regulatory scheme." *Brown & Williamson*, 529 U. S., at 156. A brief review of the rele- vant statutory provisions leaves no doubt that the PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens.

{From page 20 of the decision.}

3

EPA thought that despite the foregoing problems, it could make its interpretation reasonable by adjusting the levels at which a source's greenhouse-gas emissions would oblige it to undergo PSD and Title V permitting. Although the Act, in no uncertain terms, requires permits for sources with the potential to emit more than 100 or 250 tons per year of a relevant pollutant, EPA in its Tailoring Rule wrote a new threshold of *100,000* tons per year for greenhouse gases. Since the Court of Appeals thought the statute unambiguously made greenhouse gases capable of triggering PSD and Title V, it held that petitioners lacked Article III standing to challenge the Tailoring Rule be- cause that rule did not injure petitioners but merely re- laxed the pre-existing statutory requirements. Because we, however,

hold that EPA's greenhouse-gas-inclusive interpretation of the triggers was *not* compelled, and because EPA has essentially admitted that its interpreta- tion would be unreasonable without "tailoring," we consider the validity of the Tailoring Rule.

We conclude that EPA's rewriting of the statutory thresholds was impermissible and therefore could not validate the Agency's interpretation of the triggering provisions. An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always "'give effect to the unambiguously expressed intent of Congress.'" *National Assn. of Home Builders* v. *Defenders of Wildlife*, 551 U. S. 644, 665 (2007) (quoting *Chevron*, 467 U. S., at 843). It is hard to imagine a statu- tory term less ambiguous than the precise numerical thresholds at which the Act requires PSD and Title V permitting. When EPA replaced those numbers with others of its own choosing, it went well beyond the "bounds of its statutory authority."

{From page 29 of the decision.}

* * *

To sum up: We hold that EPA exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse-gas emissions. Specifically, the Agency may not treat greenhouse gases as a pollutant for pur- poses of defining a "major emitting facility" (or a "modifi- cation" thereof) in the PSD context or a "major source" in the Title V context. To the extent its regulations purport to do so, they are invalid. EPA may, however, continue to treat greenhouse gases as a "pollutant subject to regula- tion under this chapter" for purposes of requiring BACT for "anyway" sources. The judgment of the Court of Ap- peals is affirmed in part and reversed in part.

It is so ordered.
