10-1983

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.

Lewis F. Powell, Jr.

May 17, 1983

CHEVR GINA-POW

TO: Memorandum to file

FROM: LFP, JR.

SUBJECT: 82-1005 Chevron U.S.A., Inc. v. NRDC (and related cases No. 82-1247 and 82-1591).

If appears from the papers in this case that Vepco was among a group of about eighty electric power companies that intervened in 82-1247. The papers do not indicate that Vepco remains in the case.

I called Evans Brasfield, General Counsel of Vepco, who advised me as follows: Although Vepco did intervene below, it no longer has any significant interest in the case and is not a party to the ongoing litigation. He also stated that of the about eighty electric utilities that constituted the group, Vepco's interest probably was the least significant.

In substance, he advised that Vepco has little or no interest in the case at the present time, and sees no reason for me to disqualify.

My clerk, Jim Browning, has checked the other parties and finds no conflict.

LFP, JR.

May 17, 1983

82-1005 Chevron v. Natural Resources Defense Council

Dear Al:

Please mark the public records to reflect that I am now in the above case which appears on page 1 of the Conference for May 19.

Sincerely,

Mr. Alexander Stevas

cc: The Chief Justice
Justice O'Connor

LFP/vde

PRELIMINARY MEMORANDUM

May 19, 1983 Conference
List 1, Sheet 1

No. 82-1591

ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY	Cert to CADC (Mikva, Ginsburg, Jameson [DJ])
v.	
NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.	Federal/Civil Timely

Please see the preliminary memorandum in No. 82-1005.

There is a response.

May 10, 1983 T. Green Opns in petn in No. 82-1005

Andy

VEPLO elected
not to participate
in appeal.

at least

5/16/83
I am not "Out."
See my memo

"(CODI)" - is this a problem?

Syncrude Canada, Ltd. (Gulf?, Mobil
Rainbow Pipe Line Co., Ltd. (Gulf)
Peace Pipe Line, Ltd (Gulf)
Northward Development Ltd (a Gulf sub)
Canaulex (a Gulf sub) - Gulf is a corporate petr who was an intervenor - reapp w/ the API

Decision

I see it important but CADC is OK. probably ~~is~~ would be affirmed - Deny
5/16/83

VEPCO was an intervenor - respondent in the proceedings below.

PRELIMINARY MEMORANDUM

May 19, 1983 Conference
List 1, Sheet 1

No. 82-1005

CHEVRON, U.S.A., INC.	Cert to CADC (Mikva, Ginsburg, Jameson [DJ])	
v.		
dc NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.	Federal/Civil	Timely

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VEPCO - intervenor - resp below

no longer in case

No. 82-1247

AMERICAN IRON AND STEEL INSTITUTE, et al.	SAME	
v.		
dc NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.		

Deny - this case involves an extremely important question of statutory construction, but the CADC's decision is not unreasonable and the legislative check seems sufficient in this area. Congress will not let the CADC go too far. ??

JOB

No. 82-1591

ADMINISTRATOR, ENVIRONEMNTAL PROTECTION AGENCY — SAME

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.

SUMMARY: Petrs challenge the CADC's invalidation of the EPA's "bubble concept" under which the word "source" in Part D of the Clean Air Act means an entire plant. Under previous EPA regulations, the word "source" meant an individual piece of process equipment within the plant.

FACTS AND DECISION BELOW: As part of the 1970 amendments to the Clean Air Act, Congress directed the EPA to prescribe national ambient air quality standards (NAAQSs), and required all states to adopt, and submit to the EPA for approval, State Implementation Plans (SIPs) that would indicate timely attainment of the NAAQSs. It soon became evident that many states would fail to attain the NAAQSs within the statutory deadline. In 1977, Congress amended the Clean Air Act to address areas of the country that were not expected to attain the NAAQS. Part D of the Act was added to require states with "nonatainment areas" to submit revised SIPs demonstrating that the NAAQSs would be attained "as expeditiously as practicable," but not later than Dedember 31, 1982, or "if the State demonstrates to the satisfaction of the Administrator ... that such attainment is not

possible in an area with respect to either [ozone or carbon monoxide] ... not later than December 31, 1987." Until the NAAQSs are attained, "reasonable further progress towards the standards must occur in each year."

Two aspects of Part D precipitated the issue in this case. First, Part D requires that SIPs establish a permit program for the construction and operation of new or modified "major stationary sources" in nonattainment areas. States may issue a permit for construction modifications of a major source only if four conditions are met. Application of this four-part test is called "new source review." Second, if the nonattainment area lacks an approved SIP meeting Part D's requirements, a construction moratorium becomes operative and no major stationary source can be constructed in the area.

Part D does not explicitly define the term "stationary source" and the EPA has twice construed it in regulations. In 1980, the EPA defined the term to mean "any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act." This regulation further defined "building, structure, [and] facility" to mean, essentially, an entire plant. "Installation," however, was defined as "an identifiable piece of process equipment." Thus, a "source" could be either an entire plant or an individual piece of equipment at a plant. The reason for this "dual definition" was the EPA's determination that Congress intended Part D to subject to review more new construction projects in areas with unhealthy air than in areas where the objective is simply to

prevent deterioration of healthy air. These regulations also provided that reconstructed facilities, facilities where the cost of now components exceeds 50% of an entirely new source, would be treated as new sources.

In 1981, the EPA replaced the dual definition for new source review in nonattainment areas with a plantwide definition of "stationary source." This is known as the "bubble concept." This change was made to reduce perceived regulatory complexity and to allow the states to play a primary role in pollution control. The 1981 regulations also deleted the requirement that reconstructed facilities should be treated as new sources. Resps filed a petn for review of the 1981 regulations.

The CADC viewed the question as whether the EPA's discretion under the Clean Air Act is broad enough to allow it to apply the bubble concept to Part D's nonattainment program. The CADC felt itself bound by two of its previous decisons on this topic. First, the decision in Alabama Power Co. v. Costle, 636 F. 2d 323 (CADC 1979), held that the EPA must apply the bubble concept to the regulatory scheme under Part C of the Act. Part C establishes the Prevention of Significant Deterioration component of the Act that is designed to maintain air quality in clean areas. The bubble concept was viewed as "precisely suited" to the goals of Part C; "preserving air quality within a framework that allows cost-effiient, flexible planning for industrial expansion and improvement." A more specific definition of "source" was not necessary to implement Part C.

The second controlling decision was ASARCO, Inc. v. EPA, 578 F. 2d 319 (CADC 1978). In that case, the court rejected application of the bubble concept to national "new source performance standards" which the Act directs the EPA to set with a view to enhancing air quality. When the Act directs that air quality is to be improved, rather than merely maintained, the bubble concept is inappropriate because it would allow operators to avoid installing the best pollution control technology as long as the emissions from the entire plant do not increase. The Alabama Power court reconciled its decision with ASARCO by noting the difference between preserving air quality, as mandated by Part C, and enhancing air quality, as required by "new performance standards." The term "source" could properly have different meanings under each of these different regulatory schemes.

The CADC read these two cases to "establish as the law of this Circuit a 'bright line test' for determining the propriety of EPA's resort to a bubble concept. The bubble concept, Alabama Power declares, is mandatory for Clean Air Act programs designed merely to maintain existing air quality; it is inappropriate, both ASARCO and Alabama Power plainly signal, in programs enacted to improve the quality of the ambient air." The bubble concept was thus inappropriately applied to Part D's nonattainment scheme because the purpose of that scheme is to improve air quality in regions that fall below the NAAQSs.

The EPA argued that the court misperceived the nature of the nonattainment program. The EPA urged that the bubble concept

would leave the states considerable latitude to define "source" as they saw fit. However, regardless of the definition adopted by a state, the state would still have to submit and comply with a revised SIP that assures air quality. Timely compliance with the NAAQSs, the primary purpose underlying Part D, would thus be achieved. The CADC rejected this argument on the ground that offering flexibility to the states did not change the fact that Part D's goal was to enhance air quaility. Consequently, the Alabama Power-ASARCO rule invalidated the bubble concept. Further, the court could not reconcile the EPA's desire to allow the states large leeway to define "source" with the fact that Part D contains wholly federal requirements imposed on the states. The CADC vacated the 1981 regulations, including the EPA's deletion of the rule that reconstructed facilities should be treated as new sources.

CONTENTIONS: 1. Chevron USA, Inc. Chevron argues that cert should be granted to "rescue both the regulators and the regulated from the legal quagmire created by the" CADC. Chevron asserts that Alabama Power and Asarco are irreconcilable. Finally, Chevron argues that the CADC has simply substituted its judgment for that of the EPA.

2. American Iron and Steel Institute. These petrs argue that the CADC decision inhibits reasonable economic growth in nonattainment areas and thus impedes the nation's ability to recover from the current recession. The EPA determined that its "dual definition" was an "economic disincentive" with little or no environmental benefits. Under the invalidated regulations,

plant-wide modifications were permitted so long as plant-wide emissions did not increase. This is all that is required by Part D. Further, the CADC decision is inconsistent with the notion that the Clean Air Act places primary responsibility for assuring air quality on the states. See Train v. NRDC, 421 U.S. 60 (1975).

3. The SG. The SG's arguments center on the notion that the CADC exceeded the limits upon the scope of judicial review of administrative action. Congress has consistently provided that the states should have primary responsibility for the control and prevention of air pollution. The addition of Part D to the Clean Air Act in 1977 is not an exception to this policy. The EPA's construction of the undefined term "source" in Part D accords the states, within Part D's broad outlines, the authority to define "source" in a way that will best enable it to ahcieve attainment. The EPA's policy does not permit a state to adopt the bubble concept unless any increased emissions at a particular site are offset by decreased emission from another component within the same facility. Thus, the states are accorded the flexibility to determine how to structure their source review programs only if Part D's attainment requirements are met.

The SG also argues that the "bright line" established by ASARCO and Alabama Power has no basis in the Act. Neither the statutory text nor its legislative history requires that "source" be defined differently depending on whether one is seeking ehancement or maintenance of existing air quality.

The SG finally argues that cert should be granted because 31 states have sought to adopt bubble concept approaches to new source review. The CADC opinion would require the EPA to disapprove these proposals.

4. Resps. Resps note that this is a simple case of statutory construction that does not warrant this Court's attention. Congress has assigned review of Clean Air Act regulations to the CADC to assure national uniformity in the law; there is no need for further review of this case by this Court. In any event, resps argue that the CADC decision is correct. First, the 1977 "nonattainment" amendments to the Clean Air Act were passed to allow certain extremely polluted areas a little more time to come within clean air standards. This leeway was accorded, however, only so long as the affected states adopted stringent guidelines governing construction of new sources. New sources must be subjected to a four-step "new source review" that will help assure that the polluted area will be brought into compliance as soon as possible. The CADC decicsion simply construes the term "source" in a manner that best implements Congress' intent. Resps also note that Congress is currently considering legislation to amend the Act and can repudiate the CADC's construction if it so desires. The report of at least one Senate committee on these amendments has expressly endorsed the CADC opinion: "The court's decision ... correctly interprets congressional intent." S. Rep. No. 666, 97th Cong., 2d Sess. 49 (1982).

DISCUSSION: Although Congress' intent is not entirely clear, it seems that the CADC has the best of this issue. The 1977 amendments to the Clean Air Act were added only to allow certain areas, areas unable realistically to comply with the Act's guidelines within prescribed time periods, to continue to grow and construct new "sources" only if those sources did not hinder attainment of the Act's standards. New sources in such nonattainment areas were made subject to a rigorous four-part test, to be applied by the states, before they could become operational. It stands to reason that Congress' close scrutiny of construction in nonattainment areas is better implemented when all sources, including specific sources within an existing plant, are subjected to the statutory test--the CADC's construction of the Act is therefore more in accord with Congress' intent than are the new EPA guidelines.

It also appears that the CADC has developed a body of law on this issue that should not be lightly cast aside. The progression from ASARCO-Alabama Power to this case has established a workable legal framework within which the EPA can develop guidelines relating to new "sources" under the Act. This legal framework is fully supported by the Act and by its legislative history and, as resps point out, has been endorsed by the Senate Committee on Environment and Public Works.

I recommend denial.

There is a response and an amicus brief.

May 10, 1983 T. Green Opn in petn in No. 82-1005

Included, Deny
~~Chevron~~
unless Chevron
82-1005 is
granted.

PRELIMINARY MEMORANDUM

May 19, 1983 Conference
List 1, Sheet 1

No. 82-1247

AMERICAN IRON & STEEL INSTITUTE, et al.

v.

NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.

Cert to CADC (Mikva, Ginsburg, Jameson [DJ])

Federal/Civil

Timely

Pleas see the preliminary memorandum in No. 82-1005.

There is a response.

May 10, 1983 T. Green Opns in petn in No. 82-1005

May 19, 1983

Court .... Voted on ...., 19...

Argued ...., 19... Assigned ...., 19... No. 82-1005

Submitted ...., 19... Announced ...., 19...

CHEVRON U.S.A., INC. Relisted for me

vs.

NRDC

This is case I thought I was out of. VEPCO not

CADC seems right. ~~But would~~ Inclined to Deny 5/24

Time for filing extended by the Chief Justice until 3/26/83. Also motion of Mid-America Legal Foundation for leave to file a biref as amicus curiae.

No longer interested

Relist for LFP

Word "source" in EPA was held by CADC to any individual piece of equipment — not just the "entire plant".

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.	[illegible]												
Rehnquist, J.		✓											
Stevens, J.			✓										
O'Connor, J.	[illegible]	J3											

May 19, 1983

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 82-1247

Am. Iron & Steel

vs.

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Time for filing extended by the Chief Justice until 3/26/83. Also motion of Mid-America Legal Foundation for leave to file a biref as amicus curiae.

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May 19, 1983

Court ..... *Voted on* ....., 19...

Argued ....., 19... *Assigned* ....., 19...

Submitted ....., 19... *Announced* ....., 19...

No. 82-1591

re the Chevron case 82-1005

ADMINR., EPA

vs.

NRDC

OK

Time for filing extended by the Chief Justice until 3/26/83. Also motion of Mid-America Legal Foundation for leave to file a bref as amicus curiae.

ad 1005

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
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May 26, 1983

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 82-1005

CHEVRON U.S.A., INC.

vs.

NRDC

THIS CASE WAS RELISTED FOR YOU. Also motion of Mid-America Legal Foundation for leave to file a biref as amicus curiae.

Grant & consolidate

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
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May 26, 1983

Court .....
Argued ....., *19*...
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Voted on....., *19*...
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No. 82-1247

Am. Iron & Steel

vs.

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May 26, 1983

Court .....
Argued ....., *19*...
Submitted ....., *19*...

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No. 82-1591

ADMINR., EPA

vs.

NRDC

THIS CASE WAS RELISTED FOR YOU. Also motion of Mid-America Legal Foundation for leave to file a biref as amicus curiae.

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O'Connor, J.													

Memo. to
File

lfp/ss 02/25/84 CHEVRON SALLY-POW

82-1005, 82-1247, 82-1591 The Chevron Group of Cases

As these cases involve an environmental law issue of some importance, and the parties probably number well into the hundreds, I have been concerned about a possible need to disqualify.

In checking through my disqualification file (July 1, 1982 through July 3, 1983), I find that we already have carefully checked out this litigation, and I do not have to disqualify.

See, first my letter of December 10, 1982, recognizing that Hunton & Williams - at that time - may have clients who were interested. Apparently, I asked to be "out" at least temporaryily. Next, I find a memo to file of May 17, 1983. This indicates that I talked to Evans Brasfield, who advised me that Vepco no longer had any significant interest in the case. Moroever, Jim Browning checked - with his usual meticulous care - all of the parties named and found no conflict. Accordingly, on May 17, 1983, I advised Al Stevas that I was in the case.

In recent conversations with Turner Smith and Heny Nichol, both of Hunton & Williams, they confirm that there was no reason for me to be out of th Chrevon cases.

See Turner Smith's letter of February 8. In my conversation with him, he advised that Hunton & Williams no longer has any interest in Chemical Manfuacturers Associations v. National Resources Defense Council, No. 83-1013 - a case filed here on December 19, 1983, and that will be on the list in March.

The other two cases mentioned in Turner's letter are no longer pending.

L.F.P., Jr.

ss

dac 02/28/84 Reviewed 2/28 - Excellent memo.

David would reverse, & at least tentatively I am inclined to agree.

Common sense & economic policy support the "bubble concept":

If a "source" is deemed to be every new piece of equipment or modification, there would be a disincentive to modernize or improve efficiency.

There are problems in determining what constitutes a plant (e.g. multiple-buildings - e.g. Philip Morris' "plant" in Richmond. But there is less of a problem that determining "emission" effect of every change or addition.

BENCH MEMORANDUM

Chevron v. NRDC
American Iron and Steel Institute v. NRDC
Ruckelshaus v. NRDC

Nos. 82-1005, 82-1247, 82-1591

David A. Charny February 28, 1984

Question Presented

Whether, under the Clean Air Act, the EPA may allow the states to define a "source" as an entire plant, rather than an individual piece of equipment, for the purposes of the Act's requirement that "new or modified sources" in nonattainment areas qualify for permits under the State Implementation Plan.

Outline

I. Background

The Clean Air Act, as amended in 1977, requires states that have not attained compliance with the ambient air quality standards set by the federal government to adopt a "new source review" (NSR) program. 42 U.S.C. §7502(b)(6). The program is to assure that economic growth does not contribute to increased pollution and thereby delay attainment of the air quality goals under the Act. The program applies to any new or modified "source" of pollution; a "modification" is any change in an existing source that increases the amount of pollution. 42 U.S.C. §7501(4). A permit may be issued for construction of a new or modified source only if four condition are met: (i) the owner of the source must obtain reductions in pollution from other sources that more than offset that increase attributable to the new source; (ii) the source must comply with the "lowest achievable emission rate," as set by the state; (iii) other sources under the same ownership must also be in compliance; (iv) an (SIP) is being carried out in the nonattainment area. §7503.

In addition, all new sources are subject to the requirements of the "new source performance standards" (NSPS) program, that was instituted in 1970. These standards, that require new sources to adopt the "best available technology" for pollution control, are applied to new sources uniformly throughout the nation. For purposes of the NSPS program, the statute defines "source" as a "any building, structure, facility or installation which emits or may emit any air pollutant." §7411(a)(3).

In 1981, the EPA promulgated regulations that, for the purposes of the NSR program, defined "source" as an entire plant. 40 CFR 51.18(j). Under this definition, whether a change at an existing plant increases pollution -- and is therefore a "modification" subject to the four requirements noted above -- is determined by reference to the plant as a whole. If the increase from the new installation is offset by decreases accomplished elsewhere in the plant, the new installation is not a "modification" of the source. This is the "bubble concept."

The CADC invalidated the "plantwide" definition. Under CADC precedent, the "bubble concept" had been upheld when the goal of the program was to preserve air quality, Alabama Power Co. v. Costle, 636 F.2d 323 (CADC 1979); it had been rejected when the goal of the program was to improve air quality, ASARCO, Inc. v. EPA, 578 F.2d 319 (CADC 1978). Because the nonattainment program was aimed at improving air quality, the plantwide definition could not be used.

II. Discussion

A. Statutory Language

Unlike Part A of the Clean Air Act, that establishes federally-determined "new source performance standards" (NSPS), part D of the Act, at issue here, contains no definition of "source." Resps contend that Congress incorporated the part A definition into part D by referring to the part D nonattainment program in §7410(a)(2)(D) of part A. That section requires the State Implementation Plan (SIP) to include a program "to provide

for ... regulation of the modification ... of any stationary source, including a permit program as required in [part D] ...."

This is hardly a very explicit means of incorporating the Part A definition of "source" into part D. When Congress wished to incorporate the definition of "modification" from part A to part D, it expressly so provided in part D. See §7501(4). Further, as will be discussed below, the legislative history and the policies of the Act suggest that, absent more express indications of legislative intent, it should not be assumed that Congress intended the same definition to apply in parts A and D: the Conference Committee deleted a provision that would have made the NSPS definition of source applicable to all parts of the Act; and the purposes of the NSPS program and the NSR program differ significantly.

In any case, even if Congress defined "source" as "building, structure, facility or installation," it is arguable that EPA retains discretion to define these terms to refer only to entire plants. This may be difficult to reconcile with the literal language of the definition; for example, if a source is "any building" that emits pollution, then a plant that consists of five buildings, each emitting pollution, would comprise five sources. Given the difficulty and importance of the question from the viewpoint of environmental policy, however, the Court should be reluctant to reach this inflexible conclusion from the literal language of the statute in the absence of some indication that Congress consciously chose that language to express this intent. Rather, the list of terms "building, structure, facility,

or installation," could be interpreted to indicate Congress's intent that the program be comprehensive -- i.e., that all types of stationary polluters be covered by the Act.

A more significant difficulty with EPA's approach is that EPA has defined the term "source" inconsistently for different sections of part D itself. The plant-wide definition applies to §7502(b)(6), that requires permits for the "construction and operation of new or modified major stationary sources in accordance with §7503." The EPA has applied a different definition of source, however, to §7503(2), that requires "the proposed source ... to comply with the lowest achievable emission rate." For §7503(2), EPA regulations construe "source" to mean an "emissions unit," defined as "any part of a stationary source which emits ... any pollutant." 40 CFR §51.18(j)(vii); id., (xiii)(b). This inconsistency of definition gives industry the "best of both worlds." Emissions from the entire plant are considered to determine whether the source is subject to the requirements of §7503. If those requirements apply, however, they apply only to the piece of equipment or part of the plant actually responsible for the increased emissions.

As a matter of policy, it may be difficult to imagine that Congress wished to require that an entire plant be revamped with new pollution control equipment whenever total emissions from the plant increased. But Congress uses the same term -- "source" -- in both §7502(b)(6) and §7503(2). If the plant-wide definition is implausible for §7503(2), that suggests that the definition is unavailable for §7502(b)(6) as well. There is no

basis in the statute for using the plant-wide definition in one context and not the other; and, as discussed below, this may be inconsistent with the policies behind the Act.

B. Legislative History

Resp contends that the terms of earlier versions of the Clean Air Act amendments demonstrate that Congress conceived of a "source" as a unit within a plant rather than thue plant itself. Even if the terms of the 1976 proposals in Congress, that were not adopted, and the 1976 EPA regulations do draw such a distinction explicitly, the fact remains that Congress declined to draw this distinction in the amendments that were finally adopted. Although the Senate bill contained a provision applying the NSPS definition of "source" to all parts of the Act, that provision was deleted by the Conference Committee. It is possible, as resp suggests, that the deletion was inadvertent, made because the Committee thought that it was unnecessary to define "stationary source" twice in the Act. Nonetheless, the deletion of provisions that would have required a narrower definition of "source" does suggest, at least, that Congress had not focused its attention on this issue; further, insofar as Congress had adverted to the issue, it had decided not to require a specific definition of "source." In either case, the EPA definition is consistent with congressional intent.

EPA's definition is consistent with Congress' intent

The discussion of the amendments in the reports and on the floor also suggest that Congress did not form an clear intent on the definition of "source." Certainly there is no reported discussion of the question. While statements by some legislators

Markie?

seemed to assume that "source" would refer to specific installations or equipment, others refer to entire plants as "sources."

Report on House Bill

The report on the House bill, that EPA acknowledges to be the model for the amendments finally enacted, does contain some general statements that undermine the EPA's position. First, in the section entitled "State Flexibility," the House lists several ways in which the bill gives greater flexibility to the states, but does not mention the definition of "source." And in discussing the "lowest achievable emission rate," the committee states its conclusion that "all feasible efforts to reduce or control this ... pollution [from new or modified sources] should be mandated." It might appear, then, the Committee did not contemplate flexibility in application of the requirements for new and expanded sources. But the Committee might not have mentioned the states' freedom to define "source" simply because it did not realize that this might provide a significant source of flexibility to the states. And, as discussed below, the plant-wide definition of source is consistent with "maximum feasible efforts" to control pollution as long as the definition is consistently applied in all sections of the Act.

C. Policies of the Act

Resps and the Court of Appeals suggest that the definition of "source" must be the same for the "new source performance standards" and for the "new source review" programs because the programs serve the same purposes. It is true that, by requiring new or modified sources to enstall the best available technology, the programs both attempt to enhance the potential for economic

growth and create a market for new pollution control technology. Beyond that, however, the goals of the two programs diverge in ways that might justify different definitions of "source."

A major goal of the NSPS was to create a national standard for new sources, so that a competitive advantage would not accrue to industries that were subject to less stringent emissions standards because they were located in states with cleaner air. H. Rep. No. 95-294, at 184-185. This goal clearly favors a definition more specific than the plant-wide definition, as the plant-wide definition would place a much greater burden for controlling pollution upon new plants than upon older plants that might be renovated or expanded. The locally-based NSR program is unconcerned with national uniformity. To the contrary, one purpose of the section was "to give the States more flexibility in determining how to protect public health while still permitting reasonable new growth." H. Rep. No. 95-294, at 213. To that end, the states were permitted to choose "whatever mix of continuous emission reduction measures and strategies it wants to meet the requirements of this section." Id.

Further, the NSR program, unlike the nationally-based new source performance standards, requires new or modified sources to contribute to further reductions in level of emissions for the non-attainment area. Congress might have considered it desirable to leave the states greater flexibility in defining "source" in this context. The individual states would be in the better position to determine, for the types of industry subject to regulation, whether emissions could be reduced more efficient-

ly if reductions were required when each installation, narrowly defined, was added, or only when the plant as a whole contributed to further pollution. And, as each state is required to meet the national ambient goals set by EPA, the flexibility left to the states is only a matter of means; there is no question that the means adopted must be effective to achieve the ends set by the Act.

Finally, the "bubble concept" is clearly a sensible means of pollution control. The bubble concept permits each plant manager to choose the most efficient means to counterbalance increases in emissions from plants modifications. A more specific definition of source requires the plant manager to attain the lowest achievable emission rate -- a standard set with little regard to cost, see H. Rep. No. 95-294, at 215 -- for any change in plant operation that produces new emissions. The bubble concept permits the manager to counterbalance these new emissions by emission reductions, in other parts of the plant, that may be obtained much more efficiently than those that would abe required to achieve the "lowest achievable emission rate."

As noted above with reference to the statutory language, the most disturbing aspect of the EPA's approach is that it adopts different definitions for determining whether a "source" is new or modified and for requiring the "lowest achievable emission rate." Although emissions for the entire plant must increase before the source is "modified," only the particular new piece of equipment is required to achieve the lowest achievable rate. This appears inconsistent with the congressional intent to

require "maximum feasible pollution control," H. Rep. No. 95-294, at 215. On the other hand, were the definition of "source" consistent in the EPA regulations, which definition of "source" were adopted might make little difference as to the overall impact of the program on the level of emissions. While the plant-wide definition of the source might trigger the requirements for new or modified "sources" less frequently than an equipment-specific definition, the plant-wide definition would require greater efforts at abatement by those plants that did qualify as new or modified sources.

III. Conclusion

If this case required the Court to review EPA's two definitions of "source" -- to determine whether a source is new or modified and to determine what piece of equipment must comply with the "lowest achievable emisson rate" -- EPA's policy probably could not be upheld. However, the EPA policy on the "lowest achievable emission rate" was not challenged by resps and does not appear to be before the Court. I would not invalidate the EPA regulation under review on this basis because the issue is not pressed by the parties. The inconsistency does suggest, however, that EPA's regulation might warrant less deference than is generally accorded to agency action.

Nonetheless, the CA decision should be reversed. Congress expressed no clear intent on the definition of source, and the EPA approach is consistent with the language of the statute and advances the statute's purposes. The case is close, however, as there are contrary indications of congressional intent in the

legislative history and the statute itself.

David

82-1005 CHEVRON v. NATURAL RESOURCES DEFENSE COUNCIL
82-1247 AMERICAN IRON & STEEL INSTITUTE V.
v. NATURAL RESOURCES DEFENSE COUNCIL
82-1591 RUCKELSHAUS v. NATURAL RESOURCES DEFENSE COUNCIL Argued 2/29/84

Bator (SG)

Q - what constitutes a ~~"source"~~ "source".

EPA Reg. allows a state - doesn't compel - to adopt the "bubble" concept of "source".

This Reg was adopted in 1981.

The EPA was amended in 1977 to deal with non-~~attainment~~ attainment areas. (See SG's Brief for purposes of 1977 amend).

Act requires reasonable annual reductions

"Source" ~~in~~ in § 111, enacted in 1970, is defined. It states that "for purposes of this Section 111", the definition applies.

The 1977 Amend., ~~addressing~~ addressing the non-~~attainment~~ attainment areas & then a different problem, makes no cross reference to § 111. Yet the '77 Amend does refer to other definitions in § 111.

Bator (cont)

50'c Hinder '77 Act has defined "source" in two different ways. Bator explains this in a way I do not understand. He referred to "[redacted]"

?? There "layer" requirements applies to building a plant. Once these ?? requirements are met, there

The "bubble system": look at existing plant as a whole, if net pollution is increased the "bubble" doesn't apply. Only when net is not increased, does it apply.

x x ^

In [redacted] Train, 421 U S at 87, we spoke of deference due interpretation of Act

Donziger (Reply)

Two uses of term "source" in same R should be given same meaning.

Applies to boilers & blast ~~furnaces~~ furnaces

See p 36 of Br. – statement of Murkie. (does support Resp)

BRW noted that even under Govt argument, the air quality must steadily improve. Donziger agreed but said the non-attainment areas were still far behind.

Congress wanted best technology to be in every piece of new equipment.

Ala. case has been misinterpreted by CMDC as well as the Govt.

Batt ok (Reply) (This is Batt's best argument)

See reference to Muskie's statement in S 6's Reply Br.

Congress found '70 act deficient. The purpose of '77 Amend. was to give states greater flexibility & Congress wanted to encourage industry to improve its efficiency.

Under Resp's definitions improvements often will not be made.

Even.

dac 03/01/84

To: JUSTICE POWELL

From: David

Re: Chevron v. NRDC, No. 82-1005

Helpful memo on points that troubled me.

(1) EPA's two definitions of "source": As we discussed, a major weakness of the EPA's position is that it has defined "source" two ways: the "bubble" definition for determining when a source is "modified," and a definition focusing on individual pieces of equipment for determining the "lowest achievable emission rate" (LAER) to be achieved by the source.

Re-examining the statute, I think that this contradiction can be resolved, at least as a logical matter. The EPA regulation on LAER, that appears to contain the second, inconsistent, definition of "source," can be interpreted instead as a definition of "lowest achievable emission rate." For modified sources, that rate is defined, in effect, as the rate that is achieved for the source -- the plant -- by putting LAER technology on the particular piece of equipment that is altered. The definition of "source" for the purposes of LAER then remains the same as the definition used for determining whether the source is modified.

Interpreted in this way, the regulation does define the "lowest achievable emissions rate" differently for new and for modified sources. For a new source, that rate is the rate achieved when each piece of equipment is fitted, as required by the regulations, with LAER technology; for a modified source, only the new pieces of equipment need be so fitted. Such a dis-

tinction, however, is authorized by statute, as the definition of the "lowest achievable emissions rate" permits comparison among sources in a given "class or category."[1] Judge Leventhal endorses a like interpretation of this language, in the context of the NSPS program, in his concurrence in ASARCO, Inc. v. EPA, 578 F.2d 319, 330 (CADC 1978).

However, the EPA's definition of "lowest achievable emissions rate" does appear arbitrary in that it may not require, in all cases, "the most stringent emission limitation which is achieved in practice ...." That depends in practice on the "classes" or "categories" established in implementing the regulation. Thus, if the EPA regulations are upheld on this basis, the opinion would have to caution the EPA that the classifications that are adopted for different categories of modified sources must be reasonable: The statute requires that one "modified" source achieve the same emissions rate as other comparable sources.

I have discussed this analysis with Justice O'Connor's law clerk, since we had discussed the case several times previously, and he seems to agree that this approach resolves the apparent inconsistency in the EPA's use of the term "source."

On reflection, I would strongly oppose striking down the

---

[1] §7501(3) defines the term "lowest achievable emission rate" as "that rate of emissions which reflects (A) the most stringent emission limitation which is contained in theimplementaiton of any State for such class or category of source ..., or (B) the most stringent emission limitation which is achieved in practice by such class or category of source ...."

EPA regulations simply on the basis that EPA seems to use "source" in two inconsistent ways. The analysis I have described shows how complicated the problem is; and the problem was not briefed, or even mentioned, by any of the parties.

2. Required Improvements in Air Quality. -- The "bubble" concept does not imply that no progress will be made in pollution abatement. States with nonattainment areas must adopt plans that "require ... reasonable further progress..." " §7502(b)(3). The term "reasonable further progress" means "annual incremental reductions in emissions ... which are sufficient .. to provide for attainment of the applicable ... air quality standard" by the required statutory deadline. §7501(1).

Other methods of pollution control are available to the states besides the "new source review" program, to which the "bubble" concept applies. In addition to control of new sources, states place controls upon existing sources. And control of existing sources may often be the more efficient means of reducing pollution. For example, the amount of sulfur dioxide that is emitted by coal generators can be controlled either by "scrubbers" or by using low sulfur coal. Requiring existing plants to use low sulfur coal may achieve the same amount of pollution abatement, and be much less costly, than requiring all new generators to be fitted with "scrubbers."

Further, even with the "bubble" concept, the states would be free to require new sources to adopt various methods of pollution control. The states merely will be free of any rigid

compulsion to require "state-of-the-art" technology -- technology that is required with little regard to cost-effectiveness.

Thus, although adopting the "bubble" concept may reduce the number of instances in which plants will be required to install state-of-the-art technology, the states retain a number of means to improve air quality.

[c. MARCH 1, 1984]

Pre-Conference Notes

82-1005 Chevron (& other cases)

Q: Validity of the "bubble concept" under ~~the~~ which the word "source" in Part D means – under EPA's Reg. of 1981 – an "entire plant"?

The 1977 Amend: Part D addresses the status of "non-attainment" areas.

As CADC says:

Part D is "dense". It does not define "source" & makes no express cross-reference to the definitions in Part A. Nor does the legislative history "squarely" address the question.

EPA Regulations

1980 Reg defined "source" as any "bldg., structure, facility or installation". Also ~~Burke~~ "source" was said to mean an "entire plant" and "an identifiable piece of process equipment." (a "dual definition".

1981 Reg repealed the 1980 "dual definition" & adopted a plant wide definition of "stationary source"

2

82-1005 Chevron

The main arguments:

1. Supporting 1981 Reg. + Reversal of CADC

(a) Deference due Agency determination
(b) States have primary responsibility. They may - but are not compelled - to apply "bubble concept." Flexible.
(c) Increased emissions must be off-set
(d) CADC's decision:
(i) inhibits economic growth
(ii) creates "economic dis-incentives" to improvements.
(iii) handicaps American industry.

(e) Since no definition of "source", & at least the language of Part D is ambiguous, EPA Regulation should be accepted.

2. Supporting affirmance of CADC

(a) Congress intended to compel improvement - not merely preservation of status quo - in nonattainment areas.
(b) Unlikely that Congress intended "source" to mean something different under Part D from that under Part A.
(c) To extent leg. hist. is pertinent, it supports CADC holding.

82-1005 Chevron

Answer to Respondents:

A. "Bubble" concept will not inhibit progress in pollution abatement.

§ 7502(b)(3) obligates non-attainment States to adopt plans that "require --- reasonable further progress". This term means "annual incremental reductions in emissions" that will provide for attainment of the prescribed "air quality standard" by the statutory deadline.

Methods of pollution control are provided other than the "new source review" program of the "bubble concept." States also must control existing sources.

B. The two definitions of "Source"

Complicated inter-relationship of statutory provisions.

I don't believe that either CADC or the Briefs have explained shown there is any inconsistency, or that basic objective of EPA will be inhibited.

Rev 4-3 (tentative)

No. 82-1005, Chevron v. Natural Resources Defense Conf. 3/2/84

The Chief Justice Aff'm

Congress usually intends same meaning to same terms.

EPA construction goes too far.

Justice Brennan Aff'm

Inconsistency of EPA's treatment of "source" answers the Q in this case. Can't have it both ways.

Justice White Reverse - tentative

Close Q - but Ala Power is inconsistent with CADC. See Wilkie's opinion.

~~Ala~~ Ala Power said "bubble" applies to Part C. No difference ~~for~~ between C & D. Thus there is an outstanding CA decision that ~~conflicts~~ would create an inconsistency if we Aff'm

Justice Marshall

Out

Justice Blackmun Rev - tentative

Justice Powell Rev - tentative

See my notes

Justice Rehnquist

Out

Justice Stevens Rev - tentative.

Definitions should apply uniformly.

Ala. is relevant but not controlling.

John read portions of House Committee Report - cuts both ways.

As confused as situation is, am inclined to accept Agency view

Justice O'Connor Aff in

Leg. history & statutory hist. do not support reversal

Supreme Court of the United States
Washington, D. C. 20543

March 2, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: 82-1005) Chevron USA, Inc. v. Natural
) Resources Defense Council
)
82-1247) American Iron and Steel Institute
) v. Natural Resources Defense Council
)
82-1591) Ruckelshaus v. Natural Resources
) Defense Council

Dear Chief,

John Stevens has agreed to undertake the opinion for the Court in these cases.

Sincerely yours,

Byron

The Chief Justice

Copies to the COnference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 12, 1984

Re: Nos. 82-1005) Chevron v. Natural Resources Defense Council
82-1247) American Iron and Steel Institute v. Natural Resources Defense Council
82-1591) Ruckelshaus v. Natural Resources Defense Council

Dear John:

Please show me as having taken no part in the consideration of or decision in these cases.

Sincerely,

WHR

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1984

Re: 82-1005, 82-1247 and 82-1591 -

Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc, etc.

Dear John,

Please join me in your very good opinion in this case.

Sincerely yours,

Justice Stevens

Copies to the Conference

BRW says this is "fine opinion". Dand agrees. I'll check again whether I have any recusal problem

L.F.P.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 14 1984

STYLISTIC CHANGES THROUGHOUT.
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SUPREME COURT OF THE UNITED STATES

Nos. 82–1005, 82–1247 AND 82–1591

CHEVRON, U. S. A., INC., PETITIONER
82–1005 *v.*
NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

AMERICAN IRON AND STEEL INSTITUTE, ET AL., PETITIONERS
82–1247 *v.*
NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY, PETITIONER
82–1591 *v.*
NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

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

[June ——, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub. L. 95–95, 91 Stat. 685 *et seq.*, Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency pursuant to earlier legislation. The amended Act required these "nonattainment" States to establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for a new or modified major stationary source unless

1977 Amend

several stringent conditions are met.[1] The EPA regulation promulgated to implement this permit requirement allows a State to adopt a plant-wide definition of the term "stationary source."[2] Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by this case is whether EPA's decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble" is based on a reasonable construction of the statutory term "stationary source."

I

The EPA regulations containing the plant-wide definition of the term stationary source were promulgated on October 14, 1981. 46 Fed. Reg. 50766. Respondents[3] filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit pursuant to 42 U. S. C. § 7607(b)(1).[4] The Court of Appeals set aside the regula-

---

[1] Section 172(b)(6) provides:

"The plan provisions required by subsection (a) shall—

. . . . . .

"(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements). . . ." 91 Stat. 747.

[2] "(i) 'Stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

"(ii) 'Building, structure, facility, or installation' means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel." 40 CFR § 51.18(j)(1)(i) and (ii).

[3] National Resources Defense Council, Inc., Citizens for a Better Environment, Inc. and North Western Ohio Lung Association, Inc.

[4] Petitioners, Chevron U. S. A. Inc., American Iron and Steel Institute, American Petroleum Institute, Chemical Manufacturers Association, Inc.,

tions. *National Resources Defense Council, Inc.* v. *Gorsuch*, 685 F. 2d 718 (1982).

The court observed that the relevant part of the amended Clean Air Act "does not explicitly define what Congress envisioned as a 'stationary source, to which the permit program . . . should apply," and further stated that the precise issue was not "squarely addressed in the legislative history." *Id.*, at 723. In light of its conclusion that the legislative history bearing on the question was "at best contradictory," it reasoned that "the purposes of the nonattainment program should guide our decision here." *Id.*, at 726 n. 39.[5] Based on two of its precedents concerning the applicability of the bubble concept to certain Clean Air Act programs,[6] the court stated that the bubble concept was "mandatory" in programs designed merely to maintain existing air quality, but held that it was "inappropriate" in programs enacted to improve air quality. *Id.*, at 726. Since the purpose of the permit program—its "*raison d'etre*," in the court's view—was to improve air quality, the court held that the bubble concept was inapplicable in this case under its prior precedents. *Ibid.* It therefore set aside the regulations embodying the bubble concept as contrary to law. We granted certiorari to review that judgment, —— U. S. ——, and we now reverse.

The basic legal error of the Court of Appeals was to adopt a static judicial definition of the term stationary source when it had decided that Congress itself had not commanded that definition. Respondents do not defend the legal reasoning of

CADC erred.

General Motors Corporation, and Rubber Manufacturers Association were granted leave to intervene and argue in support of the regulation.

[5] The court remarked in this regard:

"We regret, of course, that Congress did not advert specificially to the bubble concept's application to various Clean Air Act programs, and note that a further clarifying statutory directive would facilitate the work of the agency and of the court in their endeavors to serve the legislators' will." 685 F. 2d, at 726 n. 39.

[6] *Alabama Power Co.* v. *Costle*, 636 F. 2d 323 (1979); *ASARCO, Inc.* v. *EPA*, 578 F. 2d 319 (1978).

the Court of Appeals.[7] Nevertheless, since this Court reviews judgments, not opinions,[8] we must determine whether the Court of Appeals' legal error resulted in an erroneous judgment on the validity of the regulations.

II

When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.[9] If, however, the court determines Congress has not directly addressed the precise ques-

[7] Respondents argued below that that EPA's plant-wide definition of stationary source is contrary to the terms, legislative history, and purposes of the amended Clear Air Act. The court below rejected respondents' arguments based on the language and legislative history of the Act. It did agree with respondents contention that the regulations were inconsistent with the purposes of the Act, but did not adopt the construction of the statute advanced by respondents here. Respondents rely on the arguments rejected by the court of appeals in support of the judgment, and may rely on any ground that finds support in the record. See *Ryerson* v. *United States*, 312 U. S. 405, 408 (1941); *LeTulle* v. *Scofield*, 308 U. S. 415, 421 (1940); *Langnes* v. *Green*, 282 U. S. 531, 533–539 (1931).

[8] *E. g.*, *Black* v. *Cutter Laboratories*, 351 U. S. 292, 297 (1956); *Riley Co.* v. *Commissioner*, 311 U. S. 55, 59 (1940); *Williams* v. *Norris*, 12 Wheat. 117, 120 (1827); *M'Clung* v. *Silliman*, 6 Wheat. 598, 603 (1821).

[9] The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent. See, *e. g.*, *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U. S. 27, 32 (1981); *SEC* v. *Sloan*, 436 U. S. 103, 117–118 (1978); *FMC* v. *Seatrain Lines, Inc.*, 411 U. S. 726, 745–746 (1973); *Volkswagenwerk* v. *FMC*, 390 U. S. 261, 272 (1968); *NLRB* v. *Brown*, 380 U. S. 278, 291 (1965); *FTC* v. *Colgate Palmolive Co.*, 380 U. S. 374, 385 (1965); *Social Security Board* v. *Nierotko*, 327 U. S. 358, 369 (1946); *Burnet* v. *Chicago Portrait Co.*, 285 U. S. 1, 16 (1932); *Webster* v. *Luther*, 163 U. S. 331, 342 (1896). If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.

tion at issue, the court does not simply impose its own construction on the statute,[10] as would be necessary in the absense of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.[11]

"The power of an administrative agency to administer a congressionally created . . . program necessarily requires formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." *Morton* v. *Ruiz*, 415 U. S. 199, 231 (1974). If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.[12] Sometimes the legislative delegation to an agency on a particular question is implicit rather than explicit. In such a case, a court may not substitute its own construction of a statutory provison for a reasonable interpretation made by the administrator of an agency.[13]

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[10] See generally, R. Pound, The Spirit of the Common Law 174–175 (1921).

[11] The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. *FEC* v. *Democratic Senatorial Campaign Committee*, 454 U. S. 27, 39 (1981); *Zenith Radio Corp.* v. *United States*, 437 U. S. 443, 450 (1978); *Train* v. *NRDC*, 421 U. S. 60, 75 (1975); *Udall* v. *Tallman*, 380 U. S. 1, 16 (1965); *Unemployment Compensation Comm'n* v. *Aragon*, 329 U. S. 143, 153 (1946); *McLaren* v. *Fleischer*, 256 U. S. 477, 480–481 (1921).

[12] See, *e. g.*, *United States* v. *Morton*, —— U. S. —— , —— – —— (1984) (slip op. at 11–12); *Schweiker* v. *Gray Panthers*, 453 U. S. 34, 44 (1981); *Batterton* v. *Francis*, 432 U. S. 416, 424–26 (1977); *American Telephone & Telegraph Co.* v. *United States*, 299 U. S. 232, 235–237 (1936).

[13] *E. g.*, *INS* v. *Wang*, 450 U. S. 139, 144 (1981); *Train* v. *NRDC*, 421 U. S. 60, 87 (1975).

We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to administer,[14] and the principle of deference to administrative interpretations

> "has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. See, *e. g.*, *National Broadcasting Co.* v. *United States*, 319 U. S. 190; *Labor Board* v. *Hearst Publications, Inc.*, 322 U. S. 111; *Republic Aviation Corp.* v. *Labor Board*, 324 U. S. 793; *Securities & Exchange Comm'n* v. *Chenery Corp.*, 322 U. S. 194; *Labor Board* v. *Seven-Up Bottling Co.*, 344 U. S. 344. . . . .If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." *United States* v. *Shimer*, 367 U. S. 374, 382, 383 (1961). *Accord Capital Cities Cable, Inc.* v. *Crisp*, —— U. S. ——, —— – —— (1984) (slip op. at 6–7).

In light of these well-settled principles it is clear that the Court of Appeals misconceived the nature of its role in re-

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[14] *Aluminum Co.* v. *Central Lincoln Util. Dist.*, —— U. S. ——, —— (1984) (slip op. at 8); *Blum* v. *Bacon*, 457 U. S. 132, 141 (1982); *Union Electric Co.* v. *EPA*, 427 U. S. 246, 256 (1976); *Investment Company Institute* v. *Camp*, 401 U. S. 617, 626–627 (1971); *Unemployment Commission* v. *Aragaon*, 329 U. S. 143, 153–154 (1946); *NLRB* v. *Hearst Publications*, 322 U. S. 111, 131 (1944); *McLaren* v. *Fleischer*, 256 U. S. 477, 480–481 (1921); *Webster* v. *Luther*, 163 U. S. 331, 342 (1896); *Brown* v. *United States*, 113 U. S. 568 U. S. 568, 570–571 (1885); *United States* v. *Moore*, 95 U. S. 760, 763 (1877); *Edwards* v. *Darby*, 12 Wheat. 206, 210 (1827).

viewing the regulations at issue. Once it determined, after its own examination of the legislation, that Congress did not actually have an intent regarding the applicability of the bubble concept to the permit program, the question before it was not whether in its view the concept is "inappropriate" in the general context of a program designed to improve air quality, but whether the Administrator's view that it is appropriate in the context of this particular program is a reasonable one. Based on the examination of the legislation and its history which follows, we agree with the Court of Appeals that Congress did not have a specific intention on the applicability of the bubble concept in this case, and conclude that the EPA's use of that concept here is a reasonable policy choice for the agency to make.

III

In the 1950's and the 1960's Congress enacted a series of statutes designed to encourage and to assist the States in curtailing air pollution. See generally *Train* v. *Natural Resources Defense Council*, 421 U. S. 60, 63–64 (1975). The Clean Air Act Amendments of 1970, Pub. L. 91–604, 84 Stat. 1676, "sharply increased federal authority and responsibility in the continuing effort to combat air pollution," *id.*, at 64, but continued to assign "primary responsibility for assuring air quality" to the several States, 84 Stat. 1678. Section 109 of the 1970 Amendments directed the EPA to promulgate National Ambient Air Quality Standards (NAAQS's)[15] and § 110 directed the States to develop plans (SIP's) to implement the standards within specified deadlines. In addition, § 111 provided that major new sources of pollution would be required to conform to technology-based performance standards; the EPA was directed to publish a list of categories of sources of pollution and to establish new source performance

[15] Primary standards were defined as those whose attainment and maintenance were necessary to protect the public health and secondary standards were intended to specify a level of air quality that would protect the public welfare.

standards (NSPS) for each. Section 111(e) prohibited the operation of any new source in violation of a performance standard.

Section 111(a) defined the terms that are to be used in setting and enforcing standards of performance for new stationary sources. It provided:

> "For purposes of this section:
>
> . . . . .
>
> "(3) The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant." 84 Stat. at 1683.

In the 1970 Act, that definition was not only applicable to the NSPS program required by § 111, but also was made applicable to a requirement of § 110 that each state implementation plan contain a procedure for reviewing the location of any proposed new source and preventing its construction if it would preclude the attainment or maintenance of national air quality standards.[16]

In due course, the EPA promulgated NAAQS's, approved SIP's, and adopted detailed regulations governing NSPS's for various categories of equipment. In one of its programs, the EPA *used a plant-wide definition* of the term "stationary source." In 1974, it issued NSPS's for the nonferrous smelting industry that provided that the standards would not apply to the modification of major smelting units if their increased emissions were offset by reductions in other portions of the same plant.[17]

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[16] See §§ 110(a)(2)(D) and 110(a)(4).

[17] The Court of Appeals ultimately held that this plant-wide approach was prohibited by the 1970 Act, see *ASARCO, INC., supra*, 578 F. 2d, at 325–327. This decision was rendered after enactment of the 1977 amendments, and hence the standard was in effect when Congress enacted the 1977 Amendments.

Nonattainment

The 1970 legislation provided for the attainment of primary NAAQS's by 1975. In many areas of the country, particularly the most industrialized States, the statutory goals were not attained.[18] In 1976, the 94th Congress was confronted with this fundamental problem, as well as many others respecting pollution control. As always in this area, the legislative struggle was basically between interests seeking strict schemes to reduce pollution rapidly to eliminate its social costs and interests advancing the economic concern that strict schemes would retard industrial development with attendant social costs. The 94th Congress, confronting these competing interests, was unable to agree on what response was in the public interest: legislative proposals to deal with nonattainment failed to command the necessary consensus.[19]

In light of this situation, the EPA published an Emissions Offset Interpretative Ruling in December 1976, see 41 Fed. Reg. 55524, to "fill the gap," as respondents put it, until Congress acted. The Ruling stated that it was intended to address "the issue of whether and to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded stationary air pollution sources." App. 8. In general, the ruling provided "that a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met." *Ibid.* The Ruling gave primary emphasis to the rapid attainment of the statute's environmental goals.[20] Consistent with that emphasis, the construc-

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[18] See Report of the National Commission on Air Quality, at 3.3–20 thru 3.3–33.

[19] Comprehensive bills did pass both chambers of Congress; the conference report was rejected in the Senate. 5 Leg. Hist., at 4411–4500.

[20] For example, it stated:

"Particularly with regard to the primary NAAQS's, Congress and the Courts have made clear that economic considerations must be subordinated to NAAQS achievement and maintenance. While the ruling allows for some growth in areas violating a NAAQS if the net effect is to insure fur-

tion of every new source in nonattainment areas had to meet the "lowest achievable emission rate" under the current state of the art for that type of facility. See App. 12. The 1976 Ruling did not, however, explicitly adopt or reject the "bubble concept."[21]

IV

The Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex, and comprehensive response to a major social issue. A small portion of the statute—91 Stat. 745–51 (Part D of Title I of the amended Act, 42 U. S. C. § 7501–7508)—expressly deals with nonattainment areas. The focal point of this controversy is one phrase in that portion of the Amendments.[22]

Basically, the statute required each State in a nonattainment area to prepare and obtain approval of a new SIP by July 1, 1979. In the interim those States were required to comply with the EPA's interpretative Ruling of December 21, 1976. 91 Stat. 745. The deadline for attainment of the primary NAAQS's was extended until December 31,

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ther progress toward NAAQS achievement, the Act does not allow economic growth to be accommodated at the expense of the public health." App. 18.

[21] In January 1979, the EPA noted that the 1976 Ruling was ambiguous concerning this issue:

"A number of commenters indicated the need for a more explicit definition of 'source.' Some readers found that it was unclear under the 1976 Ruling whether a plant with a number of different processes and emission points would be considered a single source. The changes set forth below define a source as 'any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control.' This definition precludes a large plant from being separated into individual production lines for purposes of determining applicability of the offset requirements." App. 42

[22] Specifically, the controversy in this case involves the meaning of the term "major stationary sources" in § 172(b)(6) of the Act, 42 U. S. C. § 7502(b)(6). The meaning of the term "proposed source" in § 173(2) of the Act, 42 U. S. C. § 7503(2), is not at issue.

1982, and in some cases until December 31, 1987, but the SIP's were required to contain a number of provisions designed to achieve the goals as expeditiously as possible.[23]

Most significantly for our purposes, the statute provided that each plan shall:

> "(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173. . . ." 91 Stat. 747.

relevant here

Before issuing a permit, § 173 requires the state agency to determine that (1) there will be sufficient emissions reductions in the region to offset the emissions from the new source and also to allow for reasonable further progress toward attainment, or that the increased emissions will not ex-

[23] Thus, among other requirements, § 172(b) provided that the SIP's shall—

"(3) require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

"(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additonal reductions to assure attainment of each standard by the date required under paragraph (1);

"(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area; . . .

"(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section. . . ." 91 Stat. 747.

Section 171(1) provided:

"(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a)." 91 Stat. 746.

ceed an allowance for growth established pursuant to § 172(b)(5); (2) the applicant must certify that his other sources in the State are in compliance with the SIP, (3) the agency must determine that the applicable SIP is otherwise being implemented, and (4) the proposed source complies with the lowest achievable emission rate (LAER).[24]

The 1977 Amendments contain no specific reference to the "bubble concept." Nor do they contain a specific definition of the term "stationary source," though they did not disturb the definition of "stationary source" contained in § 111(a)(3), applicable by the terms of the Act to the NSPS program. Section 302(j), however, defines the term "major stationary source" as follows:

> "(j) Except as otherwise expressly provided, the terms 'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." 91 Stat. 770.

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[24] Section 171(3) provides:

"(3) The term 'lowest achievable emission rate' means for any source, that rate of emissions which reflects—

"(A) the most stringent emission limitations which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

"(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

"In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance." *Id.*, at 746.

The LAER requirement is defined in terms that make it even more stringent than the applicable new source performance standard developed under § 111 of the 1970 statute.

V

The legislative history of the portion of the 1977 Amendments dealing with nonattainment areas does not contain any specific comment on the "bubble concept" or the question whether a plant-wide definition of a stationary source is permissible under the permit program. *It does, however,* plainly disclose that in the permit program Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality. Indeed, the House Committee Report identified the economic interest as one of the "two main purposes" of this section of the bill. It stated:

> "Section 117 of the bill, adopted during full committee markup establishes a new section 127 to the Clean Air Act. The section has two main purposes: (1) to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date; and (2) to allow States greater flexibility for the former purpose than EPA's present interpretative regulations afford.
>
> "The new provision allows States with nonattainment areas to pursue one of two options. First, the State may proceed under EPA's present 'tradeoff' or 'offset' ruling. The Administrator is authorized, moreover, to modify or amend that ruling in accordance with the intent and purposes of this section.
>
> "The State's second option would be to revise its implementation plan in accordance with this new provision." H. R. Rep. 564, 95th Cong., 1st sess., 211 (1977).[25]

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[25] During the floor debates Congressman Waxman remarked that the legislation struck

"a proper balance between environmental controls and economic growth in the dirty air areas of America. *** There is no other single issue which more clearly poses the conflict between pollution control and new jobs. We have determined that neither need be compromised. ***

The portion of the Senate Committe Report dealing with nonattainment areas states generally that it was intended to "supersede the EPA administrative approach," and that expansion should be permitted if a State could "demonstrate that these facilities can be accommodated within its overall plan to provide for attainment of air quality standards." S. Rep. 127, 95th Cong., 1st sess., 1429 (1977). The Senate Report notes the value of "case-by-case review of each new or modified major source of pollution that seeks to locate in a region exceeding an ambient standard," explaining that such a review "requires matching reductions from existing sources against emissions expected from the new source in order to assure that introduction of the new source will not prevent attainment of the applicable standard by the statutory deadline." *Ibid.* This description of a case-by-case approach to plant additions, which emphasizes the net consequences of the construction or modification of a new source, as well as its impact on the overall achievement of the national standards, was not, however, addressed to the precise issue raised by this case.

Senator Muskie made the following remarks:

> "I should note that the test for determining whether a new or modified source is subject to the EPA interpretative regulation [the Offset Ruling]—and to the permit requirements of the revised implementation plans under the conference bill—is whether the source will emit a pollutant into an area which is exceeding a national ambient air quality standard for that pollutant—or precursor.

"This is a fair and balanced approach, which will not undermine our economic vitality, or impede achievement of our ultimate environmental objectives." 123 Cong. Rec. 27076 (1977).

The second "main purpose" of the provison—allowing the States "greater flexibility" than the EPA's interpretative ruling—as well as the reference to the EPA's authority to amend its ruling in accordance with the intent of the section, is entirely consistent with the view that Congress did not intend to freeze the definition of source contained in the existing regulation into a rigid statutory requirement.

> Thus, a new source is still subject to such requirements as 'lowest achievable emission rate' even if it is used as a replacement for an older facility resulting in a net reduction from previous emission levels.
>
> "A source—including an existing facility ordered to convert to coal—is subject to all the nonattainment requirements as a modified source if it makes any physical change which increases the amount of any air pollutant for the the standards in the area are exceeded." 123 Cong. Rec. 26846 (1977).

VI

As previously noted, prior to the 1977 Amendments, the EPA had adhered to a plant-wide definition of the term "source" under a NSPS program. After adoption of the 1977 Amendments, proposals for a plant-wide definition were considered in at least three formal proceedings.

In January, 1979, the EPA considered the question whether the same restriction on new construction in nonattaiment areas that had been included in its December 1976 ruling should be required in the revised SIPs that were scheduled to go into effect in July 1979. After noting that the 1976 ruling was ambiguous on the question "whether a plant with a number of different processes and emission points would be considered a single source," app. 42, the EPA, in effect, provided a bifurcated answer to that question. In those areas that did not have a revised SIP in effect by July 1979, the EPA rejected the plant-wide definition; on the other hand, it expressly concluded that the plant-wide approach would be permissible in certain circumstances if authorized by an approved SIP. It stated:

> "Where a state implementation plan is revised and implemented to satisfy the requirements of Part D, including the reasonable further progress requirement, the plan requirements for major modifications may exempt modifications of existing facilities that are accompanied by intrasource offsets so that there is no net increase in

emissions. The agency endorses such exemptions, which would provide greater flexibility to sources to effectively manage their air emissions at least cost." App. 43.[26]

In April, and again in September, 1979, the EPA published additional comments in which it indicated that revised SIPs could adopt the plant-wide definition of source in nonattainment areas in certain circumstances. See 44 Fed. Reg. 20372, 20379, 51951, 51924, 51958. On the latter occasion, the EPA made a formal rulemaking proposal that would have permitted the use of the "bubble concept" for new installations within a plant as well as for modifications of existing units. It explained:

EPA – rule making proposal – "bubble concept"

"'*Bubble' Exemption*: The use of offsets inside the same source is called the 'bubble.' EPA proposes use of the definition of 'source' (see above) to limit the use of the bubble under nonattainment requirements in the following respects:

"i. Part D SIPs that include all requirements needed to assure reasonable further progress and attainment by the deadline under section 172 and that are being carried

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[26] In the same ruling, the EPA added:

"The above exemption is permitted under the SIP because, to be approved under Part D, plan revisions due by January 1979 must contain adopted measures assuring that reasonable further progress will be made. Furthermore, in most circumstances, the measures adopted by January 1979 must be sufficient to actually provide for attainment of the standards by the dates required under the Act, and in all circumstances measures adopted by 1982 must provide for attainment. See Section 172 of the Act and 43 Fed. Reg. 21673–21677 (May 19, 1978). Also, Congress intended under Section 173 of the Act that States would have some latitude to depart from the strict requirements of this Ruling when the State plan is revised and is being carried out in accordance with Part D. Under a Part D plan, therefore, there is less need to subject a modification of an existing facility to LAER and other stringent requirements if the modification is accompanied by sufficient intrasource offsets so that there is no net increase in emissions." App. 45.

out need not restrict the use of a plantwide bubble, the same as under the PSD proposal.

"ii. Part D SIPs that do not meet the requirements specified must limit use of the bubble by including a definition of 'installation' as an identifiable piece of process equipment."[27]

Significantly, the EPA expressly noted that the word "source" might be given a plant-wide definition for some purposes and a narrower definition for other purposes. It wrote:

"Source means any building structure, facility, or installation which emits or may emit any regulated pollutant. 'Building, structure, facility or installation' means plant in PSD areas and in nonattainment areas except where the growth prohibitions would apply or where no adequate SIP exists or is being carried out." App. 54.[28]

The EPA's summary of its proposed ruling discloses a flexible rather than rigid definition of the term "source" to implement various policies and programs:

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[27] App. 56. Later in that ruling, the EPA added:

"However, EPA believes that complete Part D SIPs, which contain adopted and enforceable requirements sufficient to assure attainment, may apply the approach proposed above for PSD, with plant-wide review but no review of individual pieces of equipment. Use of only a plant-wide definition of source will permit plant-wide offsets for avoiding NSR of new or modified pieces of equipment. However, this is only appropriate once a SIP is adopted that will assure the reductions in existing emissions necessary for attainment. *See* 44 FR 3276 col. 3 (January 16, 1979). If the level of emissions allowed in the SIP is low enough to assure reasonable further progress and attainment, new contruction or modifications with enough offset credit to prevent an emission increase should not jeopardize attainment." App. 66.

[28] In its explanation of why the use of the bubble concept was especially appropriate in preventing significant deterioration (PSD) in clean air areas, the EPA stated: "In addition, application of the bubble on a plant-wide basis encourages voluntary upgrading of equipment, and growth in productive capacity." App. 60.

> "In summary, EPA is proposing two different ways to define source for different kinds of NSR programs:
>
> "(1) For PSD and complete Part D SIPs, review would apply only to plants, with an unrestricted plant-wide bubble.
>
> "(2) For the offset ruling, restrictions on construction, and incomplete Part D SIPs, review would apply to both plants and individual pieces of process equipment, causing the plant-wide bubble not to apply for new and modified major pieces of equipment.
>
> "In addition, for the restrictions on construction, EPA is proposing to define 'major modification' so as to prohibit the bubble entirely. Finally, an alternative discussed but not favored is to have only pieces of process equipment reviewed, resulting in a no plant-wide bubble and allowing minor pieces of equipment to escape NSR regardless of whether they are within a major plant." J. A. 67.

In August of 1980, however, the EPA adopted a regulation that, in essence, applied the basic reasoning of the Court of Appeals in this case. The EPA took particular note of the two then recent Court of Appeals decisions, which had created the bright-line rule that the bubble concept should be employed in a program designed to maintain air quality but not in one designed to enhance air quality. Relying heavily on those cases,[29] EPA adopted a dual definition of "source"

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[29] "The dual definition also is consistent with *Alabama Power* and *ASARCO*. *Alabama Power* held that EPA had broad discretion to define the constituent terms of 'source' so as best to effectuate the purposes of the statute. Different definitions of 'source' can therefore be used for different sections of the statute. ***

"Moreover, *Alabama Power* and *ASARCO* taken together suggest that there is a distinction between Clean Air Act programs designed to *enhance* air quality and those designed only to *maintain* air quality. ***

"Promulgation of the dual definition follows the mandate of *Alabama Power*, which held that, while EPA had broad discretion to define 'build-

for nonattainment areas that required a permit whenever a change in either the entire plant, or one of its components, would result in a significant increase in emissions even if the increase was completely offset by reductions elsewhere in the plant. The EPA expressed the opinion that this interpretation was "more consistent with congressional intent" than the plant-wide definition because it "would bring in more sources or modifications for review" app. 82, but its primary legal analysis was predicated on the two Court of Appeals decisions.

In 1981 a new Administration took office and initiated a "Government-wide reexamination of regulatory burdens and complexities." App. 93. In the context of that review, the EPA reevaluated the various arguments that had been advanced in connection with the proper definition of the term "source" and concluded that the term should be given the same definition in both nonattainment areas and PSD areas.

In explaining its conclusion, the EPA first noted that the definitional issue was not squarely addressed in either the statute or its legislative history and therefore that the issue involved an agency "judgment as to how best to carry out the Act." *Ibid.* It then set forth several reasons for concluding that the plant-wide definition was more appropriate. It pointed out that the dual definition "can act as a disincentive to new investment and modernization by discouraging modifications to existing facilities" and "can actually retard progress in air pollution control by discouraging replacement of older, dirtier processes or pieces of equipment with new, cleaner ones." App. 94. Moreover, the new definition "would simplify EPA's rules by using the same definition of 'source' for PSD, nonattainment new source review and the construction moratorium. This reduces confusion and inconsistency." *Ibid.* Finally, the agency explained that additional requirements that remained in place would accomplish

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ing,' 'structure,' 'facility,' and 'installation' so as to best accomplish the purposes of the Act." App. 82–83.

the fundamental purposes of achieving attainment with NAAQS as expeditiously as possible.[30] These conclusions were expresed in a proposed rulemaking in August 1981 that was formally promulgated in October. See 46 Fed. Reg. 50766.

VII

In this Court respondents expressly reject the basic rationale of the Court of Appeals' decision. That court viewed the statutory definition of the term "source" as sufficiently flexible to cover either a plant-wide definition, a narrower definition covering each unit within a plant, or a dual definition that could apply to both the entire "bubble" and its components. It interpreted the policies of the statute, however, to mandate the plant-wide definition in programs designed to maintain clean air and to forbid it in programs designed to improve air quality. Respondents place a fundamentally different construction on the statute. They contend that the text of the Act requires the EPA to use a dual definition—if either a component of a plant, or the plant as a whole, emits over 100 tons of pollutant, it is a major stationary source. They thus contend that the EPA rules adopted in 1980, insofar as they apply to the maintenance of the quality of clean

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[30] It stated:

"5. States will remain subject to the requirement that for all nonattainment areas they demonstrate attainment of NAAQS as expeditiously as practicable and show reasonable further progress toward such attainment. Thus, the proposed change in the mandatory scope of nonattainment new source review should not interfere with the fundamental purpose of Part D of the Act.

"6. New Source Performance Standards (NSPS) will continue to apply to many new or modified facilities and will assure use of the most up-to-date pollution control techniques regardless of the applicability of nonattainment area new source review.

"7. In order to avoid nonattainment area new source review, a major plant undergoing modification must show that it will not experience a significant net increase in emissions. Where overall emissions increas significantly, review will continue to be required." App. 94.

air, as well as the 1981 rules which apply to nonattainment areas, violate the statute.[31]

Statutory Language

The definition of the term stationary source in § 111(a)(3) refers to "any building, structure, facility, or installation" which emits air pollution. See *supra*, at 8. This definition is applicable only to the NSPS program by the express terms of the statute; the text of the statute does not make this definition applicable to the permit program. Petitioners therefore maintain that there is no statutory language even relevant to ascertaining the meaning of stationary source in the permit program aside from § 302(j), which defines the term major stationary source. See *supra*, at 12. We disagree with petitioners on this point.

The definition in § 302(j) tells us what the word "major" means—a source must emit at least 100 tons of pollution to qualify—but it sheds virtually no light on the meaning of the term "stationary source." It does equate a source with a facility—a "major emitting facility" and a "major stationary source" are synonymous under § 302(j). The ordinary meaning of the term facility is some collection of integrated elements which has been designed and constructed to achieve some purpose. Moreover, it is certainly no affront to common English usage to take a reference to a major facility or a major source to connote an entire plant as opposed to its constituent parts. Basically, however, the language of § 302(j) simply does not compel any given interpretation of the term source.

Respondents recognize that, and hence point to § 111(a)(3). Although the definition in that section is not literally applicable to the permit program, it sheds as much light on the

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[31] "What EPA may not do, however, is define all four terms to mean *only* plants. In the 1980 PSD rules, EPA did just that. EPA compounded the mistake in the 1981 rules here under review, in which it abandoned the dual definition." Br. for Respondents 29 n. 55.

meaning of the word source as anything in the statute.[32] As respondents point out, use of the words "building, structure, facility, or installation," as the definition of source, could be read to impose the permit conditions on an individual building that is a part of a plant.[33] A "word may have a character of its own not to be submerged by its association." *Russell Motor Car Co.* v. *United States*, 261 U. S. 514, 519 (1923). On the other hand, the meaning of a word must be ascertained in the context of achieving particular objectives, and the words associated with it may indicate that the true meaning of the series is to convey a common idea. The language may reasonably be interpreted to impose the requirement on any discrete, but integrated, operation which pollutes. This gives meaning to all of the terms—a single building, not part of a larger operation, would be covered if it emits more than 100 tons of pollution, as would any facility, structure, or installation. Indeed, the language itself implies a bubble concept of sorts: each enumerated item would seem to be treated as if it were encased in a bubble. While respondents insist that each of these terms must be given a discrete meaning, they also argue that § 111(a)(3) defines "source" as that term is used in § 302(j). The latter section, however, equates a source with a facility, whereas the former defines source as a facility, among other items.

We are not persuaded that parsing of general terms in the text of the statute will reveal an actual intent of Congress.[34]

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[32] We note that the EPA in fact adopted the language of that definition in its regulations under the permit program. 40 CFR § 51.18(j)(1)(i)–(ii).

[33] Since the regulations give the States the option to define an individual unit as a source, see 40 CFR § 51.18(j)(1), petitioners do not dispute that the terms can be read as respondents suggest.

[34] The argument based on the text of § 173, which defines the permit requirements for nonattainment areas, is a classic example of circular reasoning. One of the permit requirements is that "the proposed source is required to comply with the lowest achievable emission rate" (LAER). Although a State may submit a revised SIP that provides for the waiver of another requirement—the "offset condition"—the SIP may not provide for

We know full well that this language is not dispositive; the terms are overlapping and the language is not precisely directed to the question of the applicability of a given term in the context of a larger operation. To the extent any congressional "intent" can be discerned from this language, it would appear that the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the agency's power to regulate particular sources in order to effectuate the policies of the Act.

Legislative History

In addition, respondents argue that the legislative history and policies of the Act foreclose the plant-wide definition, and that the EPA's interpretation is not entitled to deference because it represents a sharp break with prior interpretations of the Act.

Based on our examination of the legislative history, we agree with the court of appeals that it is unilluminating. The general remarks pointed to by respondents "were obviously not made with this narrow issue in mind and they cannot be said to illustrate a Congressional desire. . . ." *Jewel Ridge Corp.* v. *Local*, 325 U. S. 161, 168–169 (1944). Respondent's argument based on the legislative history relies heavily on Senator Muskie's observation that a new source is subject to

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a waiver of the LAER condition for any proposed source. Respondents argue that the plant-wide definition of the term "source" makes it unnecessary for newly constructed units within the plant to satisfy the LAER requirement if their emissions are offset by the reductions achieved by the retirement of older equipment. Thus, according to respondents, the plant-wide definition allows what the statute explicitly prohibits—the waiver of the LAER requirement for the newly constructed units. But this argument proves nothing because the statute does not prohibit the waiver unless the proposed new unit is indeed subject to the permit program. If it is not, the statute does not impose the LAER requirement at all and there is no need to reach any waiver question. In other words, § 173 of the statute merely deals with the consequences of the definition of the term "source" and does not define the term.

the LAER requirement.[35] But the full statement is ambiguous and like the text of § 173 itself, this comment does not tell us what a new source is, much less that it is to have an inflexible definition. We find that the legislative history as a whole is silent on the precise issue before us. It is, however, consistent with the view that the EPA should have broad discretion in implementing the policies of the 1977 Amendments.

More importantly, that history plainly identifies the policy concerns that motivated the enactment; the plant-wide definition is fully consistent with one of those concerns—the allowance of reasonable economic growth—and, whether or not we believe it most effectively implements the other, we must recognize that the EPA has advanced a reasonable explanation for its conclusion that the regulations serve the environmental objectives as well. See *supra*, at 19–20 and n. 29; see also 17 n. 27. Indeed, its reasoning is supported by the public record developed in the rulemaking process,[36] as well as by certain private studies.[37]

Our review of the EPA's varying interpretations of the word "source"—both before and after the 1977 Amendments—convince us that the agency primarily responsible for administering this important legislation has consistently in-

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[35] See *supra*, at ——. We note that Senator Muskie was not critical of the EPA's use of the bubble concept in one NSPS program prior to the 1977 amendments. See *supra*, at ——.

[36] See, for example, the statement of the New York State Department of Environmental Conservation, pointing out that denying a source owner flexibility in selecting options made it "simpler and cheaper to operate old, more polluting sources than to trade up. . . ." App. 128–129.

[37] "Economists have proposed that economic incentives be substituted for the cumbersome administrative-legal framework. The objective is to make the profit and cost incentives that work so well in the marketplace work for pollution control. *** [The 'bubble' or 'netting' concept] is a first attempt in this direction. By giving a plant manager flexibility to find the places and processes within a plant that control emissions most cheaply, pollution control can be achieved more quickly and cheaply." L. Lave & G. Omenn, *Cleaning the Air: Reforming the Clean Air Act* 28 (1981) (footnote omitted).

terpreted it flexibly—not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term source does not, as respondents argue, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations, and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

Significantly, it was not the agency in 1980, but rather the Court of Appeals that read the statute inflexibly to command a plant-wide definition for programs designed to maintain clean air and to forbid such a definition for programs designed to improve air quality. The distinction the court drew may well be a sensible one, but our labored review of the problem has surely disclosed that it is not a distinction that Congress ever articulated itself, or one that the EPA found in the statute before the courts began to review the legislative work product. We conclude that it was the Court of Appeals, rather than Congress or any of the decisionmakers who are authorized by Congress to administer this legislation, that was primarily responsible for the 1980 position taken by the agency.

Policy

The arguments over policy that are advanced in the parties' briefs create the impression that respondents are now waging in a judicial forum a specific policy battle which they ultimately lost in the agency and in the thirty-two jurisdictions opting for the bubble concept, but one which was never

waged in the Congress. Such policy arguments are more properly addressed to legislators or administrators, not to judges.[38]

In this case, the Administrator's interpretation represents a reasonable accommodation of manifestly competing interests and is entitled to deference: the regulatory scheme is technical and complex,[39] the agency considered the matter in a detailed and reasoned fashion,[40] and the decision involves reconciling conflicting policies.[41] Congress intended to accommodate both interests, but did not do so itself on the level of specificity presented by this case. Perhaps that body consciously desired the Administrator to strike the balance at this level, thinking that those with great expertise and charged with responsibility for admininstering the provision would be in a better position to do so; perhaps it simply did not consider the question at this level; and perhaps Congress was unable to forge a coalition on either side of the question, and those on each side decided to take their chances with the scheme devised by the agency. For judicial purposes, it matters not which of these things occurred.

Judges are not experts in the field, and are not part of either political branch of the government. Courts must, in

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[38] Respondents point out if a brand new factory that will emit over 100 tons of pollutants is constructed in a nonattainment area, that plant must obtain a permit pursuant to § 172(b)(6) and in order to do so, it must satisfy the § 173 conditions, including the LAER requirement. Respondents argue if an old plant containing several large emitting units is to be modernized by the replacement of one or more units emitting over 100 tons of pollutant with a new unit emitting less—but still more than 100 tons—the result should be no different simply because "it happens to be built not at a new site, but within a *pre-existing plant.*" Br. 4.

[39] See e. g., *Aluminun Co.* v. *Central Lincoln Util. Dist.*, —— U. S. ——, —— (1984) (slip op. at 8).

[40] See *SEC* v. *Sloan*, 436 U. S. 103, 117 (1978); *Adamo Wrecking Co.* v. *United States*, 434 U. S. 275, 287 n. 5 (1978); *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 140 (1944).

[41] See *Capital Cities Cable, Inc.* v. *Crisp*, —— U. S. ——, —— – —— (1984) (slip op., at 6–7); *United States* v. *Shimer*, 367 U. S. 374, 382 (1961).

some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policy making responsibilities may, within the limits of that delegation, properly rely upon the incumbent Administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the adminstration of the statute in light of every day realities.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges—who have no constituency—have a duty to respect legitimate policy choices made by those who do. The responsibilities for assessing the widsom of such policy choices and resolving the struggle between competing views of the public interest are not judicial ones: "Our Constitution vests such responsibilities in the political branches." *TVA* v. *Hill*, 437 U. S. 153, 195 (1978).

We hold that the EPA's definition of the term "source" is a permissible construction of the statute which seeks to accommodate progress in reducing air pollution with economic growth. "The Regulations which the Adminstrator has adopted provide what the agency could allowably view as . . . [an] effective reconciliation of these twofold ends . . . ." *United States* v. *Shimer*, 367 U. S., at 383.

The judgment of the Court of Appeals is reversed.

It is so ordered.

JUSTICE MARSHALL and JUSTICE REHNQUIST did not participate in the decision of this case.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1984

No. 82-1005 Chevron v. Natural Resources Defense Council
No. 82-1247 American Iron & Steel Institute v. Natural Resources Devense Council
No. 82-1591 Ruckelshaus v. Nat'l. Resources Defense Council

MEMORANDUM TO THE CONFERENCE

I have reviewed the petitions for certiorari in these cases and discovered that I should be recused. Since the arguments were heard, my father died. His estate is still unsettled, but I will have a remainder interest in a trust to be established. His estate holds stock in at least one of the parties to this action and until it is settled, I think it best that I not participate.

Sincerely,

Sandra

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1984

Re: 82-1005) - Chevron U.S.A. v. NRDC, Et al.
82-1247) - American Iron & Steel v. NRDC
82-1591) - Ruckelshaus v. NRDC

Dear John:

With others, I am now persuaded you have the correct answer to this case.

I join.

Regards,

WEB

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1984

No. 82-1005) Chevron v. Natural Resources Defense Council, Inc., et al.
No. 82-1247) American Iron and Steel Institute, et al. v. Natural Resources Defense Council, Inc., et al.
No. 82-1591) Ruckelshaus v. Natural Resources Defense Council, Inc.

Dear John,

Please join me.

Sincerely,

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1984

No. 82-1005 Chevron v. Natural Resources Defense Council
No. 82-1247 American Iron & Steel Institute v. Natural Resources Devense Council
No. 82-1591 Ruckelshaus v. Nat'l. Resources Defense Council

Dear John,

Please show at the end of your opinion that I took no part in its decision.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1984

Re: No. 82-1005) Chevron U.S.A., Inc.
v. National Resources Defense Council, Inc.
No. 82-1247) American Iron & Steel Institute
v. National Resources Defense Council, Inc.
No. 82-1591) Ruckelshaus
v. National Resources Defense Council, Inc.

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

June 18, 1984

82-1005 Chevron v. Natural Resources Defense Council

Dear John:

Please join me.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

82-1005 Chevron v. Natural Resources Defense Council (David)

BRW ltr to Chief (agreed to undertake opinion for the Court in case)
JPS for the Court 3/5/84
1st draft 6/11/84
2nd draft 6/14/84
3rd draft 6/19/84
Joined by BRW 6/13/84
Joined by WJB 6/14/84
LFP 6/18/84
HAB 6/18/84
CJ 6/19/84

WHR out 6/12/84
TM out 6/12/84
SOC out 6/14/84

David

See my memo
to file 2/25/84
indicating no
reason to disqualify

82-1005 CHEVRON U.S.A. v. NRDC

82-1247 AM. IRON & STEEL v. NRDC

82-1591 ADMINR., EPA v. NRDC
OT 1983 LFP, JR.

Decided 6/25/84

Part A: (applicable to states) → NSPS (new source performance standard) §7411(a)(3) defines "source" as "any building, structure, facility or installation."

Part D: