

## *Michigan v. EPA*

### Background

On June 29, the U.S. Supreme Court ruled in *Michigan v. EPA*. In this case, the plaintiffs—several states and utility companies—challenged the EPA’s Mercury and Air Toxics Standards (MATS) requiring coal-fired power plants to limit the amount of hazardous air pollutants and gases they emit.<sup>1</sup>

Provisions in Section 112 of the Clean Air Act give the EPA the ability to regulate the emissions of power plants if the regulation is found to be “appropriate and necessary.”<sup>2</sup> In late 2011, the EPA released its Final Rule on MATS, which significantly tightened the amount of mercury and other pollutants that could be released by coal-powered electricity plants. According to the Agency, the new standards would cost consumers and power plants \$9.6 billion per year, making it one of the most expensive environmental regulations on record.<sup>3</sup>

The high cost of complying with these new rules would inevitably harm the incomes of working Americans. According to analyses by National Economic Research Associates, the new standards would negatively affect worker incomes equivalent to between 180,000 and 215,000 lost jobs in 2015, with an additional 50,000 to 85,000 lost job equivalents per year thereafter.<sup>4</sup>

The EPA estimated the indirect benefits of MATS at between \$33 billion and \$90 billion per year,<sup>5</sup> yet almost all of these were based on reductions in sulfur dioxide emissions and particulate matter (PM) pollution, both of which are regulated under a different section of the Clean Air Act.<sup>6</sup> In contrast, the direct benefits—which were derived almost entirely from reductions in mercury—totaled between only \$4 million and \$6 million per year.<sup>7</sup>

Shortly after the new regulations were released, industry groups and 21 states sued the EPA on the grounds that

### ISSUE SNAPSHOT

21 States and Representatives of the Coal and Power Plant Trade Groups sued the EPA over a rule that, to comply with, would cost \$9.6 billion a year.

The Court ruled that the EPA could not ignore the substantial cost that the new standards placed on power plants.

MATS violated the Clean Air Act because it failed to account for the costs of implementation. In response, the EPA stated it was not required to take costs into account when the rules were originally written years earlier, that costs were considered in later versions, and that the benefits of MATS outweighed its costs.<sup>8</sup>

### Decision

In a 5-4 decision, the Supreme Court held that the EPA’s action was unlawful because it ignored the costs of the new standards placed on electric utilities. Rather than giving deference to the EPA’s interpretation of its statutes, the Court found that the Agency overstepped its bounds regarding Section 112.<sup>9</sup>

“No regulation is ‘appropriate’ if it does significantly more harm than good,” noted Justice Antonin Scalia, writing for the majority. “[T]he costs to power plants were thus between 1,600 and 2,400 times as great as the quantifiable benefits from reduced emissions of hazardous air pollutants.”<sup>10</sup>

### Implications

The Court’s ruling against the EPA gives precedent for lower courts to insist that any new regulations proposed by the Agency must undergo strict cost-benefit

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analyses. While any “reigning in” of the EPA can be counted as a win, most of the legal analysis surrounding the case suggests that the ruling’s impact is limited as it really only requires the EPA to consider the cost-benefit of a rule before issuing it. Further, the Court remanded the case to the D.C. Circuit without invalidating the rule outright. This is significant as it seems to reduce the likelihood that the case provides a strong basis for restraining the EPA’s rulemaking under the broad, burdensome Clean Power Plan.

Ironically, the Court’s decision also comes too late for a large part of the coal-fired power plant industry. Because the outcome of the case took more than three years to decide, many power plants have already invested in pollution control equipment or switched over to less-polluting natural gas. Moreover, at least two dozen coal-fired power plants were shut down or will be retired by next year to avoid making expensive improvements in pollution control, as required by the regulations.<sup>11</sup> The EPA chief cheerfully acknowledged this fact prior to the ruling saying, “we think we’re going to win because we did a great job on [the rule]. But even if we don’t, it was three years ago. Most of them are already in compliance, investments have been made...and we’re still going to get at the toxic pollution from these facilities.”<sup>12</sup>

The D.C. Circuit will begin proceedings sometime in the next few weeks, and that court’s holding will ultimately determine the weightiness of the Supreme Court’s ruling in this case.

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<sup>6</sup> Alden Abbott & Daren Bakst, *Supreme Court Decision against EPA a ‘Victory for Common Sense’*, THE DAILY SIGNAL (June 29, 2015), <http://dailysignal.com/2015/06/29/supreme-court-decision-against-epa-a-victory-for-common-sense/>.

<sup>7</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA-452/R-11/-011, REGULATORY IMPACT ANALYSIS FOR THE FINAL MERCURY AND AIR TOXICS STANDARDS, 3-31 (Dec. 2011), [www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf](http://www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf).

<sup>8</sup> Adam Liptak & Coral Davenport, *Supreme Court Blocks Obama’s Limits on Power Plants*, NEW YORK TIMES, June 29, 2015, available at [www.nytimes.com/2015/06/30/us/supreme-court-blocks-obamas-limits-on-power-plants.html?\\_r=1](http://www.nytimes.com/2015/06/30/us/supreme-court-blocks-obamas-limits-on-power-plants.html?_r=1).

<sup>9</sup> Alden Abbott & Daren Bakst, *Supreme Court Decision against EPA a ‘Victory for Common Sense’*, THE DAILY SIGNAL (June 29, 2015), <http://dailysignal.com/2015/06/29/supreme-court-decision-against-epa-a-victory-for-common-sense/>.

<sup>10</sup> Michigan et al. v. Environmental Protection Agency et al., U.S. 1, 4 (2015), available at [www.supremecourt.gov/opinions/14pdf/14-46\\_10n2.pdf](http://www.supremecourt.gov/opinions/14pdf/14-46_10n2.pdf)

<sup>11</sup> U.S. ENERGY INFORMATION ADMINISTRATION, *Scheduled 2015 Capacity Additions Mostly Wind and Natural Gas; Retirements Mostly Coal* (Mar. 10, 2015), [www.eia.gov/todayinenergy/detail.cfm?id=20292#tabs\\_SpotPriceSlider-2](http://www.eia.gov/todayinenergy/detail.cfm?id=20292#tabs_SpotPriceSlider-2).

<sup>12</sup> Timothy Cama & Lydia Wheeler, *Supreme Court overturns landmark EPA air pollution rule*, THE HILL (June 29, 2015), available at <http://thehill.com/policy/energy-environment/2464-supreme-court-overturns-epa-air-pollution-rule>

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<sup>1</sup> National Emission Standards, 77 Fed. Reg. 9,304 (Feb. 16, 2012).

<sup>2</sup> 42 U.S.C. § 7412.

<sup>3</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA-452/R-11/-011, REGULATORY IMPACT ANALYSIS FOR THE FINAL MERCURY AND AIR TOXICS STANDARDS, 3-31 (Dec. 2011), [www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf](http://www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf).

<sup>4</sup> NATIONAL ECONOMIC RESEARCH ASSOCIATES, ESTIMATING EMPLOYMENT IMPACTS OF REGULATIONS: A REVIEW OF EPA’S METHODS FOR ITS AIR RULES 28 (Feb. 2013), [www.uschamber.com/sites/default/files/documents/files/020360\\_ETRA\\_Briefing\\_NERA\\_Study\\_final.pdf](http://www.uschamber.com/sites/default/files/documents/files/020360_ETRA_Briefing_NERA_Study_final.pdf).

<sup>5</sup> U.S. ENVIRONMENTAL PROTECTION AGENCY, PUB. NO. EPA-452/R-11/-011, REGULATORY IMPACT ANALYSIS FOR THE FINAL MERCURY AND AIR TOXICS STANDARDS, 3-31 (Dec. 2011), [www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf](http://www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf).