



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

January 18, 2017

MEMORANDUM

**SUBJECT: EPA Clean Air Act Rules Track Record in the D.C. Circuit and Supreme Court**

**FROM: Avi Garbow**  
**General Counsel**

A handwritten signature in blue ink, appearing to read "Avi Garbow", written over a horizontal line.

**TO: Gina McCarthy**  
**Administrator**

The Obama EPA's first Administrator, Lisa Jackson — on her first day after being confirmed by the U.S. Senate — pledged in a memorandum to all EPA employees to “uphold the values of scientific integrity [and] rule of law.” She emphasized that “[s]cience must be the backbone for EPA programs,” and “EPA must follow the rule of law.” At the same time, she announced five priorities, the first two of which were “[r]educing greenhouse gas emissions” and “[i]mproving air quality.”<sup>1</sup> Similarly, in your first public speech after being sworn into office as the Obama EPA's second Administrator, following your tenure as Assistant Administrator for Air and Radiation, you referred to EPA's need to “follow[] the science and the law”.<sup>2</sup>

You have asked me to analyze the court decisions reviewing the actions that the Obama EPA took under the Clean Air Act – which were the largest set of actions that EPA took — to determine whether, in fact, the EPA followed these first principles. Based on my review of this case law, I conclude that in implementing the Clean Air Act, the Obama EPA has followed the law and the science.

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<sup>1</sup> Memorandum from Lisa P. Jackson, Administrator-designate to All EPA Employees, January 23, 2009. <http://web.archive.org/web/20090303233334/http://www.epa.gov/administrator/memotoemployees.html>

<sup>2</sup> U.S. EPA Administrator Gina McCarthy Remarks at Harvard University, July 30, 2013. <http://web.archive.org/web/20130804071536/http://yosemite.epa.gov/opa/admpress.nsf/8d49f7ad4bbcf4ef852573590040b7f6/be8f2d864287e57285257bb90067322a!OpenDocument>

## OVERVIEW

Many of the Obama EPA's actions – including, for example, some of its motor vehicle rules – were not challenged in court, and thus raise no issue about consistency with the law and the science. For this memorandum, I reviewed the 69 cases, decided between 2009 and 2016, in which the U.S. Court of Appeals for the D.C. Circuit reviewed the Obama EPA's rules and other actions under the Clean Air Act. I focused on cases in the D.C. Circuit because, after the Supreme Court, that court is considered the second most important court in the nation, and because under the Clean Air Act, all regulations of national applicability must be reviewed exclusively in that Court. Three of the cases also went before the Supreme Court.

Overall, EPA won or mostly won 81% of these D.C. Circuit cases, and lost or mostly lost 10% of the cases, with the rest resulting in a mixed decision; and during the last two years, 2015-2016, EPA won 90% of the cases. While we are concerned about any losses in court, we recognize that our rulemakings necessarily involving making judgments about matters on which the law is not settled, and as a result, some court losses are inevitable. That said, ours is an excellent record on its face. And several other considerations make it even more impressive. About one-quarter of the losses resulted in remands without vacatur, meaning that the rule stayed in effect while EPA took additional action – in most cases, no more than providing additional explanation — to remedy the deficiency. Furthermore, it should be noted that the judges on the D.C. Circuit are almost evenly split between those appointed by Democratic Presidents and those appointed by Republican Presidents, but Republican-appointed judges upheld EPA's actions as often as Democratic-appointed judges.

In addition, because many cases involved more than one issue, I reviewed EPA's track record on an issue-by-issue basis, focusing on substantive legal issues, which indicate how well EPA follows the law; and on record issues, which indicate how well EPA follows the science and other facts. Overall, EPA won approximately 85% of 100 substantive legal issues, and approximately 85% of 150 record issues — again, an excellent record. It should also be noted that even though most of the challenges were brought by industry and like-minded states, most of these losses occurred in challenges by environmental organizations.

I also briefly discuss the three U.S. Supreme Court opinions that addressed five substantive legal issues in Obama EPA Clean Air Act rules.<sup>3</sup> Although EPA's record in these cases was mixed, that does not change my overall conclusions, which are based on the much larger body of D.C. Circuit case law.

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<sup>3</sup> The Supreme Court also issued an order without opinion staying an Obama EPA rule, the Clean Power Plan. Because the Supreme Court did not issue an opinion in this action, I do not discuss it further.

## DISCUSSION

At the outset, it should be noted that although in this memorandum, I focus on the rules that were challenged in court, some of our rules, including several significant motor vehicle standards, were not challenged in court.<sup>4</sup> Moreover, many of the rules that were challenged included numerous decisions that were not contested. For those rules and decisions, there is no dispute that EPA followed the law and the science.

Turning to the cases, from 2009 through 2016,<sup>5</sup> the D.C. Circuit issued sixty-nine opinions resolving challenges to the Obama Administration EPA's Clean Air Act rules and other actions.<sup>6</sup> EPA prevailed in the vast majority of these actions: the court issued a favorable opinion in 81% of these actions, where EPA won or mostly won; a mixed opinion in 9%; and an unfavorable opinion in 10%, where EPA lost or mostly lost. EPA was especially successful during 2015-16, prevailing in 90% of actions.<sup>7</sup>

A second way to understand EPA's track record is to analyze how the court disposed of the petition for review. In 71% of actions, the court denied or dismissed the petition in its entirety, resolving every dispositive issue in EPA's favor. In 13%, the court denied or dismissed in part and granted in part; and in the remaining 16%, the court granted. (Note that a decision in which the court grants a petition is not necessarily

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<sup>4</sup> For example, the motor vehicle manufacturers did not challenge either the light-duty or heavy-duty motor vehicle standards for greenhouse gases. See Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, Final Rule, 75 Fed. Reg. 25,324 (May 7, 2010); Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, Final Rule, 76 Fed. Reg. 57,106 (Sept. 15, 2011). Similarly, the only part of the rule promulgating tier 3 motor vehicles and engines standards under CAA section 202 and fuels standards under section 211(c), 79 Fed. Reg. 23414 (April 28, 2014), that was challenged was the requirement that motor vehicle manufacturers use the same fuels in emissions testing that the vehicles would use on the road. See Energy Future Coalition v. EPA, 793 F.3d 141 (2015). For another motor vehicle rule that was not challenged, see California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's Advanced Clean Car Program and a Within the Scope Confirmation for California's Zero Emission Vehicle Amendments for 2017 and Earlier Model Years; Notice, 78 Fed. Reg. 2112 (January 9, 2013).

<sup>5</sup> The D.C. Circuit has not issued any relevant decisions so far in 2017.

<sup>6</sup> This count excludes (1) opinions citing the Clean Air Act but resolving challenges to non-Clean Air Act actions, (2) opinions resolving challenges to Clean Air Act actions promulgated under the Bush Administration, (3) judgments issued without an opinion, (4) opinions or judgments denying rehearing or rehearing en banc, and (5) opinions resolving permitting or enforcement challenges. It also excludes the decision in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), because the Supreme Court subsequently reversed that decision. See 134 S. Ct. 1584 (2014). Cf. also *infra*, note 13 (discussing which issues were excluded for the issue-by-issue analysis).

<sup>7</sup> Examining all of the decisions in Clean Air Act matters — including judgments on significant, contested matters issued without opinion, cf. *supra* note 6 — that the D.C. Circuit has issued from January 2015 to the present, EPA received favorable outcomes in 19 of those cases, largely favorable outcomes in 3 mixed decisions, and suffered only 2 losses.

unfavorable to the agency.<sup>8</sup>) In a quarter of opinions granting the petition on at least one issue, the court did not vacate EPA's action, but instead remanded to EPA without vacatur. In these remands without vacatur, the court typically does not find that EPA had exceeded its authority. Rather it often seeks additional explanation from the agency and expressly recognizes the potential for EPA to justify itself on remand.<sup>9</sup>

Another perspective on EPA's track record is to consider whether the decisions were unanimous or divided, or otherwise split along party lines. In 90% of EPA's victories — when the court denied or dismissed the petition in the entirety — the court issued a unanimous judgment; the remaining 10% were over dissents. By contrast, when the court granted the petition against EPA, 18% were over dissents.

Moreover, there was no evidence of a split among the D.C. Circuit judges along party lines. Of the seventeen active and senior judges in the D.C. Circuit during this time period, eight were appointed by Democratic presidents, and nine by Republican presidents. All seventeen heard one or more of the 69 cases. Judges appointed by Republican presidents heard over one-and-a-half times the number of cases as judges appointed by Democratic presidents. They voted to deny or dismiss petitions at virtually the same rate (72% for Democratic appointees and 70% for Republican appointees). Democratic appointees were also more likely to grant petitions than their Republican counterparts (20% versus 13%), but less likely to deny or dismiss in part and grant in part (9% versus 17%).<sup>10</sup>

Yet another way to understand EPA's record is to consider how EPA fared on particular issues. EPA's record on two types of issues is especially important. EPA's performance on substantive legal issues (for convenience, legal issues) reflects how well it follows the law. And its performance on record issues reflects how well it follows the science and other factual considerations.<sup>11</sup> Issue-by-issue analysis is important because

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8 For example, in *Hermes Consolidated, LLC v. EPA*, 787 F.3d 568 (D.C. Cir. 2015), the court upheld EPA's regulatory approach to granting hardship exemptions under its renewable fuels program. The court also denied several record challenges, but nonetheless granted the petition in light of two conceded math errors. Thus, although the court vacated EPA's action for technical reasons specific to the particular petition, its decision to approve EPA's overall regulatory approach was highly favorable to the agency.

9 See *U.S. Sugar Corp. v. EPA*, 2016 U.S. App. LEXIS 13783, at \*111 (D.C. Cir. 2016) ("it is likely that the EPA will be able to adequately explain its [approach] on remand after properly considering the matter"); *Mississippi v. EPA*, 744 F.3d 1334, 1362 (D.C. Cir. 2013) ("EPA's failure adequately to explain itself is in principle a curable defect"); *Nat'l Ass'n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1139 (D.C. Cir. 2013) ("because EPA may be able to explain [its approach], we remand this portion of the rulemaking to EPA for further explanation without vacating").

10 The stated percentages for the Democratic appointees do not sum up to exactly 100% due to rounding.

11 Specifically, legal issues concern whether the agency has complied with substantive limits on its authority. In deciding these issues, the court generally interprets the Clean Air Act, or EPA's implementing regulations, or both. In two cases, the court also interpreted the United States Constitution. By contrast, record issues concern whether the agency has exercised its legal authority in an appropriate and justifiable way, or whether it has abused its discretion. The court chiefly reviews whether the agency has adequately

some cases decide numerous issues and thus have much greater effect than a single win or loss may reflect.<sup>12</sup> The D.C. Circuit resolved approximately 100 legal issues and 150 record issues.<sup>13</sup> I identify approximate numbers because in its opinions, the D.C. Circuit does not always find it necessary to clearly delineate one issue from another. EPA prevailed on the vast majority of issues: we won approximately 85% of legal issues and approximately 85% of record issues.

The losses on issues are also instructive. EPA lost issues to both (1) environmental and state petitioners seeking to increase the stringency of federal environmental regulation (“environmental petitioners” for short) and (2) industry and state petitioners seeking to reduce stringency (“industry petitioners” for short). The D.C. Circuit reviewed almost twice as many cases involving industry petitioners as environmental petitioners,<sup>14</sup> but EPA lost more issues to environmental petitioners. Slightly over half of the legal issues EPA lost, and over 60% of the record issues EPA lost, were to environmental petitioners.

EPA’s record in the three U.S. Supreme Court cases, which involved five substantive legal issues, was more mixed, but this not change my overall conclusions, which are based on the much larger body of D.C. Circuit case law. In the Supreme Court, EPA won three issues. It lost two issues, but even in these losses, the Supreme Court did not find EPA’s interpretation to violate the clear terms of the Clean Air Act. In *EPA v. EME Homer*, the Supreme Court, by a 6-2 vote, upheld EPA’s interpretations in the Cross-State Air Pollution Rule that (1) because states subject to the rule had previously failed to submit adequate interstate transport state implementation plans, the CAA gave EPA the authority to issue a federal implementation plan to correct this deficiency; and

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explained its policy and technical judgments, articulating a rational connection between the evidence before it and the decision reached.

The cases also decided other issues, such as justiciability issues (such as whether a petitioner has standing to bring the action, or whether the court has jurisdiction to hear it) and procedural legal issues (such as whether EPA followed the procedures defined in the Clean Air Act and the Administrative Procedure Act). Separate analysis of these issues is beyond the scope of this memorandum.

<sup>12</sup> Indeed, four cases each resolved more than 20 issues. See *U.S. Sugar Corp. v. EPA*, 2016 U.S. App. LEXIS 13783 (D.C. Cir. 2016); *Miss. Comm’n on Env’tl. Quality v. EPA*, 790 F.3d 138 (D.C. Cir. 2015); *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014); *Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115 (D.C. Cir. 2013).

<sup>13</sup> I did not count issues decided by the D.C. Circuit that were later reviewed by the Supreme Court, specifically, the issues in *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), rev’d by 134 S. Ct. 1584 (2014); and some of the issues in *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), aff’d in part and rev’d in part by *UARG v. EPA*, 134 S. Ct. 2427 (2014); and *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), rev’d in part by *Michigan v. EPA*, 135 S. Ct. 2699 (2015).

<sup>14</sup> Industry petitioners brought 51 actions, while environmental petitioners brought only 27. (In the nine actions where the court consolidated petitions brought by environmental petitioners and those by industry petitioners, we counted the action as a being brought by both sides.)

(2) EPA may consider costs to determine the “significance” of upwind-to-downwind emission contributions.<sup>15</sup> In *UARG v. EPA*, the results of the Supreme Court opinion were as follows: (1) the Court upheld, by a 7-2 vote, EPA’s interpretation that sources required to obtain Prevention of Significant Deterioration (PSD) permits due to their emissions of pollutants other than greenhouse gases must limit their greenhouse gas emissions based on application of “best available control technology;” and (2) the Court found unreasonable, by a 5-4 vote, EPA’s interpretations that PSD and Title V permits must be obtained by sources of greenhouse gas emissions that are not otherwise subject to these permitting requirements due to their emissions of other air pollutants.<sup>16</sup> Because the Court’s opinion upheld limitations on emissions of greenhouse gases resulting from construction of the largest sources but relieved EPA and states from having to require smaller sources to obtain permits, Justice Scalia, the author of the opinion, noted, in announcing the opinion from the bench, that “EPA is getting almost everything it wanted in this case.”<sup>17</sup> In *Michigan v. EPA*, the Supreme Court found unreasonable by a 5-4 vote a legal interpretation by EPA that it is not required to consider costs in making the threshold finding as to whether regulation of mercury and other hazardous air pollutants from fossil fuel-fired electric power plants is “appropriate and necessary.”<sup>18</sup> The Court

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15 See *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014).

16 See *UARG v. EPA*, 134 S.Ct 2427 (2014). Notwithstanding significant administrative challenges, EPA had concluded that it was compelled by law to apply the interpretation that the Supreme Court found unreasonable based on the following considerations: (a) the CAA defines a “major emitting facility” that is required to obtain a PSD permit as a source that emits “any air pollutant” in specified amounts; (b) the D.C. Circuit had directed EPA to read this and related PSD provisions to apply, at minimum, to each pollutant regulated under the CAA; (c) consistent with this precedent, EPA had for more than three decades applied the PSD program to each pollutant regulated under the Act; (d) in 2007, the Supreme Court held in *Massachusetts v. EPA*, 549 U.S. 497 (2007), that, under CAA section 202(a), the phrase “any air pollutant” includes greenhouse gases; and (e) EPA completed standards for motor vehicles that regulated greenhouse gas emissions under the CAA for the first time when they took effect in 2011. However, EPA also determined that the emission thresholds in the PSD definition of “major emitting facility” that were designed for other pollutants would, when applied to greenhouse gases, result in large numbers of additional sources (with smaller amounts of emissions) becoming subject to PSD and Title V permitting requirements. Thus, EPA concluded that it needed to phase in PSD applicability to sources of greenhouse gases, starting with larger sources first, so that EPA and the stakeholders would have time to prepare for applicability to smaller sources. The applicability provisions of Title V program are similar to the PSD program’s applicability provisions, and EPA made similar determinations for that program. The Supreme Court found EPA’s interpretations unreasonable on grounds that the consequences of applying EPA’s longstanding reading of the permit applicability provisions to greenhouse gases (requiring many small sources to obtain permits for the first time) indicates that “any air pollutant” cannot be interpreted literally to apply to greenhouse gases for purposes of those programs. The Court also reasoned that EPA did not have authority to address this consequence by modifying the emissions thresholds reflected in the statute.

17 Debra Cassens Weiss, “SCOTUS partially limits EPA’s greenhouse gas authority; Scalia says EPA got most of what it wanted,” *ABA Journal*, June 23, 2014. [http://www.abajournal.com/news/article/scotus\\_partially\\_limits\\_epas\\_global\\_warming\\_authority](http://www.abajournal.com/news/article/scotus_partially_limits_epas_global_warming_authority)

18 See *Michigan v. EPA*, 135 S. Ct. 2699 (2015). EPA had justified interpreting the term “appropriate and necessary” not to require consideration of costs because (i) those terms are general and do not explicitly refer to cost, (ii) cost is not considered in any other listing decisions under section 112, and (iii) section 112 includes a consideration of costs later in the process of regulating power plants. In *Michigan*, the Supreme

did not review any other aspect of EPA's regulation of hazardous pollutants from power plants, which the D.C. Circuit upheld in total.<sup>19</sup> The regulation has remained in place while EPA subsequently undertook another action to consider costs and affirmed its threshold finding.<sup>20</sup>

Attached to this memorandum is a list of the D.C. Circuit cases and Supreme Court cases I have analyzed. The list of D.C. Circuit cases describes each case's outcome (whether it was favorable, mixed, or unfavorable to EPA), disposition (whether the court denied or dismissed the petition, or granted it), the decree on granting of a petition in whole or in part (RWV or remand without vacatur, vacatur, etc.), unanimity (whether the panel issued an unanimous or divided judgment), and issues (whether opinion resolved legal or record issues, or both).

## **CONCLUSIONS**

The court decisions I have reviewed in this memorandum show that when the Obama EPA promulgated its rules, it generally acted within the scope of authority given by Congress, acted consistently with the science and other factual considerations, and explained its decisions appropriately. The decisions also reflect the dedication and professionalism of EPA's technical staff and attorneys, as well as the environmental attorneys in the Department of Justice who represent EPA before the courts. Throughout the Administration's eight-year tenure, it has remained true to the core principles announced at the very beginning of its tenure, to follow the law and the science.

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Court overturned EPA's interpretation on grounds that in the context of section 112(n)(1)(A), the term "appropriate" includes consideration of all the relevant factors and that the natural reading of the requirement is that it "requires at least some attention to cost." See *id.* at 2707.

<sup>19</sup> See *White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014). The D.C. Circuit unanimously upheld EPA on each of the more than 20 remaining issues that industry petitioners raised.

<sup>20</sup> Industry has challenged this action in the D.C. Circuit, and the case is pending.

**APPENDIX. LIST OF CLEAN AIR ACTIONS, IN THE D.C. CIRCUIT AND THE UNITED STATES SUPREME COURT, RESOLVING CHALLENGES TO OBAMA ADMINISTRATION RULEMAKINGS AND OTHER ACTIONS, 2009-2016**

**1. D.C. Circuit Cases<sup>21</sup>**

<b>Case Citation</b>	<b>Pet'rs</b>	<b>Challenged Action</b>	<b>Outcome</b>	<b>Disposition</b>	<b>Decree on Grant</b>	<b>Unanimity</b>	<b>Legal Issues</b>	<b>Record Issues</b>
Alliance of Auto. Mfrs. v. EPA, 582 Fed. Appx. 1 (D.C. Cir. 2014)	Industry / State	E15 Misfueling Rule	Favorable	Deny/dism.		Unanimous		
Am. Rd. & Transp. Builders Ass'n v. EPA, 2013 U.S. App. LEXIS 1952 (D.C. Cir. 2013)	Industry / State	California Nonroad Waiver	Favorable	Deny/dism.		Unanimous		
Am. Rd. & Transp. Builders Ass'n v. EPA, 554 Fed. Appx. 18 (D.C. Cir. 2014)	Industry / State	California Nonroad Waiver	Favorable	Deny/dism.		Unanimous		
Am. Rd. & Transp. Builders Ass'n v. EPA, 705 F.3d 453 (D.C. Cir. 2013)	Industry / State	California Nonroad Waiver	Favorable	Deny/dism.		Unanimous		
API v. EPA, 684 F.3d 1342 (D.C. Cir. 2012)	Industry / State	2010 NO2 NAAQS	Favorable	Deny/dism.		Unanimous	*	*

<sup>21</sup> In 2015-16, the D.C. Circuit also issued three additional judgments on significant, contested matters without opinion. See *White Stallion Energy Center v. EPA*, 2015 U.S. App. LEXIS 21819 (D.C. Cir. Dec. 15, 2015); *In re West Virginia*, 2015 U.S. App. LEXIS 16042 (D.C. Cir. Sept. 9, 2015); *Coalition for Responsible Regulation v. EPA*, 606 Fed. Appx. 6 (D.C. Cir. Apr. 10, 2015). EPA won these cases.

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
API v. EPA, 706 F.3d 474 (D.C. Cir. 2013)	Industry / State	2012 RFS Rule	Mixed	Part deny/dism., part grant	Vacate	Unanimous	*	*
Arkema Inc. v. EPA, 618 F.3d 1 (D.C. Cir. 2010)	Industry / State	2009 Adjustments to Allowance System for Controlling HCFC Production	Unfavorable	Part deny/dism., part grant	Vacate	Divided	*	*
Ass'n of Battery Recyclers v. EPA, 716 F.3d 667 (D.C. Cir. 2013)	Both	Secondary Lead Smelting NESHAP	Favorable	Deny/dism.		Unanimous	*	
ATK Launch Sys. v. EPA, 669 F.3d 330 (D.C. Cir. 2012)	Industry / State	24-hour PM2.5 Attainment Designation for Utah	Favorable	Deny/dism.		Unanimous		*
Chamber of Commerce of the United States v. EPA, 642 F.3d 192 (D.C. Cir. 2011)	Industry / State	California Greenhouse Gas Waiver	Favorable	Deny/dism.		Unanimous		
Cmtys. for a Better Environment v. EPA, 748 F.3d 333 (D.C. Cir. 2014)	Enviro / State	CO NAAQS	Favorable	Deny/dism.		Unanimous		*
Coalition for Responsible Regulation, Inc. v. EPA, 684 F.3d 102 (D.C. Cir. 2012)	Industry / State	GHG Endangerment Finding; Tailpipe, Timing, and Tailoring Rules	Favorable	Deny/dism.		Unanimous	*	*

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Ctr. for Biological Diversity v. EPA, 722 F.3d 401 (D.C. Cir. 2013)	Enviro / State	PSD and Title V Biomass Deferral Rule	Mixed	Grant	Vacate	Divided		*
Ctr. for Biological Diversity v. EPA, 749 F.3d 1079 (D.C. Cir. 2014)	Enviro / State	2012 Secondary NOx and SOx NAAQS	Favorable	Deny/dism.		Unanimous	*	*
Daimler Trucks N. Am. LLC v. EPA, 737 F.3d 95 (D.C. Cir. 2013)	Industry / State	Nonconformance Penalties for Heavy Duty Diesel Engines	Unfavorable	Grant	Vacate	Unanimous		
Daimler Trucks N. Am. LLC v. EPA, 745 F.3d 1212 (D.C. Cir. 2013)	Industry / State	Nonconformance Penalties for Heavy Duty Diesel Engines	Favorable	Deny/dism.		Unanimous		
Dalton Trucking, Inc. v. EPA, 808 F.3d 875 (D.C. Cir. 2015)	Industry / State	2013 California Nonroad Waiver Decision for PM and NOx	Mixed	Grant	Dismiss	Unanimous		
Del. Dept of Natural Res. & Env'tl. Control v. EPA, 785 F.3d 1 (D.C. Cir. 2015)	Industry / State	Reciprocating Internal Combustion Engine NESHAP	Mixed	Part deny/dism., part grant	Vacate	Unanimous		*
Delta Constr. Co. v. EPA, 783 F.3d 1291 (D.C. Cir. 2015)	Industry / State	2010 Light Duty and 2011 Heavy Duty Vehicle GHG Emissions Rules	Favorable	Deny/dism.		Unanimous		

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Desert Citizens Against Pollution v. EPA, 699 F.3d 524 (D.C. Cir. 2012)	Enviro / State	Gold Mine NESHAP	Favorable	Deny/dism.		Unanimous	*	*
Doe Run Res. Corp. v. EPA, 528 Fed. Appx. 1 (D.C. Cir. 2013)	Industry / State	Primary Lead Processing NESHAP	Favorable	Deny/dism.		Unanimous	*	
EME Homer City Generation, L.P v. EPA, 795 F.3d 118 (D.C. Cir. 2015)	Industry / State	CSAPR (on remand from SCOTUS)	Favorable	Part deny/dism., part grant	RWV <sup>22</sup>	Unanimous	*	*
Energy Future Coalition v. EPA, 793 F.3d 141 (D.C. Cir. 2015)	Industry / State	Test Fuel Regulation, 40 CFR § 1065.701(a), (c)	Favorable	Deny/dism.		Unanimous	*	*
Grocery Mfrs. Ass'n v. EPA, 693 F.3d 169 (D.C. Cir. 2012)	Industry / State	E15 waiver	Favorable	Deny/dism.		Divided		
Hermes Consol., LLC v. EPA, 787 F.3d 568 (D.C. Cir. 2015)	Industry / State	Wyoming Refining Company Hardship Exemption from 2013-14 RFS Obligations	Favorable	Grant	Vacate	Unanimous	*	*
Honeywell Int'l, Inc. v. EPA, 705 F.3d 470 (D.C. Cir. 2013)	Industry / State	2011 Adjustments to Allowance System for Controlling HCFC Production, following Arkema	Favorable	Deny/dism.		Divided	*	

<sup>22</sup> "RWV" means "remand without vacatur."

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Kansas v. EPA, 638 Fed. Appx. 11 (D.C. Cir. 2016)	Industry / State	Motor Vehicle Emissions Simulator for 2014 (MOVES2014)	Favorable	Deny/dism.		Unanimous		
Las Brisas Energy Ctr., LLC v. EPA, 2012 U.S. App. LEXIS 25535 (D.C. Cir. 2012)	Industry / State	GHG NSPS for EGUs	Favorable	Deny/dism.		Unanimous		
Mack Trucks, Inc. v. EPA, 682 F.3d 87 (D.C. Cir. 2012)	Industry / State	2012 Nonconformance Penalties for Heavy Duty Diesel Engines	Favorable	Grant	Vacate	Unanimous		
Med. Waste Inst. & Energy Recovery Council v. EPA, 645 F.3d 420 (D.C. Cir. 2011)	Industry / State	Hospital/Medical/Infectious Waste Incinerators MACT	Favorable	Deny/dism.		Unanimous		*
Mexichem Specialty Resins, Inc. v. EPA, 787 F.3d 544 (D.C. Cir. 2015)	Industry / State	2012 PVC Production NESHAP	Favorable	Deny/dism.		Divided	*	*
Miss. Comm'n on Env'tl. Quality v. EPA, 790 F.3d 138 (D.C. Cir. 2015)	Both	2012 Attainment Designations for 2008 Ozone NAAQS	Favorable	Deny/dism.		Unanimous	*	*
Mississippi v. EPA, 2012 U.S. App. LEXIS 3313 (D.C. Cir. 2012)	Enviro / State	2008 Ozone NAAQS	Favorable	Deny/dism.		Unanimous		

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Mississippi v. EPA, 744 F.3d 1334 (D.C. Cir. 2013)	Both	2008 Ozone NAAQS	Favorable	Part deny/dism., part grant	RWV	Unanimous		*
Monroe Energy, LLC v. EPA, 750 F.3d 909 (D.C. Cir. 2014)	Industry / State	2013 RFS Rule	Favorable	Deny/dism.		Unanimous	*	*
N.A. of Mfrs. v. EPA, 750 F.3d 921 (D.C. Cir. 2014)	Industry / State	2013 PM2.5 NAAQS	Favorable	Deny/dism.		Unanimous		*
Nat'l Ass'n for Surface Finishing v. EPA, 795 F.3d 1 (D.C. Cir. 2015)	Both	2012 Hexavalent Chromium NESHAP	Favorable	Deny/dism.		Unanimous	*	*
Nat'l Ass'n of Clean Water Agencies v. EPA, 734 F.3d 1115 (D.C. Cir. 2013)	Both	Sewage Sludge Incinerators MACT	Favorable	Part deny/dism., part grant	RWV	Unanimous	*	*
Nat'l Biodiesel Bd. v. EPA, 2016 U.S. App. LEXIS 22593 (D.C. Cir. 2016)	Industry / State	Alternative Tracking for Argentine Biofuels	Favorable	Deny/dism.		Unanimous	*	*
Nat'l Chicken Council v. EPA, 687 F.3d 393 (D.C. Cir. 2012)	Industry / State	RFS Grandfathering Clause	Favorable	Deny/dism.		Unanimous		

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Nat'l Env'tl. Dev. Ass'n's Clean Air Project v. EPA, 752 F.3d 999 (D.C. Cir. 2014)	Industry / State	Guidance after Summit source aggregation decision	Unfavorable	Grant	Vacate	Unanimous	*	
Nat'l Env'tl. Dev. Association's Clean Air Project v. EPA, 686 F.3d 803 (D.C. Cir. 2012)	Industry / State	2010 SO2 NAAQS	Favorable	Deny/dism.		Unanimous		*
Nat'l Petrochemical & Refiners Ass'n v. EPA, 630 F.3d 145 (D.C. Cir. 2010)	Industry / State	2010 RFS Rule	Favorable	Deny/dism.		Unanimous	*	*
New Era Group, Inc. v. EPA, 2014 U.S. App. LEXIS 19027 (D.C. Cir. 2014)	Industry / State	HCFC allowances	Favorable	Deny/dism.		Unanimous		
North Carolina v. EPA, 614 Fed. Appx. 517 (D.C. Cir. 2015)	Industry / State	PM2.5 PSD Increment Rule	Favorable	Deny/dism.		Unanimous		
NRDC v. EPA, 643 F.3d 311 (D.C. Cir. 2011)	Enviro / State	2010 Ozone Nonattainment Alternative Compliance Guidance (Fee Program Guidance)	Unfavorable	Grant	Vacate	Unanimous	*	
NRDC v. EPA, 661 F.3d 662 (D.C. Cir. 2011)	Enviro / State	2010 PM Transportation Conformity Determinations Regulations	Favorable	Deny/dism.		Unanimous	*	*

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
NRDC v. EPA, 749 F.3d 1055 (D.C. Cir. 2014)	Enviro / State	2013 Portland Cement NESHAP; SSM Affirmative Defense	Mixed	Part deny/dism., part grant	Vacate	Unanimous	*	
NRDC v. EPA, 777 F.3d 456 (D.C. Cir. 2014)	Enviro / State	2012 Implementation Rule for 2008 Ozone NAAQS (Compliance Deadlines); Revocation of 1997 Ozone NAAQS Transportation Conformity Requirements	Unfavorable	Grant	Vacate	Divided	*	*
Okla. Dep't of Envtl. Quality v. EPA, 740 F.3d 185 (D.C. Cir. 2014)	Industry / State	2011 Indian Country NSR Rule	Unfavorable	Grant	Vacate	Unanimous	*	
Owner-Operator Indep. Drivers Ass'n v. EPA, 622 Fed. Appx. 4 (D.C. Cir. 2015)	Industry / State	California Tractor Trailer Emissions Waiver	Favorable	Deny/dism.		Unanimous		
Pfeiff v. EPA, 2012 U.S. App. LEXIS 263 (D.C. Cir. 2012)	Enviro / State	PM/Ozone Transport FIP/SIP Corrections	Favorable	Deny/dism.		Unanimous		
Portland Cement Ass'n v. EPA, 665 F.3d 177 (D.C. Cir. 2011)	Both	2010 Portland Cement NESHAP and NSPS	Favorable	Part deny/dism., part grant	RWV and stay	Unanimous	*	*
Sierra Club De P.R. v. EPA, 815 F.3d 22 (D.C. Cir. 2016)	Enviro / State	"Grounds Arising After" Challenge to 1980 Nonattainment NSR Regulation	Favorable	Deny/dism.		Unanimous		
Sierra Club v. EPA, 699 F.3d 530 (D.C. Cir. 2012)	Enviro / State	2011 112(c)(6) Determination	Unfavorable	Grant	Vacate	Unanimous		

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
Sierra Club v. EPA, 705 F.3d 458 (D.C. Cir. 2013)	Enviro / State	2010 PM2.5 PSD Significant Impact Levels, Significant Monitoring Concentration Rule	Mixed	Grant	Vacate	Unanimous	*	
Sierra Club v. EPA, 754 F.3d 995 (D.C. Cir. 2014)	Enviro / State	Memorandum Re Redesignation Requests and SIP Actions Affected by CADC Decision Vacating Transport Rule	Favorable	Deny/dism.		Unanimous		
Solvay USA Inc. v. EPA, 608 Fed. Appx. 10 (D.C. Cir. 2015)	Both	2011/13 Rule for Identification of Non-Hazardous Secondary Materials that are Solid Waste	Favorable	Deny/dism.		Unanimous	*	*
Texas v. EPA, 726 F.3d 180 (D.C. Cir. 2013)	Industry / State	2010 SIP Call/FIP for States Failing to Timely Implement PSD Programs for GHG emissions	Favorable	Deny/dism.		Divided	*	*
Treasure State Res. Indus. Ass'n v. EPA, 805 F.3d 300 (D.C. Cir. 2015)	Industry / State	2013 Attainment Designations for 2010 SO2 NAAQS	Favorable	Deny/dism.		Unanimous	*	*
U.S. Sugar Corp. v. EPA, 2016 U.S. App. LEXIS 13783 (D.C. Cir. 2016)	Both	2011/13 Major Boilers NESHAP; Area Boilers NESHAP; CISWI § 129 Standards	Favorable	Part deny/dism., part grant	RWV	Unanimous	*	*
Util. Air Regulatory Group v. EPA, 744 F.3d 741 (D.C. Cir. 2014)	Industry / State	2009 and 2012 NSPS Rules for Steam Generating Units	Favorable	Deny/dism.		Unanimous		*
Wagner v. EPA, 2011 U.S. App. LEXIS 25955 (D.C. Cir. 2011)	Enviro / State	Denial of Petition to List Anthropogenic Light as an Air Pollutant Under PSD, Visibility, and Air Toxics programs	Favorable	Deny/dism.		Unanimous	*	

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Decree on Grant	Unanimity	Legal Issues	Record Issues
West Virginia v. EPA (In re Murray Energy Corp.), 788 F.3d 330 (D.C. Cir. 2015)	Industry / State	CPP Proposed Rule	Favorable	Deny/dism.		Unanimous		
Westar Energy, Inc. v. EPA, 608 Fed. Appx. 1 (D.C. Cir. 2015)	Industry / State	2011 Disapproval of Kansas PM2.5 Interstate Transport SIP	Favorable	Deny/dism.		Unanimous	*	*
White Stallion Energy Ctr., LLC v. EPA, 748 F.3d 1222 (D.C. Cir. 2014)	Both	2012 Mercury and Air Toxics Standard (MATS)	Favorable	Deny/dism.		Divided	*	*
Wildearth Guardians v. EPA, 2016 U.S. App. LEXIS 13799 (D.C. Cir. 2016)	Enviro / State	2014 Implementation Rule for 1997 and 2006 PM2.5 NAAQS, Nonattainment Deadlines under Subpart IV	Favorable	Deny/dism.		Unanimous	*	
WildEarth Guardians v. United States EPA, 751 F.3d 649 (D.C. Cir. 2014)	Enviro / State	Denial of Rulemaking Petition to Regulate Coal Mines Under § 111(b)	Favorable	Deny/dism.		Unanimous	*	*
Zook v. EPA, 611 Fed. Appx. 725 (D.C. Cir. 2015)	Enviro / State	Denial of Petition to List Ammonia and Hydrogen Sulfide as Criteria Pollutants, and to List Animal Feeding Operations as § 111 Sources	Favorable	Deny/dism.		Unanimous	*	

## 2. Supreme Court Cases

Case Citation	Pet'rs	Challenged Action	Outcome	Disposition	Unanimity	Legal Issues
EPA v. EME Homer City Generation, L.P., 134 S. Ct. 1584 (2014)	State / Industry	CSAPR	Favorable	Rev.	Divided	*
Michigan v. EPA, 135 S. Ct. 2699 (2015)	State / Industry	2012 Mercury and Air Toxics Standard (MATS)	Unfavorable	Rev.	Divided	*
UARG v. EPA, 134 S.Ct 2427 (2014)	State / Industry	GHG Endangerment Finding; Tailpipe, Timing, and Tailoring Rules	Favorable	Aff. in part, rev. in part	Divided	*