

NOTES

Chemical Manufacturers Ass’n v. Environmental Protection Agency: The D.C. Circuit Demands Proof That Limiting Hazardous Waste Combustion Has Health Benefits

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I. INTRODUCTION

The United States Court of Appeals for the District of Columbia Circuit vacated an Environmental Protection Agency (EPA or the Agency) rule that regulated the burning of hazardous waste.¹ Three major types of businesses burn hazardous waste: large commercial incinerators, manufacturers who maintain on-site incinerators for their own waste, and cement companies that operate huge kilns and occasionally burn waste for a fee.² In 1996, the EPA created stricter emission standards for hazardous waste combustors based upon newly available technology as mandated by the Clean Air Act (CAA).³ The new standards required these businesses to make costly modifications within three years of the standards’ effective date or cease burning hazardous waste altogether.⁴ The Agency also created an early cessation program to prevent combustors intending not to comply from using the modification period as a grace period for burning waste.⁵ All combustors had to submit “Notification of Intent to Comply” (NIC) documents and report sufficient progress towards compliance, or an intent to comply by the owner, or else cease burning waste within two years of the standards’ effective date.⁶ The Agency recognized that it would not be cost-effective for onsite incinerators and cement company kilns, which burn hazardous waste

1. See Chem. Mfrs. Ass’n v. EPA, 217 F.3d 861, 862 (D.C. Cir. 2000).

2. See *id.*

3. See *id.* at 861-63.

4. See *id.* at 863.

5. See *id.*

6. See *id.*

as an adjunct to their primary business, to make the required modifications.⁷ These types of businesses would be forced to cease burning waste within two years, whereas commercial incinerators are given three years to comply.⁸

Parties on behalf of affected manufacturers and cement factories challenged the early cessation plan.⁹ They alleged that the EPA lacked statutory authority to implement such a program.¹⁰ The D.C. Circuit reviewed the agency rule and rejected the petitioners' argument that the EPA lacked statutory authority to implement an early cessation program.¹¹ It went further, however, to find that the rule failed to establish any environmental or health benefits and so vacated the rule.¹² *Chemical Manufacturers Ass'n v. Environmental Protection Agency*, 217 F.3d 861 (D.C. Cir. 2000).

II. BACKGROUND

The CAA directs the EPA to establish and adjust emission standards for hazardous air pollutants based on the maximum achievable control technology (MACT).¹³ The EPA may establish standards for the "maximum degree of reduction in emissions" while taking into consideration cost, energy requirements, and other environmental factors.¹⁴ Once the standards are set, the agency is required to establish a "compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than three years after the effective date of such standard."¹⁵ EPA rulemaking, like the rulemaking of all federal agencies, is guided by the Administrative Procedure Act (APA).¹⁶ The APA allows courts to review agency rulemaking, and to vacate agency rules and actions which are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."¹⁷

7. *See id.*

8. *See id.*

9. *See id.* at 862 ("Petitioners Chemical Manufacturers Association and Cement Kiln Recycling Coalition represent the latter two types of hazardous waste combustors.").

10. *See id.*

11. *See id.*

12. *See id.*

13. 42 U.S.C. § 7412(g)(2) (1995).

14. *See id.* § 7412(d)(2).

15. *Id.* § 7412(i)(3)(A).

16. 5 U.S.C. § 553 (1996).

17. *Id.* § 706(2)(A).

The Supreme Court historically has given deference to an agency's interpretation of its own formative statutes.¹⁸ The Court described the proper review of an agency's interpretation in *Chevron, U.S.A., Inc. v. Natural Resource Defense Council, Inc.*¹⁹ There, the Court stated that where Congress has not spoken directly with regard to the exact question at issue, courts should not impose their own interpretation.²⁰ Rather, courts must ask whether the agency's decision is based on "a permissible construction of the statute," even if the court disagrees with the conclusion.²¹ If Congress "explicitly left a gap for the agency to fill," it expressly delegated the agency authority to elucidate specific provisions of the statute by regulation.²² "Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute," or do not "represent[] a reasonable accommodation of conflicting policies . . . committed to the agency's care by the statute."²³

In *Chevron*, environmental activists objected to the EPA interpretation of a CAA provision that allowed states to treat entire industrial groupings as a single "stationary source" of pollution.²⁴ The D.C. Circuit ruled that such an interpretation of the term "stationary source" was inappropriate to the program's *raison d'être* of improving air quality.²⁵ The Supreme Court reversed the decision and gave deference to the EPA's interpretation and subsequent rulemaking.²⁶ The Court stated that the lower court had "misconceived the nature of its role in reviewing the regulations at issue."²⁷ The proper question before the court was not whether the court could find the regulation inappropriate in the general context of improving air quality, but rather whether the Administrator's view that the regulation was appropriate to a particular program is a reasonable view.²⁸ The *Chevron* Court concluded that the language of the statute appeared to enlarge, not confine, the EPA's power to regulate particular sources in

18. See *NLRB v. Hearst Publ'ns, Inc.*, 322 U.S. 111, 130-31 (1944); *United States v. Moore*, 95 U.S. 760, 763 (1878); *Edwards' Lessee v. Darby*, 25 U.S. (12 Wheat.) 206, 210 (1827).

19. 467 U.S. 837 (1984).

20. See *id.* at 843.

21. *Id.* at 843 & n.11.

22. *Id.* at 843-44; see also *Morton v. Ruiz*, 415 U.S. 199, 231 (1974) (noting that an agency must formulate policy to fill in gaps left by Congress in order to administer a program).

23. *Chevron*, 467 U.S. at 844-45.

24. See *id.* at 840-41.

25. See *id.* at 841-42.

26. See *id.* at 866.

27. *Id.* at 845.

28. See *id.*

order to effectuate the policies of the act.²⁹ Further, the Administrator's interpretation represented "a reasonable accommodation of manifestly competing interests" and was entitled to deference.³⁰

The Court explained the arbitrary and capricious standard of review in *Motor Vehicles Manufacturers Ass'n of the United States v. State Farm Mutual Automobile Insurance Co.*³¹ A rule may be "arbitrary and capricious" if the agency relied on factors which Congress did not intend to consider, entirely omitted the consideration of an important aspect of the problem, "offered an explanation for its decision that runs counter to the evidence before the agency," or is implausible to the extent that it cannot be ascribed to a different view or the result of the agency's expertise.³² The reviewing court should "not . . . supply a reasoned basis for the agency's action that the agency itself has not given," but the Court will "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned."³³ In general, "an agency must cogently explain why it has exercised its discretion in a given manner."³⁴

Some circuit courts have recently emphasized the required narrowness of the arbitrary and capricious standard of review. The Ninth Circuit stated in *United States v. Snoring Relief Labs, Inc.* that "[m]ost importantly review under the arbitrary and capricious standard is narrow, and the reviewing court may not substitute its judgment for that of the agency."³⁵ The Tenth Circuit explained that under the standard it would affirm an agency's decision once it was "assured that [the agency] . . . considered the relevant factors and made no clear errors in judgment."³⁶ In *Texas Office of Public Utilities Counsel v. FCC*, the Fifth Circuit pointed out that "the APA's 'arbitrary and capricious' standard of review is narrow and requires

29. *See id.* at 862.

30. *Id.* at 865.

31. 463 U.S. 29, 43 (1983).

32. *Id.*

33. *Id.* (quoting *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.* 419 U.S. 281, 286 (1974)).

34. *Id.* at 48-49.

35. 210 F.3d 1081, 1085 (9th Cir. 2000) (quoting *O'Keefe's, Inc. v. United States Consumer Prod. Safety Comm'n*, 92 F.3d 940, 942 (9th Cir. 1996)).

36. *High Country Citizen's Alliance v. United States Forest Serv.*, No. 97-1373, 2000 WL 147381, at *4 (10th Cir. Feb. 7, 2000).

only a finding that the agency ‘articulate[d] a rational relationship between the facts found and the choice made.’”³⁷

Congress can require courts to use a stricter standard of review when considering agency decisions, as explained in *Central and South West Services, Inc. v. EPA*.³⁸ In *South West Services*, a statute required courts to use a “substantial evidence” standard when reviewing agency decisions.³⁹ The substantial evidence standard requires a court “to ask whether a ‘reasonable mind might accept’ a particular evidentiary record as ‘adequate to support a conclusion.’”⁴⁰ The Supreme Court recently pointed out that the two standards of review may be blurred under certain circumstances.⁴¹ Therefore, when using the arbitrary and capricious standard of review, if an agency’s reasoning is bound up with a record-based factual conclusion, a court must determine whether it is supported by “substantial evidence.”⁴²

The D.C. Circuit also addressed the thoroughness with which the court reviews the record in *Small Refiner Lead Phase-Down Task Force v. EPA*.⁴³ The reviewing court must take a hard look at both the facts and the agency’s reasoning, but has limited power to second-guess the agency’s reasoning.⁴⁴ The court may only require that the agency’s reasons and policy choices “not deviate from or ignore the ascertainable legislative intent,” and that the agency’s reasons and policy choices conform to “certain minimal standards of rationality.”⁴⁵ In *Small Refiner*, petitioners argued that the EPA changed the gasoline lead content standard for small refiners so that it matched large refiner standards without producing findings that demonstrated the need to do so.⁴⁶ The court chided the agency for presenting the “simpleminded argument” that “lead is bad and our rule reduces gasoline lead.”⁴⁷ However, the court looked carefully at the record and found that the

37. 183 F.3d 393, 412 (5th Cir. 1999), *cert. dismissed sub nom.* GTE Serv. Corp. v. FCC, 2000 WL 1641148 (Nov. 2, 2000) (quoting *Harris v. United States*, 19 F.3d 1090, 1096 (5th Cir. 1994)).

38. 220 F.3d 683, 687 (5th Cir. 2000).

39. *Id.*; Toxic Substance Control Act, 15 U.S.C. § 2618(c)(1)(B)(i) (1997) (“[T]he court shall hold unlawful and set aside such rule if the court finds that the rule is not supported by substantial evidence in the rulemaking record . . . taken as a whole.”).

40. *Cent. & S.W. Servs., Inc.*, 220 F.3d at 687 (quoting *Dickenson v. Zurko*, 527 U.S. 150, 162 (1999)).

41. *Dickenson v. Zurko*, 527 U.S. 150, 164 (1999).

42. *See id.*

43. 705 F.2d 506, 519-20 (D.C. Cir. 1983).

44. *See id.* at 520.

45. *Id.* at 520-21 (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 36 (D.C. Cir. 1976)).

46. *See id.* at 512-14.

47. *Id.* at 525.

EPA did not in fact give unsupported reasons for its belief that a different standard for small refiner lead use threatened health, but rather merely failed to articulate its reasons in any detail “forcing [the court] . . . to dig into the record to understand them fully.”⁴⁸ Though given “scant aid” by the agency in ascertaining reasons for the adopted standard, the court found adequate support in the record and upheld the rule.⁴⁹

III. THE COURT’S DECISION

In the noted case, the D.C. Circuit began by rejecting the petitioners’ argument that the EPA lacked authority to set two different compliance dates based on the ability and the intent to comply.⁵⁰ The court agreed that the language of CAA section 112(i)(3) could reasonably allow for an early cessation program.⁵¹ The court went on, however, to state that the agency failed to prove its claim that the early cessation program it implemented would result in “numerous benefits for human health and the environment.”⁵² It cited EPA findings that noncomplying facilities would reallocate waste to other combustion facilities with the old conditions as evidence to the contrary.⁵³ The court determined that the rule may not have any environmental benefits, and might even result in net environmental damage on account of increased waste transport.⁵⁴

The *Chemical Manufacturers* court found that the EPA’s action was a “classic case” of arbitrary and capricious rulemaking because it had failed to “articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.”⁵⁵ By claiming numerous benefits where none were found, the EPA had “offered an explanation for its decision that runs counter to the evidence before the agency.”⁵⁶ The court then looked more closely at the EPA’s argument that it had been mandated to ensure “compliance as expeditiously as practicable,” and so must

48. *Id.* at 533-34.

49. *See id.* at 536-37.

50. *See Chem. Mfrs. Ass’n v. EPA*, 217 F.3d 861, 864 (D.C. Cir. 2000).

51. *See id.* at 865; 42 U.S.C. § 7412(i)(3)(a) (1995).

52. *Chem. Mfrs. Ass’n*, 217 F.3d at 865 (quoting Hazardous Waste Combustors; Revised Standards; Final Rule, 63 Fed. Reg. 37,782, 33,810 (June 19, 1998)).

53. *See id.* (citing NESHAPS: Final Standards for Hazardous Waste Combustors, 64 Fed. Reg. 52,828, 53,017 (Sept. 30, 1999)).

54. *See id.*

55. *Id.* at 865-66 (citing *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

56. *Id.* (quoting *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

implement the early cessation program regardless of the environmental impact.⁵⁷ Applying the two-part *Chevron* test, the court found that Congress was silent or ambiguous on the issue, and then considered whether mandating early cessation absent an environmental benefit is “a permissible construction of the statute.”⁵⁸ After pointing out that the CAA’s purpose is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” the court found the Agency was unable to reconcile its reading of “compliance as expeditiously as possible” with the Act’s purpose.⁵⁹

The court was careful to distinguish the case before it from *Chevron*.⁶⁰ The court stated that *Chevron* involved a policy disagreement between an agency and a court over which of two possible statutory interpretations would best achieve the CAA’s general goals.⁶¹ In *Chemical Manufacturers*, the court found no policy disagreement because the agency could not show its interpretation is consistent with the CAA’s aims.⁶² Furthermore, the court distinguished its decision from *Chevron* in that its decision was based on the finding that the EPA deviated from, or ignored, its ascertainable legislative intent.⁶³

The court went on to emphasize that the EPA does have the authority under the CAA to create the kind of early cessation program it attempted, so long as the agency determines through reasoned decisionmaking that the program would produce environmental or health benefits.⁶⁴ The court even suggested a line of reasoning the EPA might have used, that combustors phasing in modifications would burn waste more cleanly during the third year and therefore justify a diversion of waste from those combustors who were not phasing in modifications.⁶⁵ The court concluded, however, that the record did not contain evidence of such benefits, and so the rule must be vacated.⁶⁶

57. *Id.* (citing 42 U.S.C. 7412 (i)(3)(A) (1995)).

58. *Id.* (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)).

59. 42 U.S.C. § 7401(b)(1) (1995); *Chem. Mfrs. Ass’n*, 217 F.3d at 866-67.

60. *See Chem. Mfrs. Ass’n*, 217 F.3d at 867.

61. *See id.*

62. *See id.*

63. *See id.*

64. *See id.*

65. *See id.*

66. *See id.* at 867-68.

The dissent agreed with the majority that the EPA has the statutory authority to implement an early cessation program, but did not find any obligation to substantiate the claim of “health benefits” in the language of CAA section 112(i)(3).⁶⁷ The teaching of *Chevron*, according to the dissent, was that courts are not empowered to review the question of whether an agency rule advanced the overall goals of the statutorily established program.⁶⁸ This is because the sort of policy considerations inherent in implementation decisions “are more properly addressed to legislators or administrators, not to judges.”⁶⁹ Further, the dissent pointed out the CAA contains hundreds of specific commands to the EPA from Congress; some explicitly tell the EPA to consider environmental impacts and other factors, and others direct EPA to engage in managerial functions.⁷⁰ The dissent found that the EPA had created a rule to serve a managerial function that did not frustrate the broader goals of the CAA, and the court “can ask no more.”⁷¹

IV. ANALYSIS

In the noted case, the court fails to give the EPA deference as required by D.C. Circuit and Supreme Court precedent. First, it does not take a serious look at the record to find reasons for the agency’s action, and so rejects the thorough reading most clearly demonstrated in *Small Refiner*.⁷² This failure colors the entire opinion. The *Chemical Manufacturers* court alleges that the EPA claimed the early cessation rule would have “numerous benefits for human health and the environment.”⁷³ In fact, the EPA stated “[it] believes that compliance as expeditiously as practicable will have numerous benefits for human health and the environment,” which is simply a possible explanation for the congressional direction it had been given.⁷⁴ The EPA went on to explain the purpose of the early cessation rule by stating that “[t]oday’s incentive based approach encourages and rewards facilities that significantly reduce the amount of combusted hazardous waste using pollution prevention measures as

67. *See id.* (Sentelle, J., dissenting).

68. *See id.*

69. *Id.* (Sentelle, J., dissenting) (citing *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 864 (1984)).

70. *See id.* at 869 (Sentelle, J., dissenting).

71. *Id.* (Sentelle, J., dissenting).

72. 705 F.2d 506, 519-21 (D.C. Cir. 1983).

73. *See Chem. Mfrs. Ass’n*, 217 F.3d at 865.

74. Hazardous Waste Combustors, Revised Standards, Final Rule, 63 Fed. Reg. 33,782, 33,810 (June 19, 1998).

a method for achieving MACT standards.”⁷⁵ The *Chemical Manufacturers* court never considered the merit of the EPA’s most clearly stated purpose for the rule.⁷⁶

The court further points out a passage in the record where it states that waste will likely be reallocated to other viable combustion facilities, and concludes from that passage that the early cessation rule will not significantly reduce the amount of hazardous waste burned.⁷⁷ However, in the cited report, the EPA went further to find “[a]s today’s rule is implemented, the costs of burning hazardous waste will increase . . . [and] as much as 240,000 tons of hazardous waste may be reallocated from combustion to waste minimization alternatives. This represents approximately seven percent of the total quantity of hazardous waste currently combusted.”⁷⁸ Again, the court simply has not considered reasons the EPA has placed in the record before it.

This incomplete review of the record sets the stage for another problem. After reviewing only one explanation taken out of context, the court finds that the EPA “offered an explanation for its decision that runs counter to the evidence before the agency,” and is therefore arbitrary and capricious.⁷⁹ The court appears to take the phrase “counter to the evidence” to broadly mean unsupported by the evidence.⁸⁰ Supreme Court precedent does not support this view; it has not vacated an agency action using the arbitrary and capricious standard of review unless the agency’s findings have directly contradicted the agency’s action,⁸¹ or unless the agency’s findings

75. Hazardous Waste Combustors, Revised Standards, Final Rule, 63 Fed. Reg. at 33,816.

76. See *Chem. Mfrs. Ass’n*, 217 F.3d at 864-67.

77. See *id.* at 865 (referring to NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, 64 Fed. Reg. 52,828, 53,017 (Sept. 30, 1999)).

78. NESHAPS, 64 Fed. Reg. at 53,021.

79. See *Chem. Mfrs. Ass’n*, 217 F.3d at 865-66 (quoting *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

80. See *id.* at 866 (“By claiming ‘numerous benefits for human health and the environment’ where none were found, EPA ‘offered an explanation for its decision that runs counter to the evidence before the agency.’” (citation omitted)).

81. See *Motor Vehicles Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The National Highway Traffic Safety Administration created a rule which required automobile manufacturers to phase in either airbags or automatic seatbelts. *Id.* at 34-35. Under a new administration, the agency eliminated the rule altogether because some people detach seatbelts, and so deemed previous findings “substantially uncertain.” *Id.* at 38-39, 51. The Court found that the agency’s previous determination that airbags are an effective and cost-beneficial life-saving technology precluded the rule’s complete abandonment without any consideration of an airbags only requirement. *Id.* at 51-52. In addition, the Court found that the agency could not dismiss its own findings regarding the safety benefits of wearing seatbelts without either direct evidence to the contrary or an explanation for the change in view. *Id.* at 52.

demonstrate its lack of authority to create the rule.⁸² In addition, the *Chemical Manufacturers* court alleges that the EPA's candid concession that an early cessation program may have no environmental benefits is an indication of arbitrary and capricious rulemaking.⁸³ In doing so, the court arguably confuses the arbitrary and capricious standard of review with the stricter substantial evidence review.⁸⁴ It appears the court demands substantial evidence of environmental benefits rather than finding a rational connection between reducing pollution created by hazardous waste combustion and stopping sources of hazardous waste combustion.⁸⁵ The early cessation rule is not in itself a record-based factual conclusion, but rather an interpretation of a procedure mandated by Congress, so the line between the standards should not be blurred.⁸⁶

Another difficulty, pointed out by the *Chemical Manufacturers* dissent, is that the decision directly conflicts with a Supreme Court decision. In *Chevron*, the Court limited judicial review of agency discretion to whether the agency's rule could be reasonably construed as appropriate to the context of a particular program, and disallowed the lower court's broader investigation as to whether the rule was inappropriate to "the general context of a program designed to improve air quality."⁸⁷ The *Chemical Manufacturers* court first agreed that an early cessation rule was appropriate to an expeditious compliance program, and by reviewing the interpretation of the specific statute followed *Chevron*.⁸⁸ However, it went on to consider

82. See *Bowen v. Am. Hosp. Ass'n*, 476 U.S. 610, 640 (1986). In *Bowen*, the agency attempted to implement certain hospital regulations under its statutory power to prevent discrimination against handicapped children, when all cases of denied care within the agency's findings were shown to be caused in fact by parental nonconsent, not discrimination. *Id.* at 630-32. Though not stated explicitly, *Bowen* could be a classic case of arbitrary and capricious rulemaking, where the agency's evidence argues directly against the rulemaking.

83. See *Chem. Mfrs. Ass'n*, 217 F.3d at 865.

84. See *Cent. & S.W. Servs., Inc. v. EPA*, 220 F.3d 683, 687 (5th Cir. 2000) (quoting *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201, 1214 (5th Cir. 1991) ("Congress put the substantial evidence test in the statute because it wanted the courts to scrutinize [EPA's] actions more closely than an arbitrary and capricious standard would allow.")).

85. See *Chem. Mfrs. Ass'n*, 217 F.3d at 865.

86. See *Dickenson v. Zurko*, 527 U.S. 150, 164 (1999) ("A reviewing court reviews an agency's reasoning to determine whether it is 'arbitrary' or 'capricious,' or, if bound up with a record-based factual conclusion, to determine whether it is supported by 'substantial evidence.'").

87. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 845 (1984) ("[I]t is clear that the Court of Appeals misconceived the nature of its role in reviewing the regulations at issue . . . the question before it was not whether in its view the concept was 'inappropriate' in the general context of a program designed to improve air quality, but whether the administrator's view that it was appropriate in the context of this particular program is a reasonable one.").

88. See *Chem. Mfrs. Ass'n*, 217 F.3d at 865.

whether the rule was inappropriate given the general context of a program designed to improve air quality.⁸⁹ The main thrust of *Chevron* is that “[c]ourts are to relinquish control over statutory meaning when reviewing agency action.”⁹⁰ The *Chemical Manufacturers* court asserts control over all future EPA statutory interpretations of the CAA by requiring a demonstrated relation to the act’s general purpose, and thus directly contradicts *Chevron*.⁹¹

Finally, a cursory look at the language of the CAA, as the *Chemical Manufacturers* dissent states, shows Congress directing the EPA to engage in many managerial functions.⁹² The court ignores this when it essentially claims the EPA is only allowed to implement programs under the CAA if it shows environmental and health benefits.⁹³ Because shutting down the noncomplying waste combustors did nothing to frustrate the EPA’s broader goals, the court “can ask no more,” and should look no further.⁹⁴

V. CONCLUSION

In the noted case, the court used 42 U.S.C. § 7401(b)(1) to impose substantial requirements on the agency’s interpretation of a CAA provision. It may be further construed to impose substantial requirements on all EPA rulemaking, so that all statutory interpretation by the agency must relate to various general purpose statutes as well as to specific congressional direction. This decision not only defies *Chevron*, it sets a precedent that could seriously damage the EPA’s ability to fulfill its mandate. The EPA’s limited resources to enforce Congress’s mandate are further taxed by additional layers of legal review, both within the agency and by the courts, without any environmental benefit. The court’s loose treatment of the arbitrary and capricious standard of review is equally dangerous. It takes the “offers an explanation that runs counter to the evidence” element of the test, and finds one explanation within the record which is not supported by the evidence. As pointed out in *Chevron*, many agency decisions involve reconciling conflicting policies. Accordingly, if a court is so disposed, it could almost always find evidence in the record to counter any agency decision. This

89. See *id.* at 865-66.

90. Keith Werhan, *The Neoclassical Revival in Administrative Law*, 44 ADMIN. L. REV. 567, 593 (1992).

91. See *Chem. Mfrs. Ass’n*, 217 F.3d at 867; *Chevron, U.S.A., Inc.*, 467 F.3d at 845.

92. See *Chem. Mfrs. Ass’n*, 217 F.3d at 869 (Sentelle, J., dissenting).

93. See *id.* at 867.

94. *Id.* at 868-69.

decision potentially allows courts to vacate any order by the EPA as arbitrary and capricious upon finding any phrase in the record left unproven. Alternatively, the courts may vacate an order if support for the final decision is not found upon an incomplete review of the record. The EPA has always had to anticipate legal challenges by the many business interests that environmental policy inevitably affects. It must now also anticipate what courts will find essential as a rationale when creating each rule, and relate each rule to its general purpose. It may well be uncertain whether the early cessation program offered numerous benefits for human health and the environment. It is clear, however, that hindering EPA efforts to implement environmental policy has serious implications that offers no benefits for human health and the environment at all.

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