ETHYL CORP. v. ENVIRONMENTAL PROTECTION AGENCY: CIRCUIT COURT LIMITS EPA ADMINISTRATOR'S DISCRETION UNDER WAIVER PROVISIONS OF THE CLEAN AIR ACT

I. OVERVIEW OF THE CASE

In the mid-1970s, Ethyl Corporation (Ethyl) developed methylcyclopentadienyl manganese tricarbonyl (MMT), a manganese-based fuel additive that boosts octane when mixed with gasoline and, in so doing, prevents auto-engine knocking.[1] As specified by section 211(f)(4) of the Clean Air Act (the Act), Ethyl applied to the Environmental Protection Agency (EPA or the Agency) for a waiver from the Act's general ban on new fuel additives in March 1978.[2] The EPA Administrator denied this application, as well as two subsequent applications regarding MMT in 1981 and 1990, based on "findings" that the fuel additive would adversely impact auto-emission standards.[3]

In July 1991, Ethyl submitted a fourth waiver application to the EPA.[4] In July 1994, after several years of legal maneuvering, Carol Browner, the EPA Administrator, determined that Ethyl had adequately demonstrated that MMT would not adversely impact emissions standards.[5] Notwithstanding this determination, Browner denied Ethyl's fourth waiver application, specifically citing public health concerns.[6] Browner based this decision on her belief that the Act gave the Administrator discretion to "consider other factors in determining whether granting a waiver is in the public interest and consistent with the objectives of the Clean Air Act."[7]

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1. Ethyl Corp. v. EPA, 51 F.3d 1053, 1054 (D.C. Cir. 1995). MMT is currently sold under the commercial name "HiTEC 3000" in Canada (Ethyl's largest market) as well as in Argentina and Bulgaria. Chip Jones, *Ban Sought on Ethyl Additive; Canadian Agency Cites Concerns About Health*, RICH. TIMES-DISPATCH, May 23, 1995, at C1.

2. *Ethyl Corp.*, 51 F.3d at 1056. Clean Air Act § 211(f)(4) (*codified at* 42 U.S.C. § 7545(f)(4) (1988 & Supp. V 1993)).

3. *Ethyl Corp.*, 51 F.3d at 1056.

4. *Id.*

5. *Id.* at 1057.

6. *Id.* at 1057. *See infra* p. 192 for discussion of deleterious health effects associated with MMT.

7. *Ethyl Corp.*, 51 F.3d at 1054.

Based on this denial, Ethyl petitioned the Circuit Court of Appeals for review, challenging the EPA Administrator's inclusion of "public health concerns" as a factor in evaluating waiver applications under section 211(f)(4).[8] Upon analysis of the statute's construction, the Circuit Court *held* that the EPA Administrator, in evaluating waiver applications for the Clean Air Act's ban on new fuel additives, may not deny such an application on grounds of public health concerns; such action exceeds the authority vested in the Administrator by the Act.[9] *Ethyl Corp. v. Environmental Protection Agency*, 51 F.3d. 1053 (D.C. Cir. 1995).

II. BACKGROUND

In 1970, after a decade of federal experimentation, Congress enacted the 1970 Amendments to the Clean Air Act, which, although subsequently amended in 1977 and 1990, provide the current framework for air quality regulation in the United States.[10] The 1970 Amendments issued an unambiguous mandate to the executive branch requiring attainment of sweeping improvements in national ambient air quality in a relatively short period of time.[11] In promulgating these Amendments, one of Congress's predominant, underlying purposes was 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."[12]

In furtherance of this goal, Congress enacted section 211 of the Clean Air Act, a comprehensive, preventative approach for regulating fuels and fuel additives.[13] Within this framework, the Administrator is authorized to prohibit the sale of fuel and fuel additives if such products

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8. *Id.* at 1055.

9. *Id.*

10. 42 U.S.C. §§ 7401-7671(q) (1988 & Supp. V 1993).

11. PETER S. MENZELL & RICHARD B. STEWART, ENVIRONMENTAL LAW AND POLICY 249 (1994).

12. 42 U.S.C. § 7401(b)(1) (1988). Congress declared that its additional purposes were: (1) "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution"; (2) "to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs"; and (3) "to encourage and assist the development and operation of regional air pollution prevention and control programs." 42 U.S.C. § 7401(b)(2)(3) and (4) (1988).

13. Clean Air Act § 211, *codified as amended at* 42 U.S.C. § 7545 (1988 & Supp. V 1993).

have not been registered with the Administrator.[14] Moreover, before registering a fuel or fuel additive, the Administrator may require the product's manufacturer to test their product in order to "determine potential public health effects."[15] Similarly, the Administrator may require the manufacturer to furnish information necessary in determining "the extent to which [their product's] emissions affect the public health or welfare."[16] Furthermore, the Administrator may "control or prohibit" a particular fuel or fuel additive if it causes, or contributes to, air pollution which "may reasonably be anticipated to endanger the public health or welfare" or if that fuel or fuel additive's emission products significantly impair "the performance of any emission control devise or system."[17]

In addition to the aforementioned procedures, section 211 imposes a general ban on new fuel and fuel additives.[18] The language of this ban, found in section 211(f)(1), makes it "unlawful" for the manufacturer of a fuel or fuel additive to "introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive . . . which is not substantially similar to any fuel or fuel additive utilized in certification of any model year 1975 [or later] . . . vehicle or engine . . . ."[19]

In spite of this broad ban, section 211(f)(4) provides a mechanism for waiving the ban in certain circumstances.[20] This waiver provision states that:

> [t]he Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive . . . will not cause or contribute to a failure of any emission control device or system . . . to achieve compliance by the vehicle

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14. *Id.* § 7545(a).
15. *Id.* § 7545(b)(2)(A). Such tests are to be "conducted in conformity with test procedures and protocols established by the Administrator," and the results are not confidential. *Id.* § 7545(b)(2).
16. *Id.* § 7545(b)(2)(B).
17. 42 U.S.C. § 7545(c)(1) (1988 & Supp. V 1993).
18. *Id.* § 7545(f).
19. *Id.* § 7545(f)(1).
20. *Id.* § 7545(f)(4).

> with the emission standards with respect to which it has been certified . . . .[21]

In its analysis of whether the EPA Administrator is authorized to consider public health factors in evaluating waiver applications under section 211(f)(4), the Circuit Court examined a number of cases focusing on issues of statutory construction and administrative law.[22] In particular, the Supreme Court's decision in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*[23] was deemed controlling with regard to these matters.[24] *Chevron* provides the modern standard for judicial review of the statutory construction offered by agencies administering specific statutes.

With regard to a given statute's construction, *Chevron* established a two-prong analysis that focuses on congressional intent behind that statute.[25] According to *Chevron*'s "first prong," if Congress's intent was clear, or if such intent can be determined "using traditional tools of statutory construction," the court and the agency must give effect to the unambiguously expressed intent of Congress.[26]

Chevron's "second prong" provides that if congressional intent with regard to the construction of a given statue is unclear or ambiguous, the court should defer to the agency's construction if Congress intended, explicitly or implicitly, to delegate such authority.[27] If Congress "explicitly" intended to delegate such authority[28], the court should defer to the agency's construction unless such a rendering is deemed to be "arbitrary, capricious, and manifestly contrary to the statute."[29] If, on the

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21. *Id.*

22. Ethyl Corp. v. EPA, 51 F.3d 1053, 1058-62 (D.C. Cir. 1995).

23. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984). In *Chevron*, the Supreme Court held that the EPA's implementation of regulations adopting a plant-wide definition of "stationary source" was a permissible interpretation of the relevant provisions of the Clean Air Act Amendments of 1977. *Id.* at 837-38.

24. *Ethyl Corp.*, 51 F.3d at 1058.

25. *Chevron*, 467 U.S. at 846. This inquiry is of fundamental importance given the Constitution's parameters with regard to separation of powers.

26. City of Kansas City, Mo. v. HUD, 923 F.2d 188, 191 (D.C. Cir. 1990). In *City of Kansas City*, the Circuit Court held that since HUD had provided no "reasoned interpretation" for its construction of a statute involving the termination of grant agreements, the court would not defer to HUD's proposed construction. *Id.* at 189.

27. *City of Kansas City,* at 191-92 (citing *Chevron*, 467 U.S. at 843-44).

28. Such explicit delegation occurs when Congress expressly leaves a "gap" for a particular agency to fill. *Chevron*, 467 U.S. at 843-44.

29. *Id.*

other hand, Congress's intent to delegate was "implicit,"[30] the agency's interpretation must be based on a "permissible" construction of the statute.[31] A "permissible" construction is one that is "rational and consistent with the statute."[32]

Moreover, the agency's administrator must provide the court with a "reasonable construction to which [it] can defer."[33] Further, the construction provided by the agency must be "the result of agency decision-making, and not some *post hoc* rationale developed as part of a litigation strategy."[34]

As a supplement to the *Chevron* analysis, the Circuit Court also evaluated *American Methyl Corp. v. EPA* [35] and *National Railroad Passenger Corp. v. National Association of Railroad Passengers*,[36] two cases dealing with issues of statutory construction and congressional intent. Specifically, these cases stand for the frequently stated principle that "when a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."[37]

III. THE COURT'S DECISION

In determining that the EPA Administrator exceeded her authority in denying Ethyl's waiver application based on public health concerns, the Circuit Court's decision commenced with consideration of the central question of the *Chevron* analysis; specifically, did Congress,

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30. Intent is "implicit" when "resolution of an interpretative question turns on the reconciliation of multiple and potentially competing statutory purposes." *City of Kansas City*, 923 F.2d at 192.

31. *Id.* at 191.

32. NLRB v. United Food & Commercial Workers Union, 484 U.S. 112, 123 (1987). The court in *United Food* held that the NLRB's refusal to consider plaintiff union's objections to a proposed "postcomplaint, prehearing informal settlement" was based upon a "rational and consistent" construction of the National Labor Relations Act. *Id.* at 112-14.

33. *City of Kansas City*, 923 F.2d at 192.

34. *Id.*

35. American Methyl Corp. v. EPA, 749 F.2d 826 (D.C. Cir. 1984). Litigation in *American Methyl* arose out of the EPA's revocation of a waiver that had previously been granted to American Methyl (pursuant to section 211(f) of the Clean Air Act) for a new methyl-gasoline blend. *Id.* at 828-31.

36. National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453 (1974). Legal action in *National Railroad* was based on a railroad association's attempt to enjoin the discontinuance of certain train routes. *Id.*

37. *National R.R.*, 414 U.S. at 458 (quoting Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929)).

in enacting section 211(f)(4), speak "to the precise question at issue."[38] The Circuit Court unequivocally answered in the affirmative; Congress had "unambiguously expressed" its intent with regard to the construction of section 211(f)(4), and, as such, "that intent must be given effect."[39]

Underlying this determination, the Circuit Court considered three primary areas: (1) the language of section 211(f)(4) itself, (2) the language of section 211(c)(1), and (3) the legislative history of section 211(f).[40]

The Circuit Court, in evaluating section 211(f)(4), stated that the "plain language" of the provision made it clear that decisions on waiver applications were to be based solely on "a fuel additive's effect on emissions standards."[41] Moreover, the court noted that section 211(f)(4) makes no mention of "applicants establishing or the Administrator determining a fuel additive's effect on public health."[42]

Although the plain language of section 211(f)(4) did not explicitly mention public health factors, the EPA asserted that Congress implicitly intended to provide the Administrator with "some *significant* amount of discretionary authority."[43] The Agency derived this interpretation from section 211(f)(4)'s use of the word "may" in the phrase, "[t]he Administrator, upon application of any manufacturer of any fuel or fuel additive, *may* waive the prohibition . . . ."[44] The EPA suggested that "generally the use of the word 'shall' indicates the absence of discretion [and] the use of 'may' indicates its presence."[45]

In responding to this assertion, the court acknowledged that section 211(f)(4) does provide the Administrator with discretion in determining whether the applicant has provided sufficient scientific data on emissions' effects to satisfy the statutory standard.[46] Nonetheless, the court stressed that the word "may" in the context of section 211(f)(4) does not empower the Administrator to "apply criteria beyond those prescribed in the statute"; rather, "may" refers to the Administrator's

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38. Ethyl Corp. v. EPA, 51 F.3d 1053, 1058 (D.C. Cir. 1995).
39. *Id.*
40. *Id.*
41. *Id.*
42. *Id.*
43. Ethyl Corp. v. EPA, 51 F.3d 1053, 1058 (D.C. Cir. 1995).
44. *Id.* at 1058-59 (emphasis added); 42 U.S.C. § 7545(f)(4) (1988).
45. *Ethyl Corp.*, 51 F.3d at 1059 n.7 (quoting LO Shippers Action Comm. v. ICC, 857 F.2d 802, 806 (D.C. Cir. 1988).
46. *Id.* at 1059.

discretion in deciding whether to act or not within 180 days of receiving a waiver application.[47]

The Circuit Court recognized that, "implicit in the EPA's argument," was a reliance on the second prong of *Chevron*'s analysis of statutory construction.[48] Under this analytical approach, the EPA reasoned that since Congress was "silent or ambiguous" on the issue of public health concerns as a basis for denying waiver applications under section 211(f)(4), the EPA had "discretion to regulate on the basis of that issue."[49]

The court disagreed with this argument, stating that it "misconstrue[d] the *Chevron* analysis."[50] Specifically, the court expressed the opinion that section 211(f)(4) did not direct the EPA to adopt any implementing regulations, explicitly or implicitly, and that section 211(f)(4) was not ambiguously worded.[51] To the contrary, the appellate bench, opting for a first prong evaluation of the statutory waiver, asserted that the provision "unambiguously expresses Congress's intent that the Administrator consider a fuel additive's effects on vehicles meeting emissions standards."[52]

In response to the EPA's contention that *Chevron*'s deferential second prong applies any time a statute does not expressly negate the existence of a claimed administrative power, the court argued that such a proposition is "both flatly unfaithful to the principles of administrative law . . . [and] precedent."[53] Moreover, the court contended that agencies would enjoy "virtually limitless hegemony" if courts presumed a congressional delegation of power any time such power was not expressly withheld.[54] The court believed such an approach would not only run counter to *Chevron*, but to the Constitution, as well.[55]

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47. *Id.* Consistent with § 211(f)(4), the Administrator, in evaluating waiver applications, may either affirmatively act, denying or granting the application, or not act at all, letting the 180-day limit run. 42 U.S.C. § 7545(f)(4) (1988).

48. Ethyl Corp. v. EPA, 51 F.3d 1053, 1060 (D.C. Cir. 1995).

49. *Id.* (citing *Chevron*, 467 U.S. at 843).

50. *Ethyl Corp.*, 51 F.3d at 1060.

51. *Id.*

52. *Id.*

53. *Id.*

54. Ethyl Corp. v. EPA, 51 F.3d 1053, 1060 (D.C. Cir. 1995) (citing Oil, Chem. & Atomic Workers Int'l, AFL-CIO v. NLRB, 46 F.3d 82, 90 (D.C. Cir. 1995)).

55. *Id.* at 1060.

In addition to the language of section 211(f)(4) itself, the court's analysis of congressional intent relies on the language of section 211(c)(1).[56] Section 211(c)(1) explicitly provides the Administrator with the ability to "control or prohibit" the manufacture or sale of fuel alternatives based on two criteria: (1) the product's effects on public health and (2) the product's impact on emissions standards.[57] Not only does section 211(c)(1) establish these criteria, it offers explicit guidance as to how the Administrator should evaluate them.[58]

Based on the fact that Congress created such a definite mechanism in section 211(c)(1) to consider both public health effects and emissions standards impacts, the court maintained that the absence of analogous public health effects criteria in section 211(f)(4) was by no means an accidental omission.[59] Rather, existence of such provisions in section 211(c)(1) indicated that Congress had, in fact, considered such factors in drafting section 211, but had intentionally omitted them from the waiver application process of section 211(f)(4).[60]

In reaching this determination, the court evaluated *American Methyl* and *National Railroad Passenger Corp.*, two cases supporting the commonly touted maxim of statutory construction: *expressio unis est exclusio alterius*.[61] In *American Methyl*, the court evaluated the exact same provision, section 211(f)(4), but with regard to a different question of statutory construction; specifically, whether the EPA could revoke waivers under section 211(f).[62] The court in *American Methyl* ruled that because section 211(c)(1) provided an adequate mechanism for addressing potentially adverse health effects associated with fuel additives already in commerce, it was unnecessary to imply the ability to revoke waivers under section 211(f)(4).[63] Similarly, in *National Railroad Passenger Corp.*, the Supreme Court determined that an association of railroad passengers lacked standing to enjoin the

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56. *Ethyl Corp.*, 51 F.3d at 1061.
57. *Id.* (citing 42 U.S.C. § 7545(c)(1) (1988 & Supp. V 1993)).
58. *Id.*
59. *Ethyl Corp.*, 51 F.3d at 1061.
60. *Id.*
61. *Id.* at 1061-62 (citing *American Methyl*, 749 F.2d at 835-36; *National R.R.*, 414 U.S. at 458 (quoting *Botany Worsted*, 278 U.S. at 289)). The maxim translates as, "mention of one thing implies exclusion of another thing." *American Methyl*, 749 F.2d at 835-36 (citing E. CRAWFORD, THE CONSTRUCTION OF STATUTES § 195, at 334 (1940).
62. *American Methyl*, 749 F.2d at 828.
63. *Id.* at 835-36.

"discontinuance of certain passenger trains under the Amtrak Act."[64] As such, the Court held that respondent's attempt to read in standing for private causes of action was unwarranted given the prior existence of other adequate avenues of relief.[65]

Based on these precedents, the Circuit Court viewed the Administrator's consideration of public health effects as unnecessary and unwarranted.[66] Furthermore, the court indicated that adequate opportunity existed for consideration of MMT's effect on public health within the mechanism of section 211(c)(1); if the Administrator determined that MMT caused or contributed to air pollution that "may reasonably be anticipated to endanger" public health, the Administrator was statutorily authorized to control or prohibit sale of that product.[67]

The final aspect of the Circuit Court's analysis of section 211(f) involved an inquiry into the legislative history of the provision.[68] The EPA contended that its consideration of public health effects in evaluating waiver applications was consistent with Congress's underlying insistence on "a preventative approach to potential problems posed by MMT and other fuel additives."[69] The court stressed, however, that while Congress did advocate a preventative approach with regard to fuel additives, the focus of such concern was on a fuel additive's "effect on *emissions* and various vehicle functions, not public health."[70] Moreover, although the court noted various mentions of "public health" in the congressional record, the necessary nexus between such comments and the waiver application provisions of section 211(f)(4) does not exist.[71] As such, the court concluded its analysis by stating that "the legislative history [to section 211(f)(4)] is cryptic [at best], and this surely is not enough to overcome the plain meaning of the statute."[72]

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64. *National R.R.*, 414 U.S. at 454.
65. *Id.* at 464-65.
66. Ethyl Corp. v. EPA, 51 F.3d 1053, 1061-62 (D.C. Cir. 1995).
67. *Id.* (quoting 42 U.S.C. § 7545(c)(1)) (1988 & Supp. V 1993).
68. *Id.* at 1062-63.
69. *Id.* at 1062.
70. *Id.*
71. *Ethyl Corp.*, 51 F.3d at 1062.
72. *Id.* at 1063.

IV. ANALYSIS OF THE DECISION

Although its decision undermines a statutory construction rooted in societal utility, the Circuit Court preserves an essential limitation on agency discretion with regard to the interpretation and implementation of congressional enactments.

In evaluating waiver applications under § 211(f)(4), the EPA Administrator had never previously denied such an application based on public health effects; MMT involved a unique problem.[73] According to the EPA, MMT posed the threat of accelerating aging in the brain.[74] Moreover, manganese compounds, including the primary compound in Ethyl's new fuel additive, were known neurotoxins, deleterious to the central nervous system of humans.[75] Further, long-term exposure to high dosages of manganese were capable of causing symptoms including, but not limited to, "personality changes, hallucinations, and pathological laughter."[76] Based on this information, a compelling reason existed for the Administrator to take preemptory actions against a product posing such health hazards.[77]

Rather than utilizing the mechanisms established in section 211(c)(1) that expressly enable the Administrator to effectuate the same end,[78] Browner sought to block (or at least delay) MMT's entry into the

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73. *Id.* at 1056. The EPA considered twenty-three prior waiver application under § 211(f)(4) without denial based on public health concerns. *Id.*

74. David Ivanovich, *EPA's Influence Narrowed/Court: Health Issues Past Reach*, HOUS. CHRONICLE, Apr. 15, 1995, at 1.

75. *Id.*

76. *Id.*

77. Further undermining Ethyl's contention that MMT poses no danger to human health and welfare is recent action taken by the Canadian government seeking to ban MMT in Canada. This action undermines Ethyl's oft cited argument that MMT must be safe given the fact that one trillion miles have been "racked up by Canadian motorists" since MMT was introduced in 1977 as a replacement for lead in gasoline. Legislative action is still pending in Canada's House of Commons. Jones, *supra* note 1, at Cl.

78. 42 U.S.C. § 7545(c)(1) (1988 & Supp. V 1993). Prior to the 1990 Amendments to the Clean Air Act, section 211(c)(1) had been interpreted as "governing the control or prohibition of fuel or fuel additives *already* in commerce." *American Methyl*, 749 F.2d at 834 (emphasis added). Under such a regime, a strong argument would have existed for liberally construing section 211(f)(4) so as to allow the Administrator to deny waiver applications on the basis of public health effects. This argument would focus on the importance of evaluating public health effects associated with new fuel and fuel additives *before* such products enter into commerce. Under the amended version of section 211(c)(1), though, "[t]he Administrator may . . . control or prohibit the . . . introduction into commerce . . . of any fuel or fuel additive . . . [if] any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare . . . ." 42 U.S.C. § 7545(c)(1) (1988 & Supp. V 1993).

market by broadly construing the waiver provisions of section 211(f)(4).[79] Although beneficial from the standpoint of public health and welfare, the rationale advanced by the agency to support its construction of section 211(f)(4), if accepted, would pose a serious threat to the constitutional structure of government.

As the court noted, the language of section 211(f)(4) does not explicitly grant the Administrator authority to consider public health concerns in deciding whether or not to approve waiver applications; the only factor clearly provided for is the evaluation of the impact a new fuel additive will have on existing emissions standards.[80]

The EPA, in justifying its denial of Ethyl's application, argued that, absent an express withholding of power by Congress, the court must defer to an agency's construction of a statute deemed silent with regard to a particular issue so long as the interpretation is "reasonable."[81] Such an approach to statutory construction would vastly increase the often dubious, quasi-legislative authority of executive agencies.

In the constitutional scheme of intragovernmental division of powers, Congress has authority to legislate, while agencies, as instrumentalities of the executive branch, are charged with executing congressional enactments. In an exceedingly complex and highly technical society with a plethora of competing political interests, though, Congress often lacks the expertise, time, or political fortitude necessary to effectively address all aspects of any given legislative initiative. Accordingly, Congress often resigns itself to delegating quasi-legislative functions to executive agencies, such as the EPA.

While such delegation does require filling the technical gaps left by Congress, it should not be viewed as a *carte blanche* invitation to agencies, empowering them to make fundamental policy decisions. Policy determinations should be the sole prerogative of Congress.

The inherent problem with agency decision-making, particularly in the realm of policy determinations, is a glaring absence of electoral accountability. While members of Congress are profoundly motivated in their actions by fear of being voted out of office in the next election, bureaucrats in executive agencies are free to operate with relative

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79. *Ethyl Corp.*, 51 F.3d at 1054-55.
80. *Id.* at 1058; 42 U.S.C. § 7545(f)(4) (1988).
81. *Ethyl Corp.*, 51 F.3d at 1057-58.

impunity.[82] Members of the administrative bureaucracy are under no compulsion to proceed with the people's best interests in mind.

The dilemma confronting the court in *Ethyl Corp.* was that despite good intentions, the EPA's action, if accepted, would set a dangerous precedent for future agencies attempting to construe a particular statute's construction. In the final analysis, the court ultimately made the prudent decision in opting for a statutory construction that offers a positive model for future administrative decision-makers.

V. CONCLUSION

Clearly, the EPA administrator should have the ability to consider public health factors in determining whether to waive the Act's general ban on new fuel additives. Nonetheless, overly broad constructions of statutory language represent an even greater threat to society than a particular fuel additive. Moreover, given the mechanisms of section 211(c)(1) that effectuate the legitimate governmental end of preemptively protecting public health, the EPA Administrator's interpretation of section 211(f)(4) of the Clean Air Act was, for all intents and purposes, unnecessary.

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82. *See* DAVID R. MAYHEW, THE ELECTORAL CONNECTION (1974) for a provocative inquiry into the primacy of re-election concerns in the decision-making processes of Congressmen.