EPA REVISITS CLEAN AIR ACT INTERPRETATION

Wed Sep 26th, 2018 | Categories: Environmental Law |

In 2017, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) vacated a 2015 rule issued by the Obama Administration's Environmental Protection Agency (EPA) intended to target greenhouse gas emissions by forcing companies that use hydrofluorocarbons (HFCs) in products like spray cans and refrigerators to swap them out for an EPA-approved alternative.- The D.C. Circuit stated that, while Section 612 of the Clean Air Act (CAA or Act) requires manufacturers to replace ozone-depleting substances with safe substitutes, HFCs in certain products do not deplete ozone, and for that reason, the EPA did not have the authority to enforce the replacement provision of the rule. -The attorneys general of seventeen states and the District of Columbia, along with the National Resources Defense Council (NRDC), petitioned the U.S. Supreme Court to review the decision. -The Trump Administration's EPA also called for the Supreme Court to ignore the petition, reversing course from the prior administration.

The D.C. Circuit ruled in favor of chemical manufacturers Mexichem Fluor and Arkema, who claimed the EPA was overstepping its authority by prohibiting the use of HFCs. HFCs are chemicals commonly released into the air from the manufacturing of spray cans, air conditioning systems and refrigerators.

Passed in 1970, the CAA grants the EPA authority to enforce air quality standards. Under Section 612 of the act, companies are required to replace materials that significantly destroy the ozone layer with safer alternatives.- In 2015, the EPA added available alternatives chemicals to HFCs chemicals to the "Safe Alternatives" program, requiring companies to adopt them.

Mexichem Fluor and Arkema claimed that whether or not a chemical has safer alternatives is irrelevant to the EPA's right to prohibit it under Section 612 of the CAA, arguing chemicals can only be prohibited if they are considered ozone-depleting under the Act's technical criteria. According to the manufacturers, HFCs do not meet these criteria. The companies argued that the EPA's 2015 rule was created under a false interpretation of the CAA.

The D.C. Circuit responded to the companies' claims by focusing on the wording of CAA Section 612(c) regarding what chemicals the agency is allowed to prohibit, finding HFCs are not prohibited.- The court found the EPA's rule prohibiting HFCs lacks authority under the CAA and the EPA goes beyond CAA's literal meaning to justify the rule. –The court's concern was the amount of autonomy the EPA would have if it were allowed to unfettered authority to enforce its 2015 replacement policy without technical justification under the Act.

"However much we sympathize or agree with EPA's policy objectives, EPA may act only within the boundaries of its statutory authority," the court stated. "Here, EPA exceeded that authority." The Trump Administration's EPA agrees with this decision.

The NRDC's petition for writ of certiorari claims that limiting the EPA's enforcement power violates the purpose of the CAA, which is to protect and improve our country's air quality. In its petition, the NRDC notes, HFCs have a negative environmental impact. According to a NASA Study, HFCs are projected to be responsible by 2050 for an amount of global warming comparable to 20 percent that of carbon dioxide, which made up a substantial 81 percent of US greenhouse gas emissions in 2016.

NRDC petitioned for Supreme Court review of the D.C. Circuit's 2017 ruling claiming it "eviscerates" the EPA's Safe Alternatives program that was adopted in the early nineties. Meanwhile, the Trump Administration EPA is working on a new rule, which will be subject to notice and comment and potential subsequent challenge. -

The environmental attorneys at Bick Law LLP will continue to monitor these parties' disputes as well as other developments surrounding the EPA's air quality enforcement.

-

-

-