Util. Air Regulatory Grp. v. E.P.A., 134 S. Ct. 2427, 189 L. Ed. 2d 372 (2014)

JUSTICE SCALIA announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II.

[13] Acting pursuant to the Clean Air Act, 69 Stat. 322, as amended, 42 U.S.C. §§ 7401-7671q, the Environmental Protection Agency recently set standards for emissions of "greenhouse gases" (substances it believes contribute to "global climate change") from new motor vehicles.

What is the core question?

We must decide whether it was permissible for EPA to determine that its motor-vehicle greenhouse-gas regulations automatically triggered permitting requirements under the Act for stationary sources that emit greenhouse gases.

Which provisions of the CAA are at issue?

[16] The Clean Air Act regulates pollution-generating emissions from both stationary sources, such as factories and powerplants, and moving sources, such as cars, trucks, and aircraft. This litigation concerns permitting obligations imposed on stationary sources under **Titles I and V** of the Act.

What does Title I set up?

[17] **Title I charges EPA with formulating national ambient air quality standards (NAAQS) for air pollutants.** §§ 7408-7409.

What are the NAAQS pollutants?

To date, EPA has issued NAAQS for **six pollutants: sulfur dioxide, particulate matter, nitrogen dioxide, carbon monoxide, ozone, and lead.** Clean Air Act Handbook 125 (J. Domike & A. Zacaroli eds., 3d ed. 2011); see generally 40 CFR pt. 50 (2013).

What is the role of the states in Title I?

States have primary responsibility for implementing the NAAQS by developing "**State implementation plans**." 42 U.S.C. § 7410. A

How must the state classify each area in regard to the NAAQS pollutants?

State must designate every area within its borders as **"attainment," "nonattainment," or "unclassifiable"** with respect to each NAAQS, § 7407(d), and the

How does this affect the SIP?

State's implementation plan must include permitting programs for stationary sources that vary

according to the classification of the area where the source is or is proposed to be located. § 7410(a)(2)(C), (I).

What are the PSD provisions and where do they apply?

[18] **Stationary sources in areas designated attainment or unclassifiable are subject to the Act's provisions relating to "Prevention of Significant Deterioration"** (PSD). §§ 7470-7492. EPA interprets the PSD provisions to apply to sources located in areas that are designated attainment or unclassifiable for any NAAQS pollutant, regardless of whether the source emits that specific pollutant.

How much of the country is subject to PSD analysis?

Since the inception of the PSD program, **every area of the country has been designated attainment or unclassifiable for at least one NAAQS pollutant**; thus, on EPA's view, all stationary sources are potentially subject to PSD review.

What is the significance of being subject to PSD review?

[19] It is unlawful to construct or modify a "major emitting facility" in "any area to which [the PSD program] applies" without first obtaining a permit. §§ 7475(a)(1), 7479(2)(C).

What do you have to show to qualify for a permit?
Is this limited to the pollutant that is under control in the region?
What is the BACT requirement?

To qualify for a permit, the facility must not cause or contribute to the violation of any applicable air-quality standard, § 7475(a)(3), and it must comply with emissions limitations that reflect the **"best available control technology"** (or BACT) for "each pollutant subject to regulation under" the Act. § 7475(a)(4).

What is a major emitting facility?

The Act defines a "major emitting facility" as **any stationary source with the potential to emit 250 tons per year of "any air pollutant**" (or 100 tons per year for certain types of sources). § 7479(1).

What is a modification?
Does this always involve physical changes in the plant?

It defines "modification" as a physical or **operational change that causes the facility to emit more of "any air pollutant**." § 7411(a)(4). *fn1

What does Title V require of major sources?

[20] In addition to the PSD permitting requirements for construction and modification, **Title V of the Act makes it unlawful to operate any "major source," wherever located, without a comprehensive operating permit.** § 7661a(a).

Does Title V impose specific pollution control requirements?

Unlike the PSD program, **Title V generally does not impose any substantive pollution-control requirements.**

What is its regulatory value?

Instead, it is designed to facilitate compliance and enforcement by consolidating into a single document all of a facility's obligations under the Act. The permit must include all "emissions limitations and standards" that apply to the source, as well as associated inspection, monitoring, and reporting requirements. § 7661c(a)-(c). Title V defines a "major source" by reference to the Act-wide definition of "major stationary source," which in turn means any stationary source with the potential to emit 100 tons per year of "any air pollutant." §§ 7661(2)(B), 7602(j).

[21]

[22] In 2007, the Court held that Title II of the Act "authorize[d] EPA to regulate greenhouse gas emissions from new motor vehicles" if the Agency "form[ed] a 'judgment' that such emissions contribute to climate change." Massachusetts v. EPA, 549 U.S. 497, 528, 127 S. Ct. 1438, 167 L. Ed. 2d 248 (quoting § 7521(a)(1)). In response to that decision, EPA embarked on a course of regulation resulting in "the single largest expansion in the scope of the [Act] in its history." Clean Air Act Handbook, at xxi.

[23] EPA first asked the public, in a notice of proposed rulemaking, to comment on how the Agency should respond to Massachusetts. In doing so, it explained that regulating greenhouse-gas emissions from motor vehicles could have far-reaching consequences for stationary sources.

What did EPA say would happen if it adopted tailpipe regulations for GHGs?

Under EPA's view, once greenhouse gases became regulated under any part of the Act, the PSD and Title V permitting requirements would apply to all stationary sources with the potential to emit greenhouse gases in excess of the statutory thresholds: 100 tons per year under Title V, and 100 or 250 tons per year under the PSD program depending on the type of source. 73 Fed. Reg. 44420, 44498, 44511 (2008).

What is the small source problem?

Because **greenhouse-gas emissions tend to be "orders of magnitude greater" than emissions of conventional pollutants, EPA projected that numerous small sources not previously regulated under the Act would be swept into the PSD program and Title V, including "smaller industrial sources," "large office and residential buildings, hotels, large retail establishments, and similar facilities."** Id., at 44498-44499.

Did EPA think this expansion would have regulatory value?

The Agency warned that this would constitute an **"unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land,"** **yet still be "relatively ineffective at reducing greenhouse gas concentrations."** Id., at 44355. *fn2

Did EPA find that GHGs were a threat to public health?

[24] In 2009, EPA announced its determination regarding the danger posed by motor-vehicle greenhouse-gas emissions. EPA found that greenhouse-gas emissions from new motor vehicles contribute to elevated atmospheric concentrations of greenhouse gases, **which endanger public health and welfare by fostering global "climate change**." 74 Fed. Reg. 66523, 66537 (hereinafter **Endangerment Finding**). It denominated a "single air pollutant" the "combined mix" of six greenhouse gases that it identified as "the root cause of human-induced climate change": carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. Id., at 66526, 66537. A source's greenhouse-gas emissions would be measured in "carbon dioxide equivalent units" (CO_2e), which would be calculated based on each gas's "global warming potential." Id., at 66499, n. 4.

What did EPA say in the Triggering Rule?

[25] Next, **EPA issued its "final decision" regarding the prospect that motor-vehicle greenhouse-gas standards would trigger stationary-source permitting requirements**. 75 Fed. Reg. 17004 (2010) (hereinafter Triggering Rule). **EPA announced that beginning on the effective date of its greenhouse-gas standards for motor vehicles, stationary sources would be subject to the PSD program and Title V on the basis of their potential to emit greenhouse gases.** As expected, EPA in short order promulgated greenhouse-gas emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles to take effect on January 2, 2011. 75 Fed. Reg. 25324 (hereinafter Tailpipe Rule).

Why didn't EPA just exclude GHGs from the Title I program and avoid the tailoring issue entirely?

[26] EPA then announced steps it was taking to "tailor" the PSD program and Title V to greenhouse gases. 75 Fed. Reg. 31514 (hereinafter Tailoring Rule). Those steps were necessary, it said, because the PSD program and Title V were designed to regulate "a relatively small number of large industrial sources," and requiring permits for all sources with greenhouse-gas emissions above the statutory thresholds would radically expand those programs, making them both unadministrable and "unrecognizable to the Congress that designed" them. Id., at 31555, 31562. **EPA nonetheless rejected calls to exclude greenhouse gases entirely from those programs, asserting that the Act is not "ambiguous with respect to the need to cover [greenhouse-gas] sources under either the PSD or title V program."** Id., at 31548, n. 31. Instead, EPA adopted a "phase-in approach" that it said would "appl[y] PSD and title V at threshold levels that are as close to the statutory levels as possible, and do so as quickly as possible, at least to a certain point." Id., at 31523.

Was EPA only going to regulate major emitters, or would the regulations be expanded to small sources? What is BACT for GHGs?

[27] The phase-in, EPA said, would consist of at least three steps. **During Step 1, from January 2**

through June 30, 2011, no source would become newly subject to the PSD program or Title V solely on the basis of its greenhouse-gas emissions; however, sources required to obtain permits anyway because of their emission of conventional pollutants (so-called "anyway" sources) would need to comply with BACT for greenhouse gases if they emitted those gases in significant amounts, defined as at least 75,000 tons per year CO2e. Ibid. **During Step 2, from July 1, 2011, through June 30, 2012, sources with the potential to emit at least 100,000 tons per year CO2e of greenhouse gases would be subject to PSD and Title V permitting for their construction and operation and to PSD permitting for modifications that would increase their greenhouse-gas emissions by at least 75,000 tons per year CO2e.** Id., at 31523-31524. *fn3 **At Step 3, beginning on July 1, 2013, EPA said it might (or might not) further reduce the permitting thresholds (though not below 50,000 tons per year CO2e), and it might (or might not) establish permanent exemptions for some sources. Id., at 31524**. Beyond Step 3, EPA promised to complete another round of rulemaking by April 30, 2016, in which it would "take further action to address small sources," which might (or might not) include establishing permanent exemptions. Id., at 31525.

[28] EPA codified Steps 1 and 2 at 40 CFR §§ 51.166(b)(48) and 52.21(b)(49) for PSD and at §§ 70.2 and 71.2 for Title V, and it codified its commitments regarding Step 3 and beyond at §§ 52.22, 70.12, and 71.13. See Tailoring Rule 31606-31608. After the decision below, EPA issued its final Step 3 rule, in which it decided not to lower the thresholds it had established at Step 2 until at least 2016. 77 Fed. Reg. 41051 (2012).

[29]

Who contested the rule?

[30] **Numerous parties, including several States, f**iled petitions for review in the D. C. Circuit under 42 U.S.C. § 7607(b), challenging EPA's greenhouse-gas-related actions. The Court of Appeals dismissed some of the petitions for lack of jurisdiction and denied the remainder. Coalition for Responsible Regulation, Inc. v. EPA, 684 F. 3d 102, 401 U.S. App. D.C. 306 (2012) (per curiam).

What did the lower court hold?

First, it upheld the Endangerment Finding and Tailpipe Rule. Id., at 119, 126.

Next, it held that EPA's interpretation of the PSD permitting requirement as applying to "any regulated air pollutant," including greenhouse gases, was "compelled by the statute." Id., at 133-134.

The court also found it "crystal clear that PSD permittees must install BACT for greenhouse gases." Id., at 137.

Because it deemed petitioners' arguments about the PSD program insufficiently applicable to Title V, it held they had "forfeited any challenges to EPA's greenhouse gas-inclusive interpretation of Title V." Id., at 136.

Finally, it held that petitioners were without Article III standing to challenge EPA's efforts to limit the reach of the PSD program and Title V through the Triggering and Tailoring Rules. Id., at 146. The court denied rehearing en banc, **with Judges Brown and Kavanaugh each dissenting**. No. 09-1322 etc. (Dec. 20, 2012), App. 139, , 2012 WL 6621785.

What is the only question before this court?

[31] We granted six petitions for certiorari but agreed to decide only one question: "'**Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.**'" 571 U.S. ____, 134 S. Ct. 418, 187 L. Ed. 2d 278 (2013).

[32]

[33] This litigation presents two distinct challenges to EPA's stance on greenhouse-gas permitting for stationary sources.

What are the two challenges to the reg?

First, we must decide whether EPA permissibly determined that a source may be subject to the PSD and Title V permitting requirements on the sole basis of the source's potential to emit greenhouse gases.

What is an anyway source?

Second, we must decide whether EPA permissibly determined that a source already subject to the PSD program because of its emission of conventional pollutants (an "anyway" source) may be required to limit its greenhouse-gas emissions by employing the "best available control technology" for greenhouse gases.

What is the significance of the anyway source category?

The Solicitor General joins issue on both points but evidently regards the second as more important; he informs us **that "anyway" sources account for roughly 83% of American stationary-source greenhouse-gas emissions,** compared to just 3% for the additional, non-"anyway" sources EPA sought to regulate at Steps 2 and 3 of the Tailoring Rule. Tr. of Oral Arg. 52.

What is the standard for reviewing EPA's interpretation of the CAA?

[34] **We review EPA's interpretations of the Clean Air Act using the standard set forth in Chevron U.S. A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-843, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).** Under Chevron, we presume that when an agency-administered statute is ambiguous with respect to what it prescribes, Congress has empowered the agency to resolve the ambiguity. The question for a reviewing court is whether in doing so the agency has acted reasonably and thus has "stayed within the bounds of its statutory authority." Arlington v. FCC, 569 U.S. ___, ___,

133 S. Ct. 1863, 185 L. Ed. 2d 941, 951 (2013) (emphasis deleted).

[35]

[36] We first decide whether EPA permissibly interpreted the statute to provide that a source may be required to obtain a PSD or Title V permit on the sole basis of its potential greenhouse-gas emissions.

[37]

[38] EPA thought its conclusion that a source's greenhouse-gas emissions may necessitate a PSD or Title V permit followed from the Act's unambiguous language. The Court of Appeals agreed and held that the statute "compelled" EPA's interpretation. 684 F. 3d, at 134. We disagree. The statute compelled EPA's greenhouse-gas-inclusive interpretation with respect to neither the PSD program nor Title V. *fn4

[39] The Court of Appeals reasoned by way of a flawed syllogism:

How does this court say the lower court reasoned that GHGs would trigger Title I?

Under Massachusetts, the general, Act-wide definition of "air pollutant" includes greenhouse gases; the Act requires permits for major emitters of "any air pollutant"; therefore, the Act requires permits for major emitters of greenhouse gases.

Where does the court say this falls apart?

The conclusion follows from the premises only if the air pollutants referred to in the permit-requiring provisions (the minor premise) are the same air pollutants encompassed by the Act-wide definition as interpreted in Massachusetts (the major premise). Yet no one-least of all EPA-endorses that proposition, and it is obviously untenable.

[40] The Act-wide definition says that an air pollutant is "any air pollution agent or combination of such agents, including any physical, chemical, biological, [or] radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air." § 7602(g).

In Massachusetts, the Court held that the Act-wide definition includes greenhouse gases because it is all-encompassing; it "embraces all airborne compounds of whatever stripe." 549 U.S., at 529, 127 S. Ct. 1438, 167 L. Ed. 2d 248. **But where the term "air pollutant" appears in the Act's operative provisions, EPA has routinely given it a narrower, context-appropriate meaning.**

How has EPA limited Title V in the past?

[41] That is certainly true of the provisions that require PSD and Title V permitting for major emitters of "any air pollutant." Since 1978, **EPA's regulations have interpreted "air pollutant" in the PSD permitting trigger as limited to regulated air pollutants**, 43 Fed. Reg. 26403, codified, as amended, 40 CFR § 52.21(b)(1)-(2), (50)-a class much narrower than Massachusetts' "all airborne

compounds of whatever stripe," 549 U.S., at 529, 127 S. Ct. 1438, 167 L. Ed. 2d 248. And since 1993 EPA has informally taken the same position with regard to the Title V permitting trigger, a position the Agency ultimately incorporated into some of the regulations at issue here. See Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, to Air Division Director, Regions I-X, pp. 4-5 (Apr. 26, 1993); Tailoring Rule 31607-31608 (amending 40 CFR §§ 70.2, 71.2). Those interpretations were appropriate:

Why does the court say it is obvious that the "any pollutant" standard of the general definition is not meant to be triggering?

It is plain as day that the Act does not envision an elaborate, burdensome permitting process for major emitters of steam, oxygen, or other harmless airborne substances. It takes some cheek for EPA to insist that it cannot possibly give "air pollutant" a reasonable, context-appropriate meaning in the PSD and Title V contexts when it has been doing precisely that for decades.

[42] Nor are those the only places in the Act where EPA has inferred from statutory context that a generic reference to air pollutants does not encompass every substance falling within the Act-wide definition. Other examples abound:

How is this like Brown and Williamson?

[43] Although these limitations are nowhere to be found in the Act-wide definition, in each instance EPA has concluded-as it has in the PSD and Title V context-that the statute is not using "air pollutant" in Massachusetts' broad sense to mean any airborne substance whatsoever.

Does Mass v. EPA change this?

[44] Massachusetts did not invalidate all these longstanding constructions. **That case did not hold that EPA must always regulate greenhouse gases as an "air pollutant" everywhere that term appears in the statute, but only that EPA must "ground its reasons for action or inaction in the statute,"** 549 U.S., at 535, 127 S. Ct. 1438, 167 L. Ed. 2d 24 (emphasis added), rather than on "reasoning divorced from the statutory text," id., at 532, 127 S. Ct. 1438, 167 L. Ed. 2d 24. EPA's inaction with regard to Title II was not sufficiently grounded in the statute, the Court said, in part because nothing in the Act suggested that regulating greenhouse gases under that Title would conflict with the statutory design. Title II would not compel EPA to regulate in any way that would be "extreme," "counterintuitive," or contrary to "'common sense.'" Id., at 531, 127 S. Ct. 1438, 167 L. Ed. 2d 24. **At most, it would require EPA to take the modest step of adding greenhouse-gas standards to the roster of new-motor-vehicle emission regulations**. Ibid.

Does Mass v. EPA require the regulation of GHGs?

[45] Massachusetts does not strip EPA of authority to exclude greenhouse gases from the class of regulable air pollutants under other parts of the Act where their inclusion would be inconsistent with the statutory scheme. **The Act-wide definition to which the Court gave a "sweeping" and "capacious" interpretation, id., at 528, 532, 127 S. Ct. 1438, 167 L. Ed. 2d 24, is not a command to regulate, but a**

description of the universe of substances EPA may consider regulating under the Act's operative provisions.

Are there pollutants that EPA chooses to not regulate?

Massachusetts does not foreclose the Agency's use of statutory context to infer that certain of the Act's provisions use "air pollutant" to denote not every conceivable airborne substance, but **only those that may sensibly be encompassed within the particular regulatory program**.

How does the court imply that EPA's blanket view that GHGs are pollutants is as unreasonable as its previous claim it could not regulate them?

As certain amici felicitously put it, while Massachusetts "rejected EPA's categorical contention that greenhouse gases could not be 'air pollutants' for any purposes of the Act**," it did not "embrace EPA's current, equally categorical position that greenhouse gases must be air pollutants for all purposes" regardless of the statutory context. Brief for Administrative Law Professors** et al. as Amici Curiae 17. *fn5

Is the Act ambiguous?

[46] **To be sure, Congress's profligate use of "air pollutant" where what is meant is obviously narrower than the Act-wide definition is not conducive to clarity.** One ordinarily assumes "'that identical words used in different parts of the same act are intended to have the same meaning.'" Environmental Defense v. Duke Energy Corp., 549 U.S. 561, 574, 127 S. Ct. 1423, 167 L. Ed. 2d 295 (2007). In this respect (as in countless others), the Act is far from a chef d'oeuvre of legislative draftsmanship. **But we, and EPA, must do our best, bearing in mind the "'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" FDA v. Brown & Williamson Tobacco Corp.**, 529 U.S. 120, 133, 120 S. Ct. 1291, 146 L. Ed. 2d 121 (2000).

Do the words always mean just what that say alone?

As we reiterated the same day we decided Massachusetts, **the presumption of consistent usage "'readily yields'" to context, and a statutory term-even one defined in the statute-"may take on distinct characters from association with distinct statutory objects calling for different implementation** strategies." Duke Energy, supra, at 574, 127 S. Ct. 1423, 167 L. Ed. 2d 295.

Does the court find that the EPA is required to trigger PSD and Title V?

[47] We need not, and do not, pass on the validity of all the limiting constructions EPA has given the term "air pollutant" throughout the Act. **We merely observe that taken together, they belie EPA's rigid insistence that when interpreting the PSD and Title V permitting requirements it is bound by the Act-wide definition's inclusion of greenhouse gases, no matter how incompatible that inclusion is with those programs' regulatory structure.**

[48] In sum, there is no insuperable textual barrier to EPA's interpreting "any air pollutant" in the permitting triggers of PSD and Title V to encompass only pollutants emitted in quantities that enable them to be sensibly regulated at the statutory thresholds, and to exclude those atypical pollutants that, like greenhouse gases, are emitted in such vast quantities that their inclusion would radically transform those programs and render them unworkable as written. *fn6

[49]

Is this within the EPA's discretion?

[50] Having determined that EPA was mistaken in thinking the Act compelled a greenhouse-gas-inclusive interpretation of the PSD and Title V triggers, **we next consider the Agency's alternative position that its interpretation was justified as an exercise of its "discretion" to adopt "a reasonable construction of the statute."** Tailoring Rule 31517. We conclude that EPA's interpretation is not permissible.

The Reasonability standard

[51] Even under Chevron's deferential framework, agencies must operate "within the bounds of reasonable interpretation." Arlington, 569 U.S., at ___, 133 S. Ct. 1863, 185 L. Ed. 2d 941, 951. **And reasonable statutory interpretation must account for both "the specific context in which . . . language is used" and "the broader context of the statute as a whole.**" Robinson v. Shell Oil Co., 519 U.S. 337, 341, 117 S. Ct. 843, 136 L. Ed. 2d 808 (1997). A statutory "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd., 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988). Thus, an agency interpretation that is "inconsisten[t] with the design and structure of the statute as a whole," University of Tex. Southwestern Medical Center v. Nassar, 570 U.S. ___, ___, 133 S. Ct. 2517, 186 L. Ed. 2d 503 (2013), does not merit deference.

Chevron only allows reasonable interpretations. What does the Court say about applying PSD to GHGs?

[52] **EPA itself has repeatedly acknowledged that applying the PSD and Title V permitting requirements to greenhouse gases would be inconsistent with-in fact, would overthrow-the Act's structure and design.**

What does the Tailoring rule say about this?

In the Tailoring Rule, EPA described the calamitous consequences of interpreting the Act in that way. Under the PSD program, annual permit applications would jump from about 800 to nearly 82,000; annual administrative costs would swell from $12 million to over $1.5 billion; and decade-long delays in issuing permits would become common, causing construction projects to grind to a halt nationwide. Tailoring Rule 31557. The picture under Title V was equally bleak: The number of sources required to have permits would jump from fewer than 15,000 to about 6.1 million; annual administrative costs would balloon from $62 million to $21 billion; and collectively the newly covered

sources would face permitting costs of $147 billion. Id., at 31562-31563. Moreover, "the great majority of additional sources brought into the PSD and title V programs would be small sources that Congress did not expect would need to undergo permitting." Id., at 31533. EPA stated that these results would be so "contrary to congressional intent," and would so "severely undermine what Congress sought to accomplish," that they necessitated as much as a 1,000-fold increase in the permitting thresholds set forth in the statute. Id., at 31554, 31562.

Based on Brown and Williamson, what does the court think is implied when an interpretation leads to unreasonable results?

[53] Like EPA, we think it beyond reasonable debate that requiring permits for sources based solely on their emission of greenhouse gases at the 100- and 250-tons-per-year levels set forth in the statute would be "incompatible" with "the substance of Congress' regulatory scheme." Brown & Williamson, 529 U.S., at 156, 120 S. Ct. 1291, 146 L. Ed. 2d 121. A brief review of the relevant statutory provisions leaves no doubt that the PSD program and Title V are designed to apply to, and cannot rationally be extended beyond, a relative handful of large sources capable of shouldering heavy substantive and procedural burdens.

How does the structure of the PSD program belie its expansion to a huge number of small emitters?

[54] **Start with the PSD program, which imposes numerous and costly requirements on those sources that are required to apply for permits.**

Among other things, the applicant must make available a detailed scientific analysis of the source's potential pollution-related impacts, demonstrate that the source will not contribute to the violation of any applicable pollution standard, and identify and use the "best available control technology" for each regulated pollutant it emits.

§ 7475(a)(3), (4), (6), (e). **The permitting authority (the State, usually) also bears its share of the burden: It must grant or deny a permit within a year, during which time it must hold a public hearing on the application**. § 7475(a)(2), (c). Not surprisingly, EPA acknowledges that PSD review is a "complicated, resource-intensive, time-consuming, and sometimes contentious process" suitable for "hundreds of larger sources," not "tens of thousands of smaller sources." 74 Fed. Reg. 55304, 55321-55322.

What about Title V requirements?

[55] Title V contains no comparable substantive requirements but imposes elaborate procedural mandates**. It requires the applicant to submit, within a year of becoming subject to Title V, a permit application and a "compliance plan" describing how it will comply with "all applicable requirements" under the Act; to certify its compliance annually; and to submit to "inspection, entry, monitoring, . . . and reporting requirements." §§ 7661b(b)-(c), 7661c(a)-(c).** The procedural burdens on the permitting authority and EPA are also significant. The permitting authority must hold a public hearing on the application, § 7661a(b)(6), and it must forward the application and any proposed permit to EPA and neighboring States and respond in writing to their comments, § 7661d(a), (b)(1). If it fails to issue or

deny the permit within 18 months, any interested party can sue to require a decision "without additional delay." §§ 7661a(b)(7), 7661b(c). An interested party also can petition EPA to block issuance of the permit; EPA must grant or deny the petition within 60 days, and its decision may be challenged in federal court. § 7661d(b)(2)-(3). As EPA wrote, Title V is "finely crafted for thousands," not millions, of sources. Tailoring Rule 31563.

Why is the court showing a sudden interest in the well-being of the agency?

[56] The fact that EPA's greenhouse-gas-inclusive interpretation of the PSD and Title V triggers would place plainly excessive demands on limited governmental resources is alone a good reason for rejecting it; but that is not the only reason.

What seems to be this court's main reason for finding that EPA cannot use GHGs to trigger PSD and Title V?

EPA's interpretation is also unreasonable because it would bring about an enormous and transformative expansion in EPA's regulatory authority without clear congressional authorization.

When an agency claims to discover in a long-extant statute an unheralded power to regulate "a significant portion of the American economy," Brown & Williamson, 529 U.S., at 159, 120 S. Ct. 1291, 146 L. Ed. 2d 121, we typically greet its announcement with a measure of skepticism.

What is the elephants in mouse holes doctrine at work here?

We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast "economic and political significance." Id., at 160, 120 S. Ct. 1291, 146 L. Ed. 2d 121; see also MCI Telecommunications Corp. v. American Telephone & Telegraph Co., 512 U.S. 218, 231, 114 S. Ct. 2223, 129 L. Ed. 2d 182 (1994); Industrial Union Dept., AFL-CIO v. American Petroleum Institute, 448 U.S. 607, 645-646, 100 S. Ct. 2844, 65 L. Ed. 2d 1010 (1980) (plurality opinion).

The power to require permits for the construction and modification of tens of thousands, and the operation of millions, of small sources nationwide falls comfortably within the class of authorizations that we have been reluctant to read into ambiguous statutory text.

Moreover, in EPA's assertion of that authority, we confront a singular situation: an agency laying claim to extravagant statutory power over the national economy while at the same time strenuously asserting that the authority claimed would render the statute "unrecognizable to the Congress that designed" it. Tailoring Rule 31555. Since, as we hold above, the statute does not compel EPA's interpretation, it would be patently unreasonable-not to say outrageous-for EPA to insist on seizing expansive power that it admits the statute is not designed to grant. *fn7

[57]

How did EPA seek to defuse this huge expansion of powers?

[58] **EPA thought that despite the foregoing problems, it could make its interpretation reasonable by adjusting the levels at which a source's greenhouse-gas emissions would oblige it to undergo PSD and Title V permitting.**

Is this allowed by the Act?

Although the Act, in no uncertain terms, requires permits for sources with the potential to emit more than 100 or 250 tons per year of a relevant pollutant, EPA in its Tailoring Rule wrote a new threshold of 100,000 tons per year for greenhouse gases.

Why did the CA say petitioners did not have standing to challenge the Tailoring rule?

Since the Court of Appeals thought the statute unambiguously made greenhouse gases capable of triggering PSD and Title V, it held that petitioners lacked Article III standing to challenge the Tailoring Rule **because that rule did not injure petitioners but merely relaxed the pre-existing statutory requirements**.

Does standing change if EPA acts beyond the statute?

Because we, however, hold that EPA's greenhouse-gas-inclusive interpretation of the triggers was not compelled, and because EPA has essentially admitted that its interpretation would be unreasonable without "tailoring," we consider the validity of the Tailoring Rule.

[59] **We conclude that EPA's rewriting of the statutory thresholds was impermissible and therefore could not validate the Agency's interpretation of the triggering provisions.**

What does the Court say about tailoring around statutory requirements?

An agency has no power to "tailor" legislation to bureaucratic policy goals by rewriting unambiguous statutory terms. Agencies exercise discretion only in the interstices created by statutory silence or ambiguity; they must always "'give effect to the unambiguously expressed intent of Congress.'" National Assn. of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 665, 127 S. Ct. 2518, 168 L. Ed. 2d 467 (2007) (quoting Chevron, 467 U.S., at 843, 104 S.Ct. 2778, 81 L. Ed. 2d 694).

What was the statutory language the EPA could not get around?

It is hard to imagine a statutory term less ambiguous than the precise numerical thresholds at which the Act requires PSD and Title V permitting. When EPA replaced those numbers with others of its own choosing, it went well beyond the "bounds of its statutory authority." Arlington, 569 U.S., at ___, 133 S. Ct. 1863, 185 L. Ed. 2d 941, 951 (emphasis deleted).

[60] The Solicitor General does not, and cannot, defend the Tailoring Rule as an exercise of EPA's enforcement discretion.

Why isn't this just regulatory discretion?

The Tailoring Rule is not just an announcement of EPA's refusal to enforce the statutory permitting requirements; it purports to alter those requirements and to establish with the force of law that otherwise-prohibited conduct will not violate the Act. This alteration of the statutory requirements was crucial to EPA's "tailoring" efforts. Without it, small entities with the potential to emit greenhouse gases in amounts exceeding the statutory thresholds would have remained subject to citizen suits-authorized by the Act-to enjoin their construction, modification, or operation and to impose civil penalties of up to $37,500 per day of violation. §§ 7413(b), 7604(a), (f)(4); 40 CFR § 19.4.

CITIZEN SUITS
Even if the EPA does not enforce against excluded entities, are there are threats?

EPA itself has recently affirmed that the "independent enforcement authority" furnished by the citizen-suit provision cannot be displaced by a permitting authority's decision not to pursue enforcement. 78 Fed. Reg. 12477, 12486-12487 (2013).

Why did this prompt the Tailoring rule?

The Solicitor General is therefore quite right to acknowledge that the availability of citizen suits made it necessary for EPA, in seeking to mitigate the unreasonableness of its greenhouse-gas-inclusive interpretation, to go beyond merely exercising its enforcement discretion. See Tr. of Oral Arg. 87-88.

[61] For similar reasons, Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055, 39 L. Ed. 2d 270 (1974)-to which the Solicitor General points as the best case supporting the Tailoring Rule, see Tr. of Oral Arg. 71, 80-81-is irrelevant.

What was Ruiz about that is not relevant in this case?

In Ruiz, Congress had appropriated funds for the Bureau of Indian Affairs to spend on providing assistance to "'Indians throughout the United States'" and had not "impose[d] any geographical limitation on the availability of general assistance benefits." Id., at 206-207, 94 S. Ct. 1055, 39 L. Ed. 2d 270, and n. 7. Although we held the Bureau could not deny benefits to off-reservation Indians because it had not published its eligibility criteria, we stated in dictum that the **Bureau could, if it followed proper administrative procedures, "create reasonable classifications and eligibility requirements in order to allocate the limited funds available."** Id., at 230-231, 94 S. Ct. 1055, 39 L. Ed. 2d 270. That dictum stands only for the unremarkable proposition that an agency may adopt policies to prioritize its expenditures within the bounds established by Congress. See also Lincoln v. Vigil, 508 U.S. 182, 192-193, 113 S. Ct. 2024, 124 L. Ed. 2d 101 (1993). **Nothing in Ruiz remotely authorizes an agency to modify unambiguous requirements imposed by a federal statute. An agency confronting resource constraints may change its own conduct, but it cannot change the law**.

Why would the tailoring rule violate separation of powers?

[62] Were we to recognize the authority claimed by EPA in the Tailoring Rule, we would deal a severe blow to the Constitution's separation of powers. Under our system of government, Congress

makes laws and the President, acting at times through agencies like EPA, "faithfully execute[s]" them. U. S. Const., Art. II, § 3; see Medellan v. Texas, 552 U.S. 491, 526-527, 128 S. Ct. 1346, 170 L. Ed. 2d 190 (2008). **The power of executing the laws necessarily includes both authority and responsibility to resolve some questions left open by Congress that arise during the law's administration. But it does not include a power to revise clear statutory terms that turn out not to work in practice.** See, e.g., Barnhart v. Sigmon Coal Co., 534 U.S. 438, 462, 122 S. Ct. 941, 151 L. Ed. 2d 908 (2002) (agency lacked authority "to develop new guidelines or to assign liability in a manner inconsistent with" an "unambiguous statute").

[63] In the Tailoring Rule, EPA asserts newfound authority to regulate millions of small sources-including retail stores, offices, apartment buildings, shopping centers, schools, and churches-and to decide, on an ongoing basis and without regard for the thresholds prescribed by Congress, how many of those sources to regulate. We are not willing to stand on the dock and wave goodbye as EPA embarks on this multiyear voyage of discovery.

Where does Chevron fail in this case?

We reaffirm the core administrative-law principle **that an agency may not rewrite clear statutory terms** to suit its own sense of how the statute should operate. EPA therefore lacked authority to "tailor" the Act's unambiguous numerical thresholds to accommodate its greenhouse-gas-inclusive interpretation of the permitting triggers. Instead, the need to rewrite clear provisions of the statute should have alerted EPA that it had taken a wrong interpretive turn. Agencies are not free to "adopt . . . unreasonable interpretations of statutory provisions and then edit other statutory provisions to mitigate the unreasonableness." App. 175, , 2012 WL 6621785, *16 (Kavanaugh, J., dissenting from denial of rehearing en banc). Because the Tailoring Rule cannot save EPA's interpretation of the triggers, that interpretation was impermissible under Chevron. *fn8

[64]

[65] For the reasons we have given, EPA overstepped its statutory authority when it decided that a source could become subject to PSD or Title V permitting by reason of its greenhouse-gas emissions.

This means that the GHG regs do not expand Title I to otherwise unregulated entities. But what about those that are already regulated?

But what about "anyway" sources, those that would need permits based on their emissions of more conventional pollutants (such as particulate matter)? **We now consider whether EPA reasonably interpreted the Act to require those sources to comply with "best available control technology" emission standards for greenhouse gases.**

[66]

What is BACT

[67] To obtain a PSD permit, a source must be "subject to the best available control technology" for

"each pollutant subject to regulation under [the Act]" that it emits. § 7475(a)(4). The Act defines BACT as **"an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation" that is "achievable . . . through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques." § 7479(3).** BACT is determined "on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs." Ibid.

How is BACT fundamentally different for GHGs than for NAAQS pollutants?

[68] Some petitioners urge us to hold that EPA may never require BACT for greenhouse gases-even when a source must undergo PSD review based on its emissions of conventional pollutants-because BACT is fundamentally unsuited to greenhouse-gas regulation. **BACT, they say, has traditionally been about end-of-stack controls "such as catalytic converters or particle collectors"; but applying it to greenhouse gases will make it more about regulating energy use, which will enable regulators to control "every aspect of a facility's operation and design," right down to the "light bulbs in the factory cafeteria."** Brief for Petitioner Energy-Intensive Manufacturers Working Group on Greenhouse Gas Regulation et al. in No. 12-1254, p. 7; see Joint Reply Brief for Petitioners in No. 12-1248 etc., pp. 14-15 ("BACT for [greenhouse gases] becomes an unbounded exercise in command-and-control regulation" of everything from "efficient light bulbs" to "basic industrial processes"). But see Brief for Calpine Corp. as Amicus Curiae 10 ("[I]n Calpine's experience with 'anyway' sources, the [greenhouse-gas] analysis was only a small part of the overall permitting process").

[69] EPA has published a guidance document that lends some credence to petitioners' fears.

What did EPA say would be the foundation of GHG BACT?

It states that at least initially, **compulsory improvements in energy efficiency will be the "foundation" of greenhouse-gas BACT**,

Why not require end of stack technology?

with more traditional end-of-stack controls either not used or **"added as they become more available."** PSD and Title V Permitting Guidance for Greenhouse Gases 29 (Mar. 2011) (hereinafter Guidance); see Peloso & Dobbins, Greenhouse Gas PSD Permitting: The Year in Review, 42 Tex. Env. L. J. 233, 247 (2012) ("Because [other controls] tend to prove infeasible, energy efficiency measures dominate the [greenhouse-gas] BACT controls approved by the states and EPA**"). But EPA's guidance also states that BACT analysis should consider options other than energy efficiency, such as "carbon capture and storage."** Guidance 29, 32, 35-36, 42-43. EPA argues that carbon capture is reasonably comparable to more traditional, end-of-stack BACT technologies, id., at 32, n. 86, and petitioners do not dispute that.

[70] Moreover, assuming without deciding that BACT may be used to force some improvements in energy efficiency, there are important limitations on BACT that may work to mitigate petitioners' concerns about "unbounded" regulatory authority.

What is the limit on BACT that would make it hard to apply to GHGs?

For one, BACT is based on "control technology" for the applicant's "proposed facility," § 7475(a)(4); therefore, it has long been held that BACT cannot be used to order a fundamental redesign of the facility. See, e.g., Sierra Club v. EPA, 499 F. 3d 653, 654-655 (CA7 2007); In re Pennsauken Cty., N. J., Resource Recovery Facility, 2 E. A. D. 667, 673 (EAB 1988). For another, EPA has long interpreted BACT as required only for pollutants that the source itself emits, see 44 Fed. Reg. 51947 (1979); accordingly, EPA acknowledges that BACT may not be used to require "reductions in a facility's demand for energy from the electric grid." Guidance 24.

How did EPA say it would tailor BACT?

Finally, **EPA's guidance suggests that BACT should not require every conceivable change that could result in minor improvements in energy efficiency,** such as the aforementioned light bulbs. Id., at 31. The guidance explains that permitting authorities should instead consider whether a proposed regulatory burden outweighs any reduction in emissions to be achieved, and should concentrate on the facility's equipment that uses the largest amounts of energy. Ibid.

[71]

What does the court rule about BACT for "anyway" sources?

[72] **The question before us is whether EPA's decision to require BACT for greenhouse gases emitted by sources otherwise subject to PSD review is, as a general matter, a permissible interpretation of the statute under Chevron. We conclude that it is.**

Why is the text of the BACT provision less open-ended than that of the PSD permitting trigger language?

[73] The text of the BACT provision is far less open-ended than the text of the PSD and Title V permitting triggers. **It states that BACT is required "for each pollutant subject to regulation under this chapter" (i.e., the entire Act), § 7475(a)(4), a phrase that-as the D. C. Circuit wrote 35 years ago-"would not seem readily susceptible [of] misinterpretation."** Alabama Power Co. v. Costle, 636 F. 2d 323, 404, 204 U.S. App. D.C. 51 (1979).

How is this different from the language in the permitting triggers section?

Whereas the dubious breadth of "any air pollutant" in the permitting triggers suggests a role for agency judgment in identifying the subset of pollutants covered by the particular regulatory program at issue, **the more specific phrasing of the BACT provision suggests that the necessary judgment has already been made by Congress.** The wider statutory context likewise does not suggest that the BACT provision can bear a narrowing construction: There is no indication that the Act elsewhere uses, or that EPA has interpreted, "each pollutant subject to regulation under this chapter" to mean anything other than what it says.

Why isn't applying BACT to GHGs not the same disaster as triggering PSD?

[74] Even if the text were not clear, applying BACT to greenhouse gases is not so disastrously unworkable, and need not result in such a dramatic expansion of agency authority, as to convince us that EPA's interpretation is unreasonable. **We are not talking about extending EPA jurisdiction over millions of previously unregulated entities, but about moderately increasing the demands EPA (or a state permitting authority) can make of entities already subject to its regulation.** And it is not yet clear that EPA's demands will be of a significantly different character from those traditionally associated with PSD review. In short, the record before us does not establish that the BACT provision as written is incapable of being sensibly applied to greenhouse gases.

What are the limits of the court's holding?

[75] We acknowledge the potential for greenhouse-gas BACT to lead to an unreasonable and unanticipated degree of regulation, and our decision should not be taken as an endorsement of all aspects of EPA's current approach, nor as a free rein for any future regulatory application of BACT in this distinct context. **Our narrow holding is that nothing in the statute categorically prohibits EPA from interpreting the BACT provision to apply to greenhouse gases emitted by "anyway" sources.**

What is the limitation on the application of BACT to an anyway source?

[76] **However, EPA may require an "anyway" source to comply with greenhouse-gas BACT only if the source emits more than a de minimis amount of greenhouse gases.** As noted above, the Tailoring Rule applies BACT only if a source emits greenhouse gases in excess of 75,000 tons per year CO2e, but the Rule makes clear that EPA did not arrive at that number by identifying the de minimis level. See nn. 1, 3, supra. EPA may establish an appropriate de minimis threshold below which BACT is not required for a source's greenhouse-gas emissions. We do not hold that 75,000 tons per year CO2e necessarily exceeds a true de minimis level, only that EPA must justify its selection on proper grounds. Cf. Alabama Power, supra, at 405. *fn9

[77]

What is the final holding?

[**78**] **To sum up: We hold that EPA exceeded its statutory authority when it interpreted the Clean Air Act to require PSD and Title V permitting for stationary sources based on their greenhouse-gas emissions. Specifically, the Agency may not treat greenhouse gases as a pollutant for purposes of defining a "major emitting facility" (or a "modification" thereof) in the PSD context or a "major source" in the Title V context. To the extent its regulations purport to do so, they are invalid.**

EPA may, however, continue to treat greenhouse gases as a "pollutant subject to regulation under this chapter" for purposes of requiring BACT for "anyway" sources. The judgment of the Court of Appeals is affirmed in part and reversed in part.

[79] It is so ordered.

Alito

Justice Alito, with whom Justice Thomas joins, concurring in part and dissenting in part.

I agree with the Court that the EPA is neither required nor permitted to take this extraordinary step, and I therefore join Parts I and II-A of the Court's opinion.

II

I do not agree, however, with the Court's conclusion that what it terms "anyway sources," i.e., sources that are subject to PSD and Title V permitting as the result of the emission of conventional pollutants, must install "best available control technology" (BACT) for greenhouse gases. As is the case with the PSD and Title V thresholds, trying to fit greenhouse gases into the BACT analysis badly distorts the scheme that Congress adopted.