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Clean Air Act and Dirty Coal at the Supreme Court

A coal-fired plant in Kentucky.

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The name of the law at issue before the Supreme Court on Wednesday is the Clean Air Act. It is not the Coal Industry Protection Act, despite what that industry's advocates seem to want the justices to believe.

Congress passed the legislation in 1970 and substantially strengthened it in 1990 to safeguard human health from air pollution generated by power plants, vehicles, incinerators and other sources.

One of the most toxic of these pollutants is mercury, a heavy metal that accumulates in waterways and the fish Americans eat. While mercury is particularly dangerous to the vulnerable, developing brains and nervous systems of young children and fetuses, the Environmental Protection Agency estimates that improved air-quality standards prevent the premature deaths of as many as 11,000 Americans each year from exposure to mercury and other toxic air pollutants.

In 2012, the agency issued a rule ordering coal-fired power plants, which are far and away the single biggest source of these emissions, to adopt technology to reduce them. The coal industry sued the government for the same reason it has countless times over the decades: Cleaning up pollution costs

money. Business owners and other industry backers argue that the law requires the E.P.A. to weigh those costs against any potential health benefits of a regulation.

Industry supporters point to a single phrase in the law — that the agency must regulate pollutants only when "appropriate and necessary" — to mean that if a regulation would cost too much in their eyes, it's not appropriate.

But the agency does consider the financial impact of its regulations later in the process, when it sets the actual emissions standards. At the beginning of the process, when it is deciding whether a substance like mercury endangers human health and thus must be regulated — which the law requires it to do — cost is not a factor.

Plenty of evidence suggests this is how the law was designed to work. In line with its fundamental goal of protecting health, it never says costs to business are to be considered at the outset. And even if "appropriate" could be read in more than one way, courts as a rule defer to reasonable agency interpretations of statutory language.

The coal industry, however, argues that costs must be considered at the outset because, it says, they are central to the question of whether to regulate at all. In this case, reducing mercury emissions is expected to cost almost $10 billion, but the industry says it will provide at most $4 million to $6 million in benefits. That is an absurdly low range based on a single statistic: the estimated increase in lifetime earnings for people whose I.Q.s will presumably be higher if their prenatal mercury exposure is lower.

According to the E.P.A., the benefits of an overall reduction in mercury and other toxic air pollutants that the new standards would achieve should be valued at between $37 billion and $90 billion.

The vast discrepancies in these various estimates show that standard cost-benefit analyses can never precisely account for environmental risks to public health. Given that reality, why should the cost of any uncertainty always fall on the American public, rather than on the industries that create the health risks to begin with?

Coal industry backers, notably the Senate's majority leader, Mitch McConnell of Kentucky, view every regulation, whether aimed at protecting human lives or the future of the planet, as nothing more than a "war on coal."

But profits and human health are not mutually exclusive. To the contrary, the technology to meet the E.P.A.'s new mercury standards is already in place at most coal-fired power plants nationwide.

Burning coal is a dirty business, but it can be made cleaner. The federal law balances the need for affordable electricity with reduction of significant threats to human health. The Supreme Court has upheld the E.P.A.'s authority to carry out that law's purpose with broad discretion. There is no reason to upset that deliberate balance, or unreasonably limit the agency's authority, now.

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