

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

American Petroleum Institute v. Environmental Protection Agency

16 ERC 1694 (5th Cir. 1981) · No. Nos. 76-4497, 79-1829, and 79-2944 · Decided November 13, 1981

SUMMARY

The Fifth Circuit reviewed EPA's final effluent guidelines for the oil and gas extraction point-source category under the Clean Water Act and Administrative Procedure Act. The court upheld EPA's treatment of upset and bypass provisions but remanded issues concerning the recategorization of certain coastal wells and the treatment of stripper wells for further consideration.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	John R. Brown; John M. Thornberry; Thomas M. Reavley Williams
JURISDICTION	Federal
DECIDED	November 13, 1981
DOCKET	Nos. 76-4497, 79-1829, and 79-2944
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitions for direct review of EPA final effluent guidelines and regulations governing oil and gas extraction point sources under the Clean Water Act.
STANDARD OF REVIEW	Review under the Administrative Procedure Act, 5 U.S.C. § 706, including whether EPA's action was arbitrary, capricious, an abuse of discretion, contrary to law, or unsupported by the record. The court applied searching and careful review under Citizens to Preserve Overton Park v. Volpe while declining to substitute its judgment for the agency's and according considerable deference to EPA's statutory interpretation and technical judgments.
PRECEDENTIAL VALUE	published precedential federal appellate opinion
PARTIES	American Petroleum Institute, Shell Oil Company, Mobil Oil Corporation, Union Oil of California, Continental Oil Company, Atlantic Richfield Company, Exxon Corporation, Chevron Oil Company, Texaco Inc., Cities Service Company, The Standard Oil Company (Ohio), Phillips Petroleum Company, Amoco Production Company v. Environmental Protection Agency

TOPICS

clean water act administrative procedure act judicial review of agency action rulemaking
statutory interpretation

PRACTICE AREAS

environmental law administrative law Clean Water Act litigation judicial review of agency action
appellate procedure

QUESTIONS PRESENTED

1. Whether EPA was required to include upset and bypass provisions in the oil and gas effluent guidelines themselves rather than in generic NPDES permit regulations.
2. Whether EPA's bypass provisions were impermissibly vague or otherwise unlawful.
3. Whether EPA's reclassification of certain land-based wells discharging into coastal waters from the coastal subcategory to the onshore subcategory was arbitrary and capricious under the Administrative Procedure Act.
4. Whether EPA adequately considered compliance costs as required by Clean Water Act § 304(b)(1)(B) when reclassifying the coastal wells.
5. Whether EPA acted arbitrarily by excluding stripper gas wells from the stripper-well subcategory without adequately reconsidering available data.

HOLDINGS

1. EPA was not required to place upset and bypass provisions in the oil and gas effluent guidelines, so long as the generic NPDES regulations required those provisions to be included in applicable permits and thereby provided a reliable means of relief.
2. EPA's bypass provisions were not unconstitutionally vague; under the regulations, shutting in a well may constitute severe property damage when a reasonable expectation exists that shutting in would cause substantial and permanent loss of natural resources and no feasible alternative exists.
3. EPA did not violate the Administrative Procedure Act merely by changing its prior classification and adopting an onshore classification for the affected land-based wells.
4. EPA had not satisfactorily fulfilled its statutory obligation to analyze and explain the costs of the reclassification; the issue had to be remanded for further proceedings.
5. EPA had to reconsider the stripper gas-well issue in light of information indicating that stripper gas wells were numerous and economically significant; the issue was remanded for further proceedings.

KEY QUOTATIONS

"An agency decision "is entitled to a presumption of regularity. But that presumption is not to shield (the agency's) action from a thorough, probing, in-depth review." (401 U.S. at 415)

“Although the review of the facts “is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency.”” (401 U.S. at 416)

“EPA cannot regulate by whim; it must take into account both the technological potential and existing limitations when it sets BPT standards.”

“Nothing in the Administrative Procedure Act prohibits an agency from changing its mind, if that change aids it in its appointed task.”

FACTUAL BACKGROUND

EPA promulgated BPT effluent guidelines for onshore, offshore, coastal, agricultural and wildlife-use, and stripper subcategories in the oil and gas extraction industry. API challenged the guidelines' treatment of upset and bypass events, EPA's reclassification of certain land-based wells discharging into coastal waters from the coastal to the onshore subcategory, and EPA's failure to include marginal gas wells in the stripper-well subcategory. The record contained sharply conflicting economic studies concerning the cost and production effects of the coastal reclassification, while EPA had not adequately explained the discrepancies or fully reconsidered the effect of available data regarding stripper gas wells.

PROCEDURAL HISTORY

API and oil and gas companies challenged EPA interim final onshore and offshore effluent guidelines in the Fifth and Ninth Circuits. EPA later promulgated integrated final guidelines, and the Ninth Circuit transferred the offshore petitions to the Fifth Circuit, which consolidated the proceedings. The Fifth Circuit affirmed EPA's treatment of upset and bypass provisions, but reversed and remanded the coastal-well reclassification and EPA's exclusion of stripper gas wells for further consideration.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to EPA for further consideration of the costs and economic effects of reclassifying the affected coastal wells, including reconciliation and explanation of the conflicting economic studies and consideration of relevant Natural Gas Policy Act effects. EPA must also reconsider the stripper gas-well issue in light of the additional data concerning the number and production of such wells. The court did not require EPA ultimately to include stripper gas wells in the stripper subcategory.

CASES CITED

- E. I. duPont de Nemours & Co. v. Train, 430 U.S. 112, 128 (1977)
- EPA v. California ex rel. State Water Resources Control Board, 426 U.S. 200, 205 (1976)
- Natural Resources Defense Council, Inc. v. Train, 510 F.2d 692 (D.C. Cir. 1975)
- Weyerhaeuser Co. v. Costle, 590 F.2d 1011, 1024 (D.C. Cir. 1978)
- Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415-416 (1971)

- Hooker Chemicals & Plastics Corp. v. Train, 537 F.2d 620, 622 (2d Cir. 1976)
- American Meat Institute v. EPA, 526 F.2d 442, 452-453 (7th Cir. 1975)
- ASARCO, Inc. v. EPA, 578 F.2d 319, 325 (D.C. Cir. 1978)
- Bowman Transportation, Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 286 (1974)
- Appalachian Power Co. v. Train, 545 F.2d 1351, 1365 (4th Cir. 1976)
- Ethyl Corp. v. EPA, 541 F.2d 1, 34 (D.C. Cir. 1976) (en banc)
- Appalachian Power Co. v. EPA, 477 F.2d 495, 507 (4th Cir. 1973)
- Marathon Oil Co. v. EPA, 564 F.2d 1253, 1274-1275 (9th Cir. 1977)
- FMC Corp. v. Train, 539 F.2d 973, 979, 986 (4th Cir. 1976)
- American Iron & Steel Institute v. EPA, 526 F.2d 1027, 1052 (3d Cir. 1975), modified, 560 F.2d 589 (1977)
- E. I. duPont de Nemours & Co. v. Train, 528 F.2d 1136 (4th Cir. 1975), aff'd, 430 U.S. 112 (1977)
- E. I. duPont de Nemours & Co. v. Train, 541 F.2d 1018, 1027 (4th Cir. 1976), aff'd in part and rev'd in part, 430 U.S. 112 (1977)
- American Petroleum Institute v. EPA, 540 F.2d 1023, 1030, 1038 (10th Cir. 1976)
- Texas v. EPA, 499 F.2d 289, 297 (5th Cir. 1974)
- American Textile Manufacturers Institute, Inc. v. Donovan, 452 U.S. 490 (1981)

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