

What Chevron's End Could Mean for EPA Climate Regulations

Media Mentions

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The Supreme Court is expected to issue a decision this week on the so-called *Chevron* doctrine, a 40-year-old legal doctrine that has empowered agencies to write aggressive regulations on a wide range of topics including climate change.

Bracewell's **Jeff Holmstead** told *E&E News' Climatewire* that a Supreme Court decision limiting or eliminating *Chevron* could prompt courts to scrutinize agency determinations more closely. This would force agencies to consider how courts will interpret statutes that are vague or ambiguous.

Under three presidents, EPA regulated carbon emissions through a Clean Air Act provision that requires agencies to identify a "best system of emissions reduction" for each category of pollution sources. A best system must be "adequately demonstrated" considering costs and factors such as pollution.

EPA does not require polluters to use the "best system." Rather, they must reduce emissions to a level that could be achieved using the "best system."

EPA's new power plant rule makes carbon capture and storage the "best system." That requires plants to make ambitious cuts equivalent to a CCS system that captures 90 percent of carbon emissions.

But there is currently only one commercial-scale coal plant operating in the US with CCS — and no gas plants — to which Holmstead said, EPA would struggle to prove to a court that the technology is "adequately demonstrated." And courts are unlikely to take EPA's word for it.

"That's an example of a case where the idea [is] that it's not EPA defining what statutory terms mean, it's the courts," Holmstead said. "And I think it makes it pretty hard for EPA to argue that CCS has been adequately demonstrated considering costs and other energy impacts."

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