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May 29, 1984

JPS Draft #1 [2$1005i, 2$1005if]

82-1005 - Chevron U.S.A. Inc., a Corporation v. Natural Resources Defense Council, Inc., et al.

82-1247 - American Iron and Steel Institute v. Natural Resources Defense Council, Inc. et al.

82-1591 - William D. Ruckelshaus, Administrator, Environmental Protection Agency v. Natural Resources Defense Council, Inc., et al.

JUSTICE STEVENS delivered the opinion of the Court.

In the "Clean Air Act Amendments of 1977", 91 Stat. 685, Congress enacted certain specific requirements applicable to those areas of the country--known as "nonattainment areas"--that had not achieved the air quality goals that had been set under earlier legislation. Among those provisions was a requirement that no "new or modified major stationary sources" could be constructed without a permit evidencing compliance with certain stringent conditions.[1] The regulation adopted by the

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[1]Section 172(b)(6) provides:

"The plan provisions required by subsection (a) shall--
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"(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements);" 91 Stat. 747.

Footnote continued on next page.

Environmental Protection Agency to implement this permit requirement employs a plant-wide definition of the term "stationary source."[2] Thus, in a plant that contains several pollutant-emitting installations, the construction or modification of one piece of equipment may not require a permit if the change will not increase the total emissions from the plant. The question presented by this case is whether the regulation that allows all of the pollutant-emitting activities within the same industrial grouping to be treated as though they were encased within a single "bubble" is a sufficiently reasonable construction of the Act that it should be accepted by reviewing courts. See Train v. Natural Resources Defense Council, 421 U.S. 60, 75 (1975).

The EPA regulation adopting a plant-wide definition of the term "stationary source" was promulgated on October 14, 1981, 46

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"(i) 'Stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.

"(ii) 'Building, structure, facility, or installation' means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel." 40 C.F.R. §51.18(j)(1)(i) and (ii).

Fed. Reg. 50766. Respondents[3] filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit.[4] That court concluded that its course was "marked by two prior decisions in which panels of this court determined the applicability vel non of the bubble concept to distinct Clean Air Act programs." App. to Pet. for Cert. A-2.[5] In substance, the Court concluded that the EPA must employ the bubble concept in programs designed to maintain air quality in clean air areas but that it may not employ that concept in programs designed to enhance air quality. Accordingly, it held the regulation invalid. To explain why we disagree with this holding, we must describe the historical background that led to the adoption of the 1977 Amendments, the text of those Amendments, their legislative history, and the conflicting policy concerns that Congress sought to accommodate.

I

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[3]National Resources Defense Council, Inc., Citizens for a Better Environment, Inc. and North Western Ohio Lung Association, Inc.

[4]See 42 U.S.C. §7607(b)(1). Petitioners, Chevron U.S.A. Inc., American Iron and Steel Institute, American Petroleum Institute, Chemical Manufacturers Association, Inc., General Motors Corporation, and Rubber Manufacturers Association were allowed to intervene and argue in support of the regulation.

[5]The cases to which the Court referred were Alabama Power Co. v. Costle, 636 F.2d 323 (D.C. Cir. 1979) and ASARCO, Inc. v. EPA, 578 F.2d 319 (D.C. Cir. 1978).

In the 1950's and the 1960's Congress enacted a series of statutes designed to encourage and to assist the States in curtailing air pollution. See Train, 421 U.S., at 63-64. The Clean Air Amendments of 1970, 84 Stat. 1676, "sharply increased federal authority and responsibility in the continuing effort to combat air pollution," 421 U.S., at 64, but continued to assign "primary responsibility for assuring air quality" to the several States. See 84 Stat. 1678. Section 109 of the 1970 Amendments directed the EPA to promulgate National Ambient Air Quality Standards (NAAOS's)[6] and §110 directed the States to develop plans (SIP's) to implement the standards within specified deadlines. In addition, §111 provided that major new sources of pollution would be required to conform to technology-based performance standards; the EPA was directed to publish a list of categories of sources of pollution and to establish performance standards for each. Section 111(e) prohibited the operation of any new source in violation of a performance standard.

Section 111(a) defined the terms that are to be used in setting and enforcing standards of performance for new stationary sources. It provided:

"For purposes of this section:

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[6]Primary standards were defined as those whose attainment and maintenance were necessary "to protect the public health" and secondary standards were intended to specify a level of air quality that would "protect the public welfare."

> "(3) The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant." 84 Stat. at 1683.

In the 1970 Act, that definition was not only applicable to the new source performance standards (NSPS) program required by §111, but also was made applicable to a requirement of §110 that each state implementation plan contain a procedure for reviewing the location of any proposed new source and preventing its construction if it would preclude the attainment or maintenance of national air quality standards.[7]

In due course, the EPA promulgated the National Air Ambient Air Quality Standards (NAAQS), approved the several States implementation plans (SIP's), and adopted detailed regulations governing new source performance standards (NSPS's) for various categories of equipment. In at least two of its programs, the EPA used a plant-wide definition of the term "source."

In 1974, it issued new source performance standards for the nonferrous smelting industry that provided that the standards would not apply to the modification of major smelting units if their increased emissions were offset by reductions in other portions of the same plant.[8] And in a program designed to

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[7] See §§110(a)(2)(D) and 110(a)(4).

[8] The Court of Appeals ultimately held that this plant-wide approach was prohibited by the 1970 Act, see ASARCO, INC., supra,

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prevent significant deterioration (PSD) in the quality of the air in regions that complied with NAAQS's, the EPA has employed the plant-wide definition.

The 1970 legislation provided for the attainment of primary NAAQS's by 1975. In many areas of the country, particularly the most industrialized States, however, the statutory goals were not attained.[9] In 1976, Congress was therefore confronted, on the one hand, with the environmental concern about the continuing excessive levels of air pollution and, on the other hand, with the economic concern that strict enforcement of existing laws might deter industrial development in nonattainment areas. These concerns did not produce legislation in 1976,[10] but they did lead the EPA to publish its "Emissions Offset Interpretative Rule" in December 1976. See 41 Fed. Reg. 55524.

The emissions offset interpretative rule stated that it was intended to address "the issue of whether and to what extent national air quality standards established under the Clean Air Act may restrict or prohibit growth of major new or expanded

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578 F.2d, at ___. But this standard was in effect when Congress enacted the 1977 Amendments.

[9] See Report of the National Commission on Air Quality, pages 3.3-20 thru 3.3-33.

[10] A bill did however pass both Houses of Congress, even though it was never enacted into law. See H.R. Rep. 1742, 94th Cong. 2d Sess. (1976).

stationary air pollution sources." J.A. 8. In general, the ruling provided "that a major new source may locate in an area with air quality worse than a national standard only if stringent conditions can be met." Id. The ruling gave primary emphasis to the attainment of the statute's environmental goals.[11] Consistent with that emphasis, the conditions imposed on new construction in nonattainment areas were applied to every major new source within a plant and could not be avoided by offsetting savings elsewhere in the same location. Every new installation had to meet the "lowest achievable emission rate" under the current state of the art for that type of source. See J.A. 12. The "bubble concept" was firmly rejected in nonattainment areas by the EPA in December 1976.

II

Although the text of the Clean Air Act Amendments of 1977 is over 100 pages long, see 91 Stat. 685-796, only a few pages deal expressly with nonattainment areas. Id., at 745-751. Those

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[11] For example, it stated:

> "Particularly with regard to the primary NAAQS's, Congress and the Courts have made clear that economic considerations must be subordinated to NAAQS achievement and maintenance. While the ruling allows for some growth in areas violating a NAAQS if the net effect is to insure further progress toward NAAQS achievement, the Act does not allow economic growth to be accommodated at the expense of the public health." J.A. 18.

pages are, however, significant. They require each State in ~~the~~ a nonattainment area to prepare and obtain approval of a new SIP by July 1, 1979. In the interim those States were required to comply with the EPA's interpretative ruling of December 21, 1976. Id., at 745.

The deadline for attainment of the primary NAAQS was extended until December 31, 1982, and with certain exceptions until December 31, 1987, but the SIP's were required to contain a number of provisions designed to achieve the goal as expeditiously as possible.[12] Most importantly, the statute

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[12]Thus, among other requirements, §172(b) provided that the SIP's shall--

"(3) require, in the interim, reasonable further progress (as defined in section 171(1)) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

"(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additonal reductions to assure attainment of each standard by the date required under paragraph (1);

"(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;

"(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section ...."
91 Stat. 747.

Footnote continued on next page.

provided that each plan shall:

> "(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirement)." Id., at 747.

Before issuing a permit, §173 requires the state agency to determine that there will be sufficient emissions reductions in the region to offset the emissions from the new source and also to allow for reasonable further progress toward attainment, the applicant must certify that his other sources in the State are in compliance with the SIP, and the agency must determine that the applicable SIP is otherwise being implemented. Of greatest importance, however, §173 expressly provides that "the proposed source is required to comply with the lowest achievable emission rate." This requirement--known as "LAER"--is defined in terms that make it even more stringent than the applicable new source performance standard developed under §111 of the 1970 statute.[13]

Section 171(1) provided:

> "(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110(a)(2)(I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172(a)." Id., at 746.

Footnote(s) 13 will appear on following pages.

The 1977 Amendments contain no specific reference to the "bubble concept." Nor do they contain a specific definition of the term "source." They do, however, define the term "major stationary source" as follows:

> "(j) Except as otherwise expressly provided, the terms 'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." Id., at 770.

Thus, this much is clear from the face of the statute. If a brand new factory that will emit over 100 tons of pollutants is constructed in a nonattainment area, that plant must obtain a permit pursuant to §172(b)(6) and in order to do so, it must satisfy the §173 conditions, including the LAER requirement. If,

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[13]Section 171(3) provides:

> "(3) The term 'lowest achievable emission rate' means for any source, that rate of emissions which reflects--
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> "(A) the most stringent emission limitations which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
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> "(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.
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> "In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance." Id., at 746.

however, an old plant containing several large emitting units is to be modernized by the replacement of one unit emitting over 100 tons of pollutant, the question whether the new unit must satisfy the LAER requirement depends on whether the individual unit, or the entire plant, is regarded as the major stationary source.

III

The legislative history of the portion of the 1977 Amendments dealing with nonattainment areas does not contain any specific comment on the "bubble concept" or the question whether a plant-wide definition of a stationary source is permissible. It does, however, plainly disclose that Congress recognized the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality. Indeed, the House Committee Report identified the economic interest as one of the two main purposes of this section of the bill. It stated:

> "Section 117 of the bill, adopted during full committee markup establishes a new section 127 to the Clean Air Act. The section has two main purposes: (1) to allow reasonable economic growth to continue in an area while making reasonable further progress to assure attainment of the standards by a fixed date; and (2) to allow States greater flexibility for the former purpose than EPA's present interpretative regulations afford.
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> "The State's second option would be to revise its implementation plan in accordance with this new provision." House Report, p. 211

The second "main purpose" of this section--allowing the States "greater flexibility" than the EPA's interpretative ruling--as well as the reference to the EPA's authority to amend

its ruling in accordance with the intent of the section, is entirely consistent with the view that Congress did not intend to freeze the definition of source contained in the existing regulation into a rigid statutory requirement.[14]

The portion of the Senate Report dealing with this section confirms the fact that it was intended to "supersede the EPA administrative approach", Legislative History, Vol. 3, p. 1429, and that expansion should not be permitted unless a State could "demonstrate that these facilities can be accommodated within its overall plan to provide for attainment of air quality standards." Ibid. The Senate Report emphasized the value of "case-by-case review of each new or modified major source of pollution that seeks to locate in a region exceeding an ambient standard." They explained that such a review "requires matching reductions from existing sources against emissions expected from the new source in order to assure that introduction of the new source will not

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[14] During the floor debates Congressman Waxman remarked that the legislation struck

> "a proper balance between environmental controls and economic growth in the dirty air areas of America. *** There is no other single issue which more clearly poses the conflict between pollution control and new jobs. We have determined that neither need be compromised. ***
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> "This is a fair and balanced approach, which will not undermine our economic vitality, or impede achievement of our ultimate environmental objectives." 123 Cong. Rec. 27076 (1977).

prevent attainment of the applicable standard by the statutory deadline." This description of a case-by-case approach to plant additions, which emphasizes the net consequences of the construction or modification of a new source, as well as its impact on the overall achievement of the national standards, is consistent with a plant-wide definition of the term source.

IV

As we have already noted, prior to the 1977 Amendments, the EPA had on two occasions determined that a plant-wide definition of the term "source" was permissible. It has also done so on at least three occasions after the enactment of the 1977 Amendments.

In January, 1979, the EPA considered the question whether the same restriction on new construction in nonattaiment areas that had been included in its December 1976 ruling should be required in the revised SIPs that were scheduled to go into effect in July 1979. After noting that the 1976 ruling had not expressly resolved the question "whether a plant with a number of different processes and emission points would be considered a single source" J.A. 42, the EPA, in effect, provided a bifurcated answer to that question. In those areas that did not have a revised SIP in effect by July 1979, the EPA unequivocally rejected the plant-wide definition; on the other hand, it expressly concluded that the plant-wide approach would be permissible in certain circumstances if authorized by an approved

SIP. It stated:

> "Where a state implementation plan is revised and implemented to satisfy the requirements of Part D, including the reasonable further progress requirement, the plan requirements for major modifications may exempt modifications of existing facilities that are accompanied by intrasource offsets so that there is no net increase in emissions. The agency endorses such exemptions, which would provide greater flexibility to sources to effectively manage their air emissions at least cost." J.A. 43.[15]

In April, and again in September, 1979, the EPA published additional comments in which it indicated that revised SIPs could adopt the plant-wide definition of source in certain circumstances. See 44 Fed. Reg. 20372, 20379; 51951924, 51958.

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[15] In the same ruling, the EPA added:

> "The above exemption is permitted under the SIP because, to be approved under Part D, plan revisions due by January 1979 must contain adopted measures assuring that reasonable further progress will be made. Furthermore, in most circumstances, the measures adopted by Janaury 1979 must be sufficient to actually provide for attainment of the standards by the dates required under the Act, and in all circumstances measures adopted by 1982 must provide for attainment. See Section 172 of the Act and 43 FR 21673-21677 (May 19, 1978). Also, Congress intended under Section 173 of the Act that States would have some latitude to depart from the strict requirements of this Ruling when the State plan is revised and is being carried out in accordance with Part D. Under a Part D paln, therefore, there is less need to subject a modification of an existing facility to LAER and other stringent requirements if the midification is accompanied by sufficient intrasource offsets so that there is no net increase in emissions." J.A. 45 (44 Fed. Reg. 3277?).

On the latter occasion, the EPA made a formal rulemaking proposal that would have permitted the use of the "bubble concept" for new installations within a plant as well as for modifications of existing units. It explained:

> "'Bubble' Exemption: The use of offsets inside the same source is called the 'bubble.' EPA proposes use of the definition of 'source' (see above) to limit the use of the bubble under nonattainment requirements in the following respects:
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> "i. Part D SIPs that include all requirements needed to assure reasonable further progress and attainment by the deadline under section 172 and that are being carried out need not restrict the use of a plantwide bubble, the same as under the PSD proposal.
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> "ii. Part D SIPs that do not meet the requirements specified must limit use of the bubble by including a definition of 'installation' as an identifiable piece of process equipment."[16]

Significantly, the EPA expressly noted that the word "source" might be given a plant-wide definition for some purposes and a narrower definition for other purposes. It wrote:

> "Source means any building structure, facility, or

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[16] J.A. 56. Later in that ruling, the EPA added:

> "However, EPA believes that complete Part D SIPs, which contain adopted and enforceable requirements sufficient to assure attainment, may apply the approach proposed above for PSD, with plant-wide review but no review of individual pieces of equipment. Use of only a plant-wide definition of source will permit plant-wide offsets for avoiding NSR of new or modified pieces of equipment. However, this is only appropriate once a SIP is adopted that will assure the reductions in existing emissions necessary for attainment. See 44 FR 3276 col. 3 (January 16, 1979). If the level of emissions allowed in the SIP is low enough to assure reasonable further progress and attainment, new construction or modifications with enough offset credit to prevent an emission increase should not jeopardize attainment." J.A. 66.

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installation which emits or may emit any regulated pollutant. 'Building, structure, facility or installation' means plant in PSD areas and in nonattainment areas except where the growth prohibitions would apply or whre no adequate SIP exists or is being carried out." J.A. 54.[17]

EPA's summary of its proposed ruling discloses the latitude that the agency understood the statute to allow it in defining the term "source":

> "In summary, EPA is proposing two different ways to define source for different kinds of NSR programs:
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> "(1) For PSD and complete Part D SIPs, review would apply only to plants, with an unrestricted plant-wide bubble.
>
> "(2) For the offset ruling, restrictions on construction, and incomplete Part D SIPs, review would apply to both plants and individual pieces of process equipment, causing the plant-wide bubble not to apply for new and modified major pieces of equipment.
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> "In addition, for the restrictions on construction, EPA is proposing to define 'major modification' so as to prohibit the bubble entirely. Finally, an alternative discussed but not favored is to have only pieces of process equipment reviewed, resulting in a no plant-wide bubble and allowing minor pieces of equipment to escape NSR regardless of whether they are within a major plant." J.A. 67.

In August of 1980 the EPA adopted a regulation that, in essence, applied the reasoning of the Court of Appeals in this case. The EPA took particular note of the two then recent Court of Appeals decisions, which had suggested that the bubble concept should be employed in a program designed to maintain air quality

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[17] In its explanation of why the use of the bubble concept was especially appropriate in preventing significant deterioration (PSD) in clean air areas, the EPA stated: "In addition, application of the bubble on a plant-wide basis encourages voluntary upgrading of equipment, and growth in productive capacity." J.A. 60.

but not in one designed to enhance air quality. Relying heavily on those cases,[18] EPA adopted a dual definition of "source" for nonattainment areas that required a permit whenever a change in either the entire plant, or one of its components, would result in a significant increase in emissions even if they were completely offset by reductions elsewhere in the plant. The EPA expressed the opinion that this interpretation was "more consistent with congressional intent" than the plant-wide definition because it "would bring in more sources or modifications for review" J.A. 82, but its primary legal analysis was predicated on the two Court of Appeals decisions.

In 1981 a new Administration took office and initiated a "Government-wide reexamination of regulatory burdens and complexities" J.A. 93. In the context of that review, the EPA

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18 "The dual definition also is consistent with Alabama Power and ASARCO. Alabama Power held that EPA had broad discretion to define the constituent terms of 'source' so as best to effectuate the purposes of the statute. Different definitions of 'source' can therefore be used for different sections of the statute. ***

"Moreover, Alabama Power and ASARCO taken together suggest that there is a distinction between Clean Air Act programs designed to enhance air quality and those designed only to maintain air quality. ***

"Promulgation of the dual definition follows the mandate of Alabama Power, which held that, while EPA had broad discretion to define 'building,' 'structure,' 'facility,' and 'installation' so as to best accomplish the purposes of the Act." J.A. 82-83.

evaluated the various arguments that had been advanced in connection with the proper definition of the term "source" and concluded that the term should be given the same definition in both nonattainment areas and PSD areas. In explaining its conclusion, the EPA first noted that the definitional issue was not squarely addressed in either the statute or its legislative history and therefore that the issue involved an agency "judgment as to how best to carry out the Act." Ibid. It then set forth several reasons for concluding that the plant-wide definition was appropriate. It pointed out that the dual definition "can act as a disincentive to new investment and modernization by discouraging modifications to existing facilities" and "can actually retard progress in air pollution control by discouraging replacement of older, dirtier processes or pieces of equipment with new, cleaner ones." J.A. 94. Moreover, the new definition "would simplify EPA's rules by using the same definition of 'source' for PSD, nonattainment new source review and the construction moratorium. This reduces confusion and inconsistency." Ibid. Finally, the agency explained that additional requirements that remained in place would accomplish the fundamental purposes of achieving attainment with NAAQS as expeditiously as possible.[19] These conclusions were expresed in

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[19] It stated:

"5. States will remain subject to the requirement that for all nonattainment areas they demonstrate attainment of NAAQS as expeditiously as practicable and show reasonable further progress toward such

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a proposed rulemaking in August 1981 that was formally promulgated in October. See 46 F.R. 50766.

V

Having recited the history of the challenged definition of the term "source" at perhaps unnecessary length, we may now briefly state the reasons why we are satisfied that the EPA acted well within the scope of its statutory authority.

First, it is undeniable that the text of the Act does not preclude the plant-wide definition. No one questions the permissibility of a plant-wide definition for purposes of PSD review; nor has anyone pointed to any statutory language that would authorize the definition in the clean air context while prohibiting it in nonattainment areas.

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attainment. Thus, the proposed change in the mandatory scope of nonattainment new source review should not interfere with the fundamental purpose of Part D of the Act.

"6. New Source Performance Standards (NSPS) will continue to apply to many new or modified facilities and will assure use of the most up-to-date pollution control techniques regardless of the applicability of nonattainment area new source review.

"7. In order to avoid nonattainment area new source review, a major plant undergoing modification must show that it will not experience a significant net increase in emissions. Where overall emissions increas significantly, review will continue to be required."

Second, the legislative history is silent on the precise issue before us, but is consistent with the view that the EPA should have broad discretion in implementing the policies of the 1977 Amendments. More importantly, that history plainly identifies the policy concerns that motivated the enactment; the plant-wide definition is fully consistent with one of those concerns--the allowance of reasonable economic growth--and, whether or not we believe it most effectively implements the other, we must recognize that the reasons advanced by EPA for believing it serves the environmental concerns as well are certainly not frivolous. Indeed, they are supported by the public record developed in the rulemaking process,[20] as well as by certain private studies.[21]

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[20]See for example the statement of the New York State Department of Environmental Conservation pointing out that denying a source owner flexibility in selecting options made it "simpler and cheaper to operate old, more polluting sources than to trade up. ..." J.A. 128-129.

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> "Economists have proposed that economic incentives be substituted for the cumbersome administrative-legal framework. The objective is to make the profit and cost incentives that work so well in the marketplace work for pollution control. *** [The 'bubble' or 'netting' concept] is a first attempt in this direction. By giving a plant manager flexibility to find the places and processes within a plant that control emissions most cheaply, pollution control can be achieved more quickly and cheaply." L. Lave & G. Omenn, Cleaning the Air: Reforming the Clean Air Act 28 (1981) (footnote omitted).

Third, our review of the EPA's varying interpretations of the word "source"--both before and after the 1977 Amendments--convince us that the agency primarily responsible for administering this important legislation has consistently interpreted it as allowing a measure of discretion and flexibility on this issue. This factor is especially important in the context of a case of this kind because of the complexity of the decision-making process. At the fist level, of course, is the business decision to make an investment in the modernization of plant and equipment. The rigid imposition of unduly burdensome costs may not only harm the economy, but also delay improvements that might accelerate the reduction in air pollution.

At the second level is each State's separate administration of its own SIP. The EPA's definition is merely permissive and does not prevent a State from entirely rejecting the bubble concept. It is true that the task of state enforcement is somewhat handicapped by the risk that excessive regulation may induce some industry to shift production to a more liberal State. But it is nevertheless the fact that the immediate victims of air pollution reside in the affected States and that Congress has always insisted that the States assume a major responsibility for the administration of this legislation. Invalidation of this regulation would diminish state authority in a significant way.

The EPA participates in the decision-making process at a

still higher level. Significantly, it was not the agency but rather the Court of Appeals that read the statute inflexibly to command a plant-wide definition for programs designed to maintain clean air and to forbid such a definition for programs designed to improve air quality. The distinction the court drew may well be a sensible one, but our labored review of the problem has surely disclosed that it is not a distinction that Congress ever articulated itself, or one that the EPA found in the statute before the courts began to review the legislative work product. We conclude that it was the Court of Appeals, rather than Congress or any of the decisionmakers who are authorized by Congress to administer this legislation, that fashioned the rule of law which produced the judgment we review today.

Accordingly, we hold that the EPA's definition of the term "source" is a permissible construction of the statute. The judgment of the Court of Appeals is reversed.

It is so ordered.