June 7, 1984

JPS Draft #6 [chevron,chevron1]

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, Pub. L. 95-95, 91 Stat. 685 et seq., Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency pursuant to earlier legislation. The amended Act required these "nonattainment" States to establish a permit program regulating "new or modified major stationary sources" of air pollution. Generally, a permit may not be issued for a new or modified major stationary source unless several stringent conditions are met.[1] The EPA regulation promulgated to implement

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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

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this permit requirement allows a State to adopt a plant-wide definition of the term "stationary source."[2] Under this definition, an existing plant that contains several pollution-emitting devices may install or modify one piece of equipment without meeting the permit conditions if the alteration will not increase the total emissions from the plant. The question presented by this case is whether EPA's decision to allow States to treat all of the pollution-emitting devices within the same industrial grouping as though they were encased within a single "bubble" is based on a reasonable construction of the statutory term "stationary source."

I

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operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements). . . ." 91 Stat. 747.

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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).

The EPA regulations containing the plant-wide definition of the term stationary source were promulgated on October 14, 1981. 46 Fed. Reg. 50766. Respondents[3] filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit pursuant to 42 U.S.C. §7607(b)(1).[4] The court of appeals set aside the regulations. National Resources Defense Council, Inc. v. Gorsuch, 685 F.2d 718 (1982).

The court observed that the relevant part of the amended Clean Air Act "does not explicitly define what Congress envisioned as a 'stationary source, to which the permit program . . . should apply," and further stated that the precise issue was not "squarely addressed in the legislative history." Id., at 723. In light of its conclusion that the legislative history bearing on the question was "at best contradictory," it reasoned that "the purposes of the nonattainment program should guide our decision here." Id., at 726 n. 39.[5] Based on two of its

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

[4]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 granted leave to intervene and argue in support of the regulation.

[5]The court remarked in this regard:

"We regret, of course, that Congress did not advert specificially to the bubble concept's application to various Clean Air Act programs, and note that a further clarifying statutory directive would facilitate the

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precedents concerning the applicability of the bubble concept to certain Clean Air Act programs,[6] the court stated that the bubble concept was "mandatory" in programs designed merely to maintain existing air quality, but held that it was "inappropriate" in programs enacted to improve air quality. Id., at 726. Since the purpose of the permit program--its "raison d'etre," in the court's view--was to improve air quality, the court held that the bubble concept was inapplicable in this case under its prior precedents. Ibid. It therefore set aside the regulations embodying the bubble concept as contrary to law. We granted certiorari to review that judgment, ___ U. S. ___, and we now reverse.

The basic legal error of the court of appeals was to adopt a static judicial definition of the term stationary source when it had decided that Congress itself had not commanded that definition. Respondents do not defend the legal reasoning of the court of appeals in this regard.[7] Nevertheless, since this

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work of the agency and of the court in their endeavors to serve the legislators' will." 685 F.2d, at 726 n. 39.

[6] Alabama Power Co. v. Costle, 636 F.2d 323 (1979); ASARCO, Inc. v. EPA, 578 F.2d 319 (1978).

[7] Respondents argued below that that EPA's plant-wide definition of stationary source is contrary to the terms, legislative history, and purposes of the amended Clear Air Act. The court below rejected respondents' arguments based on the language and legislative history of the Act. It did agree with respondents contention that the regulations were inconsistent

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court reviews judgments, not statements in opinions, we must determine whether the judgment of the court of appeals is correct.[8]

II

Whenever a court is required to review an agency's construction of the statute which it administers, it may be confronted with two quite different questions. First, always, is the question whether Congress has directly spoken the the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the Court, as well as the agency, must obey the unambiguously expressed intent of Congress.[9] If, however, the statute is silent or ambiguous with respect to the specific issue, the question for the Court is whether the

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with the purposes of the Act, but did not adopt the construction of the statute advanced by respondents. Respondents rely on the arguments rejected by the court of appeals in support of the judgment. See generally Ryerson v. United States, 312 U.S. 405, 408 (1941); LeTulle v. Scofield, 308 U.S. 415, 421 (1940); Langnes v. Green, 282 U.S. 531, 533-539 (1931).

[8]E.g., Black v. Cutter Laboratories, 351 U.S. 292, 297 (1956); Riley Co. v. Commissioner, 311 U.S. 55, 59 (1940); Williams v. Norris, 12 Wheat. 117, 120 (1827); M'Clung v. Silliman, 6 Wheat. 598, 603 (1821).

[9]FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 32 (1981); SEC v. Sloan, 436 U.S. 103, 117-118 (1978); FMC v. Seatrain LInes, INc., 411 U.S. 726, 745-746 (1973); Volkswagenwerk v. FMC, 390 U.S. 261, 272 (1968); NLRB v. Brown, 380 U.S. 278, 291 (1965); FTC v. Colgate Palmolive Co., 380 U.S. 374, 385 (1965); Social Security Board v. Nierotko, 327 U.S. 358, 369 (1946); Burnet v. Chicago Portrait Co., 285 U.S. 1, 16 (1932); Webster v. Luther, 163 U.S. 331, 342 (1896).

agency's answer is a permissible interpretation of the statute. That, of course, is a different inquiry than the question that might confront a court that was authorized to place its own interpretation on an ambiguous statute.

If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to construe a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute. See, e.g., United States v. Morton, ___ U. S. ___, ___-___ (1984) (slip op. at 11-12); Schweiker v. Gray Panthers, 453 U.S. 34, 44 (1981); Batterton v. Francis, 432 U.S. 416, 424-26 (1977); American Telephone & Telegraph Co. v. United States, 299 U.S. 232, 235-237 (1936). Sometimes the legislative delegation to an agency is implicit rather than explicit. When Congress has implicitly left a gap for the agency to fill, and the agency has been accorded general authority to prescribe such regulations as are necessary to fulfill its statutory mandate, generally a court may not substitute its own construction of a statutory provison for a reasonable interpretation made by the adminstrator of an agency. INS v. Wang, 450 U.S. 139, 144 (1981); Train v. NRDC, 421 U.S. 60, 87 (1975).

The principle of deference to administrative interpretations

> "has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies, and a full

understanding of the force of the statutory policy in the given situation has depended upon more than ordinary knowledge respecting the matters subjected to agency regulations. See, e.g., National Broadcasting Co. v. United States, 319 U.S. 190; Labor Board v. Hearst Publications, Inc., 322 U.S. 111; Republic Avivation Corp. v. Labor Board, 324 U.S. 793; Securities & Exchange Comm'n v. Chenery Corp., 322 U.S. 194; Labor Board v. Seven-Up Bottling Co., 344 U.S. 344. . . . .If this choice represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute, we should not disturb it unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned." United States v. Shimer, 367 U.S. 374, 382, 383 (1961).

The court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding. FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27, 39 (1981); Zenith Radio Corp. v. United States, 437 U.S. 443, 450 (1978); Train v. NRDC, 421 U.S. 60, 75 (1975); Udall v. Tallman, 380 U.S. 1, 16 (1965); Unemployment Compensation Comm'n v. Aragon, 329 U.S. 143, 153 (1946); McLaren v. Fleischer, 256 U.S. 477, 480-481 (1921).

In light of these well-settled principles it is clear that the Court of Appeals misconceived the nature of its role in reviewing the regulations at issue. Once it determined, after its own examination of the legislation, that Congress did not actually have an intent regarding the applicability of the bubble concept to the permit program, the question before it was not

whether in its view the concept is "inappropriate" in the general context of a program designed to improve air quality, but whether the Admininistor's view that it is appropriate in the context of this particular program is a reasonable one. Based on the examination of the legislation and its history which follows, we agree with the court of appeals that Congress did not have a specific intention on the applicability of the bubble concept in this case, and conclude that the EPA's use of that concept here is a reasonable policy choice for the agency to make.

III

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 generally Train v. Natural Resources Defense Council, 421 U.S. 60, 63-64 (1975). The Clean Air Act Amendments of 1970, Pub. L. 91-604, 84 Stat. 1676,

"sharply increased federal authority and responsibility in the continuing effort to combat air pollution," id., at 64, but continued to assign "primary responsibility for assuring air quality" to the several States, 84 Stat. 1678. Section 109 of the 1970 Amendments directed the EPA to promulgate National Ambient Air Quality Standards (NAAQS's)[10] and §110 directed the

[10]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.

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 new source performance standards (NSPS) 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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> * * *
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> "(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 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.[11]

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[11] See §§110(a)(2)(D) and 110(a)(4).

In due course, the EPA promulgated NAAQS's, approved SIP's, and adopted detailed regulations governing NSPS's for various categories of equipment. In one of its programs, the EPA used a plant-wide definition of the term "stationary source." In 1974, it issued NSPS's 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.[12]

Nonattainment

The 1970 legislation provided for the attainment of primary NAAQS's by 1975. In many areas of the country, particularly the most industrialized States the statutory goals were not attained.[13] In 1976, the 94th Congress was confronted with this fundamental problem, as well as many others respecting pollution control. As always in this this area, the legislative struggle was basically between interests seeking strict schemes to reduce pollution rapidly to eliminate its social costs and interests advancing the economic concern that strict schemes would retard industrial development with attendant social costs. The 94th

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[12]The Court of Appeals ultimately held that this plant-wide approach was prohibited by the 1970 Act, see ASARCO, INC., supra, 578 F.2d, at 325-327. This decision was rendered after enactment of the 1977 amendments, and hence the standard was in effect when Congress enacted the 1977 Amendments.

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

Congress, confronting these competing interests, was unable to agree on what response was in the public interest: legislative proposals to deal with nonattainment failed to command the necessary consensus.[14]

In light of this situation, the EPA published an Emissions Offset Interpretative Ruling in December 1976, see 41 Fed. Reg. 55524, to "fill the gap," as respondents put it, until Congress acted. The Ruling 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 stationary air pollution sources." App. 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." Ibid. The Ruling gave primary emphasis to the rapid attainment of the statute's environmental goals.[15] Consistent with that

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[14]Comprehensive bills did pass both chambers of Congress; the conference report was rejected in the Senate. 5 Leg. Hist., at 4411-4500.

[15]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." App. 18.

emphasis, the construction of every new source in nonattainment areas had to meet the "lowest achievable emission rate" under the current state of the art for that type of facility. See App. 12. The 1976 Ruling did not, however, explicitly adopt or reject the "bubble concept."[16]

IV

The Clean Air Act Amendments of 1977 are a lengthy, detailed, technical, complex, and comprehensive response to a major social issue. A small portion of the statute--91 Stat. 745-51 (Part D of Title I of the amended Act, 42 U.S.C. §7501-7508)--expressly deals with nonattainment areas. The focal point of this controversy is one phrase in that portion of the

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[16]In January 1979, the EPA noted that the 1976 Ruling was ambiguous concerning this issue:

> "A number of commenters indicated the need for a more explicit definition of 'source.' Some readers found that it was unclear under the 1976 Ruling whether a plant with a number of different processes and emission points would be considered a single source. The changes set forth below define a source as 'any structure, building, facility, equipment, installation, or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control.' This definition precludes a large plant from being separated into individual production lines for purposes of determining applicability of the offset requirements." App. 42

Amendments.

Basically, the statute required each State in 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. 91 Stat. 745. The deadline for attainment of the primary NAAQS's 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.[17]

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[17] 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);
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> "(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 ...."
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> 91 Stat. 747.

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Most significantly for our purposes, the statute 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." 91 Stat. 747.

Before issuing a permit, §173 requires the state agency to determine that (1) 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, or that the increased emissions will not exceed an allowance for growth established pursuant to §172(b)(5); (2) the applicant must certify that his other sources in the State are in compliance with the SIP, (3) the agency must determine that the applicable SIP is otherwise being implemented, and (4) the proposed source complies with the lowest achievable emission rate (LAER).[18]

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)." 91 Stat. 746.

[18]Section 171(3) provides:

> "(3) The term 'lowest achievable emission rate'

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The 1977 Amendments contain no specific reference to the "bubble concept." Nor do they contain a specific definition of the term "stationary source," though they did not disturb the definition of "stationary source" contained in §111(a)(3), applicable by the terms of the Act to the NSPS program. Section 302(j), however, defines 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)." 91 Stat. 770.

> means for any source, that rate of emissions which reflects--
>
> "(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.

The LAER requirement is defined in terms that make it even more stringent than the applicable new source performance standard developed under §111 of the 1970 statute.

V

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 under the permit program. It does, however, plainly disclose that in §127, Congress sought to accommodate 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.
>
> "The new provision allows States with nonattainment areas to pursue one of two options. First, the State may proceed under EPA's present 'tradeoff' or 'offset' ruling. The Administrator is authorized, moreover, to modify or amend that ruling in accordance with the intent and purposes of this section.
>
> "The State's second option would be to revise its implementation plan in accordance with this new provision." H.R. Rep. 564, 95th Cong., 1st sess., 211 (1977).[19]

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

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The portion of the Senate Committe Report dealing with nonattainment areas states generally that it was intended to "supersede the EPA administrative approach", and that expansion should be permitted if a State could "demonstrate that these facilities can be accommodated within its overall plan to provide for attainment of air quality standards." S. Rep. 127, 95th Cong., 1st sess., 1429 (1977). The Senate Report notes 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," explaining 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 prevent attainment of the applicable standard by the statutory deadline." Ibid. 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, was not, however, addressed to the precise issue

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"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. ***

"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).

raised by this case.

Similarly, Senator Muskie made the following remarks regarding the NSPS program:

> "I should note that the test for determining whether a new or modified source is subject to the EPA interpretative regulation [the Offset Ruling]--and to the permit requirements of the revised implementation plans under the conference bill--is whether the source will emit a pollutant into an area which is exceeding a national ambient air quality standard for that pollutant--or precursor. Thus, a new source is still subject to such requirements as 'lowest achievable emission rate' even if it is used as a replacement for an older facility resulting in a net reduction from previous emission levels." 123 Cong. Rec. 26846 (1977).

VI

As previously noted, prior to the 1977 Amendments, the EPA had concluded that a plant-wide definition of the term "source" was permissible under the NSPS program. After adoption of the 1977 Amendments, proposals for a plantwide definition were considered in at least three formal proceedings.

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 was ambiguous on the question "whether a plant with a number of

different processes and emission points would be considered a single source" App. 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 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." App. 43.[20]

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[20] 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 January 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 plan, 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." App. 45.

The second "main purpose" of the provison--

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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 nonattainment areas in certain circumstances. See 44 Fed. Reg. 20372, 20379, 51951, 51924, 51958. 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."[21]

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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.

[21] App. 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

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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 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." App. 54.[22]

The EPA's summary of its proposed ruling discloses a flexible rather than rigid definition of the term "source" to implement various policies and programs:

> "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.

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 contruction or modifications with enough offset credit to prevent an emission increase should not jeopardize attainment." App. 66.

[22] 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." App. 60.

> "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, however, the EPA adopted a regulation that, in essence, applied the basic reasoning of the Court of Appeals in this case. The EPA took particular note of the two then recent Court of Appeals decisions, which employed a bright-line rule that the bubble concept should be employed in a program designed to maintain air quality but not in one designed to enhance air quality. Relying heavily on those cases,[23] 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

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23 "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." App. 82-83.

increase in emissions even if the increase was 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" App. 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." App. 93. In the context of that review, the EPA reevaluated 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 more 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." App.

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.[24] These conclusions were expresed in a proposed rulemaking in August 1981 that was formally promulgated in October. See 46 Fed. Reg. 50766.

VII

In this Court respondents expressly reject the basic

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[24] 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 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." App. 94.

rationale of the Court of Appeals' decision. That court viewed the statutory definition of the term "source" as sufficiently flexible to cover either a plant-wide definition, a narrower definition covering each unit within a plant, or a dual definition that could apply to both the entire "bubble" and its components. It interpreted the policies of the statute, however, to mandate the plant-wide definition in programs designed to maintain clean air and to forbid it in programs designed to improve air quality. Respondents place a fundamentally different construction on the statute. They contend that the text of the Act requires the EPA to use a dual definition--if either a component of a plant, or the plant as a whole, emits over 100 tons of pollutant, it is a major stationary source. They thus contend that the EPA rules adopted in 1980, insofar as they apply to the maintenance of the quality of clean air, as well as the 1981 rules which apply to nonattainment areas, violate the statute.[25]

Statutory Language

Petitioners maintain that the sole statutory language even

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25 "What EPA may not do, however, is define all four terms to mean only plants. In the 1980 PSD rules, EPA did just that. EPA compounded the mistake in the 1981 rules here under review, in which it abandoned the dual definition." Respondent's brief, p. 29 n. 55.

relevant to ascertaining the meaning of the term stationary source is the language of §302(j) defining major stationary source. Respondents maintain §302(j) merely defines the term "major," and that we must refer to §111(a)(3) which defines stationary source to mean "any building, structure, facility, or installation" which emits pollution. Petitioners disagree, noting that §111(a)(3) is applicable by the express terms of the Act only to the NSPS program and not to the permit program.[26]

The definition of the term "major stationary source" sheds limited light on the meaning of the term "stationary source." It does equate a source with a facility--a "major emitting facility" and a "major stationary source" are synomous under §302(j). The ordinary meaning of the term facility is some collection of integrated elements which has been designed and contructed to achieve some purpose. Moreover, it is certainly no affront to common English usage to take a reference to a major facility or a major source to connote an entire plant as opposed to its constitent parts. Basically, however, the language of §302(j) simply does not compel any given interpretation of the term source.

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[26]They also observe that a provision in the 1976 Senate bill, S. 3219, 94th Cong., 2d sess. §302(m), at 79 (1976), which would have explicitly incorporated the §302(j) definition into the permit program was not contained in the 1977 amendments. See generally Russello v. United States, ___ U. S. ___, ___ (1983) (slip op. at 7); Secretary of Interior v. California, ___ U. S. ___, ___ (1983) (slip op. at 21).

Respondents recognize that, and hence point to §111(a)(3). Although the definition in that section is not literally applicable to the permit program, it sheds as much light on the meaning of the word source as anything in the statute.[27] As respondents point out, use of the words "building, structure, facility, or installation," as the definition of source, could be read to impose the permit conditions on an individual building that is a part of a plant. A "word may have a character of its own not to be submerged by its association." Russell Motor Car Co. v. United States, 261 U.S. 514, 519 (1923). On the other hand, the meaning of a word must be ascertained in the context of achieving a particular objective, and the words accociated with it may indicate that the true meaning of the series is to convey a common idea. The language may reasonably be interpreted to impose the requirement on any discrete, but integrated, operation which pollutes. This gives meaning to all of the terms--a single building, not part of a larger operation, would be covered if it emits more than 100 tons of pollution, as would any facility, structure, or installation. Indeed, the language itself implies a bubble concept of sorts: each enumerated item would seem to be treated as if it were encased in a bubble. While respondents insist that each of these terms must be given a discrete meaning, they also argue that §111(a)(3) defines "source" as that term is

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[27] We note that the EPA in fact adopted the language of that definition in its regulations.

used in §302(j). The latter section equates a source with a facility, whereas the former defines source as a facility, among other items.[28]

We are not persuaded that this parsing of general terms in the text of the statute will shed meaningful light on the actual intent of Congress. We know full well that this language is not dispositive; the terms are overlapping and the language is simply is not precisely directed to the question of the applicability of a given term in the context of a larger operation. To the extent any congressional "intent" can be discerned from this language, it would appear that the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope

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[28]The argument based on the text of §173, which defines the permit requirements for nonattainment areas, is a classic example of circular reasoning. One of the permit requirements is that "the proposed source is required to comply with the lowest achievable emission rate" (LAER). Although a State may submit a revised SIP that provides for the waiver of another requirement--the "offset condition"--the SIP may not provide for a waiver of the LAER condition for any proposed source. Respondent argues that the plant-wide definition of the term "source" makes it unnecessary for newly constructed units within the plant to satisfy the LAER requirement if their emissions are offset by the reductions achieved by the retirement of older equipment. Thus, according to respondent, the plant-wide definition allows what the statute explicitly prohibits--the waiver of the LAER requirement for the newly constructed units. But this argument proves nothing because the statute does not prohibit the waiver unless the proposed new unit is indeed a "proposed source." If it is not a "source", the statute does not impose the LAER requirement at all and there is no need to reach any waiver question. In other words, §173 of the statute merely deals with the consequences of the definition of the term "source" and does not define the term.

of the agency's power to regulate particular sources in order to effectuate the policy of the Act.

Legislative History

In addition, respondents argue that the legislative history and policies of the Act foreclose the plant-wide definition, and that the EPA's interpretation is not entitled to deference because it represents a sharp break with prior interpretations of the Act.

Based on our examination of the legislative history, we agree with the court of appeals that it is unilluminating. The general remarks pointed to by respondents "were obviously not made with this narrow issue in mind and they cannot be said to illustrate a Congressional desire. . . ." Jewel Ridge Corp. v. Local, 325 U.S. 161, 168-169 (1944). Respondent's argument based on the legislative history relies heavily on Senator Muskie's observation that a new source is subject to the LAER requirement.[29] But like the text of §173 itself, this comment does not tell us what a new source is. We find that the legislative history as a whole is silent on the precise issue before us. It is, however, consistent with the view that the EPA should have broad discretion in implementing the policies of the

[29] See supra, ___.

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...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 reasonable. Indeed, they are supported by the public record developed in the rulemaking process,[30] as well as by certain private studies.[31]

Our review of the EPA's varying interpretations of the word "source"--both before and after the 1977 Amendments--convince us

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[30] 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. ..." App. 128-129.

[31] "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).

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that the agency primarily responsible for administering this important legislation has consistently interpreted it flexibly--not in a sterile textual vacuum, but in the context of implementing policy decisions in a technical and complex arena. The fact that the agency has from time to time changed its interpretation of the term source does not, as respondent argues, lead us to conclude that no deference should be accorded the agency's interpretation of the statute. An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations, and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible, particularly since Congress has never indicated any disapproval of a flexible reading of the statute.

Significantly, it was not the agency in 1980, 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

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Congress or any of the decisionmakers who are authorized by Congress to administer this legislation, that was primarily responsible for the 1980 position taken by the agency.

Policy

The arguments over policy that are advanced in the parties' briefs create the impression that respondents are now waging in a judicial forum the specific policy battle which they ultimately lost in the agency and which was never waged in the Congress. Such policy arguments are more properly addressed to legislators or administrators, not to judges.[32]

In this case, the Administrator's interpretation represents a reasonable accommodation of manifestly competing interests and is entitled to deference: the regulatory scheme is technical and complex,[33] the agency considered the matter in a detailed and reasoned fashion,[34] and the decision involves reconciling

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[32]Respondents point out 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. Respondents argue if a an old plant containing several large emitting units is to be modernized by the replacement of one or more units emitting over 100 tons of pollutant with a new unit emitting less--but still more than 100 tons--the result should be no different simply because "it happens to be built not at a new site, but within a pre-existing plant." Br. 4.

[33]See e.g., Aluminun Co. v. Central Lincoln Util. Dist., ___

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conflicting policies.[35] Congress intended to accommodate both interests, but did not do so itself on the level of specificity presented by this case. Perhaps that body consciously desired the Adminstrator to strike the balance at this level, thinking that those with great expertise and charged with responsibility for admininstering the provision would be in a better position to do so; perhaps it simply did not consider the question at this level; and perhaps, Congress was unable to forge a coalition on either side of the question, and those on each side decided to take their chances with the scheme deviced by the agency. For judicial purposes, it matters not which of these things occurred.

Judges are not experts in the field, and are not part of either political branch of the government. Courts must in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. An agency, on the other hand, may properly rely upon the incumbent Adminstration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this

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U.S. ___, ___ (1984) (slip op. at 8).

[34] See SEC v. Sloan, 436 U.S. 103, 117 (1978); Adamo Wrecking Co. v. United States, 434 U.S. 275, 287 n. 5 (1978); Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

[35] See Capital Cities Cable, Inc. v. Crisp, ___ U.S. ___, ___ (1984) (slip op., at 6-7); United States v. Shimer, 367 U.S. 374, 382 (1961).

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political branch of the Government to make such policy choices--resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the adminstration of the statute in light of every day realities. Our politicial system presupposes that the Chief Executive, and his political party, will be fully accountable at the polls for the policies it adopts. It also presupposes that a new Adminstration will adopt certain new policies. Some changes in policy are, of course, impermissible without a change in legislation, but many others are entirely consistent with the broad delegation of authority to the Executive Branch that has characterized much legislation in the 20th Century. Political accountability operates as a constraint on the executive; the election of a new administration may also provide authority for a change in policy. As long as administrative agencies respect the limits upon their authority imposed by Congress, they may legitimately respond to political change as they do to other relevant changed circumstances. There is nothing illegitimate about reflecting such considerations in a policy judgment the agency is authorized to make. On the contrary, it is the essence of democracy, and the vitality of our system of checks and balances depends in no small part on the executive branch being openly responsive to political interests just as is the legislative branch.

When a challenge to an agency construction of a statutory provision, fairly conceptualized, really centers on its wisdom,

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