

Business and the air we breathe

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In December of 2008, the government's environmental watchdog, the Environmental Protection Agency, decided that new power facilities are exempted from the requirement of installing mechanisms that will decrease the amount of carbon dioxide the plants emit into the atmosphere (David Fahrenthold, Steven Mufson, 2008).

This action was adopted despite the resistance from environment-oriented organizations (Fahrenthold, Mufson, 2008).

The ruling, signed by EPA Administrator Stephen L. Johnson, is anchored on an old statute that could be pivotal in the future operations of the power plants under the ambit of the Clean Air Act (Fahrenthold, Mufson, 2008). In the administration of former President Bush, the EPA has been inclined to dismiss the idea that greenhouse gases can be lumped together with soot, smog triggers and various types of air pollution (Fahrenthold, Mufson, 2008).

The case for the classification of carbon dioxide in the category of an air polluting element began in the issuance of a permit for the construction of a power plant in Bonanza, Utah (Fahrenthold, Mufson, 2008). An environmental group, the Sierra Club, had challenged the permit for the plant (Fahrenthold, Mufson, 2008).

In its motion, the group argued that the plant must first undertake mechanisms to decrease its emissions of carbon dioxide (Fahrenthold, Mufson, 2008). In a hearing of the EPA's Appeals Board, a body tasked to hear issues regarding rulings and procedures of the body, the group made its case against the plant (Fahrenthold, Mufson, 2008).

The group cited a statute that would require that the power plants must avail of the optimum technology to make the plants regulate the emission of all monitored pollutive substances (Fahrenthold, Mufson, 2008).

This is parallel to the reminder of the group to the decision of the April 2007 ruling of the Supreme Court (Fahrenthold, Mufson, 2008). In that decision, *Massachusetts vs. EPA* (549 U. S. ___ (2007) (The Oyez Project, 2009), the Supreme Court ruled on the question whether the EPA has the power to monitor carbon dioxide and other pollutants (Oyez, 2009). In a 5-4 decision, that power was affirmed by the Supreme Court (Oyez, 2009). The case mainly stemmed from the action of the EPA in a seeming abrogation of that power (Environmental Defense Fund, 2008).

In the majority decision with Justice John Paul Stevens as ponente, or author, the court ruled that the agency cannot abandon its responsibility and duty under the law to monitor the emissions of air pollutants into the air (Linda Greenhouse, 2007).

Court litigations have been put on hold among them the earlier case of emissions from power facilities (Greenhouse, 2007). Stevens, joined in the decision by Justices Anthony Kennedy, Ruth Bader Ginsburg, David Breyer and Stephen Souter, decided that the EPA did not do anything in court than just present a list of items that the agency will not monitor (Greenhouse, 2007).

The ruling of the Supreme Court however does not order that the Federal government conduct and enact programs to combat pollution emission

(Environmental, 2008). But it is inferred that the United States Congress enact legislation to found a program for the purpose (Environmental, 2008).

Massachusetts, among the parties, that did have a legal standing before the Court, was vindicated in its appeal against the EPA (Environmental, 2008). It is in the opinion of the Court that the matter be sent to Congress for final disposition (Environmental, 2008).

In their opinion, air pollutants, as those emitted by the power facilities as well as motor vehicles, on which the Massachusetts case hinged, did not qualify as such under the ambit of the Clean Air Act (Environmental, 2008). In their decision, the Court ruled that it is within the scope of the powers of the EPA to regulate such pollutants (Environmental, 2008). The only exception is that if the pollutants do not contribute to the crisis of global warming (Environmental, 2008). But the EPA decided otherwise.

This in complete defiance of a ruling by the United States Supreme Court in April of 2007 that carbon dioxide can be classified as an air pollutant that should be monitored under the Clean Air Act (Fahrenthold, Mufson, 2008). In the same way, the EPA granted the same exemptions to power plants emitting mercury beyond the lawful regulations (Fox News, 2008).

In a decision handed down by a Federal Appeals court, the court overturned the policy of the Bush administration that stated that the government can let power plants exceed limits set for emission of the poisonous mercury element (Fox News, 2008).

About a dozen state authorities had opposed the EPA regulation, saying that if the regulation had pushed through, it would release notoriously high amounts of mercury into the atmosphere (Fox News, 2008).