

For Immediate Release

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SUPREME COURT SENDS EPA'S MERCURY RULE BACK TO CIRCUIT COURT FOR ADDITIONAL REVIEW

*Mercury rule likely to ultimately stand; ruling unlikely to hamper Clean Power Plan
carbon dioxide regulations*

Today, the Supreme Court ruled that the Environmental Protection Agency (EPA) did not consider costs at the appropriate stage of the regulatory process before crafting the Mercury and Air Toxics Standards. This rule, which regulates toxic emissions from power plants, will now be sent back to the U.S. Court of Appeals for the D.C. Circuit, where the judges will decide how the EPA should proceed.

"It is very likely that the mercury rule will ultimately be upheld, and that it will remain in place as the legal process continues," said Richard Revesz, director of the Institute for Policy Integrity and dean emeritus of NYU Law School.

The Supreme Court ruling did not invalidate the rule – it merely remanded the rule back to the U.S. Court of Appeals for the D.C. Circuit, which can now either vacate the rule, or opt for the "remand without vacatur" technique, leaving the rule in place while the EPA makes required changes.

Remand without vacatur is a common technique that the D.C. Circuit Court often uses for EPA regulations. There is good reason to use this technique here, because the EPA already conducted a cost-benefit analysis for this rule, finding it to be cost-benefit justified. The Supreme Court did not dispute that the direct and ancillary benefits of the rule vastly outweigh compliance costs – net monetized benefits to the American public are projected to be \$27 billion to \$80 billion per year. The regulatory analysis that the EPA conducted followed the cost-benefit analysis practices outlined in an Office of Management and Budget circular that dates back to the George W. Bush administration.

"The most important part of the majority opinion is Justice Scalia's acknowledgement that the agency is not precluded from taking co-benefits into account in its cost-benefit analysis of the rule," said Revesz.

Justice Kagan's dissent in this case focuses largely on the central argument of the [amicus brief](#) that the Institute for Policy Integrity submitted for the case. The brief argued that the EPA cannot meaningfully assess costs at the initial listing stage of its regulatory process, because costs inextricably depend on subsequent regulatory design choices, such as the subcategorization of power plants. Policy Integrity's legal director, Jason Schwartz, analyzed this issue further in a [recent article](#).

The case is unlikely to be significant setback in EPA's efforts to regulate other forms of pollution

from power plants. In August, the EPA will release the final version of its Clean Power Plan, which will set greenhouse gas emission targets for the power sector in each state.

“Nothing in this decision would in any way call into question the legal legitimacy of the Clean Power Plan,” said Revesz.

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The Institute for Policy Integrity at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking through research and advocacy in economics, law, and regulatory policy.