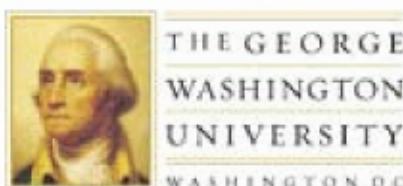


The Burger Court Opinion Writing Database

EPA v. National Crushed Stone Association

449 U.S. 64 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
~~Mr.~~ Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

*9/11
not
join*

From: Mr. Justice White
17 JAN 1980

Circulated: _____

Recirculated: _____

Re: 79-770 - Environmental Protection Agency v. National
Crushed Stone Association; and Douglas Costle,
Administrator, EPA, v. Consolidation Coal Co.

MR. JUSTICE WHITE, dissenting.

To achieve the national goal of eliminating the discharge of pollutants into the Nation's navigable waters, the Federal Water Pollution Control Act Amendments of 1972 (Act), 86 Stat. 816, 33 U.S.C. § 1251 et seq., directs that by 1977 the discharge of pollutants was to be limited to the extent made possible by "the best practicable control technology currently available" (BPT). By 1987, more stringent limitations, based on "the best available technology economically available" (BAT), were to be observed. The Environmental Protection Agency (EPA) was to issue regulations to implement both of these standards, which it proceeded to do. These regulations contained variance clauses setting forth the grounds upon which the EPA or an authorized state agency could modify or ease the requirements at the behest of an individual discharger.

*The conflict found by Mr. Justice
White is not all that obvious.
I would not join -
David*

TO: THE JUDGES
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Queated
Circulated: _____

1st DRAFT

Recirculated: 21 JAN 1980

SUPREME COURT OF THE UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY *v.* NATIONAL CRUSHED STONE ASSOCIATION ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 79-770. Decided January —, 1980

MR. JUSTICE WHITE, dissenting.

To achieve the national goal of eliminating the discharge of pollutants into the Nation's navigable waters, the Federal Water Pollution Control Act Amendments of 1972 (Act), 86 Stat. 816, 33 U. S. C. § 1251 *et seq.*, directs that by 1977 the discharge of pollutants was to be limited to the extent made possible by "the best practicable control technology currently available" (BPT). By 1987, more stringent limitations, based on "the best available technology economically available" (BAT), were to be observed. The Environmental Protection Agency (EPA) was to issue regulations to implement both of these standards, which it proceeded to do. These regulations contained variance clauses setting forth the grounds upon which the EPA or an authorized state agency could modify or ease the requirements at the behest of an individual discharger.

Relying on the statutory specification of the factors to be considered in granting variances, as well as upon the legislative history, the EPA contends that the fact that an individual discharger may be financially incapable of footing the bill for the best practicable control technology currently available would not entitle the discharger to a variance from the 1977 BPT limitations and need not be considered. The Court of Appeals for the Fourth Circuit in the two cases before us disagreed and invalidated the variances clauses contained in the regulations covering two different industries.

The petition for certiorari of the EPA asserts that the two decisions will significantly affect its ability to enforce the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 22, 1980

Re: No. 79-770 - EPA v. National Crushed Stone Ass'n

Dear Byron:

The slight change made in the printed draft of your dissent alleviates the concerns I expressed at conference on January 18. I therefore shall not be writing in response.

Sincerely,



Mr. Justice White

cc: The Conference