

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



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

CHAMBERS OF
THE CHIEF JUSTICE

November 21, 1980

Re: 79-770 - EPA v. National Crushed Stone Association

Dear Byron:

I join.

Regards,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 13, 1980

RE: No. 79-770 EPA v. National Crushed Stone, et al.

Dear Byron:

I agree.

Sincerely,



Mr. Justice White
cc: The Conference

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IN THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 13, 1980

Re: 79-770 - EPA v. NATIONAL CRUSHED STONE ASSN.

Dear Byron,

I have two minor problems with your opinion as now written. First, on page 13, you state that "[i]nsofar as a current practice was not considered, the BPT limitation is incomplete." It is my understanding that the limitation is incomplete only if a current practice is not considered that is fundamentally different from the practices considered in the guidelines. Your wording suggests that a BPT limitation might be invalid if any practice, in any plant, went unconsidered -- regardless either of its significance or its similarity to the practices actually considered. In the same light, I would eliminate from the preceding sentence the word "full".

Second, on the same page, you refer to the "normal or average" costs of compliance. The use of these words seems unnecessary, and may impart some unintended technical meaning. I would, therefore, delete them.

If these small changes can be made, I shall be glad to join your opinion.

Sincerely yours,

P.S.
/

Mr. Justice White

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 13, 1980

Re: No. 79-770, EPA v. National Crushed
Stone Association

Dear Byron,

The changes you have made are satisfactory
to me, and I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Justice White

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BRW
T...
M...

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

From: Mr. Justice White

Circulated: 11-12-80

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-770

Environmental Protection Agency,
Petitioner,

-v.

National Crushed Stone Association et al.

Douglas Costle, Administrator, Environmental Protection Agency,
Petitioner,

v.

Consolidation Coal Co. et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[November —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

In April and July 1977, the Environmental Protection Agency (EPA), acting under the Federal Water Pollution Control Act Amendments of 1972 (Act), 33 U. S. C. § 1251 *et seq.*, promulgated pollution discharge limitations for the coal mining industry and for that portion of the mineral mining and processing industry comprising the crushed stone, construction sand, and gravel categories.¹ Although the Act does not expressly authorize or require variances from the 1977 limitations, both sets of regulations contained a variance provision.² Respondents sought review of the regulations in

¹ The coal mining standards were published at 42 Fed. Reg. 21380 *et seq.*, adopting 40 CFR Part 434. The mineral mining and processing standards were published at 42 Fed. Reg. 35843 *et seq.*, adopting 40 CFR Part 436.

² The variance provision reads as follows:
"In establishing the limitations set forth in this section, EPA took into

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 13, 1980

Re: 79-770 - EPA v. National Crushed Stone Association

Dear Potter,

I appreciate your letter. Although I think the opinion in its present form is satisfactory, I hope I can satisfy you with the following changes which I have sent to the printer. The first sentence that you find objectionable I am changing to read as follows:

"Insofar as a BPT limitation was determined without consideration of a current practice fundamentally different from those that were considered by the Administrator, that limitation is incomplete."

The next sentence on page 13 to which you also object I am modifying to read as follows:

"A variance based on economic capability, however, would not have this character: it would allow a variance simply because the point source could not afford a compliance cost that is not fundamentally different than those the Administrator has already considered in determining BPT."

Sincerely yours,



Mr. Justice Stewart

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SERIES

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9, 12, 13, 16, 20

From: Mr. Justice White

Circulated: _____

Recirculated: 11-14-80

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-770

Environmental Protection Agency,
Petitioner,
v.
National Crushed Stone Association et al.

Douglas Costle, Administrator, Environmental Protection Agency,
Petitioner,
v.
Consolidation Coal Co. et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[November —, 1980]

MR. JUSTICE WHITE delivered the opinion of the Court.

In April and July 1977, the Environmental Protection Agency (EPA), acting under the Federal Water Pollution Control Act Amendments of 1972 (Act), 33 U. S. C. § 1251 *et seq.*, promulgated pollution discharge limitations for the coal mining industry and for that portion of the mineral mining and processing industry comprising the crushed stone, construction sand, and gravel categories.¹ Although the Act does not expressly authorize or require variances from the 1977 limitation, each set of regulations contained a variance provision.² Respondents sought review of the regulations in

¹ The coal mining standards were published at 42 Fed. Reg. 21380 *et seq.*, adopting 40 CFR Part 434. The mineral mining and processing standards were published at 42 Fed. Reg. 35843 *et seq.*, adopting 40 CFR Part 436.

² The variance provision reads as follows:
"In establishing the limitations set forth in this section, EPA took into

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 17, 1980

Re: 79-770 - EPA v. National
Crushed Stone

Dear Harry,

Because the sentence which bothers
you has bothered others, it has been
deleted as you will note from draft
three which will soon be circulating.

Sincerely yours,



Mr. Justice Blackmun

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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

From: Mr. Justice White

Circulated: _____

Recirculated: 17 NOV 1980

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 7, 13

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-770

Environmental Protection Agency,
Petitioner,

v.

National Crushed Stone Association et al.

Douglas Costle, Administrator, Environmental Protection Agency,
Petitioner,

v.

Consolidation Coal Co. et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[November —, 1980]

JUSTICE WHITE delivered the opinion of the Court.

In April and July 1977, the Environmental Protection Agency (EPA), acting under the Federal Water Pollution Control Act Amendments of 1972 (Act), 33 U. S. C. § 1251 *et seq.*, promulgated pollution discharge limitations for the coal mining industry and for that portion of the mineral mining and processing industry comprising the crushed stone, construction sand, and gravel categories.¹ Although the Act does not expressly authorize or require variances from the 1977 limitation, each set of regulations contained a variance provision.² Respondents sought review of the regulations in

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²The variance provision reads as follows:

"In establishing the limitations set forth in this section, EPA took into

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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

From: Mr. Justice White

Circulated: _____

Recirculated: 25 NOV 1980

STYLISTIC CHANGES THROUGHOUT.
~~SEE PAGES.~~

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-770

Environmental Protection Agency,
Petitioner,
v.
National Crushed Stone Association et al.
Douglas Costle, Administrator, Environmental Protection Agency,
Petitioner,
v.
Consolidation Coal Co. et al.

On Writ of Certiorari to
the United States Court
of Appeals for the
Fourth Circuit.

[November —, 1980]

JUSTICE WHITE delivered the opinion of the Court.

In April and July 1977, the Environmental Protection Agency (EPA), acting under the Federal Water Pollution Control Act Amendments of 1972 (Act), 33 U. S. C. § 1251 *et seq.*, promulgated pollution discharge limitations for the coal mining industry and for that portion of the mineral mining and processing industry comprising the crushed stone, construction sand, and gravel categories.¹ Although the Act does not expressly authorize or require variances from the 1977 limitation, each set of regulations contained a variance provision.² Respondents sought review of the regulations in

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² The variance provision reads as follows:

"In establishing the limitations set forth in this section, EPA took into

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1980

Re: No. 79-770 - EPA v. National Crushed Stone
Association, et al.

Dear Byron:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice White

cc: The Conference

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LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 17, 1980

Re: No. 79-770 - EPA v. National Crushed Stone Association

Dear Byron:

If you can see your way clear to make a very minor change in a footnote, I shall be glad to join your opinion.

My suggestion is that the last two sentences, that is, the material beginning with "Moreover . . ." in footnote 17, on page 13, be dropped. In the Louisiana-Pacific decision, at 1851-1852 & note 27, the Administrator implied that a point source's significant compliance cost deferential would merit variance consideration, but I am not persuaded that the issue of external costs is there presented or addressed. I think your reference is unnecessary to the main point of the footnote, and that it might create some confusion by signaling agency uncertainty over the external costs question.

You have written a good opinion, and I say again that I am glad to join the opinion if this deletion can be made.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 17, 1980

Re: No. 79-770 - EPA v. National Crushed Stone Association

Dear Byron:

Please join me in your recirculation of November 17.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTION

THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 12, 1980

70-770 EPA v. National Crushed Stone Association

Dear Byron:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

L. F. P.

Mr. Justice White

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION OF THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 20, 1980

Re: No. 79-770 - EPA v. National Crushed Stone
Association

Dear Byron:

Please join me in your opinion.

Sincerely,



Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTION

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LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 13, 1980

Re: 79-770 - Environmental Protection Agency
v. National Crushed Stone et al.

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

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