

The Burger Court Opinion Writing Database

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.

467 U.S. 837 (1984)

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

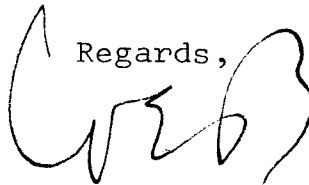
March 3, 1984

Re: Nos. 82-1005, 82-1247, 82-1591 - Chevron U.S.A. Inc.
v. NRDC; Am. Iron and Steel Inst. v. NRDC; Ruckelsh-
haus v. NRDC.

Dear Bill:

Are you inclined to do a dissent in this? There's
a good chance I'll join you!

Regards,

A handwritten signature in dark ink, appearing to be 'WB' or similar initials, written over the word 'Regards,'.

Justice Brennan

Copies to: Justice O'Connor

XC:JA
P

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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CHIEF JUSTICE

March 85, 1984 MAR 5 P3:49

No. 82-1005) Chevron U.S.A., Inc.
) v. Natural Resources
) Defense Council
)
) American Iron & Steel
) Institute v. Natural
No. 82-1247) Resources Defense Council
)
) Ruckelshaus, Administrator
) of EPA v. Natural Resources
No. 82-1591) Defense Council

Dear Chief,

I am willing to take on the dissent in this case but, particularly because we were all somewhat tentative in our votes at Conference, I hold out some hope that John will write an opinion for the Court that will bring us together. I am presently in the process of drafting a letter to him on the matter. I would prefer, therefore, to take the assignment on a tentative basis and await John's response before going forward with a dissent.

OK
WJB

Sincerely,

WJB
by NE

The Chief Justice

Justice O'Connor

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

CHAMBERS OF
THE CHIEF JUSTICE

June 18, 1984

Re: 82-1005) - Chevron U.S.A. v. NRDC, Et al.
82-1247) - American Iron & Steel v. NRDC
82-1591) - Ruckelshaus v. NRDC

Dear John:

With others, I am now persuaded you have the
correct answer to this case.

I join.

Regards,



Justice Stevens

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.

March 5, 1984

No. 82-1005)	<u>Chevron U.S.A., Inc.</u>
)	<u>v. Natural Resources</u>
)	<u>Defense Council</u>
)	
)	<u>American Iron & Steel</u>
)	<u>Institute v. Natural</u>
No. 82-1247)	<u>Resources Defense Council</u>
)	
)	<u>Ruckelshaus, Administrator</u>
)	<u>of EPA v. Natural Resources</u>
No. 82-1591)	<u>Defense Council</u>

Dear Chief,

I am willing to take on the dissent in this case but, particularly because we were all somewhat tentative in our votes at Conference, I hold out some hope that John will write an opinion for the Court that will bring us together. I am presently in the process of drafting a letter to him on the matter. I would prefer, therefore, to take the assignment on a tentative basis and await John's response before going forward with a dissent.

Sincerely,

WJB by RE

The Chief Justice

Justice O'Connor

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

March 6, 1984

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

No. 82-1005) Chevron U.S.A., Inc.
) v. Natural Resources
) Defense Council
)
) American Iron & Steel
) Institute v. Natural
No. 82-1247) Resources Defense Council
)
) Ruckelshaus, Administrator
) of EPA v. Natural Resources
No. 82-1591) Defense Council

Dear John,

The Chief has assigned me the dissent in this case, but I have accepted the assignment only tentatively in the hope that your opinion will bring us all together. Particularly in view of the fact that many of us remained unsettled about our votes at Conference, I wonder if there isn't an approach that would not only bring us together, but also resolve the case in a manner more satisfying than either of the extreme positions offered by the parties.

As I stated at Conference, the point about this case that bothers me most--and as I understand the views of Sandra and the Chief, the point that bothers them the most as well--is the inconsistency between EPA's definition of "source" under §172(b)(6) of the Act and its definition of the identical term under §173 of the Act. In assessing whether new polluting equipment should be subject to New Source Review, EPA allows the states to define the threshold term "source" in §172(b)(6) to mean an entire plant, including old emitting units within the plant. 40 C.F.R. 58.18(j)(1)(ii). Yet in implementing the "LAER" facet of New Source Review, EPA defines "source" in §173(2) to mean the "new or modified emissions units within the stationary source." 40 C.F.R. 51.18(j)(1)(xiii)(b) (emphasis added). In view of the fact that both of these provisions are within Part D of the Act, it seems unlikely that Congress intended the term "source" to be interpreted differently in the two sections.

Moreover, by allowing "source" to be defined in this inconsistent manner, EPA has undermined the goal of New Source Review, which is to induce firms that install new equipment in nonattainment areas to employ technology that will reduce

emissions over time. The plant-wide threshold definition allows plants to avoid New Source Review altogether so long as they expand their facilities at rates that are sufficiently slow that the technology employed does not significantly increase plant-wide emissions. And when the LAER requirement of New Source Review is engaged, it applies as narrowly as possible, not to the whole "source," but rather to much smaller "units." As a result, existing plants could be accorded the right to pollute at an increasing rate, which, it seems to me, flies in the face of the Program's purpose of inducing the states to adopt state Implementation Plans that ensure attainment of the national ambient air quality standards. If EPA were consistent in applying the plant-wide definition of "source," the states would retain flexibility in meeting the standards, but polluters would be forced to take significant steps forward on those occasions when they become subject to New Source Review under the plant-wide definition. On the other hand, if EPA is permitted to persist in its inconsistent definition of "source," plants could not only be permitted to emit pollutants at a slowly increasing rate, they could also be permitted to increase their emissions significantly as long as the new equipment that causes the increased emissions complies with LAER--even though other equipment in the same plant, including that of post-1977 vintage, may continue to be operated even if the equipment is not up to LAER quality.

This approach is supported by Judge Wilkey's analysis in Alabama Power Co. v. Costle, 636 F. 2d 323 (D.C. Cir. 1979). In that case, the court held that the term "source" must retain a consistent meaning in all provisions of the Act relating to the "Prevention of Significant Deterioration" or "PSD" Program, thereby disallowing EPA from adopting inconsistent interpretations within the same program. Id. at 396.

Although, I stated at Conference that I was inclined to think that this leads to the conclusion that the plant-wide definition is impermissible under the Act, I might be able to go along with a decision upholding the plant-wide definition so long as it is applied consistently in §172(b)(6) and §173(2). Does this have any appeal to you?

Sincerely,

WGB
by RE

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1984

No. 82-1005) Chevron v. Natural
) Resources Defense
) Council, Inc., et
) al.
) American Iron and
) Steel Institute,
) et al.
No. 82-1247) v. Natural Resources
) Defense Council, Inc.,
) et al.
) Ruckelshaus v.
) Natural Resources
No. 82-1591) Defense Council, Inc.

Dear Chief and Sandra,

John has added footnote 22 at page 10 of his second circulation addressing my concern about the inconsistency between EPA's definition of "source" under §§172 and 173. Accordingly, I am joining his opinion.

Sincerely,



The Chief Justice
Justice O'Connor

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1984

No. 82-1005)	<u>Chevron v. Natural</u>
)	<u>Resources Defense</u>
)	<u>Council, Inc., et</u>
)	<u>al.</u>
)	
)	<u>American Iron and</u>
)	<u>Steel Institute,</u>
)	<u>et al.</u>
No. 82-1247)	<u>v. Natural Resources</u>
)	<u>Defense Council, Inc.,</u>
)	<u>et al.</u>
)	
)	<u>Ruckelshaus v.</u>
)	<u>Natural Resources</u>
No. 82-1591)	<u>Defense Council, Inc.</u>

Dear John,

Please join me.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

March 2, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

Re: 82-1005) Chevron USA, Inc. v. Natural
) Resources Defense Council
)
 82-1247) American Iron and Steel Institute
) v. Natural Resources Defense Council
)
 82-1591) Ruckelshaus v. Natural Resources
) Defense Council

Dear Chief,

John Stevens has agreed to undertake the opinion
for the Court in these cases.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543
RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1984

84 JUN 13 AM 1:38

Re: 82-1005, 82-1247 and 82-1591 -

Chevron, U.S.A., Inc. v. Natural Resources
Defense Council, Inc, etc.

Dear John,

Please join me in your very good opinion
in this case.

Sincerely yours,



Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1984

Re: Nos. 82-1005, 1247 and 1591-Chevron v.
Natural Resources Defense Council, etc.

Dear John:

Please show me as having taken no part in the
decision in these cases.

Sincerely,

T.M.

T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

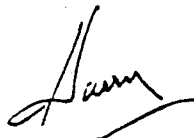
June 18, 1984

Re: No. 82-1005) Chevron U.S.A., Inc.
v. National Resources Defense Council, Inc.
No. 82-1247) American Iron & Steel Institute
v. National Resources Defense Council, Inc.
No. 82-1591) Ruckelshaus
v. National Resources Defense Council, Inc.

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1984

82-1005 Chevron v. Natural Resources Defense Council

Dear John:

Please join me.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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SUPREME COURT, U.S.
JUSTICE MARSHALL

June 12, 1984

84 JUN 12 10:48

Re: Nos. 82-1005) Chevron v. Natural Resources
) Defense Council
) American Iron and Steel Institute
) v. Natural Resources Defense
) Council
) Ruckelshaus v. Natural Resources
) Defense Council

Dear John:

Please show me as having taken no part in the
consideration of or decision in these cases.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 6, 1984

Re: 82-1005 - Chevron v. Natural Resources
Defense Council
82-1247 - American Iron v. Natural
Resources Defense Council
82-1591 - Ruckelshaus v. Natural
Resources Defense Council

Dear Bill:

Many thanks for your thoughtful letter. Your approach may well be sound. I must acknowledge, however, that I had tentatively concluded that the statutory definition was sufficiently flexible to allow the administrator to adopt either a plant-wide approach or a specific equipment type of approach and that it would even be permissible to use different approaches for different portions of the statute. I had not, however, focused on the fact that the two sections that you mention are both in Part D of the Act. At this point I really am not far enough into the case to give you a definitive answer, but I certainly will do my best to prepare an opinion that will achieve as broad a consensus as possible.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

off CS WJB SOC

Rev BRW HAB LFP JPS May 23, 1984

out TM WHR

Re: 82-1005 - Chevron U.S.A., Inc. v. Natural
Resources Defense Council
82-1247 - American Iron & Steel Institute v.
Natural Resources Defense Council
82-1591 - Ruckelshaus v. Natural Resources
Defense Council

Dear Bill:

At long last I have found the time to get back into these cases and to begin work on a draft opinion. Since you wrote to me on March 6, in the hope that you might be able to escape the chore of writing a dissenting opinion if I could see my way clear to accepting your approach to the case, I thought I should let you know that I am now quite firmly persuaded that the Government is correct in arguing that the EPA's interpretation of the term "source" is permissible.

I do not agree with the view expressed in your letter that there is an inconsistency between the EPA's definition of "source" in 40 C.F.R. 58.18(j)(1)(ii), and its definition of "lowest achievable emission rate" in 40 C.F.R. 51.18(j)(1)(xiii)(b). The former definition, which describes an entire plant, including old as well as new emitting units, performs the function of determining when new source review is required. Thus, for example the addition of one new unit to nine old units might trigger review.

The latter definition deals with the problem of the scope of the review that is mandated once a plant qualifies as a new source. That section, as I read it, would require the new source review to be applied only to the new unit that is added to the plant. In other words, in my hypothetical, the nine old units within the plant would not have to achieve "lowest achievable emission rate" whereas

the new one would. It is no doubt true, as you suggest in page 2 of your letter, that this interpretation will not achieve the highest possible rate of improvement in air quality, but I frankly do not see the inconsistency that you suggest.

Putting the point somewhat differently, it does not seem to me inconsistent to read the words "new or modified major stationary sources" as they are used in §172(b)(6) to refer to an entire plant while at the same time reading the words "proposed source" as used in §173(2) to refer to the proposed addition to a plant that makes the new source review necessary.

I might add that my review of the administrative history has persuaded me that at one time the Carter Administration considered the plantwide definition as a legitimate option, even though it ultimately did not adopt it. I think this is one of those cases in which Congress was concerned about two inconsistent policies--the environmental interest in improving air quality on the one hand, and the economic interest in not making capital improvements for certain polluters too costly--and left a hole in the statute for the Administrator to fill. I have no doubt that it would have been proper to plug the hole by adopting the approach that respondent advocates, but I am really not persuaded that Congress was that specific.

In all events, I thought I should let you know that you probably will have to be writing a dissent in this fascinating case unless what I put on paper is more persuasive than my threat to make you undergo the punishment of the hurdle.

Respectfully,

A handwritten signature in dark ink, appearing to be "Jh" or "JB", written in a cursive, flowing style.

Justice Brennan

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SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 11 P3:41

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1005, 82-1247 AND 82-1591

CHEVRON, U. S. A., INC., PETITIONER
82-1005
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

AMERICAN IRON AND STEEL INSTITUTE, ET AL.,
PETITIONERS
82-1247
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER
82-1591
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

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

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1984

Re: 82-1005 - Chevron U.S.A., Inc. v. Natural
Resources Defense Council
82-1247 - American Iron & Steel Institute v.
Natural Resources Defense Council
82-1591 - Ruckelshaus v. Natural Resources
Defense Council

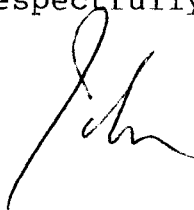
Dear Bill:

At the end of the first paragraph of Part IV on page 10, I propose to add the following footnote:

Specifically, the controversy in this case involves the meaning of the term "major stationary sources" in §172(b)(6) of the Act, 42 U.S.C. §7502(b)(6). The meaning of the term "proposed source" in §173(2) of the Act, 42 U.S.C. §7503(2), is not at issue.

I think this will do the trick but if you have any questions, please give me a call.

Respectfully,



Justice Brennan

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84 JUN 14 NO 22
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SEE PAGES: 10

To: The Chief Justice
Justice Brennan
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Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1005, 82-1247 AND 82-1591

CHEVRON, U. S. A., INC., PETITIONER
82-1005 v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

AMERICAN IRON AND STEEL INSTITUTE, ET AL.,
PETITIONERS
82-1247 v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER
82-1591 v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

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'84 JUN 19 P1:32
SEE PAGES: 28

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Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: Justice Stevens

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JUN 15
Jun 19 '84

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-1005, 82-1247 AND 82-1591

CHEVRON, U. S. A., INC., PETITIONER
82-1005
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

AMERICAN IRON AND STEEL INSTITUTE, ET AL.,
PETITIONERS
82-1247
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

WILLIAM D. RUCKELSHAUS, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY,
PETITIONER
82-1591
v.
NATURAL RESOURCES DEFENSE COUNCIL, INC.,
ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June —, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

In the Clean Air Act Amendments of 1977, Pub. L. 95-95, 91 Stat. 685, Congress enacted certain requirements applicable to States that had not achieved the national air quality standards established by the Environmental Protection Agency (EPA) pursuant to earlier legislation. The amended Clean Air 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

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 26, 1984

MEMORANDUM TO THE CONFERENCE

Case held for Chevron v. Natural Resources Defense Council, 82-1005

83-1429 - Alabama Power Co. v. Sierra Club

At our June 14 conference I asked that this case be taken off the dead list because I considered it a possible hold for Chevron. In an opinion by Judge McGowan, joined by Judges MacKinnon and Edwards, the D.C. Circuit set aside certain EPA regulations promulgated under §123 of the Clean Air Act Amendments of 1977 governing the extent to which the stack height of a source may be used as a pollution control technique. The petition raises some difficult, and in one or two instances, rather close questions, but in view of the fact that the Solicitor General has filed a response in which he takes the position that the Court of Appeals applied the correct legal standard and that the court's mandate allows the EPA sufficient discretion to promulgate appropriate regulations, I am inclined to agree with his conclusion that the petition should be denied. The essence of his response is stated in the following concluding paragraph of his response:

"In sum, although we believe that certain aspects of the court of appeals' decision are incorrect, the court's interpretation of the statute is not unreasonable in all respects, and it left the EPA considerable discretion in implementing the court's mandate. Moreover, the court's narrow analysis of Section 123 is unlikely to

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

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CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

84 JUN 15 A9:44

June 14, 1984

No. 82-1005 Chevron v. Natural Resources Defense Council
No. 82-1247 American Iron & Steel Institute v. Natural
Resources Defense Council
No. 82-1591 Ruckelshaus v. Nat'l. Resources Defense Council

MEMORANDUM TO THE CONFERENCE

I have reviewed the petitions for certiorari in these cases and discovered that I should be recused. Since the arguments were heard, my father died. His estate is still unsettled, but I will have a remainder interest in a trust to be established. His estate holds stock in at least one of the parties to this action and until it is settled, I think it best that I not participate.

Sincerely,

Sandra

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

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JUSTICE SANDRA DAY O'CONNOR

June 14, 1984

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SUPREME COURT, U.S.
JUSTICE MARSHALL

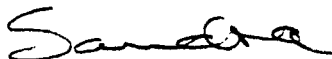
84 JUN 15 A9:44

No. 82-1005 Chevron v. Natural Resources Defense Council
No. 82-1247 American Iron & Steel Institute v. Natural
Resources Defense Council
No. 82-1591 Ruckelshaus v. Nat'l. Resources Defense Council

Dear John,

Please show at the end of your opinion that I took no
part in its decision.

Sincerely,



Justice Stevens

Copies to the Conference