The U.S. Supreme Court should issue a decision in *Utility Air Regulatory Group (UARG) v. EPA* very soon, perhaps as early as Monday (the Court typically issues its opinions on Mondays and Thursdays at 10:00 a.m. EST). The case involves an important set of regulations designed to regulate greenhouse gases from large new "sources" (industrial facilities, chemical plants, power plants, etc.) through a permitting process that determines, for each individual plant, the steps the new (or modified) plant will need to take to minimize its carbon emissions. The provision at issue in the Supreme Court case is known as the Prevention of Significant Deterioration part of the Clean Air Act. Because the *UARG* case will come down so soon after the recent release of the Section 111d rules for existing power plants (known as the "Clean Power Plant" rule), there is likely to be significant interest in the relationship between the *UARG* decision and the legality of the Section 111d rules. Without knowing the content of the *UARG* case, we can't, of course, know what that relationship will be. But that won't stop me from speculating about the relationship. And here's my speculative conclusion: a decision upholding the rules at issue in UARG will help EPA in any legal challenge to the Section 111d rules but a decision striking down the rules will not have much effect. Here's why.

The *UARG* rules, as I have explained here and here, involve what could be called an awkward fit between the statutory language of the PSD section and the regulation of greenhouse gases. The PSD provision applies to all "major" new and modified sources of greenhouse gases and defines "major" as any facility emitting more than 100 tons per year of a regulated air pollutant. The problem for EPA is that 100 tons per year is a very small amount of greenhouse gases (but a fairly significant amount of many other air pollutants). The definition could require EPA to mandate that very small sources of greenhouse gases get permits, though as we argued in an amicus brief we filed in the *UARG* case, EPA has and is utilizing a number of options to limit the number of sources that need permits. Initially, however, to deal with the potentially huge number of new sources that could be included in the 100 ton per year definition, EPA adopted a "tailoring" rule that requires only new sources emitting 100,000 tons of greenhouse gases per year or more and existing sources making modifications that would increase emissions by 75,000 tons per year or more to get permits. The tailoring rule is what's at issue in *UARG* rule and the major question in the case is whether and how the PSD provision should be interpreted to accommodate the fact that greenhouse gases are emitted in much larger amounts than other regulated pollutants. Put a different way, the *UARG* case is about whether applying the PSD provision to greenhouse gases makes sense. The legal questions involved in the case are unique to the PSD provision of the Act and involve complex questions of statutory interpretation.

If the Supreme Court strikes down the "tailoring rule" that was issued to implement the PSD

provisions, it will almost certainly do so based on the peculiar and specific language contained in the PSD section (my post here contains my predictions of how the Court could rule and an explanation for why the Court will almost certainly not use the *UARG* case as an opportunity to overturn *Massachusetts v. EPA,* the case holding that the CAA applies to greenhouse gases). The Court could, for example, say that it doesn't make sense to apply the PSD provisions to new facilities that emit greenhouse gases. Or the Court could say that the tailoring rules should only apply to facilities that already have to get a permit because they emit other kinds of pollutants. Or the Court could uphold the rules altogether. But its decision is likely to be based on the particular language in the PSD section. That's why, for the most part, the decision in my view won't affect the Section 111d rules for existing power plants. Section 111d involves a different section of the Clean Air Act that contains different statutory language and that does not involve the definition of "major" sources at stake in the *UARG* case. There are, to be sure, interesting and complex questions that the 111d rules raise (highlighted in a remarkable set of posts by UCLA Emmett/Frankel Fellow Megan Herzog here, here, here and here). But the legal questions are simply different ones than the legal questions involved in the *UARG* case.

With that said, there are some broad rules of statutory interpretation that the Court could rely on in upholding the PSD tailoring rule if the Court decides in favor of EPA that could in turn help EPA in legal challenges to the 111d rules. The most likely broad rule that the Court would invoke would be one that accords significant deference to an agency's interpretation of statutory language that is ambiguous and also defers to an agency's complex factual decisions about how to apply statutory provisions. The Supreme Court just reaffirmed the idea that EPA should be accorded significant deference in its interpretation and application of Clean Air Act statutory provisions when it upheld EPA's cross state air pollution rule in *Homer Generation v. EPA.* If the Court upholds the PSD provisions in *UARG* based on these broad principles, such an affirmation of EPA authority would help EPA in any legal challenge to the Section 111d rules. But the specific, technical grounds about what the statutory language means in the *UARG* case should otherwise simply not have much effect on the inevitable legal challenges to the 111d power plant rules. They involve different statutory provisions that involve unique legal questions.