"UARG" sounds like the name of a monster in a children's book or maybe some kind of strangled exclamation. But it actually stands for Utility Air Regulatory Group, which represents utility companies in litigation. UARG did well in two important Supreme Court cases last year, winning part of the case it brought against EPA climate change rules and getting the limited outcome it advocated in another case (*EME Homer*). So its legal efforts deserve to be taken seriously.

UARG is back at the Supreme Court again with a case involving air pollution standards. The Court seems to be taking the case seriously enough to list it for its September 29th conference. But UARG's arguments ("UARGuments"?) seem very weak this time around. Hopefully, they won't attract the four votes necessary for a grant of cert.

The case involves the primary air quality standards for ozone. Under the Clean Air Act, EPA must set these standards at a level "requisite" to protect public health "with an adequate margin of safety." EPA decided to lower the standard based on new scientific evidence that suggested harmful effects and firmed-up previous uncertainty about the harmfulness of lower levels of ozone pollution. UARG argues that EPA did this incorrectly in two respects.

UARG's first argument is based on a Supreme Court case (Whitman v. American Trucking) that upheld EPA's previous ozone standard. The Court in that case said "requisite" meant neither higher nor lower than necessary. UARG interprets this to mean "quantitative findings and the precise line drawing that the Court found that the statute demands." UARG criticizes EPA's approach as "uncertainty-centric" because of the role EPA's greater certainty about lower level impacts played in the EPA's decision.

This argument ignores both the nature of the task facing EPA and the language of the statute. The nature of the task that Congress gave to the agency inevitably requires judgment calls, because the scientific evidence of harm is never completely clearcut and the term "public health" has an inevitable degree of vagueness. And remember that the statute requires EPA to employ "an ample margin of safety," which both recognizes the importance of uncertainty in making these decisions and gives EPA discretion to decide on how large the margin of safety should be.

UARG's other argument seems to completely misread another Supreme Court opinion. UARG argues that before EPA could change the standard, it has to show that changed evidence means that the previous standard no longer meets the statutory requirement. Strangely, UARG relies on a Supreme Court case that stands for the opposite proposition. In fact, the Court in that case specifically rejected the view that an agency has to meet a higher burden of proof when it changes its mind about a previous regulation. All it needs to

do is provide a reasoned explanation for its current decision, not prove that the earlier decision is wrong.

The fact that this case was set for conference is puzzling. It may simply mean that the Justices hadn't looked deeply enough into the issues at that point. This is really a routine administrative law case in which the lower court opinion faithfully followed the normal rules for judicial review. On the other hand, maybe this is a signal that at least some Justices don't think the normal rules should apply in this context, maybe because of the national importance of these particular rules.

Stayed tuned for further developments on or around the first Monday in October, when the Court begins sitting again.