

There are going to be some significant environmental cases over the next year. In addition, some important new cases will be filed now or in the near future, which may have produced some interesting rulings. It will probably take more than a year, however, for some of the big new cases down the turnpike to result in their first level of judicial opinions, let alone reach completion.

### **The Supreme Court.**

The Court agreed last spring to hear two environmental cases this year. The first, [\*\*County of Maui, Hawaii v. Hawaii Wildlife Fund\*\*](#), No. [18-260](#), will be argued on November 6. The issue is whether the Clean Water Act requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater.

The second case was [\*\*Atlantic Richfield Co. v. Christian\*\*](#), No. [17-1498](#). It's a Superfund case involving a number of fairly technical legal issues, the most interesting of which involve the relationship between the Superfund law and state laws. The Court seems to like taking Superfund cases, maybe because they involve civil liability issues that the Court feels comfortable with. Given the make-up of the Court, I'd be happy if they never took any environmental cases. But if they do have to hear some environmental cases, at least both of these cases involving fairly narrow issues.

When it reconvened earlier this month, the Court added a third case, [\*\*U.S. Forest Service v. Cowpasture River Preservation Association\*\*](#). The Solicitor General urged the Court to take the case, but it's bizarre that the Court is taking up its very limited docket space on this case. The issue is whether the Appalachian Trail counts as part of the National Park Service, in terms of a statute that prohibits gas pipelines from crossing national park land. The issue has very limited national significance and may not even affect whether this particular pipeline gets built. The reason for that is that the lower court found other legal flaws in the agency decision to grant the pipeline permit. Those other legal issues won't be heard by the Supreme Court, and it remains to be seen whether the agency can fix them on remand.

### **D.C. Circuit.**

*California v. EPA* is one round in the ongoing battle over EPA's effort to cap gas mileage requirements, contrary to the escalating requirements adopted by the Obama Administration. The first step in EPA's process was to rule that the conditions for reconsidering the Obama rule had been met. That's the subject of this lawsuit. EPA appears

to be planning to issue a final decision about weakening the standards sometime this Fall, although it's having trouble figuring out how to message the evidence to support its action. It's not clear to me what happens to this existing lawsuit when that happens.

*Sierra Club v. EPA* involves EPA guidance for facilities seeking permits in areas with relatively clean air. The new guidance for regulators uses "significant impact levels" to decide whether to issue a permit for a new source. Basically, EPA's guidance is designed to give sources an easier way of exiting from the requirements for these new sources. EPA claims that because this is a "guidance," it's not judicially reviewable, which is a very tricky issue in administrative law. If it is reviewable, however, EPA claims it is valid. The issues in this case are pretty technical, but there would be a real impact on air quality if EPA wins.

In *Massachusetts Lobstermen's Association v. Ross*, the court will review the Obama-era designation of the Northeast Canyons and Seamounts Marine National Monument. The district court upheld the creation of this national monument, but fishing groups have appealed. From what I understand of the Antiquities Act, I don't think they have much of the case.

*American Lung Association v. EPA* is a challenge to the rollback of the Obama Administration's Clean Power Plant. It is probably the highest profile case in terms of the environmental issue involved.

*California v. Chao* is a challenge to the Trump Administration's revocation of California's authority to regulate greenhouse gas emissions from motor vehicles. It may well be the most important of the pending cases in terms of actual impact on carbon emissions. This case is still in the trial court, so it won't reach the D.C. Circuit for some time.

The D.C. Circuit has exclusive jurisdiction over EPA regulation of national application under the Clean Air Act. That means that many of the most significant Trump rollbacks will be heading for that court.

### **Looking forward.**

This list is only the tip of the iceberg. Brookings has a lengthy [list](#) of deregulatory actions under the Trump Administration. Apart from those that have already been resolved by the courts, almost every completed deregulatory action is being challenged in court somewhere in the country. It could take years for all of these cases to work their way through the litigation system. All of this is great for lawyers, if no one else.

If a Democrat wins in 2020, whatever cases have not yet been resolved will probably result in remands back to the new Administration for further consideration. The new Administration will then need to start new proceedings to repeal the Trump rollbacks. At least in some cases, it might be easier just to let the litigation play out, at least in cases where a favorable ruling seems likely. On the other hand, if Trump wins, the litigation will go on a long time.