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Voight v. Coyote Creek Mining Co.—Eighth Circuit panel disagrees over whether deference should be paid to state agency’s interpretation of Clean Air Act regulation

The Coyote Creek Mining Company constructed a lignite coal mine in North Dakota that became operational in 2016. The overall project consists of the open face mine connected by a several-mile private hauling road to a coal processing facility. Prior to processing, the coal is placed into an open storage pile with a capacity of 180,000 tons of raw coal and generally maintained at 130,000 to 145,000 tons. A retaining wall separates the storage pile and the processing plant, with an apron feeder located near the wall’s top to place coal into the processing facility for crushing. Coal is transferred from the storage area into the feeder by gravity or bulldozer.

Prior to the mine’s construction, CCMC applied for and received a minor source permit from the North Dakota Department of Health under the Clean Air Act state implementation plan approved by the Environmental Protection Agency. *See* N.D. Admin. Code § 33.1-15-14-03. During the mine’s construction, however, lessees of a nearby ranch filed suit under the CAA alleging that the mine required a major, not a minor, source permit and that the processing plant violated the federal statute because it lacked a coal-dust control plan. The ranchers’ claim turned on the interpretation of an EPA regulation, 40 C.F.R. § 60.250(a), which appears in 40 C.F.R. Part 60, Subpart Y and states that “[t]he provisions of this subpart apply to affected facilities *in* coal preparation and processing plants that process more than 181 megagrams (Mg) (200 tons) of coal per day.” [Emphasis added.] The facts made clear that if the storage pile coal was “in” the coal preparation and processing plant, the storage’s “fugitive emissions”—i.e., coal dust—when added to the plant’s other emissions would make the regulation’s requirements applicable and the plant a major emitting facility. On cross-motions for summary judgment, the magistrate judge, sitting as the district court, entered judgment in CCMC’s favor. *Voight v. Coyote Creek Mining Co., LLC*, 329 F. Supp. 3d 735 (D.N.D. 2019).

A divided Eighth Circuit panel affirmed. *Voight v. Coyote Creek Mining Co., LLC*, No. 18-2705, 2020 WL 6811356 (8th Cir. Nov. 20, 2020). The majority, like the district court, found the relevant regulations ambiguous and therefore “turn[ed] to subsequent interpretative guidance to aid us in determining whether the coal pile is part of the coal processing plant.” It found EPA had “offered some clarification on when a coal pile is considered to be ‘in’ a coal processing plant” in New Source Performance Standards (NSPS)—Applicability of Standards of Performance for Coal Preparation Plants to Coal Unloading Operations, 63 Fed. Reg. 53288-01, 53289 (Oct. 5, 1998). This guidance document provided that “if the coal is unloaded for the purpose of storage, then the unloading activity is not an affected facility under NSPS Subpart Y” and that “[t]he coal must be directly unloaded into receiving equipment, such as a hopper, to be subject to the provisions of NSPS Subpart Y.” Nevertheless, the majority “agree[d] with the district court that it too does not provide a conclusive answer, particularly where, as here, the coal pile is used for storage, unloading, and feeding purposes.” Given the continuing ambiguity, it further agreed with the lower

court that “the best interpretative aid to determine whether Subpart Y applies to the coal pile is the NDDOH permitting decision, which concluded that the coal pile is not part of the coal processing plant and thus is not subject to Subpart Y.” It then followed the district court’s lead in deferring to the NDDOH’s application of § 60.250(a):

[T]he district court’s exhaustive and well-reasoned opinion demonstrates that the NDDOH permitting decision does not run afoul of the relevant regulations and EPA guidance. The district court explicitly noted that the NDDOH decision was entitled to deference because (1) the determination that the coal pile is not part of the coal processing plant is consistent with EPA guidance describing the beginning of a coal processing plant as the “first hopper”; (2) the coal pile contains only unprocessed raw coal; (3) most of the coal pile consists of coal stored long-term in the event of a delay or shutdown at the mine face; and (4) the exclusion of the coal pile from the coal processing plant does not eviscerate the regulations as they would still apply to coal piles in a coal processing plant, particularly those that contained processed coal. As the primary body responsible for issuing permits based upon the CAA standards, North Dakota is in the best position to decide whether a given facility falls within or satisfies the CAA standards, and that decision is entitled to deference.

The majority next rejected the ranchers’ “assertion that giving deference to the NDDOH permitting decision undercuts the EPA’s non-delegable authority to make legal determinations in order to preserve the uniformity and consistency of NSPS on a national level.” It reasoned that “[t]he process for NSPS enforcement would be significantly impaired if the state authority did not have the ability to make determinations based on application of given facts to the SIP and EPA framework.” The majority added that any unreasonable, arbitrary or capricious exercise of NDDOH authority is (as here) subject to judicial review—an “avenue to challenge aberrant decisions [that] guards against the risk of national inconsistency.”

The remaining panel member (Stras, J.) dissented. The dissent’s opening paragraph established the core thrust of its disagreement:

Most Americans would be surprised to learn that state bureaucrats can play an even larger role than federal judges do in interpreting federal law. Yet by deferring to the North Dakota Department of Health’s interpretation of a Clean Air Act regulation, the court’s decision has just that effect. In my view, even if we must defer to a federal agency’s interpretation of a federal statute, ... and a federal agency’s interpretation of a federal regulation, ... it defies basic constitutional principles to defer to a state agency’s interpretation of federal law.

It expanded at length on this precis. After expressing discomfort broadly with “[t]he threat to the judiciary’s interpretative power” embodied in “the growth of the administrative state” and acquiescence in “judicial-deference doctrines” under both “horizontal” (separation of federal powers) and “vertical” (federalism) “structural principles,” the dissent argued that

it should be clear that the Constitution does not leave room for state executive-branch officials to tell *federal judges* what *federal* law means. Rather than bending to “local habits [or] feelings,” ... our job is to exercise independent judgment “to say what the law is,” ... even when—perhaps especially when—someone else interprets the law differently. ... [¶] By extending deference to state executive-branch officials, the court has taken what so far has been only a horizontal separation-of-powers problem and expanded it vertically. A state bureaucrat, who unquestionably has “state attachments ... and [] interests,” ... now has more say over Clean Air Act regulations than we do.

No one would seriously argue, to use a slightly different example, that we should defer to what state judges say federal law means, ... even though they are “bound” to interpret and apply it just as we are. Yet in the court’s view, somehow state executive-branch officials are different.

Lastly, the dissent had no difficulty construing “in” to encompass the coal storage area. “Everyone, including the EPA, agrees that the apron feeder, which receives the coal for conveyance into the crushing equipment, is ‘in’ the plant. ... So it follows that the coal pile, which fully envelops and surrounds the apron feeder, is in the plant, too.”

Decision link: <https://www.ca8.uscourts.gov/sites/ca8/files/opinions/182705P.pdf>