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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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ENVIRONMENTAL DEFENSE ET AL. *v.* DUKE ENERGY CORP. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 05–848. Argued November 1, 2006—Decided April 2, 2007

In the 1970s, Congress added two air pollution control schemes to the Clean Air Act (Act): New Source Performance Standards (NSPS) and Prevention of Significant Deterioration (PSD), each of which covers modified, as well as new, stationary sources of air pollution. The NSPS provisions define "modification" of such a source as a physical change to it, or a change in the method of its operation, that increases the amount of a pollutant discharged or emits a new one. 42 U. S. C. §7411(a)(4). The PSD provisions require a permit before a "major emitting facility" can be "constructed," §7475(a), and define such "construction" to include a "modification (as defined in [NSPS])," §7479(2)(C). Despite this definitional identity, the Environmental Protection Agency's (EPA) regulations interpret "modification" one way for NSPS but differently for PSD. The NSPS regulations require a source to use the best available pollution-limiting technology, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 846, when a modification would increase the discharge of pollutants measured in kilograms per hour, 40 CFR §60.14(a), but the 1980 PSD regulations require a permit for a modification only when it is a "major" one, §51.166(b)(2)(i), and only when it would increase the actual annual emission of a pollutant above the actual average for the two prior years, §51.166(b)(21)(ii).

After respondent Duke Energy Corporation replaced or redesigned the workings of some of its coal-fired electric generating units, the United States filed this enforcement action, claiming, among other things, that Duke violated the PSD provisions by doing the work without permits. Petitioner environmental groups intervened as plaintiffs and filed a complaint charging similar violations. Duke

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moved for summary judgment, asserting, *inter alia*, that none of its projects was a "major modification" requiring a PSD permit because none increased hourly emissions rates. Agreeing, the District Court entered summary judgment for Duke on all PSD claims. The Fourth Circuit affirmed, reasoning that Congress's decision to create identical statutory definitions of "modification" in the Act's NSPS and PSD provisions affirmatively mandated that this term be interpreted identically in the regulations promulgated under those provisions. When the court *sua sponte* requested supplemental briefing on the relevance of this Court's decision in *Rowan Cos.* v. *United States*, 452 U. S. 247, 250, that the Government could not adopt different interpretations of the word "wages" in different statutory provisions, plaintiffs injected a new issue into the case, arguing that a claim that the 1980 PSD regulation exceeded statutory authority would be an attack on the regulation's validity that could not be raised in an enforcement proceeding, see 42 U. S. C. §7607(b)(2), since judicial review for validity can be obtained only by a petition to the District of Columbia Circuit, generally within 60 days of EPA's rulemaking, §7607(b)(1). The Fourth Circuit rejected this argument, ruling that its interpretation did not invalidate the PSD regulations because they can be interpreted to require an increase in the hourly emissions rate as an element of a major "modification."

Held: The Fourth Circuit's reading of the PSD regulations in an effort to conform them with their NSPS counterparts on "modification" amounted to the invalidation of the PSD regulations, which must comport with the Clean Air Act's limits on judicial review of EPA regulations for validity. Pp. 8–17.

(a) Principles of statutory interpretation do not rigidly mandate identical regulation here. Because "[m]ost words have different shades of meaning and consequently may be variously construed, [even] when [they are] used more than once in the same statute or . . . section," the "natural presumption that identical words used in different parts of the same act are intended to have the same meaning . . . is not rigid and readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent." *Atlantic Cleaners & Dyers, Inc.* v. *United States*, 286 U. S. 427, 433. A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different ways of implementation. The point is the same even when the terms share a common statutory definition, if it is general enough. See *Robinson* v. *Shell Oil Co.*, 519 U. S. 337, 343–344. *Robinson* is not inconsistent with *Rowan,* where the Court's invalidation of the differing interpretations of "wages," 452

U. S., at 252, turned not on the fact that a "substantially identical" definition of that word appeared in each of the statutory provisions at issue, but on the failure of the regulations in question to serve Congress's manifest "concern for the interest of simplicity and ease of administration," *id.,* at 255. In fact, in a case close to *Rowan*'s facts, the Court recently declined to follow a categorical rule of resolving ambiguities in identical statutory terms identically regardless of their surroundings, *United States* v. *Cleveland Indians Baseball Co.*, 532 U. S. 200, 213, but instead accorded "substantial judicial deference" to an agency's "longstanding," "reasonable," and differing interpretations of the statutory term at issue, *id.,* at 218–220. It makes no difference here that the Clean Air Act does not merely repeat the same definition in its NSPS and PSD provisions, but that the PSD provisions refer back to the section defining "modification" for NSPS purposes. Nothing in the text or legislative history of the statutory amendment that added the NSPS cross-reference suggests that Congress meant to eliminate customary agency discretion to resolve questions about a statutory definition by looking to the surroundings in which the defined term appears. EPA's construction need do no more than fall within the outer limits of what is reasonable, as set by the Act's common definition. Pp. 9–12.

(b) The Fourth Circuit's construction of the 1980 PSD regulations to conform them to their NSPS counterparts was not a permissible reading of their terms. The PSD regulations clearly do not define a "major modification" in terms of an increase in the "hourly emissions rate." On its face, the definitional section specifies no rate at all, hourly or annual, merely requiring a "physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any" regulated pollutant. 40 CFR §51.166(b)(2)(i). But even when the regulations mention a rate, it is annual, not hourly. See, *e.g.,* §51.166(b)(23)(i). Further at odds with the idea that hourly rate is relevant is the mandate that "[a]ctual emissions shall be calculated using the unit's actual operating hours," §51.166(b)(21)(ii), since "actual emissions" must be measured in a manner looking to the number of hours the unit is or probably will be actually running. The Court of Appeals's reasons for its different view are no match for these textual differences. Consequently, the Court of Appeals's construction of the 1980 PSD regulations must be seen as an implicit invalidation of those regulations, a form of judicial review implicating the provisions of §7607(b), which limit challenges to the validity of a regulation during enforcement proceedings when such review "could have been obtained" in the Court of Appeals for the District of Columbia within 60 days of EPA rulemaking. Because the Court of Appeals did not be-

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lieve that its analysis reached validity, it did not consider the applicability or effect of that limitation here. The Court has no occasion itself at this point to consider the significance of §7607(b). Pp. 12–17.

(c) Duke's claim that, even assuming the Act and the 1980 regulations authorize EPA to construe a PSD "modification" as it has done, EPA has been inconsistent in its positions and is now retroactively targeting 20 years of accepted practice was not addressed below. To the extent the claim is not procedurally foreclosed, Duke may press it on remand. P. 17.

411 F. 3d 539, vacated and remanded.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SCALIA, KENNEDY, GINSBURG, BREYER, and ALITO, JJ., joined, and in which THOMAS, J., joined as to all but Part III–A. THOMAS, J., filed an opinion concurring in part.