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*Corrosion Proof Fittings v. E.P.A.***

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# Standard of Review under the Toxic Substances Control Act: *Corrosion Proof Fittings v. E.P.A.*

JOYCE MERRITT\*

## INTRODUCTION

In recognition of the serious chemical hazards to health and the environment and the inadequacy of the existing piecemeal regulations,<sup>1</sup> Congress enacted the Toxic Substances Control Act ("TSCA" or "Act").<sup>2</sup> Congress wrestled for six years on the toxic substances issue before the final adoption of the TSCA.<sup>3</sup> The TSCA gives broad authority to the Environmental Protection Agency ("EPA") to regulate the manufacturing, importation, processing, distribution, use and disposal of chemical substances.<sup>4</sup> The TSCA has several major purposes. First, the Act seeks to screen new chemicals to determine whether they pose a risk to health and the environment.<sup>5</sup> Second, the TSCA requires testing of chemicals which the EPA identifies as possible

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<sup>1</sup> MARY D. WOROBEK & GIRARD ORDWAY, TOXIC SUBSTANCES CONTROLS GUIDE 13 (1989).

<sup>2</sup> Toxic Substances Control Act of 1976 [hereinafter TSCA], Pub. L. No. 94-469, § 30, 90 Stat. 2050 (codified at 15 U.S.C. §§2601-2629 (1976)).

<sup>3</sup> For an excellent discussion of the legislative history of the TSCA, see generally RAY M. DRULEY & GIRARD L. ORDWAY, THE TOXIC SUBSTANCES CONTROL ACT 10 (rev. ed. 1981).

<sup>4</sup> 15 U.S.C. §§ 2601-2629 (1976). For an explanation of what constitutes a chemical substance, see S. REP. NO. 94-698, 94th Cong., 2d Sess. 1-105 (1976) reprinted in 1976 U.S.C.C.A.N. 4491-4590. For more discussion of the breadth of the TSCA see Nina G. Stillman & John R. Wheeler, *The Expansion of Occupational Safety and Health Law*, 62 NOTRE DAME L. REV. 969, 980 (1986-87).

<sup>5</sup> Under TSCA § 5(a)(1), 15 U.S.C. § 2604(a)(1) (1976), a premanufacture notification, or "PMN," must be submitted to the EPA at least 90 days prior to commercial manufacture or import of any chemical substance that is not on a list of chemicals in commerce that is compiled and maintained by the EPA. This list is the "TSCA Inventory of Chemical Substances," and was compiled pursuant to § 8(b) of the Act. The Inventory consists of all commercial chemical substances initially compiled by the EPA pursuant to § 8(b), plus all commercial chemicals which have passed PMN review under § 5.

risks.<sup>6</sup> Third, the Act seeks to gather information on existing chemicals<sup>7</sup> and gives the EPA the power to control those chemicals which pose a risk.<sup>8</sup>

Under Section 6 of the Act, the EPA may prohibit or limit the manufacturing, processing, distribution, use or disposal of a chemical which poses an unreasonable risk to health or the environment.<sup>9</sup> Under this section, Congress granted the EPA a wide range of options, from requiring warning labels, to mandating a complete ban on production, import, and use of dangerous chemicals in the United States.<sup>10</sup> The EPA must, however, formulate regulations which are the least burdensome necessary to achieve their objectives of controlling the chemical which poses the unreasonable risk to health or the environment.<sup>11</sup> "The Agency must list the substance's effects and the effects of exposure to it both on humans and on the environment, the benefits of use and availability of substitutes, and the economic consequences of EPA's proposed action on the economy, small business, and technical innovation."<sup>12</sup>

The EPA recently used its authority under Section 6 of the TSCA for the first time in banning a dangerous substance, but in *Corrosion Proof Fittings v. E.P.A.*,<sup>13</sup> the Fifth Circuit Court of Appeals remanded the EPA's final rule prohibiting the manufacture and sale of asbestos in almost all products.<sup>14</sup>

This Comment places *Corrosion Proof Fittings* in its historical perspective by discussing some prior decisions which utilized

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<sup>6</sup> Under TSCA § 4, 15 U.S.C. § 2603 (1976), the Administrator can require that testing be conducted on any substance or mixture which poses a risk to health or the environment if there is an insufficiency of data to determine whether an unreasonable risk is present.

<sup>7</sup> TSCA § 8, 15 U.S.C. § 2607 (1976) provides, in relevant part, that "[e]ach person . . . who manufactures or processes or proposes to manufacture or process a chemical substance . . . shall maintain such records, and shall submit to the Administrator such reports as the Administrator may reasonably require . . . ."

<sup>8</sup> TSCA § 6, 15 U.S.C. § 2605 (1976) provides, in relevant part, that "If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activity, presents or will present an unreasonable risk of injury to health or the environment, the Administrator shall by rule . . . protect adequately against such risk . . . ."

<sup>9</sup> TSCA § 6, 15 U.S.C. § 2605 (1976).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*; see also WOROBEK & ORDWAY, *supra* note 1, at 33-34.

<sup>12</sup> WOROBEK & ORDWAY, *supra* note 1, at 33-34.

<sup>13</sup> *Corrosion Proof Fittings*, 947 F.2d 1201 (5th Cir. 1991).

<sup>14</sup> *Id.* at 1207.

the same standard of review, by examining the Fifth Circuit's decision in *Corrosion Proof Fittings*, and by examining the impact of *Corrosion Proof Fittings* on the power of the EPA.

### I. THE EARLIER CASES

It is a long-held view that an agency's decisions concerning its rulemaking procedures are entitled to great deference because agencies are the "best situated to determine how they should allocate their finite resources."<sup>15</sup>

The deference traditionally afforded to the EPA, specifically, has been great, even when the subject matter involved in the dispute is the environment versus business. Two recent Supreme Court cases illustrate this struggle. First, in *E.P.A. v. Nat'l Crushed Stone Ass'n*,<sup>16</sup> the Supreme Court upheld the EPA's policy of withholding variances from individual polluters who are economically unable to comply with the 1977 effluent limitations promulgated under the Federal Water Pollution Control Act.<sup>17</sup> In upholding the EPA's policy, the Court showed "great deference to the interpretation given the statute by the officers or agency charged with its administration."<sup>18</sup> This decision upheld a very rigid EPA policy in the face of potentially severe economic impacts. In a report prepared jointly by the EPA, the Commerce Department and the Council on Environmental Quality (CEQ), it was estimated that there would be 200 to 300 plant closings caused by the first set of pollution limitations.<sup>19</sup>

The Supreme Court tackled the struggle between the EPA and business a second time in *Chemical Manufacturers Ass'n v. Natural Resources Defense Council*.<sup>20</sup> Reaffirming a judicial policy of deference to the EPA, the Supreme Court upheld a rigid policy of not allowing exceptions for businesses, on the basis of economic circumstances when failing to meet best practicable control technology (BPT) and best available technology economically achievable (BAT) requirements set by the EPA.<sup>21</sup> The

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<sup>15</sup> *Superior Oil Co. v. Fed. Energy Reg. Comm'n*, 563 F.2d 191, 201 (5th Cir. 1977).

<sup>16</sup> *Nat'l Crushed Stone Ass'n*, 449 U.S. 64 (1980).

<sup>17</sup> 33 U.S.C.S. §1251 et seq.

<sup>18</sup> *Nat'l Crushed Stone Ass'n*, 449 U.S. at 83.

<sup>19</sup> *Id.* at 80.

<sup>20</sup> *Chemical Mfrs. Ass'n*, 470 U.S. 116 (1985).

<sup>21</sup> *Id.*

Court held that the "view of the agency charged with administering the statute is entitled to considerable deference."<sup>22</sup> The Court refused to substitute its judgment for that of the EPA solely on the basis that there were other policies available which the EPA might have adopted.<sup>23</sup>

While the Supreme Court has traditionally deferred to the EPA when it must weigh environmental quality and economic viability, this deference has not been without limitations. As early as 1971, the Supreme Court in *Citizens to Preserve Overton Park, Inc. v. Volpe*,<sup>24</sup> established that while the court's review is indeed narrow and that it ordinarily does not substitute its judgment for that of the agency involved, the court will continue to undertake a "substantial inquiry" and a "thorough, probing, in-depth review."<sup>25</sup> While many courts have disagreed on the degree of judicial scrutiny required or provided by *Overton Park*,<sup>26</sup> the *Chemical Manufacturers Ass'n v. Natural Resources Defense Council* and *Nat'l Crushed Stone Ass'n* decisions illustrate the continuing power of the EPA.

Despite the scrutiny over agencies' rulemaking articulated by the courts in 1971,<sup>27</sup> courts have attempted to strike a delicate balance between agency deference and substantial inquiry. While *Overton Park* afforded the courts the power to probe agency decisions more carefully, most courts continued to defer to the EPA. In *Ethyl Corp. v. E.P.A.*,<sup>28</sup> the majority following *Overton Park* stated that the "reviewing court had an obligation to engage in a searching and complete review of the facts."<sup>29</sup> The Court also noted that the "reviewing court must defer if the agency has a rational basis for its decision."<sup>30</sup> Thus, under the substantial evidence inquiry, courts have been mindful of their balancing role. They must give careful scrutiny to the agency's findings, while affording the appropriate deference to decisions of administrative agencies.<sup>31</sup>

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<sup>22</sup> *Id.* at 125.

<sup>23</sup> *Id.*

<sup>24</sup> *Overton Park*, 401 U.S. 402 (1971).

<sup>25</sup> *Id.* at 415.

<sup>26</sup> See, e.g., Kevin Gaynor, *The Toxic Substances Control Act*, 30 VAND. L. REV. 1149 (1977).

<sup>27</sup> *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).

<sup>28</sup> 541 F.2d 1 (D.C. Cir. Mr. 19, 1976), *cert. denied*, 426 U.S. 941 (1976).

<sup>29</sup> Gaynor, *supra* note 26, at 1158.

<sup>30</sup> *Ethyl Corp.*, 541 F.2d at 35.

<sup>31</sup> See, *Envtl. Defense Fund v. E.P.A.*, 636 F.2d 1267, 1277 (D.C. Cir. 1980); see

Courts typically note the importance of allowing a better informed agency to make administrative decisions. But, they keep a watchful eye so as to make sure those decisions are justified.

## II. *CORROSION PROOF FITTINGS v. E.P.A.*

### A. *Background and Facts*

The EPA began proceedings in 1979 to reduce the risk to health and the environment by exposure to asbestos.<sup>32</sup> A panel appointed by the EPA conducted public meetings and reviewed over a hundred asbestos studies.<sup>33</sup> As a result, the EPA concluded that "asbestos is a potential carcinogen at all levels of exposure . . . ."<sup>34</sup> In 1989, the EPA issued the final rule prohibiting the manufacture and sale of almost all asbestos products.<sup>35</sup> Applying TSCA's substantial evidence standard for reviewing agency findings, the Fifth Circuit held that the EPA presented insufficient evidence to justify a total asbestos ban.<sup>36</sup> This was the first use of the power granted by Congress to the EPA under Section 6 of the TSCA to ban a dangerous substance. The EPA contended that the ban would save either 148 or 202 lives at a cost of \$450 to 800 million.<sup>37</sup>

Regarding EPA's rulemaking defects, the Court held that the denial of cross-examination of some of its witnesses and failure to provide public notice of its use of analogous exposure estimates before closing the hearing record, together deprived

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*also* Yaffe Iron & Metal Co. v. E.P.A., 774 F.2d 1008, 1014 (10th Cir. 1985) (supports deference to agencies, while noting that substantial evidence is more than a mere "scintilla;" upholds the reasonable person standard to determine what constitutes substantial evidence.)

<sup>32</sup> *Corrosion Proof Fittings*, 947 F.2d at 1207. For an examination of the harms of asbestos claimed by the EPA, see generally ENVIRONMENTAL PROTECTION AGENCY, GUIDANCE FOR CONTROLLING ASBESTOS-CONTAINING MATERIALS IN BUILDINGS (June 1985); ENVTL. PROTECTION AGENCY, GUIDANCE FOR CONTROLLING FRIABLE ASBESTOS-CONTAINING MATERIALS IN BUILDINGS (Mar. 1983); ENVTL. PROTECTION AGENCY, A GUIDE TO RESPIRATORY PROTECTION FOR THE ASBESTOS ABATEMENT INDUSTRY (Sept. 1986).

<sup>33</sup> *Corrosion Proof Fittings*, 947 F.2d at 1207.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 1207-08.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 1208.

the final rule of the substantial evidence necessary to survive judicial review.<sup>38</sup>

The TSCA also instructs the EPA to undertake the least burdensome regulations,<sup>39</sup> and the Court held that the substantial evidence test requires more scrutiny for a total ban of a dangerous substance than for other administrative actions.<sup>40</sup>

### B. *The EPA's Burden Under TSCA*

In *Chemical Manufacturers Ass'n v. E.P.A.*,<sup>41</sup> the Court provided the basic framework for reviewing the EPA's actions under the TSCA. The EPA must show: (1) the quantities of the chemical in question are substantial; and (2) the human exposure to the chemical is substantial.<sup>42</sup> The Court, however, recognized that "substantial" is difficult to define.<sup>43</sup> The Court noted that it defers to agencies in their rulemaking, but requires the agency to articulate its findings so the court can determine whether the EPA "engaged in balanced, informed decisionmaking."<sup>44</sup> The Court remanded the decision to the EPA to "articulate the standards or criteria on the basis of which it found the quantities . . . to be 'substantial'."<sup>45</sup> The decision to remand this case was consistent with the Fifth Circuit's decision in *Shell Chemical Co. v. E.P.A.*, which held that remand is appropriate in close cases under substantial review.<sup>46</sup>

The TSCA provides that a reviewing court shall hold unlawful and set aside a final rule promulgated under Section 6 of the Act "if the court finds that the rule is not supported by substantial evidence . . ."<sup>47</sup> The TSCA also requires that the EPA use the least burdensome regulation necessary to achieve its objectives of minimum reasonable risk.<sup>48</sup> Congress did not

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<sup>38</sup> *Id.* at 1212.

<sup>39</sup> TSCA § 6.

<sup>40</sup> *Corrosion Proof Fittings*, 947 F.2d at 1216.

<sup>41</sup> *Chemical Mfrs. Ass'n*, 899 F.2d 344 (5th Cir. 1990).

<sup>42</sup> *Id.* at 357.

<sup>43</sup> *Id.* at 359.

<sup>44</sup> *Id.* (quoting *Texas Power & Light v. F.C.C.*, 784 F.2d 1265, 1269 (5th Cir. 1986)).

<sup>45</sup> *Chemical Mfrs. Ass'n*, 899 F.2d at 360.

<sup>46</sup> *Shell Chem.*, 826 F.2d 295, 296 (5th Cir. 1987).

<sup>47</sup> TSCA § 19, 15 U.S.C. §2618(c)(1)(B)(i) (1976).

<sup>48</sup> TSCA § 6; *see also*, H.R. REP. NO. 1341, 94th Cong., 2d Sess. 202 (1976), *reprinted in* DRULEY & ORDWAY, *THE TOXIC SUBSTANCES CONTROL ACT* (1981).

enact TSCA as a zero-risk statute.<sup>49</sup> TSCA is a "risk/benefit-balancing statute."<sup>50</sup> The Court held that because the EPA chose the harshest remedy available under the Act, the EPA had a difficult burden to prove substantial evidence warranted such a remedy.<sup>51</sup> The EPA did not calculate the risk levels for intermediate levels of regulation.<sup>52</sup>

In order to survive judicial scrutiny under the substantial evidence standard provided by the TSCA, the EPA must prove that asbestos presents an unreasonable risk of harm to humans and the environment.<sup>53</sup> Any review of TSCA necessarily involves the concept of unreasonable risk.<sup>54</sup> "This concept is central to TSCA and findings concerning unreasonable risk are a prerequisite to most EPA regulatory action under the statute."<sup>55</sup> Congress realized that this was a difficult concept to define and thus set only general standards for the EPA when examining regulations.<sup>56</sup> In general, though, in order "to make a determination that a risk associated with a chemical is unreasonable, the EPA must balance the probability that a harm will occur and the magnitude and severity of the harm against the effect of the proposed regulatory action on the availability to society of the benefits of the substance of mixture, taking into account the availability of substitutes and other adverse effects."<sup>57</sup> In evaluating unreasonable risk of injury, the Court was careful to note that they are not a regulatory agency, but still concluded that the EPA "basically ignored the cost side of the TSCA equation."<sup>58</sup>

Consistent with its previous decisions of *Chemical Manufacturers Ass'n v. E.P.A.* and *Shell Chemical Co.*, the Court in *Corrosion Proof Fittings* was mindful of the considerable deference traditionally afforded to agencies when they engage in

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<sup>49</sup> *Corrosion Proof Fittings*, 947 F.2d at 1215.

<sup>50</sup> *WOROBEC & ORDWAY*, *supra* note 1, at 17.

<sup>51</sup> *Corrosion Proof Fittings*, 947 F.2d at 1216.

<sup>52</sup> *Id.* at 1217.

<sup>53</sup> *Id.* at 1214.

<sup>54</sup> See John S. Applegate, *The Perils of Unreasonable Risk: Information, Regulatory Policy, and Toxic Substances Control*, 91 COLUM. L. REV. 201 (1991).

<sup>55</sup> Stillman & Wheeler, *supra* note 4, at 982.

<sup>56</sup> H.R. REP. NO. 1341, 94th Cong., 2d Sess. 6-7 (1976), reprinted in DRULEY & ORDWAY, *THE TOXIC SUBSTANCES CONTROL ACT 185-86* (1981).

<sup>57</sup> *Id.*; CONFERENCE COMM., 74th Cong., 2d Sess., JOINT EXPLANATORY STATEMENT, reprinted in DRULEY & ORDWAY, *THE TOXIC SUBSTANCES CONTROL ACT 145* (1981).

<sup>58</sup> *Corrosion Proof Fittings*, 947 F.2d at 1222-23.

rulemaking.<sup>59</sup> In *Corrosion Proof Fittings*, the Court concluded that the EPA had not provided the substantial evidence required to withstand judicial scrutiny, even though the EPA is judged by relatively lenient standards.<sup>60</sup>

The discussion by the Court regarding least burdensome regulation and unreasonable risk are consistent with past Fifth Circuit opinions.<sup>61</sup> However, the Fifth Circuit has gone beyond the *Chem. Manufacturers Ass'n v. Natural Res. Defense Coun.* and *Nat'l Crushed Stone Ass'n* decisions rendered by the Supreme Court. As set forth in *Corrosion Proof Fittings*, the EPA attempted to use Section 6 to ban almost all asbestos products, regardless of whether there was a currently available substitute.<sup>62</sup> The EPA contended that if the companies did not develop substitutes, "the waiver provision would allow the continued use of asbestos in these areas, just as if the ban had not occurred at all."<sup>63</sup> This argument parallels the arguments used by the EPA in *Chemical Manufacturers Ass'n v. Natural Resources Defense Council* and *National Crushed Stone Ass'n*<sup>64</sup> where the EPA was forcing a strict standard much like the one attempted in *Corrosion Proof Fittings*. In each case, exceptions were not allowed based on economic inability to comply with the regulation.<sup>65</sup> The EPA argued in *Corrosion Proof Fittings* that exceptions would render their efforts meaningless. However, contrary to the decisions rendered by the Supreme Court, the Fifth Circuit struck down the attempt by the EPA to ban asbestos, regardless of available substitutes.<sup>66</sup> The difference in these results may

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<sup>59</sup> *Corrosion Proof Fittings*, 947 F.2d at 1211, 1212, 1219, 1222, 1226, 1229.

<sup>60</sup> *Id.* at 1212.

<sup>61</sup> See *Superior Oil Co. v. Fed. Energy Reg. Comm'n*, 563 F.2d 191 (5th Cir. 1977); see also *Shell Chem. Co. v. E.P.A.*, 826 F.2d 195 (5th Cir. 1987) (case remanded to EPA to reconsider its rule requiring manufacturers and processors of mesityl oxide to test the substance for its harmful effects on human health in light of new information discovered after the rules promulgation); *Chem. Mfrs. Ass'n v. E.P.A.*, 899 F.2d 344 (5th Cir. 1990) (case remanded to E.P.A. "to articulate the standards of criteria on which it found the quantities of cumen entering the environment from the facilities in question to be 'substantial' and the human exposure potentially resulting to be 'substantial'").

<sup>62</sup> *Corrosion Proof Fittings*, 947 F.2d at 1220.

<sup>63</sup> *Id.*

<sup>64</sup> See *E.P.A. v. Nat'l Crushed Stone Ass'n*, 449 U.S. 64 (1980); see also *Chem. Mfrs. Ass'n v. Natural Res. Defense Council*, 470 U.S. 116 (1985).

<sup>65</sup> See, *Nat'l Crushed Stone Ass'n*, 449 U.S. at 68; see also *Chem. Manufacturers Ass'n*, 470 U.S. at 131-132.

<sup>66</sup> *Corrosion Proof Fittings*, 947 F.2d at 1220.

stem from the language in the Act itself. The TSCA specifically instructs the EPA to consider the "relative merits of its ban, as compared to the economic effects of its actions."<sup>67</sup> Subsequently, the failure of the EPA to specifically consider the economic effects by examining less burdensome regulations, results in a lack of substantial evidence justifying a total ban.<sup>68</sup>

The Fifth Circuit viewed the burden of the EPA as being stricter than provided by the Supreme Court and remanded the decision to the EPA to provide more evidence justifying a total ban. The substantial evidence standard utilized by the Fifth Circuit in *Chemical Manufacturers Ass'n v. E.P.A.*, was consistently applied in *Corrosion Proof Fittings* and, consistent with *Shell Chemical*, the Fifth Circuit remanded the case to the EPA for more clarity.

### *C. Corrosion Proof Fittings' Further Narrowing of EPA Power*

The Fifth Circuit's opinion will narrow the EPA's power in regulating toxic substances. The first time the EPA attempted to use the power granted to it in 1976 by Congress under Section 6 to ban a dangerous substance, it was unsuccessful. Throughout the decision, the Fifth Circuit noted that the EPA must be afforded the appropriate level of deference.<sup>69</sup> However, the Court went beyond the traditional judicial inquiry in this case. The Supreme Court has afforded the EPA considerable deference and the Fifth Circuit, until now, balanced deference with substantial inquiry carefully.<sup>70</sup>

The Court also held that not informing the public of its intent to use analogous exposure estimates deprived the EPA of substantial evidence.<sup>71</sup> The Court went on to say "we are concerned about some of the methodology employed by the EPA in making various of the calculations that it did perform."<sup>72</sup> Furthermore, the Court examined the methods by which the EPA computed the costs and benefits of its proposed rule<sup>73</sup> and

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<sup>67</sup> *Id.* at 1221.

<sup>68</sup> *Id.* at 1215.

<sup>69</sup> *Id.* at 1211, 1212, 1219, 1222, 1226, 1229.

<sup>70</sup> *See*, *Chem. Mfrs. Ass'n v. N.R.D.C.*, 470 U.S. 116 (1985); *see also*, *E.P.A. v. Nat'l Crushed Stone Ass'n*, 449 U.S. 64, 83 (1980).

<sup>71</sup> *Corrosion Proof Fittings*, 947 F.2d at 1212.

<sup>72</sup> *Id.* at 1218.

<sup>73</sup> *Id.*

analyzed its calculations. The Court held that it was possible for the EPA to discount the benefit of human life.<sup>74</sup> The Court said that the EPA did not use an appropriate time frame and, as a result, the Court was concerned about the unquantifiable lives the EPA estimated they were saving after the year 2000.<sup>75</sup> The Court also said the EPA placed too great a reliance on the concept of population exposure when it made its calculations.<sup>76</sup>

This unprecedented inquiry by the Fifth Circuit into the specific methodology employed by the EPA has defined the new role of the court in determining whether agency actions are reasonable. The courts can now determine the adequacy of the methodology employed by the administrative agency, as well as the conclusion the agency reaches.

#### CONCLUSION

The EPA attempted, without success, for the first time to use Section 6 of the TSCA to ban a dangerous substance. The examination by the Fifth Circuit Court into the EPA's methodology was more probing than in previous decisions and, as a result, further narrows the power of the EPA through the substantial evidence standard. This decision also defines Section 6 of the TSCA and sets the standard for review of EPA actions under Section 6 of the TSCA.

In 1977 it was noted that "reviewing courts are deferring to the Administrators' judgment when [s]he acts to protect public health, regardless of whether they are applying. . . a substantial evidence standard. In light of the legislative history of the TSCA, reviewing courts will likely construe the term 'evidence' to include speculations and extrapolations based upon available knowledge."<sup>77</sup> The decision in *Corrosion Proof Fittings*, however, turns the attempt by Congress to protect health and the environment, by allowing the EPA to ban dangerous substances under the TSCA, into a virtually useless tool.<sup>78</sup>

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 1219.

<sup>77</sup> Gaynor, *supra* note 26, at 1161.

<sup>78</sup> Frances H. Irwin, *An Integrated Framework for Preventing Pollution and Protecting the Environment*, 22 ENVTL. L. 33 n.66 (1991).