

Supreme Court Decisions Increase Risk for Businesses in the U.S. Energy Sector



In June and July, the U.S. Supreme Court handed down several landmark decisions that shift the regulatory landscape for businesses in the energy sector. In a decision released on June 28, 2024,¹ the Court overturned the long-standing *Chevron* doctrine² and, with it, abolished the principle of judicial deference to an administrative agency’s interpretation of ambiguous statutes. Historically, *Chevron* deference granted agencies like the Environmental Protection Agency (EPA), the Federal Energy Regulatory Commission (FERC), the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission latitude in interpreting regulations. The new *Loper Bright* decision instead requires courts to conduct judicial review of agency actions, applying their own judgment without deferring to the agencies. This marks a significant shift in regulatory interpretation that amplifies risks for businesses in the U.S. energy sector.



A few days after the *Loper Bright* decision, the Court issued its ruling in the *Corner Post* case,³ holding that the statute of limitations for any claim brought against a government action under the Administrative Procedures Act is “plaintiff specific” and runs from the date any particular plaintiff is subject to harm. As stated by Justice Jackson in her dissent, “*This means that, from this day forward, administrative agencies can be sued in perpetuity over every final decision they make.*”⁴

While the majority opinion in *Loper Bright* expressly states that any existing regulation that has been upheld under the *Chevron* doctrine remains in force, any such regulation is now more vulnerable under a combination of *Loper Bright* and *Corner Post*. Justice Jackson described it this way, “*a fixed statute of limitations, running from the agency’s action, was one barrier to the chaotic upending of settled agency rules; the requirement that deference be given to an agency’s reasonable interpretations concerning its statutory authority to issue rules was another. The Court has now eliminated both. Any new objection to any old rule must be entertained and determined de novo by judges who can now apply their own unfettered judgment as to whether the rule should be voided.*”⁵

¹ *Loper Bright Enterprises, et al. v. Raimondo, Secretary of Commerce, et al.*, No. 22-451, slip op. 603 U.S. __ (2024) (*Loper Bright*).

² *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (*Chevron*).

³ *Corner Post, Inc. v. Bd. of Governors of The Fed. Reserve Sys.*, No. 22-1008, slip op. 603 U.S. __ (2024) (*Corner Post*).

⁴ *Id.* at 20 (Jackson, J. dissenting).

⁵ *Id.* at 23.

How Does this Affect Your Business?

Federal courts are no longer required to defer to federal agencies' interpretations, and this change injects a higher degree of uncertainty into the regulatory environment. Energy producers, providers, and project developers are subject to complex regulations and now face greater uncertainty. The lack of deference to agencies creates a less stable regulatory framework in the foreseeable future, which can affect investment strategies, operational compliance, and risk management processes.

Agency actions where businesses may now face greater uncertainty include:

- EPA's authority to regulate greenhouse gases from the power sector, conduct analysis under the National Environmental Policy Act, make permitting determinations related to water discharge under the Clean Water Act, and approve or disapprove fuels under the Renewable Fuels Standard;
- FERC's environmental reviews, cost allocation for regional transmission grid expansions, and enforcement authority; and
- The SEC's rule requiring climate-related disclosures, already under legal scrutiny, is now on even weaker ground.

This is by no means a complete list. More frequent and varied legal challenges will result in a patchwork of judicial decisions that complicate compliance efforts and strategic planning.



Actions to Take

Businesses operating in the energy sector must rely on regulatory predictability to make long-term investment decisions. The overturning of *Chevron* deference together with the *Corner Post*'s decision opening up the statute of limitation introduces a new era of uncertainty for agency rulemaking. Future application of regulations and interpretations are likely to be shaped by increased judicial scrutiny, potential legal challenges, and possible legislative action. Market participants should be prepared for potential changes as courts reassess well-established regulations. This uncertain regulatory environment necessitates a more dynamic and proactive approach to regulatory compliance and legal risk assessment. Given this new regulatory landscape, businesses may want to undertake several actions to assess and mitigate their risk exposure:

- 1. Comprehensive Regulatory Review:** Conduct a thorough review of all current regulations affecting operations and identify areas where judicial interpretations could diverge from agency guidance. This will help in understanding potential legal vulnerabilities.
- 2. Scenario Planning:** Develop scenario plans for various judicial outcomes on key regulatory issues. This includes assessing the potential impacts of differing court rulings on business operations and financial performance.
- 3. Strengthen Legal Teams:** Enhance internal legal capabilities or establish stronger partnerships with external legal experts to better navigate the increased complexity and volume of litigation.
- 4. Engage in Advocacy:** Actively engage in policy and regulatory advocacy to influence the development of clear and consistent regulatory standards that reduce uncertainty and consider the possibility of initiating or joining litigation challenging unreasonable agency interpretations.
- 5. Monitor Judicial Trends:** Keep a close watch on emerging judicial trends and decisions that could set precedents affecting regulatory interpretations. This can inform proactive adjustments to compliance strategies.

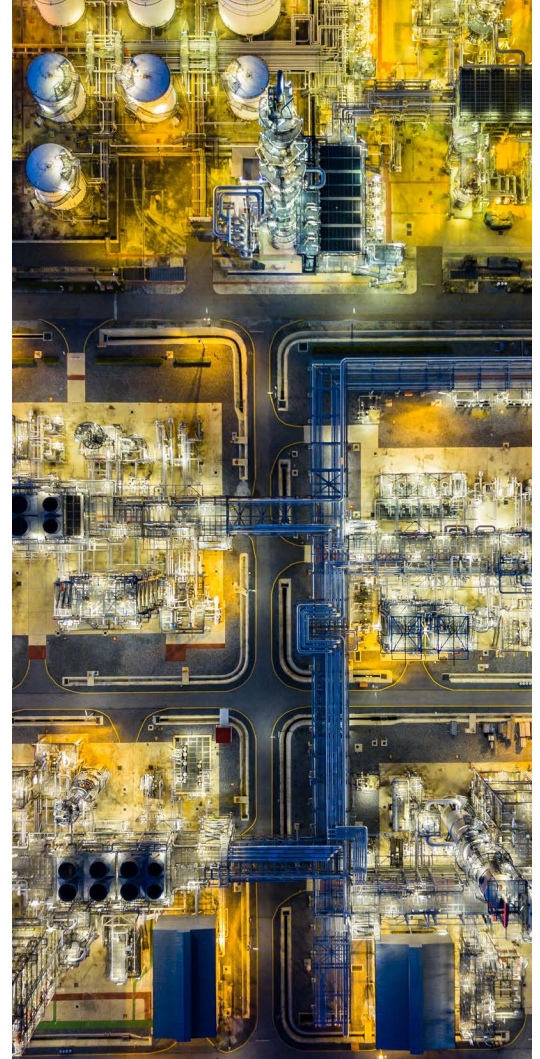
ERM and Charles Law PLLC

To navigate this intricate regulatory landscape, ERM has engaged Charles Law PLLC to offer a comprehensive suite of services that combine legal and technical risk assessment expertise. This solution aims to provide businesses with a one-stop solution for understanding and mitigating the risks arising from the Supreme Court's decision.

ERM brings extensive experience in environmental and regulatory compliance, providing technical assessments and strategic planning to ensure businesses meet evolving regulatory requirements. [Charles Law](#), renowned for its expertise in structuring and negotiating complex financial transactions, offers robust legal analysis, advocacy, transactional support, strategy, and litigation support.

Together, ERM and Charles Law provide an integrated approach that delivers a comprehensive overview of all aspects of business operations affected by these changes. This collaboration ensures that businesses receive legal guidance in environmental and energy regulations, technical expertise, and practical solutions to maintain compliance and manage risks effectively.

By leveraging the combined strengths of ERM and Charles Law, businesses can achieve a holistic understanding of their regulatory environment, ensuring they are better equipped to navigate the uncertainties introduced by this new regulatory paradigm.



Contact us with any questions



Sara Hayes
Partner, ERM
sara.hayes@erm.com



GuyLaine Charles
Founder, Charles Law PLLC
guylaine@charleslawpllc.com



This client update is prepared for the general information of our clients and other interested people. It is not, and does not attempt to be, comprehensive in nature. Due to the general nature of its content, it should not be regarded as legal advice.

©Copyright 2024 by the ERM International Group Limited and/or its affiliates ('ERM') and Charles Law PLLC (CL). All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means, without prior written permission of ERM and CL.

Sustainability is our business

