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The End of Chevron Deference: Implications for the Oil & Gas Industry

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The End of *Chevron* Deference: Implications for the Oil & Gas Industry

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I. Introduction

For nearly four decades, the doctrine of *Chevron* deference has shaped the landscape of administrative law, granting federal agencies broad authority to interpret ambiguous statutes. Established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, this principle required federal courts to defer to agency interpretations of statutes so long as they were reasonable.[2] The doctrine has had a major impact on the oil and gas industry, which is subject to extensive regulation both at the federal and state level.

Now, with the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*[3] to overturn *Chevron* deference, the balance of power in regulatory interpretation is shifting. Courts will no longer be required to defer to agency interpretations.[4] This means that judges will have the final say on ambiguous laws. This shift will significantly affect the oil and gas industry, particularly in heavily regulated areas where state and federal agencies have shaped how oil and gas companies operate.

This paper will explore the implications of *Chevron*'s demise, focusing on the legal framework of *Chevron* deference and its role in regulatory litigation, how the end of *Chevron* deference alters the balance of power between agencies, courts, and industry participants, and the practical impacts on the oil and gas industry at the federal and state level.

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[2] *Chevron, U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–44 (1984), *overruled by Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

[3] *See Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

[4] *Id.* ("The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous[.]").

II. *Chevron* Deference in a Nutshell

The Supreme Court's ruling in *Chevron* establishes a two-step test for courts reviewing agency interpretations of statutes.[5] Under the first step, if the statute's language is clear, courts must enforce it as written, without considering agency interpretations.[6] Under the second step, if the statute is ambiguous, courts must defer to the agency's interpretation so long as it is "based on a permissible construction of the statute," even if the court would have interpreted the statute differently.[7] The second step embodies the *Chevron* deference principal.

By way of background, *Chevron* dealt with the Environmental Protection Agency's (EPA) interpretation of the Clean Air Act Amendments of 1977, which imposed certain requirements on states that had not achieved the national air quality standards established by the EPA.[8] Included was the requirement that such states establish a permit program regulating "new or modified major stationary sources" of air pollution.[9] In 1981, the EPA adopted a more flexible approach to air pollution regulations, allowing states to treat entire industrial facilities as a single "bubble" rather than regulating each individual emissions sources separately.[10] The EPA's flexible definition made it easier for companies to comply with air quality standards by shifting emissions reductions within a facility rather than making changes to each individual unit.[11]

The Natural Resources Defense Council (NRDC) challenged this policy, arguing that it weakened pollution controls, and that the EPA's interpretation of the Clean Air Act was incorrect.[12] The D.C. Circuit Court of Appeals initially sided with the NRDC, ruling that the EPA's interpretation was inconsistent with the law, relying on two precedents *Alabama Power Co. v. Costle* and *ASARCO Inc. v. EPA* wherein the D.C. Circuit held that the bubble concept was inapplicable.[13] Notably, the Circuit Court had found the relevant Clean Air Act provision ambiguous.[14]

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[5] *Chevron*, 467 U.S. at 837–38, 842–43.
[6] *Id.* at 842–43.
[7] *Id.* at 843.
[8] *Id.* at 839–40.
[9] *Id.* at 840.
[10] *Id.* at 840–41.
[11] *Id.* at 855–56 (discussing the EPA's flexible definition of the term "source").
[12] *Id.* at 837, 841.
[13] *Id.* at 841–42 (citing *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979); *ASARCO Inc. v. EPA*, 578 F.2d 319 (D.C. Cir. 1978)).
[14] *Id.* at 841.

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