Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Environmental MVP: Hunton & Williams' F. William Brownell

By **David Siegel**

Law360, New York (December 05, 2014, 6:04 PM ET) —

Fighting off a Clean Air Act suit for DTE Energy Co. and convincing the U.S. Supreme Court to limit the government's authority to regulate carbon dioxide emissions are among the highlights that landed Hunton & Williams LLP's Bill Brownell a spot among Law360's 2014 Environmental MVPs.

Brownell

Brownell also represents the Utility Air Regulatory Group in the case of Michigan v. U.S. Environmental Protection Agency, where the high court in November granted the industry group's cert petition to determine whether the agency reasonably refused to consider costs in deciding to regulate hazardous air pollutant emissions produced by electric utilities.

"We have a large and experienced team of environmental lawyers at Hunton & Williams who contributed to our successes in each of these important proceedings," Brownell, chair of the firm's executive committee, told Law360. "Each of these decisions sets important precedent for implementation and enforcement of the environmental laws and regulations at issue."

In March a Michigan federal judge denied an EPA request for a preliminary injunction to block a DTE Energy Co. power plant operating permit and placed limits on the government's ability to bring actions based only on preconstruction emissions estimates.

U.S. District Judge Bernard A. Friedman ruled that the EPA does not possess "unfettered authority" to challenge the methodology and factual assumptions that DTE used to predict its emissions, granting summary judgment to the energy company in a case that was remanded from the Sixth Circuit.

Brownell had also represented DTE before the appeals court, which overturned an earlier ruling by the judge that the EPA could not bring an action against the company before first determining whether modifications to DTE's Michigan coal-fired plant actually increased emissions, finding that the EPA is within its right to question emissions projections.

The district court ruled that the government can hit permit holders for violations if they start construction without making an emissions projection or if they use an improper baseline period, but can't penalize DTE because the agency doesn't even contend that the company violated its regulations.

Brownell notched a major win before the Supreme Court in June for longtime client UARG when the justices scaled back the EPA's authority to regulate greenhouse gases from stationary sources, ruling that the agency violated the Clean Air Act when it expanded two permitting programs to include carbon dioxide emissions.

Writing for the majority, Justice Antonin Scalia said that the EPA misinterpreted the Clean Air Act when it concluded that a source's greenhouse gas emissions can trigger permitting requirements under the law's Title V or Prevention of Significant Deterioration programs.

The EPA can continue to treat greenhouse gases as a pollutant for so-called anyway sources that already would need a permit under the the Best Available Control Technology program for conventional pollutants like particulate matter, but the agency can't do the same for defining a "major emitting facility" for PSD or a "major source" for Title V, the majority ruled.

The ruling reversed the D.C. Circuit's holding that under the landmark Massachusetts v. EPA decision, the agency had the authority in general to include greenhouse gases among the air pollutants it regulates under the CAA.

"The D.C. Circuit — and indeed many others — thought that Massachusetts was the beginning and end of the argument," Brownell said. " A majority of the Supreme Court, of course, saw it otherwise."

In November Brownell scored another win for the UARG before the high court when it agreed to review the EPA's rule limiting mercury and other toxic emissions from power plants, granting requests from 23 states and industry groups that have argued the rule would drive up electricity prices and harm the coal industry.

The states, the National Mining Association and the UARG argue that a D.C. Circuit ruling upholding the new regulations failed to adequately consider the costs associated with implementing the EPA's new mercury and air toxic standards, or MATS.

A divided D.C. Circuit panel held in April that the EPA had the authority under Section 112 of the Clean Air Act to craft the MATS. The agency also went by the book in promulgating the rule, including its decision not to consider its billion-dollar costs when determining if the rule was appropriate or necessary, the panel held.

Brownell attributed his appellate success in 2014 to effectively breaking down dense, scientific subject material in a way that makes the underlying legal issues clearer to understand.

"The challenge in any case before the Supreme Court or Court of Appeals is making complex environmental issues, with extensive administrative records and lengthy regulatory histories, simple," Brownell said. "Making sense of these complex statutory and regulatory issues is a key to success."

Brownell predicted 2015 would be another busy year for him, noting that the DTE Energy case will go before the Sixth Circuit, whose ruling will shed more light on the parameters of EPA's new source review program. And Michigan v. EPA will be briefed and argued before the Supreme Court sometime in 2015.

"In short, 2015 will be an equally busy and important year for national and international environmental policy," Brownell said.

—Additional reporting by Caroline Simson and Sean McLernon. Editing by Brian Baresch.