

No. 22479 - In Re: Petition of Chester Snuffer for an Appeal of a Final Order of the Division of Natural Resources that Revokes Hunting and Fishing Privileges for Five Years

Cleckley, Justice, concurring:

The majority's opinion is sound and solid. I concur only to reinforce the message.

The simple issue in this case is whether the Division of Natural Resources's official interpretation and application of organic legislation was a permissible reading of the statute. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L.Ed.2d 694 (1984); Sniffin v. Cline, ___ W. Va. ___, ___ S.E.2d ___ (No. 22573 2/17/95). The policy underlying our grant of special deference to agency decisions and similar official agency pronouncements does not extend to every agency action. For example, it would not extend to ad hoc representations on behalf of an agency, such as litigation arguments. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 213, 109 S. Ct. 468, 474, 102 L.Ed.2d 493, 503 (1988) (little weight should be given to expedient litigation position of an agency). Similarly, an agency's interpretation of a statute is not entitled to deference when it goes beyond the meaning that the statute can bear. Pittston Coal Group v. Sebben, 488 U.S. 105, 113, 109 S. Ct. 414, 420, 102 L.Ed.2d

408, 419-20 (1988). In this case, however, the issue involves a ruling of an agency which we deem was made within the agency's statutorily granted discretion. In situations in which a statute does not compel a single understanding, our prior decisions have held our duty is not to weigh the wisdom of, or to resolve any struggle between, competing views of public interest but, rather, is to respect legitimate policy choices made by an agency in interpreting and applying a statute. See National R.R. Passenger Corp. v. Boston and Maine Corp., 503 U.S. 407, ___, 112 S. Ct. 1394, 1401, 118 L.Ed.2d 52, 66 (1992), quoting Chevron, 467 U.S. at 843, 104 S. Ct. at 2782, 81 L.Ed.2d at 703 ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute").