

For immediate release
June 24, 2005

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Federal Court Strikes Down Parts of EPA's Clean Air Rollbacks

Court Rejects Industry's Attempt to Gut Air Quality Protections

Washington, DC – The Environmental Protection Agency illegally weakened the air quality safeguards that apply to aging power plants and other large industrial facilities, a federal appeals court said in a decision issued earlier today. The ruling came in a lawsuit brought by states, local governments, and a coalition of citizen groups represented by the Clean Air Task Force, Earthjustice, and the Natural Resources Defense Council.

"Today's ruling is a victory for clean air," said Jonathan Lewis, an attorney for the Clean Air Task Force. "Although we are disappointed that the court upheld some of EPA's rollbacks, the decision, on the whole, provides further evidence that the Bush administration has gone overboard in its attempt to gut the laws that protect our air quality."

At issue was a set of loopholes EPA carved into an important Clean Air Act program that governs when coal-fired power plants and sources of air pollution must clean up. The program, known as "New Source Review," limits the amount of harmful soot and smog in our air by requiring major polluters to meet modern emissions standards whenever they make changes to their facilities that result in additional air pollution. EPA's 2002 loopholes exempted broad categories of changes from regulation – even when the changes would result in more pollution – and allowed industry to underestimate new emissions.

In today's ruling, the U.S. Court of Appeals for the District of Columbia Circuit struck down two EPA loopholes that allowed certain types of plant renovations to escape review. The exemptions violated the law and threatened the environment by turning a blind eye to the dangerous emissions increases associated with such projects.

Other harmful aspects of the rule were upheld by the court, including a provision that allows facilities to avoid new pollution controls after making emissions-increasing changes, as long as their new emissions do not exceed historically high levels. These rollbacks weaken the ability of states to limit new pollution.

But in the most significant part of the ruling, the court rejected a legal argument made by power companies and other industry groups that would have excluded almost all emissions-increasing changes from regulation, regardless of their impact on air quality. The D.C. Circuit's ruling calls into question recent decisions by other courts, including a decision earlier this month by the U.S. Court of Appeals for the Fourth Circuit in a regulatory enforcement case against the Duke Energy Corporation.

"Industry's reckless interpretation of the law would have effectively erased critical air quality protections," continued Lewis. "By rejecting industry's approach, the Court of Appeals struck a blow for public health and the environment."

Air pollution from power plants and other industrial sources is responsible for asthma attacks, respiratory disease, heart attacks, and premature death suffered by hundreds of thousands of Americans every year. The New Source Review program, which applies to more than 20,000 large facilities nationwide, is essential to controlling these dangerous emissions. If EPA fully enforced

New Source Review at coal-fired power plants, at least 5,500 premature deaths and 80,000 asthma attacks would be avoided annually.

The Clean Air Task Force, a member of the Clear the Air coalition, represents the Alabama Environmental Council, Clean Air Council, Group Against Smog and Pollution, Michigan Environmental Council, Ohio Environmental Council, Scenic Hudson, and the Southern Alliance for Clean Energy.

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