

Court strikes down EPA pollution rule

August 22 2012, By Neela Banerjee

A federal appeals court Tuesday struck down a key Obama administration air pollution rule meant to protect residents of some states from polluters in neighboring states, saying that the Environmental Protection Agency must grant states more time to implement protections.

The ruling by two George W. Bush appointees covers the "good neighbor rule" issued by the EPA in mid-2011 to regulate emissions of pollutants, including sulfur dioxide and nitrous oxides, the main ingredients in soot and smog.

The rule is one of several federal efforts to arbitrate a long-standing regional dispute between coal-powered, lightly regulated [states](#) mainly in the South and Midwest, and Mid-Atlantic and New England states where the toxic emissions wind up on account of prevailing winds.

Even cities in the Midwest and the South are affected by their neighbors' pollution, including Chicago, Knoxville, Tenn., and Charlotte, N.C., said Vickie Patton, an attorney with the Environmental Defense Fund, which had intervened in the case on behalf of the EPA.

In a 2-1 decision, the District of Columbia Circuit Court of Appeals ruled that the EPA had overstepped its authority by issuing federal pollution standards before states had a chance to develop their own and by calling for emissions reductions greater than the court's majority considered necessary. Led by Judge Brett Kavanaugh, the court vacated the rule and ordered the EPA to develop a new one, leaving in its place a

Bush-era regulation.

The EPA estimates that the now-vacated rule could have prevented more than 30,000 [premature deaths](#) and hundreds of thousands of illnesses annually. There are 28 states that are home to the biggest [polluters](#), and on the East Coast there are about 240 million people downwind from their emissions.

The challenge against the good neighbor rule was brought by the attorneys general from states including Texas, Mississippi, Florida and Kansas. Coal-burning utilities like AEP and the Southern Co., the main emitters of sulfur dioxide and nitrous oxides, intervened on behalf of the plaintiff states. Together, they welcomed the decision as a much-needed limit on what they consider overreaching federal authority.

"The importance of the ruling cannot be overstated," said Scott Segal, director of the Electric Reliability Coordinating Council, an industry group. "EPA has not showed sufficient respect or deference to state programs. Today's decision is a stern warning against EPA's recent views."

Other panels of judges on the D.C. Circuit Court have recently handed the EPA key victories against efforts by industry and the same attorneys general to dismantle or delay other beefed-up [air pollution](#) rules.

Tuesday's decision was accompanied by a scathing dissent from Judge Judith Rogers, who wrote that the majority's conclusions "are unsupported by a factual record, and a trampling on this court's precedent."

In 2005, the Bush administration EPA developed a rule to curtail interstate air pollution that was challenged by industry as too stringent and by the state of North Carolina as too lenient. In 2008, the D.C.

Circuit Court ruled that the Obama administration regulation was too strict and that the Bush-era provision was too weak and ordered the EPA to develop a new good neighbor rule swiftly.

The EPA reacted by issuing standards on a state-by-state basis to reduce emissions, though it gave polluter states a timetable from 2012 to 2015 to submit their own plans to cut pollution. On Tuesday, the D.C. Circuit Court ruled that the states needed more time to devise their plans first before EPA issued its standards.

Environmentalists contend that the polluter states have delayed such rules for more than 20 years and that the 2008 Circuit Court decision compelled the current EPA to step in. "The EPA is whipsawed between these two decisions in 2008 and now," said John Walke, director of the Clean Air Program at the Natural Resources Defense Council. "And it's the public that suffers because will it take five or six years before the court would see a regulation they would all agree to."

The EPA, which is reviewing the court's action, could abide by the decision and develop a new rule. Its congressional, state and environmental allies are urging it to appeal the ruling, either to the full D.C. Circuit Court or to the U.S. Supreme Court.

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