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Court Blocks Clean-Air Change

Panel Acknowledges Pollution Concerns

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A federal appeals court yesterday blocked the Bush administration from implementing a major environmental rule change this week that would allow thousands of coal plants and refineries to upgrade their facilities without installing expensive anti-pollution equipment.

In temporarily halting the change, a three-judge panel of the U.S. Court of Appeals for the D.C. Circuit wrote that a dozen state attorneys general and others who sued in November to stop the administration "have demonstrated the irreparable harm [of the rule] and likelihood of success on the merits" of their case.

The state officials, joined by several cities and environmental groups, have said the change, which was to take effect tomorrow, would violate the Clean Air Act and undermine the government's only effective tool to combat industrial polluters. They say it would allow antiquated industrial plants to continue polluting or even increase pollution, triggering increases in such diseases as asthma and bronchitis in nearby populations.

"This is enormous," New York Attorney General Eliot L. Spitzer said of the ruling. "The courts have agreed with us that the Bush administration cannot by administrative fiat eviscerate a statute that is critically important to protecting the quality of the air that we breathe. . . . The regs were taking us down a path of dirty air, more asthma and more death."

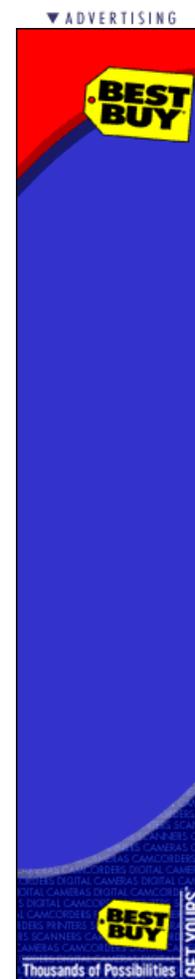
Cynthia Bergman, a spokeswoman for the Environmental Protection Agency, which proposed the rule change a year ago and finalized it in October, said yesterday that officials are "disappointed" with the court's decision. She said that the rule change was designed to increase the efficiency and safety of industrial plants, and that the administration has a separate initiative to improve air quality nationwide.

"The new rule does not allow power plants to increase their emissions past their current Clean Air Act limits," Bergman said in a statement. "In fact, this rule will have little or no impact on emissions."

The court order further confuses a clean-air enforcement process. The Justice Department, anticipating the rule change, recently announced that it was reviewing whether to bring new prosecutions against polluters under the current standard that the administration wants to discard.

Under the court's order, however, the current standard will remain in effect at least until the panel issues a final ruling in the case, which is expected to happen late next year.

The question is how much renovation the government should allow industrial plants to undertake before requiring costly new anti-pollution equipment.



Under the Clean Air Act, plants and refineries built before 1970 are exempt from having to install modern "scrubbers" unless they undertake extensive and costly improvements that boost power production and pollution. Industry officials have long complained that the distinction between "routine maintenance" and more substantial improvements is too vague.

Under the new rule, older plants could avoid installing pollution controls if the cost of the upgrade does not exceed 20 percent of the cost of replacing a plant's essential production equipment, and the new parts are the "functional equivalent" of the old ones.

Opponents of the new rule say it ignores the question of whether the changes, however extensive, will increase emissions.

But industry representatives say the lawsuit is off base and undermines the cause of clean air by stalling much-needed plant improvements.

"What these lawsuits do is create delay and uncertainty," said Scott Segal, director of the Electric Reliability Coordinating Council, a utility industry group. "The real losers are American consumers and workers because energy efficiency is a critical element of emissions control, and maintenance activities are essential for workplace safety."

Peter Lehner, chief of the environmental protection bureau in the New York attorney general's office, said the importance of yesterday's ruling went beyond one case.

"This is probably one of the most important efforts of the Bush administration to roll back environmental laws and provide what they call more 'flexibility' for industry and what we call basically a campaign payback to industry," Lehner said. "This is really probably one of the most significant rejections of the Bush approach to the environment that we've yet seen."

Connecticut Attorney General Richard Blumenthal said, "This victory is huge for public health -- a stunning defeat for polluters and an administration that gives them gifts year-round."

Plaintiffs include attorneys general for 12 states -- Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Wisconsin -- and legal officers for New York City, Washington, San Francisco, New Haven and several other cities in Connecticut.

The three judges on the panel were Harry T. Edwards, nominated by President Jimmy Carter (D), and Judith W. Rogers and David S. Tatel, both nominated by President Bill Clinton (D).

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