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Federal Appeals Court Strikes Down Obama Administration Air Pollution Rule

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By [Juliet Eilperin](#)

The U.S. Court of Appeals for the District of Columbia Circuit overturned one of the Obama administration's hallmark air-quality rules Tuesday, ruling that the [Environmental Protection Agency](#) had overstepped its authority in sharply curbing pollution from power plants.

The 2 to 1 ruling by the appeals court represents a major victory for utilities and business groups, which fought the [Cross-State Air Pollution Rule](#) on the grounds that it was costly, burdensome and arbitrary. Environmentalists, who had hailed the rule as a major improvement over a George W. Bush-era regulation, bemoaned the decision as a blow to public health.

For years, federal regulators have struggled with how best to cut harmful sulfur dioxide and nitrogen oxide emissions from power plants in the eastern half of the country. Those emissions blow downwind and contribute to forming smog and acid rain in the East. The EPA issued regulations — which were to take effect Jan. 1, 2011, but were delayed by the court — which would have required utilities in 28 states and the District of Columbia to install new pollution controls. It also established a limited cap-and-trade system that would have allowed utilities to buy and sell pollution credits in order to comply with the new standards.

EPA officials calculated that by 2014 the requirements would yield health benefits for 240 million Americans, including D.C. residents, and save between 13,000 and 34,000 lives a year. The agency predicted that in two years this rule, in concert with others, would cut sulfur dioxide emissions nationwide by 73 percent, compared with 2005 levels, and reduce nitrogen oxide emissions by 54 percent.

But Southern Co., EME Homer City Generation and Energy Future Holdings Corp. units in Texas challenged the rule, saying they could not meet the new requirements in time. Meanwhile, the state of Texas, the National Mining Association and the International Brotherhood of Electrical Workers also sued the EPA in separate cases on the grounds that the requirements were based on flawed computer models and could jeopardize the nation's electricity supply by forcing companies to shut down [older coal-fired plants](#).

In the ruling — authored by Judge Brett Kavanaugh and joined by Judge Thomas Griffith, both Bush appointees — the court wrote that the EPA used a section in the Clean Air Act known as the “good neighbor provision” to “impose massive emissions reduction requirements on upwind States without regard to the limits imposed by the statutory text. Whatever its merits as a policy matter, EPA’s Transport Rule violates the statute.”

Judge Judith Rogers, a Bill Clinton appointee, dissented.

“EPA can’t force states to do more than their fair share and can’t force ‘one size fits all’ federal programs without allowing states to craft their own solution,” said Joseph Stanko, who heads government relations at the law firm Hunton & Williams and represents coal-fired utilities.

Janice Nolen, assistant vice president for national policy and advocacy at the American Lung Association, said tackling the issue is particularly hard because eastern states — such as Pennsylvania and Virginia — must meet federal air rules even when they are on the receiving end of pollution emitted as far away as Texas and Illinois.

“These were not our next-door neighbors,” Nolen said of the emissions tracking the EPA had conducted. “There were long paths for these pollutants.”

[Jeffrey R. Holmstead](#), who helped craft an earlier interstate pollution rule when he headed the EPA’s air and radiation office under Bush and is now a partner at Bracewell & Giuliani, said the ruling might prompt environmentalists and industry officials to seek new legislation to resolve the issue. But Holmstead, who also represents several utilities, said it represents a significant legal loss for an administration that has [worked aggressively to curb power-plant pollution](#).

“This is certainly a major setback for the administration’s efforts to target coal-fired power plants, and I think it raises the real possibility that by overreaching, they may come up with nothing,” he said.

Frank O’Donnell, who heads the advocacy group Clean Air Watch, called the Cross-State Pollution Rule “a key element” of the administration’s effort to improve the nation’s air quality. “This is clearly a big blow for breathers in downwind states,” he said. “The court’s rationale in this case is a legal one. This decision does not eliminate the need to reduce dangerous air pollution that blows across state lines.”

[John Walke](#), clean-air director at the Natural Resources Defense Council, urged the administration to appeal the decision. “The majority opinion is an outlier at odds with the court’s own rulings as well as the Clean Air Act,” he said.

EPA spokeswoman Alisha Johnson said by e-mail that the agency is reviewing the decision overturning a rule “that is aimed at reducing the harmful power plant emissions reaching Americans in downwind states, thereby protecting public health. When that review is complete, EPA will determine the appropriate course of action.” End

The interstate air pollution rule enacted under Bush, which phases in emissions reductions over a longer period of time, was vacated by the federal appeals court in 2008. The federal appeals court had reinstated that rule, the Clean Air Interstate Rule, when it suspended the Obama administration's regulation, and the Bush rule will remain in place for now. The EPA has previously estimated that roughly two-thirds of the reductions it predicts from the new rule have already been achieved under Bush's CAIR rule.

It remains unclear whether a divided Congress can come to any agreement on how to curb air pollution. Sen. Thomas R. Carper (D-Del.), chairman of the Senate subcommittee on clean air and nuclear safety, said he will work with "the impacted states and my colleagues to ensure we find a swift solution to ensure all states do their fair share to clean up our air if that appeal is not successful."

But Carper spokeswoman Emily Spain said it would be difficult to predict when that could happen, and Rep. H. Morgan Griffith (R-Va.) drew a different conclusion from the ruling.

"Thankfully we're seeing a growing pattern in the courts," Griffith said in a statement. "Today, a federal court found yet another example of the EPA exceeding its statutory authority." End