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News from

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FEDERAL COURT DECISION UPHOLDS CLEAN AIR EFFORT

Attorney General Eliot Spitzer today hailed a federal court decision in a key clean air case.

In State of New York v. Environmental Protection Agency, a federal appeals court in Washington, D.C. rejected much of the Environmental Protection Agency's (EPA) attempt to weaken federal air pollution rules. The court also rejected all industry arguments that air pollution control requirements should be weakened even beyond the lax standards the EPA had adopted.

"This is a victory for clean air and for accountability," Spitzer said. "Today's court decision fully upholds the basis of all of our enforcement cases against coal-fired power plants – that plant modifications that increase air pollution must be accompanied by the installation of pollution controls on smokestacks."

In December 2002, Spitzer and nine state attorneys general filed a lawsuit against the EPA for endangering air quality by exempting thousands of industrial air pollution sources, including many coal-fired power plants, from the New Source Review (NSR) provision of the Clean Air Act. New Source Review requires that industrial plants add modern pollution controls on smokestacks when they are upgraded or modified and increase air pollution.

In a unanimous opinion by Judges Judith W. Rogers, David S. Tatel and Stephen F. Williams today, the court upheld the foundation of the NSR program, which is that power plants and other sources must install pollution controls when they modify plants in ways that increase "actual" emissions. In addition, it upheld the states' challenges to certain new exemptions that would have made it easier for polluters to avoid the emission reductions required by law.

The court agreed with the attorneys general that EPA's effort to allow companies to avoid full pollution reduction requirements for ten years, based on their installation of lesser pollution controls, was illegal. It also firmly rejected EPA's plan to allow polluters not to keep any records with respect to many upgrades – a lack of record keeping that the attorneys general argued would have severely hindered enforcement.

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The decision also acknowledges the right of states to adopt more protective air pollution programs or to keep their existing programs if they better protect the environment and public health than the new federal rules. “EPA’s effort to force states to adopt its weaker rules contradicts over 30 years of states’ rights in environmental policy,” said Spitzer.

In the same decision, the court rejected the Attorneys General’s arguments that industries other than power plants should not be able to compare pollution emissions after a plant upgrade with the plant’s highest emissions over the previous ten years in order to determine whether state of the art air pollution controls are necessary.

The lawsuit was filed by New York Attorney General Eliot Spitzer and joined by California Attorney General Bill Lockyer, Connecticut Attorney General Richard Blumenthal, Delaware Attorney General M. Jane Brady, Illinois Attorney General Lisa Madigan, Maine Attorney General G. Steven Rowe, Maryland Attorney General J. Joseph Curran, Jr., Massachusetts Attorney General Thomas Reilly, New Hampshire Attorney General Kelly Ayotte, New Jersey Attorney General Peter C. Harvey, Rhode Island Attorney General Patrick Lynch, Vermont Attorney General William H. Sorrell and Wisconsin Attorney General Peggy A. Lautenschlager.

The case was handled by New York Assistant Attorneys General Michael Myers and Jared Snyder under the supervision of Environmental Protection Bureau Chief Peter Lehner with Assistant Solicitor General Denise Hartman.

The decision is available at: www.cadc.uscourts.gov