

D.C. COURT REJECTS EPA OZONE WAIVERS

On July 10, 2009, a Federal Court of Appeals rejected Bush administration rules that allowed major power plants and factories to emit uncontrolled pollution in cities that already have severely polluted air. The U.S. Court of Appeals for the D.C. Circuit found the EPA rules illegally let plants buy rights to pollute instead of installing modern emission controls. In addition, the court invalidated parts of the rule that had weakened pollution limits for major new or modified factories and power plants in cities with unhealthy air.

The case came out of the air pollution trading program (CAIR) aimed at reducing pollution that travels between states. The overturned EPA rule created loopholes by allowing power plants in already polluted communities to avoid installing controls by buying pollution credits from other facilities, in some cases not even in the same region. Twenty-two states are members of this interstate trading program, and most of them contain areas that are already in non-attainment of the ozone standards. Environmental advocates and affected states are not the only ones who took issue with the power plant exemption. The National Petrochemicals and Refiners Association also filed a brief objecting to this waiver.

The ruling also rejected weakening Clean Air Act limits on new and modified factories in non-attainment areas. The law requires new plants to have a net decrease in emissions, by arranging for excess pollution reductions from other facilities in the area. Yet the challenged Bush rules let new plants claim offset credit for historical pollution reductions from plants that closed down many years ago. The court ruled that the reduction credits could not be allowed in cities that lacked approved plans assuring that they would meet clean air standards on time.

To view the complete court ruling, go to:

<http://pacer.cadc.uscourts.gov/common/opinions/200907/06-1045-1195613.pdf>