July 16, 2008

EDITORIAL

A Major Setback for Clean Air

Nobody could ever seriously accuse the Bush administration of being too aggressive when it comes to enforcing the nation’s environmental laws. But it was partly on those grounds that a federal court last week struck down the Clean Air Interstate Rule, a regulation aimed at reducing soot and smog and one of the few creative initiatives to emerge from the Environmental Protection Agency in the last seven years.

The decision was an unexpected triumph for a handful of utilities, including Duke Energy, which complained that the agency had overstepped its authority. It was also an enormous setback for the nation’s air quality and the health of all Americans.

In practical terms, the decision will invite power plant operators across the country to stop installing new pollution-control equipment required under the E.P.A.’s rule. To ensure that doesn’t happen, the administration should move quickly to fashion a new rule that can pass legal muster. If it does not, Congress must pass legislation that would accomplish the same ends.

The 2005 rule was aimed at sharply reducing power plant emissions of sulfur dioxide, which creates acid rain, and nitrogen oxides, which create smog. The government estimated that cutting those emissions could help prevent 17,000 premature deaths annually by 2015. The rule covered emissions in 28 states east of the Mississippi River. It was aimed at pollution that blows eastward from coal-fired power plants in the Midwest, threatening not only human health but the environment — in New York’s case, the streams and forests of the Adirondacks.

The unanimous ruling by a three-judge panel from the United States Court of Appeals for the District of Columbia Circuit was murky. The bottom line, though, is that the court agreed with Duke’s argument that in requiring sharper pollution reductions than those called for in the 1990 Clean Air Act, the E.P.A. had essentially usurped Congress’s authority.

The overwhelming majority of utilities did not challenge the rule, nor did the industry’s trade association. And some legal experts believe that the court — which has rightly struck down other administration rules that sought to weaken the Clean Air Act — erred in this instance. But the plain fact is that the rule no longer exists, and steps must be taken to replace it.