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In Reversal, Court Allows a Bush Plan on Pollution

By FELICITY BARRINGER

A federal appeals court in Washington reversed itself on Tuesday and temporarily reinstated a Bush administration plan to reduce pollution from coal-fired power plants.

In July, the court struck down the rule, saying the Environmental Protection Agency had exceeded its authority in devising a new emissions-trading system to reduce that pollution, and must rewrite the rule to fix its “fundamental flaws.” Environmentalists criticized the decision as a major setback for clean air.

In Tuesday's decision, the court said that having a flawed rule temporarily in place was better than having no rule at all. The agency must still revise the rule but has no deadline for doing so.

The regulation, known as the Clean Air Interstate Rule, had been the centerpiece of the Bush administration's re-engineering of the Clean Air Act. It set significant targets to reduce pollution around the power plants and in the downwind states whose air quality was affected by the emissions.

Tuesday's decision, by the Court of Appeals for the District of Columbia Circuit, means that levels of smog-forming nitrogen oxides must be reduced in 28 eastern states and the District of Columbia beginning Jan. 1. Levels of sulfur dioxide, closely associated with the formation of deadly fine soot particles, must be reduced beginning a year later.

Environmentalists applauded the decision, saying it could form the basis for stronger controls to be drafted by the new administration. Industry groups were relieved to know what rules would cover their operations for the moment, but were pleased that the court's original objections to the rule were unchanged.

The court's second thoughts about striking down the rule came in response to complaints from state regulators, environmental groups, some utilities and the E.P.A. itself.

Judge Judith W. Rogers, concurring with the court's decision, said eliminating the rule “would have serious adverse implications for public health and the environment,” because “the rule has become so intertwined” with the overall architecture of current Clean Air Act protections.

Both the new Congress and President-elect Barack Obama are expected to tackle the problem of nitrogen oxides and sulfur dioxide. That will include determining how the new controls on those emissions should dovetail with controls for mercury, a toxic pollutant, and with the carbon dioxide emissions that are associated with climate change.

Bob Meyers, who heads the Air and Radiation office at the E.P.A., said that he was disappointed that the court did not reconsider its underlying objections to the rule. The regulation, he said, "was one of the main
programs the administration was able to put forward to improve public health and the environment."

He added, “To the extent that today’s hearing restores it — by removing immediate threat of vacating a rule — it is a good day.”

Dan Riedinger, a spokesman for the Edison Electric Institute, a utility trade group, said in an e-mail message that his group applauded the court for “providing greater near-term certainty for pollution reduction programs and emission markets, and maintaining important health and environmental benefits.”

But, he added, “It’s impossible to predict what comes next.”

Vicki Patton, the deputy general counsel with the Environmental Defense Fund, said that, while the E.P.A. must redesign the rule to meet the court’s objections, “the baton has been handed off to President-elect Obama and his team.”

The rule, Ms. Patton said, “provides a foundation for building a more comprehensive program that protects human health from the full sweep of pollutants that are emitted from coal-fired power plants.”

On Monday, the E.P.A. issued a report on fine-particle pollution that showed that the number of geographic areas failing to meet federal standards had nearly doubled, to 58, including part or all of 211 counties in 25 states.