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Subject: Appeals Court Decision Repeals 2004 Ozone Nonattainment Rule

To All:

FYI - From Pollution Online at www.pollutiononline.com This ruling by the full US Court of Appeals repeals EPA's 2004 rule which established the new ozone classification system and control requirements that were required to be adopted by the ozone nonattainment areas. Unless EPA appeals this decision to the US Supreme Court, then EPA will have to revise its rule and issue a new one addressing the objections of the court.

Gary

Appeals Court Denies EPA Attempt to Weaken Air Quality

6/18/2007

Washington, DC – A panel of federal judges denied appeals by the U.S. Environmental Protection Agency and industry to overturn the same court's December, 2006 ruling that struck down the agency's rule attempting to weaken protections against harmful smog-forming pollution.

Ozone is associated with asthma attacks, coughing, wheezing, and other respiratory illness. Higher smog levels in a region are frequently accompanied by increased hospitalization and emergency room visits for respiratory disorders. Hundreds of counties across the country currently have unhealthful levels of smog, which limits outdoor activities, increases hospitalizations, and puts millions of Americans at risk for respiratory problems.

Today's decision reaffirms that EPA violated the Clean Air Act by relaxing limits on ozone, or smog pollution, from large power plants, factories and other industrial sources.

The U.S. Court of Appeals for the District of Columbia denied the EPA and industry petitions for rehearing, and actually clarified in even stronger terms that weakening air protections is illegal under federal law. The Court characterized the industry's desired readings of the law as a "glaring loophole" that nothing suggests Congress intended.

Significantly, recognizing the harm from EPA's delay, laxity and lawlessness, the Court also "urged" EPA to "act promptly in promulgating a revised rule that effectuates the statutory mandate by implementing the eight-hour [ozone] standard, which was deemed necessary to protect the public health a decade ago."

Earthjustice successfully represented a group of public health and environmental organizations -- the American Lung Association, Environmental Defense, the Natural Resources Defense Council and the Sierra Club -- that challenged the EPA rule and then subsequently defended the Court's December decision that overturned the rule. Also challenging the EPA rules were the Clean Air Task Force (on behalf of the Conservation Law Foundation and Southern Alliance for Clean Energy), Louisiana Environmental Network, South Coast Air Quality Management District, and a coalition of states including Massachusetts, Delaware, Maine, New York, Pennsylvania, and the District of Columbia.

"Today's decision reaffirms that EPA must follow the Clean Air Act and limit this harmful pollution," said Earthjustice attorney David Baron. "Health experts agree that we need stronger protections, not weaker limits on smog pollution."

7/25/2007

EPA and industry groups had tried to overturn the decision by seeking rehearing in March. The environmental and public health groups, along with the states, argued that EPA's original rule and requested appeal made no sense, because the agency's unlawfully weak ozone rule came after EPA had found that the previous ozone standard was too weak to protect public health.

"Hundreds of counties across the country currently have dangerous levels of ozone smog. We've already seen high levels this spring," said Janice Nolen, Assistant Vice President of the American Lung Association. "Ozone triggers asthma attacks, sends children to hospitals and emergency rooms, and even increases the risk of early death. Today's court decision puts us closer to having air that does not make people sick."

"EPA should heed the Court's pointed warning to act promptly to adopt protective rules that will deliver long overdue clean air to the American people," said NRDC attorney John Walke. "EPA foot-dragging and law-breaking have a daily toll on people forced to breathe smog levels that doctors and scientists tell us is widely unhealthy."

The 1990 Clean Air Act required stronger anti-smog measures in cities violating ozone standards, including limits on pollution from new and expanded factories, requirements for annual cuts in smog-forming emissions, and caps on truck and car exhaust. In 1997, EPA found that the then-existing "1-hour" ozone health standard wasn't strong enough to protect health, and adopted a new "8-hour" standard to provide greater protection. Paradoxically, the agency in 2004 adopted rules that weakened pollution control requirements for areas violating both the old and the new standard. That decision triggered the court challenge leading to that rule being struck down in December, 2006, and the EPA-industry appeals being rebuffed today.

"EPA has a responsibility to protect our health and our environment from unhealthy, polluted air," said Marti Sinclair, chairperson for Sierra Club's Air Quality Committee. "Millions of Americans breathe air with unsafe ozone levels, and they deserve stronger, not weaker protection under the law."

SOURCE: U.S. Environmental Protection Agency

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