



Press Release: Groups Ask Court to Overturn EPA-Industry Deal that Significantly Cuts Clean Air Monitoring of Polluters

New Rules Eliminate Requirement that Industry Monitor its Pollution Output

Nov 30, 2004

WASHINGTON, D.C. A coalition of eight environmental and public health groups, along with concerned individuals, filed a brief November 24th asking the D.C. Circuit Court to reverse a rule change by the U.S. Environmental Protection Agency (EPA) that allows industry to circumvent federal Clean Air Act standards. The new legal challenge is being brought by the Clean Air Council, Environmental Defense, Environmental Integrity Project, Natural Resources Defense Council, Northwest Environmental Defense Center, Our Children's Earth Foundation, Physicians for Social Responsibility and Sierra Club.

The lax EPA rule change supposedly was "forced" by a settlement negotiated in an earlier lawsuit brought by an industry group in September 2002. That settlement – which was opposed by six states and nearly sixty environmental and public health organizations from across the country – ignores stringent monitoring standards required by Title V of the Clean Air Act. Instead, the settlement allows power plants, refineries and other large industrial sources to check their emissions only twice every five years, providing illegal polluters with ample opportunity to escape detection for years at a time.

"EPA's actions are blatantly illegal," said Keri Powell, an attorney with Earthjustice. "The Clean Air Act clearly requires that industry conduct sufficient monitoring to demonstrate whether it is complying with air pollution limits. Sadly, EPA's decision to ignore the Clean Air Act and allow industry to skirt its monitoring obligations is consistent with numerous other EPA actions ignoring the law.

"Basically, EPA has decided just to trust that industry will comply with the law," said Kelly Haragan, counsel for the Environmental Integrity Project. "Without adequate monitoring, the public can't know what industry is putting into the air it breathes and regulators can't know when industry exceeds its pollution limits. So, it's a lose-lose situation for everyone except industry."

Hilton Kelly, an individual living in Port Arthur, TX., and a party in the coalition's suit, said: "I live in a community surrounded by refineries and chemical plants. We wake every day wondering what toxics will be released into the air we breathe. In Port Arthur, we count on the EPA to watch out for us, for our

government to monitor what these companies are emitting. They have let us down for years... and this is the final straw. EPA won't even be able to collect the data needed to see what these industries are putting in our air."

Earthjustice and the law firm of Carter, Ledyard and Milburn (working pro bono) are representing the parties in the lawsuit.

BACKGROUND

Title V of the Clean Air Act requires that permits for major sources of air pollution include "monitoring...sufficient to assure compliance with the permit terms and conditions." The Act also requires that permits include conditions, "as are necessary to assure compliance with the permit terms and conditions." The purpose of these provisions is to make sure that industrial sources conduct enough monitoring to allow the public and regulators to determine whether these sources are violating their air pollution limits.

In February 2004, EPA finalized new rules that ignore the Clean Air Act requirements and exempt industrial sources from additional monitoring under Title V as long as they conduct at least some kind of monitoring more than once during the five-year term of their operating permit. Obviously, when a source only monitors its emissions once a year (or even less), it is difficult or impossible for anyone to know whether the source is complying with pollution limits on a daily basis.

In March 2004, environmental and public health groups filed suit in the D.C. Circuit Court of Appeals asking the court to reverse EPA's new rules. On November 24th, the groups filed their opening brief in the case highlighting the illegality of EPA's actions and the serious adverse consequences for public health and the public's right to know.

ABOUT THE GROUPS

Clean Air Council (<http://www.cleanair.org>), a nonprofit corporation, uses public education, community advocacy, and government oversight to ensure enforcement of environmental laws in its efforts to improve air quality throughout Pennsylvania and Delaware.

Environmental Defense (<http://www.edf.org>) is a national nonprofit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems.

Environmental Integrity Project (<http://www.environmentalintegrity.org>) is a nonpartisan, nonprofit organization established in March of 2002 to advocate for more effective enforcement of environmental laws.

Natural Resources Defense Council (<http://www.nrdc.org>) is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

Northwest Environmental Defense Center (<http://www.nedc.org>) is an Oregon-based nonprofit corporation whose mission is to preserve and protect the environment and natural resources of the Pacific Northwest.

Our Children's Earth Foundation (<http://www.ocefoundation.org>) is a San Francisco-based non-profit organization that works to protect the public, especially children, from the health impacts of pollution and other environmental hazards.

Physicians for Social Responsibility (<http://www.psr.org>) is a national nonprofit organization dedicated to nuclear disarmament, a healthful environment, and an end to the epidemic of gun violence.

Sierra Club (<http://www.sierraclub.org>) is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

Environmental Integrity Project • 919 18th Street, NW, Suite 975, Washington, DC 20006
Phone - 202-296-8800 • Fax - 202-296-8822 • Email - officemanager@environmentalintegrity.org