



Written by [Brian Koenig](#) on August 22, 2012

Federal Court Strikes Down EPA Regulation on Coal

A federal appeals court has put the kibosh on the Environmental Protection Agency's (EPA) latest regulatory scheme to curb soot- and smog-forming air pollution. The rule, which was shot down Tuesday by the U.S. Court of Appeals for the D.C. Circuit, was set to impose a greater regulatory burden on coal-fired power plants while potentially boosting electric rates for consumers.



In a [2-1 decision](#), the court said the EPA had superseded its mandate, which placed a cap on sulfur dioxide and nitrogen oxide emissions from coal plants in 28 states, including Texas and other mostly Eastern states. The rule was estimated to cover about 1,000 power plants, and to comply, companies operating older plants would have to slow production, shut their plants down, or buy credits to offset their emissions.

Two of the three judges charged the EPA with exceeding its "jurisdictional limits" in portraying the Clean Air Act while inflicting "massive emission reduction requirements" on upwind states. "By doing so, EPA departed from its consistent prior approach to implementing the good neighbor provision and violated the [Clean Air Act]," Judge Brett Kavanaugh attested in the court's opinion.

In a major setback for the agency, the court returned the Cross-State Air Pollution Rule for revision, charging the EPA to temporarily enact its existing Clean Air Interstate Rule, a less stringent Bush-era rule that the agency was initially revising. Fox News [explains](#):

The 1970 Clean Air Act leaves air-pollution enforcement to states, but states on the East Coast have said for years that pollution from upwind neighbors causes them to exceed federal air-quality standards.

In 2005, the Bush administration sought to address that problem by imposing a trading system under which power plants in states with excess pollution buy credits from cleaner plants. The same federal appeals court found problems with that rule, but it left it in place while the EPA made revisions. Tuesday's decision again leaves the Bush rule in effect but sends the EPA back to the drawing board on how to share the cleanup work among states.

Tuesday's ruling was hailed by Republicans and the coal industry, while criticized by environmental groups and some Democrats. It also feeds ammo to presidential candidates and congressional lawmakers up for election in November. Presumptive Republican nominee Mitt Romney has railed against President Obama for not "believing in coal," while he has pledged to review EPA regulations if elected in November.



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“The Obama-EPA continues to demonstrate that it will stop at nothing in its determination to kill coal,” charged Sen. James Inhofe (R-Okla.), one of the EPA’s fiercest opponents. “With so much economic pain in store, it is fortunate that EPA was sent back to the drawing board.”

The agency’s cross-state rule “is just one of several new EPA rules targeting America’s power sector that together will cost our economy tens of billions of dollars and put thousands of jobs at risk,” echoed Rep. Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee. “The EPA is an agency out of control.”

Industry leaders, who contended that many plant owners could not afford costly new upgrades, lauded the court’s ruling. “The court was clear in finding that EPA had overstepped its legal authority in developing the rule,” asserted Scott Segal, director of the Electric Reliability Coordinating Council.

Power companies such as Edison International and American Electric Power Co. say the decision gave them a much-needed reprieve, but that other looming EPA regulations will inflict a devastating blow to the industry, potentially leading to thousands of plant closures. “At the end of the day the older, dirtier coal plants are going to close,” [said](#) Sam Brothwell, a utility analyst at Bloomberg Industries. “It’s an economic decision.”

EPA regulations such as the Utility MACT rule — which would force many coal-plant owners to install costly technological upgrades to curb pollutant emissions — have already spurred thousands of layoffs. *The New American* recently [reported](#):

The EPA’s string of new environmental rules has already prompted widespread layoffs as well as plant and mine closures. Consol Energy announced it would lay off 318 workers this month while shuttering operations at its Red Bird West coal mine, due to EPA measures imposed by the Obama administration’s burdensome environmental policies.

Furthermore, PBS Coals Inc. in Pennsylvania had to lay off 225 employees last month working in mines in Somerset County, citing reduced demand and stringent new regulations. And finally, OhioAmerican Energy, Inc. announced layoffs of about 50 employees this month, also citing the EPA’s coal regulations as a contributor.

Proponents of the ruling contest that the EPA’s cross-state rule, along with a slew of other regulations, impedes on state programs while undermining the U.S. Constitution. “This was not entirely surprising because it’s the third or fourth ruling by a federal court that shows the EPA to be overriding the authority that the states have and conducting an unlawful regulatory program against coal,” said Luke Popovich, a spokesman for the National Mining Association.

The court’s ruling is a victory for coal, while it levies a dent to the Obama administration’s rigorous environmental agenda — which, [according](#) to the President himself, seeks to eliminate coal as a power source altogether.

Photo: [Coal mine and railway cars waiting to be loaded](#) via Shutterstock



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