

AIR POLLUTION

Appeals court tosses EPA 'good neighbor' ozone rule

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The U.S. Court of Appeals for the District of Columbia Circuit. Ellen M. Gilmer/E&E News

A panel of appeals court judges scrapped a Trump-era rule yesterday that it said did not set strong enough restrictions on downwind states' exposure to smog-forming air pollutants produced by upwind neighbors.

The 2018 regulation, known as the closeout rule, relies on a part of the Obama-era Cross-State Air Pollution Rule (CSAPR) update that the U.S. Court of Appeals for the District of Columbia Circuit recently instructed EPA to revisit ([Greenwire](#), Sept. 13).

EPA's closeout rule "did not require these reductions to be made by 2021, the next applicable attainment deadline," the court wrote in a [judgment](#) issued yesterday afternoon. "Recently, we reaffirmed that the Clean Air Act requires upwind states to make such reductions."

Judges Judith Rogers, Thomas Griffith and Gregory Katsas decided the case after canceling oral arguments last month. The judges were appointed by former Presidents Clinton, George W. Bush and Trump, respectively.

Trump administration challengers called the decision a "victory for clean air, human health and water quality."

An EPA spokesperson said today that the agency is reviewing the D.C. Circuit's opinion.

A collection of Northeast states and cities and several environmental groups submitted their challenge to the D.C. Circuit earlier this year. They asked the court to scrutinize EPA's decision against requiring 20 states to cut coal plant emissions that contribute to formation of ozone, the main ingredient in smog, outside their borders.

EPA instead leaned on requirements set by the 2016 CSAPR update.

"A core obligation of the EPA under the Clean Air Act is to protect the air quality of downwind states that suffer from excessive upwind pollution," said Richard Revesz, director of the Institute for Policy Integrity at NYU School of Law. "The Trump administration has consistently flouted this obligation and has now suffered a significant defeat in federal court."

Revesz, who contributed to a friend-of-the-court brief in support of the challengers, said yesterday's ruling may be a "harbinger of further defeats" for EPA in related cases over states' "good neighbor" obligations.

The Chesapeake Bay Foundation, a party to the case, celebrated the D.C. Circuit's decision.

"The Court ruled that EPA's decision not to expeditiously require upwind states to reduce pollution that damages air and water quality in downwind states was wrong," said Ariel Solaski, an attorney for the environmental group. "This pollution contributes to ozone and is a threat to both human health and water quality."

"The Court decision clarifies that EPA and upwind states must do more," she said.

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