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Saturday, August 9, 2003

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Ruling to aid air in Maine

By ELBERT AULL, Portland Press Herald
Writer

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State officials and environmentalists on Friday praised a federal judge's ruling that an Ohio power plant violated federal air pollution laws. They said the ruling sets a precedent that could lead to cleaner air in Maine.

U.S. District Judge Edmund Sargus ruled on Thursday that FirstEnergy Corp. should have installed pollution controls required by the Clean Air Act when it modernized the W.H. Sammis plant in eastern Ohio during the 1980s and 1990s.

"I believe that this case shows that the states have a very important role in Clean Air Act enforcement," said Maine Attorney General Stephen Rowe. "I'm saddened that it has taken lawsuits initiated by the states to get the (U.S. Environmental Protection Agency) to do its job."

The lawsuit was filed by the federal government and New York, New Jersey and Connecticut.

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Rowe said the ruling sets a precedent for other cases in which states and the federal government have sued energy companies to force compliance with the Clean Air Act. A similar lawsuit, against Illinois Power Co., has passed the trial phase and is nearing a decision.

Rowe also said that Thursday's ruling may weigh heavily on a pending lawsuit in federal court against the EPA.

Maine is one of several states that sued the EPA in December, charging that the agency exceeded its authority when it weakened the act in late 2002.

"If anything, I expect we'll see the federal EPA step back and take a careful look at what it's doing," he said. "We have a federal court saying the EPA isn't doing its job. That sends a strong message that they have a responsibility to enforce the Clean Air Act."

This week's ruling was seen as vindication by environmentalists, who have long accused utilities of renovating older coal-fired power plants without installing smog controls - as required by the Clean Air Act, said Judy Berk, spokeswoman for the Natural Resources Council of Maine.

Berk said the act, passed in 1970, mandated that all power plants built from then on be equipped with pollution controls. But it allowed older plants to operate without anti-smog measures as long as companies did not renovate or expand them.

About 17,000 such plants exist throughout the country, Berk said.

"The belief was that these plants would go out of business," Berk said. "They didn't, and the plants were never cleaned up. (Companies) have been using loopholes . . . they were calling these renovations 'routine maintenance.' "

Aging, coal-fired plants in the Midwest and South have been blamed for sending pollutants that create ground-level ozone, the principal component of smog, to the Northeast via wind and weather patterns.

Power companies in the Midwest counter that the problem is overstated, and that states in the Northeast are blaming the nation's midsection rather than tackling their own pollution problems.

That FirstEnergy knowingly avoided making such improvements was a central theme in Sargus' ruling. At issue was whether the corporation's improvements to the plant constituted "routine maintenance" or "renovations and expansions."


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The U.S. Justice Department said the company was required to install the best available pollution control technology when work was done between 1984 and 1998 on the Sammis plant near Steubenville, Ohio.

Company officials argued that improvements made to the plant on 11 occasions were no more than routine maintenance, which did not increase the plant's generating capacity or emissions and were therefore not significant enough to require the installation of pollution control devices.

Prosecutors argued that the additional controls were necessary because the improvements were major modifications that extended the plant's life and allowed it to generate more electricity.

FirstEnergy spokesman Ralph DiNicola told The Associated Press that company officials were still going through the 109-page ruling on Thursday. DiNicola repeated the company's position that the work was routine maintenance. He said emissions at the Sammis plant had been reduced since 1990.

"At this point we are prepared to go into the remedy phase of the case," DiNicola said.

The remedy phase of the case, in which Sargus will decide how the company will correct the violations, is scheduled to begin in March.

The court has yet to decide whether FirstEnergy will be allowed to appeal the decision.

Berk said Thursday's decision "puts other companies on notice" that they can no longer dodge installing pollution controls when they renovate old power plants.

The Associated Press contributed to this report.

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