Court Looks At EPA Rule On Cross-State Pollution

MARK SHERMAN, Associated Press

WASHINGTON (AP) — The Supreme Court indicated Tuesday it could breathe new life into a federal rule requiring states to reduce power plant pollution from the South and Midwest that fouls the air in the eastern U.S.

Several justices suggested during a 90-minute argument that they believe the Environmental Protection Agency did not exceed its authority when it issued its cross-state air pollution rule in 2011. A divided federal appeals court panel invalidated the rule last year.

The EPA sought to reduce pollution from power plants in 28 states that drifts above states in the Northeast and Mid-Atlantic regions. Texas led 14 states and industry groups in challenging the rule. Most downwind states support it.

Justice Department lawyer Malcolm Stewart said the EPA is trying to be "an honest broker" between upwind and downwind states.

Sulfur dioxide and nitrogen oxide pollution from power plants can be carried long distances and the pollutants react with other substances to form smog and soot, which have been linked to illnesses. The cross-border pollution has prevented many cities from complying with health-based standards set by law.

The cross-state pollution case was not the only Obama administration air pollution policy being challenged in a Washington courtroom Tuesday. At a federal appeals court, industry groups sought to invalidate the first regulations aimed at controlling mercury and other toxic air pollution from coal-fired power plants.

The EPA has long tried to find a way to enforce the so-called good neighbor provision of hthe federal Clean Air Act that prohibits states from polluting their neighbors' air. The latest effort would cost energy utilities $800 million annually to install pollution controls on coal-fired and other plants, according to EPA estimates.

The EPA said the investments would be far outweighed by the hundreds of billions of dollars in health care savings from cleaner air. The agency said the rule would prevent tens of thousands of premature deaths and hundreds of thousands of illnesses each year.

But the U.S. Circuit Court of Appeals for the District of Columbia said the EPA didn't give states a chance to devise their own plans to reduce pollution. Because state-by-state limits on pollution were not matched with each state's contribution to the problem, some were asked to do more to reduce pollution even though their power plants are not the worst offenders, the appeals court said.

At the Supreme Court, though, several justices said the agency appears to have

wide latitude to come up with pollution controls.

"What the EPA said here was: We're going to distinguish between states that have put a lot of technology and a lot of money into this already and on the other hand states that have lots of cheap and dirty emissions," Justice Elena Kagan said. "And why isn't that a perfectly rational thing to do?"

Peter Keisler, the Washington-based lawyer representing industry and labor groups, said there should be a link between pollution generated by a state and what it is required to reduce.

"There is no relationship at all under the EPA's methodology between the amounts states contribute and the amounts states have to reduce," Keisler said.

Justice Antonin Scalia was the only member of the court who appeared squarely on the side of industry and the states challenging the rule.

Chief Justice John Roberts asked tough questions of both sides, but at several points seemed to suggest he would ultimately vote in favor of the administration. In an exchange with Texas Solicitor General Jonathan Mitchell, Roberts said EPA appeared to abide by the Clean Air Act in its dealing with the states. "It seems to me that if EPA had taken a different view, it would have been contrary to the statute," Roberts said.

Justice Samuel Alito is not taking part in the case, presumably because he owns stock in companies involved in it.

The eight participating justices should issue their decision by late June.

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