

## **Court rules new air toxic regulations not required for synthetic organic chemicals**

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The D.C. Circuit Court of Appeals ruled June 6 that EPA can leave in place technology-based standards for hazardous air pollutants — if it deems them sufficiently protective of human health — and does not have to implement more restrictive health-based standards, as two environmental groups contended.

The immediate case deals with toxic air emissions from the synthetic organic chemical manufacturing industry, but applies to other industry sectors too. Synthetic organic chemicals often serve as raw materials in the production of plastics, rubbers, fibers, protective coatings, and detergents.

The court deemed EPA's 2006 rulemaking for synthetic organic chemicals, which reaffirmed the already-in-place technology-based standards for controlling hazardous air pollutants from the sector, sufficient to address any adverse public health impacts. The court held that the Natural Resources Defense Council (NRDC) and the Louisiana Environmental Action Network (LEAN) did not meet its burden of demonstrating that EPA's actions were unreasonable.

Adam Babich, attorney for LEAN, condemns the decision as one which allows “EPA policy to decrease protection to public health.”

“We are disappointed that the court sided with EPA's refusal to protect the American people from cancer-causing toxic air pollution,” John Walke, clean air program director for NRDC, said in a press release. “While the Bush EPA will celebrate this perverse victory for polluters, today's ruling is a loss for the American people and the fight against cancer.”

But American Chemistry Council's President and CEO Jack Gerard hails the unanimous decision and states that the ACC participated in the case to defend “EPA's decision” to leave in place the already-existing technology-based standards to control toxic air emissions from synthetic organic chemical manufacturing.

ACC contends that the decision was based on sound science and affirms that the application of technology-based standards has “resulted in a substantial reduction of hazardous air pollutant emissions from the synthetic organic chemical manufacturing industry.”

## **Two sets of regulations**

In 1990, Congress amended the Clean Air Act adopting a new regulatory approach for hazardous air pollutants. Congress provided EPA a list of 191 substances that it deemed hazardous. EPA could subsequently add to or subtract from this list.

Congress charged EPA with adopting two sets of regulations. First, EPA was required by the 1990 amendments to adopt technology-based standards for the regulation of hazardous air pollutants.

In adopting technology-based standards, the agency looked to the best available technology to control emissions for new sources of hazardous air pollutants. Under this technology-based approach, standards for new sources may not be less stringent than “the emission control that is achieved in practice by the best controlled similar source.” For existing sources of hazardous air pollutants, the standards may not be less stringent than “the average emission limitation achieved by the best performing 12% of the existing sources.”

After setting this “floor”— i.e., the minimum required reduction in emissions for a new or existing source — EPA has discretion to require an even greater reduction in pollutants, taking into account costs, health effects, environmental effects, and energy requirements.

The second set of regulations requires EPA to review any residual health risks that had not been eliminated by the initial technology-based standards. This second stage is described as “risk-based” or “health-based” because it requires EPA to set a standard based on a medical assessment of a given pollutant's health risks.

Within six years of promulgating technology-based standards for emitters of hazardous air pollutants, EPA is required to prepare a report to Congress analyzing any residual health risks. If Congress does not act on the report, then EPA must conduct its own residual risk analysis.

EPA initially promulgated technology-based emission standards for the synthetic organic chemical manufacturing industry in 1994. Those standards required the use of control technologies such as recovery devices, thermal oxidizers, carbon absorbers, and steam strippers.

After submitting the required report to Congress in 1999, the agency commenced residual risk rulemaking to consider whether to revise the technology-based standards. EPA reaffirmed the formerly-adopted technology-based standards because it concluded these standards were sufficient to prevent adverse health impacts from the emission of hazardous air pollutants by the industry.

EPA's reaffirmation of the formerly-adopted technology-based standards prompted NRDC and LEAN to sue in February 2007.

They contended that the Clean Air Act obligates EPA, in the residual risk rulemaking, to tighten the technology-based standards for hazardous air pollutants.

However, the court interpreted the Clean Air Act as only requiring EPA to “promulgate standards,” indicating it has assessed the residual risks from hazardous air pollutants. But, as the court pointed out, the Clean Air Act is silent as to “the substantive content of those standards.” Therefore, if in EPA's judgment, the already-existing technology-based standards adequately address adverse health impacts from hazardous air pollutants, it may, at its discretion, leave those standards in place.

The Synthetic Organic Chemical Manufacturers Association and attorneys representing the American Chemistry Council did not respond to PTCN's requests for comment.

— Shawna Bligh

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