

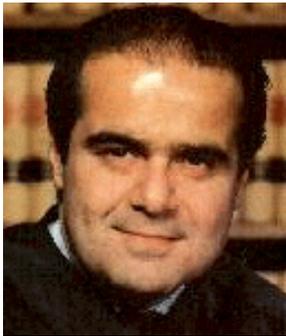


## Supreme Court Clears EPA to Regulate Cleaner Air

By Cat Lazaroff

**WASHINGTON, DC**, February 27, 2001 (ENS) - In a major defeat for polluting industries, the U.S. Supreme Court ruled unanimously today that the federal government need not consider the financial costs of meeting clean air standards when creating new regulations. The court rejected industry arguments that the health benefits of cleaner air must be balanced against the costs of compliance.

However, the court also rejected the U.S. Environmental Protection Agency's (EPA) rules on implementing new rules for ground level ozone, or smog, and ordered the agency to develop a more "reasonable" interpretation of the law.



**Justice Antonin Scalia wrote the Supreme Court's unanimous decision (Photo courtesy The Supreme Court)**

Writing for the unanimous court, Justice Antonin Scalia wrote that the Clean Air Act "unambiguously bars cost considerations" from federal air quality regulations. The Supreme Court interprets the Act as "requiring the EPA to set air quality standards at the level that is 'requisite' - that is, not lower or higher than is necessary - to protect the public health with an adequate margin of safety," Scalia wrote.

In 1997, as part of efforts to update the Clean Air Act to reflect current scientific knowledge, President Bill Clinton announced new health based air standards for smog and soot pollutants. The EPA estimated that the revised 1997 standards would protect an estimated 130 million Americans, including 35 million children who suffer from asthma and other respiratory illnesses due to poor air quality.

Soon after these new health based air quality standards were finalized in 1997, a host of industry groups, trade organizations and three states, led by the American Trucking Association, filed a lawsuit to halt implementation of the regulations.



**Vehicle exhaust is among the prime sources of the pollution that leads to smog (Two photos courtesy EPA)**

Opponents argued that the EPA should have to consider the costs of achieving cleaner air when setting standards. The Washington, DC circuit court rejected that argument last year, ruling that the EPA only had to take costs into account when it initially adopted standards - not when it revised them, as the agency had done in 1997.

But the EPA's victory was rendered meaningless by a second aspect of the court's 1999 decision. The court held that the standard setting process that the agency had followed in 1997 represented an unconstitutional delegation of Congress's legislative authority - meaning that the EPA had overstepped its own authority and tried to borrow powers normally held only by Congress.

Today, the Supreme Court overturned that ruling, upholding the rights of the EPA to set health based standards, and rejecting arguments that the agency must balance the negative health effects of pollution against the negative economic effects of regulation.

Environmental groups hailed the unanimous ruling as a crucial victory.



**The EPA's 1997 rules reduced the amount of pollution that trucks and other vehicles were allowed to emit**

"For 30 years the Clean Air Act air pollution standards have been based on public health needs n not a company's balance sheet," said David Hawkins, director of the Natural Resources Defense Council's Air and Energy Program. "The Supreme Court today resoundingly declared that the Clean Air Act means just that, clean air."

"The intention of the Clean Air Act is to protect the health of Americans by setting reasonable standards for regulating harmful pollutants," agreed Mohammad Akhter, MD, MPH, executive director of the American Public Health Association (APHA). "In setting these standards we must consider the incalculable cost of illness and death, not the cost to polluters."

The APHA was one of several groups that filed amicus briefs in support of the EPA's position in the case.

In their response to today's ruling, the American Trucking Association (ATA) and other industry groups focused on the Supreme Court's criticism of EPA's implementation of the smog and soot rule, also called the ozone rule.



**Coal burning power plants are a major source of smog and soot pollution (Photo by Carole Swinehart, courtesy Michigan Sea Extension)**

"The objective of these lawsuits was to work to obtain clear, understandable legal standards to promote clean air in a sensible fashion," wrote the ATA in a press release issued today. "The ruling that EPA exceeded its authority in attempting to impose a new ozone standard, coupled with the lower court's unchallenged decision that the beneficial health effects of ozone should have been considered, are significant developments toward this objective."

ATA and the other groups said today they would continue to challenge the ozone rule in lower courts, based on today's Supreme Court ruling.

Environmental groups today urged EPA Administrator Christine Todd Whitman to act quickly to create an implementation plan for the ozone rule that would meet the Supreme Court's standard of "reasonable" interpretation of the Clean Air Act.



**Implementation of the smog and soot rules will fall to new EPA Administrator Christine Todd Whitman (Photo courtesy EPA)**

"We urge EPA Administrator Whitman to develop a comprehensive plan to protect Americans n especially children and the elderly n who live in the most polluted areas of the country," said the NRDC's Hawkins. "She needs to move on this immediately."

Still, clean air proponents breathed a sigh of relief today that the Court chose not to force the EPA to perform costly, time consuming economic studies as part of their regulatory process - an action that could have crippled the agency's ability to regulate any pollutants.

"For more than 30 years, the bedrock principle of the Clean Air Act is that national clean air standards should be based on science and the impact on public health," noted Frank O'Donnell, executive director of the Clean Air Trust. "This bedrock principle has driven three decades of clean air progress."

In his concurring opinion in the case, Justice Steven Breyer cited the late Senator Edmund Muskie, the Clean Air Trust's co-founder and the primary sponsor of the 1970 Clean Air Act. Breyer cited Muskie's statement that Congress' primary responsibility in drafting the Clean Air Act was not "to be limited by what is or appears to be technologically or economically feasible," but "to establish what the public interest requires to protect the health of persons," even if that means that "industries will be asked to do what seems to be impossible at the present time."

The Supreme Court's decision is available at: <http://supct.law.cornell.edu/supct/html/99-1257.ZS.html>

The briefs filed in the case are available at: <http://www.cleanair.net/SmogSoot/NAAQSupremecourt.htm>

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