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Court: EPA Can Overrule State on Clean Air

By David G. Savage, Times Staff Writer

WASHINGTON — The Supreme Court today strengthened the power of federal anti-pollution regulators to enforce the Clean Air Act, ruling that they may overrule lax state officials and block new plants that would emit dirty air.

The 5-4 ruling is a victory for environmentalists, and it upholds a Clinton administration order that halted the construction of a large diesel generator at a huge zinc mine in northern Alaska.

"Today's decision is good news for the lungs of every American and shows that the federal government clearly has the authority to secure clean, safe air for all Americans," said Vickie Patton, a lawyer for Environmental Defense, in Boulder, Colo.

She said the ruling gives federal regulators new clout to halt or slow the building of coal-fired power plants in the Rocky Mountain region.

However, it comes at an interesting moment. Bush administration officials recently announced that they were pulling back on the enforcement of strict anti-pollution controls on power plants in the Midwest, and they are being sued by a series of regulators in the Eastern states.

"It highlights a paradox. On one hand, the Supreme Court is affirming the power of the Environmental Protection Agency to fight air pollution, but it comes at the same time the Bush administration is putting the brakes on the EPA," Patton said.

The Clean Air Act states that new plants must use the "best available" technology to limit pollution. And state regulators have a legal duty to enforce this requirement and to issue permits only to new plants that meet the standard.

But Alaskan authorities said it would be too expensive for the operators of the Red Dog Mine to install the clean technology, and they approved a cheaper and less effective alternative.

In 1999, the federal EPA refused to go along, and it blocked the issuance of the plant's permit, leading to today decision by the Supreme Court.

The dispute turned into a classic clash between states' rights and federal power.

First, Alaska challenged the EPA, but lost in the U.S. 9th Circuit Court of Appeals in San Francisco. The liberal court sided with the environmentalists and upheld EPA's authority to overrule Alaska. Otherwise, states could bow to "industry

pressure" and allow new plants that belch dirty air across America, the 9th Circuit said.

The Supreme Court, friendlier to states' rights claims, voted last year to hear Alaska's appeal, which argued that the federal government was trying to "usurp" the state's authority.

Even the states were split among themselves. Eleven states, mostly Midwestern, sided with Alaska and its claims of states' rights. Thirteen others, including California, New York and the New England states, sided with the EPA, and said pollution must be strictly controlled at its point of origin.

With Justice Sandra Day O'Connor joining her more liberal colleagues, the Supreme Court upheld the EPA. When it passed the Clean Air Act, Congress "endorsed an expansive surveillance role for the EPA," said Justice Ruth Bader Ginsburg in Alaska vs. EPA. She was joined by Justices John Paul Stevens, David H. Souter and Stephen G. Breyer.

The dissenters, led by Justice Anthony M. Kennedy, faulted the majority for "relegating the states to the role of mere provinces, instead of coequal sovereigns."

Lawyers for the Eastern states, led by New York Atty. Gen. Elliott Spitzer, have sued to block the administration's proposed changes in the regulatory rules for power plants. The case is pending before the U.S. appeals court in Washington.

That court has a new Bush appointee, Judge John G. Roberts, who last fall represented Alaska in the Supreme Court battle with EPA.