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## Court ruling raises concerns on acid rain

EPA loses case over cross-state pollution

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The EPA, in a statement issued last week, said it continues to review the

A recent federal court ruling has revived concerns about the environmental damage acid rain and other pollutants can do to fragile mountain lakes and landscapes.

A Washington Circuit Court of Appeals ruled 2-1 on Aug. 21 that the U.S. Environmental Protection Agency overstepped its bounds with the Cross-State Air Pollution Rule it adopted last year to control power plant emissions.

The EPA rule would further restrict coal-fired power plants in the Midwest and West, whose discharges of sulphur dioxide and nitrogen oxide are a major cause of acid rain.

Earlier efforts have decreased the amount of those chemicals in rain and snow significantly, and there have been some signs of recovery in Adirondack lakes.

The Adirondack Council has called on the Obama administration to appeal the ruling to the U.S. Supreme Court, rather than come up with a new rule.

“The Cross State Pollution rule was our best hope for the Adirondack Park’s eventual recovery from decades of damage from acid rain,” said Adirondack Council Legislative Director Scott Lorey.

In July, the Adirondack Council had named the EPA its 2012 “Conservationist of the Year” for its rules to fight power plant pollution.

“Until the federal government takes action, the forests and waters of the Adirondack Park will continue to face daily abuse from the smokestacks of Midwest power plants,” Lorey said.

The council contends — and scientists generally agree — that the 6 million acres in the Adirondacks have been among the U.S. regions hardest hit by power plant pollution, both because of prevailing winds and because thin soils and high altitudes make for a fragile environment. Hundreds of lakes and ponds have been damaged over the last nearly 100 years, and some no longer support life.

Plant life — particularly red spruce and sugar maples — has also been hard-hit, with trees killed by acidic precipitation.

“These are one of the most sensitive environments in the world,” said Charles T. Driscoll Jr., a Syracuse University professor and leading acid rain researcher.

New York state has had laws restricting power plant emissions since the 1980s, but the state has no power on its own to control pollution being blown by prevailing winds from the upper Midwest. Automobiles are also a significant source of the pollutants that cause acid rain.

REVIEWING DECISION court decision limiting its authority to regulate power plant emissions.

“When that review is complete, EPA will determine the appropriate course of action,” the agency statement said. “EPA remains committed to working with states and the power sector to address pollution transport issues as required by the Clean Air Act.”

Under the court ruling, the 2005 Clean Air Interstate Rule written by the EPA remains in effect, though it too has dubious legal status. The same appeals court in 2008 ordered the EPA to revise those rules, leading to the writing of the Cross-State Air Pollution Rule.

The 2011 rule would require power plant sulfur dioxide emission reductions of 73 percent from 2005 levels, and a 54 percent reduction in nitrogen oxides.

While environmentalists note the forest and lake impacts, the EPA has emphasized the broader public health benefits of the voided rule. Officials said the proposed reductions in ozone and particle pollution would avoid 14,000 to 36,000 premature deaths a year, and reduce medical costs for nonfatal heart attacks, bronchitis and asthma.

“The court’s decision imperils long-overdue clean air safeguards for millions of Americans,” said Vickie Patton, general counsel to the Environmental Defense Fund in Washington.

The Cross-State Air Pollution Rule was challenged by a coalition of utility companies, the National Mining Association, the state of Texas, and others.

American Electric Power Co. of Columbus, Ohio, which is the largest U.S. consumer of coal, said pollutant emissions from its plants are being reduced without the federal rules.

“Air emissions from AEP’s coalfueled power plants are nearly 80 percent less than they were just a decade ago,” the company said in a statement after the court decision. “We are willing to move forward to make additional emission reductions, but we believe it can be done in a more reasonable way.”

## HEART OF RULING

At the heart of the appeals court’s decision was whether the EPA overstepped in attempting to address a federal air pollution issue that a politically and regionally divided Congress has been unable to resolve.

“It is not our job to set environmental policy,” Judge Brett Kavanaugh wrote in the majority opinion. “Our limited but important role is to independently ensure that the agency stays within the boundaries Congress has set. EPA did not do so here.”

In her dissent, Judge Judith Rogers wrote that the majority opinion's outcome would be "the endorsement of a 'maximum delay' strategy for regulating entities, rewarding states and industries for cloaking their objections throughout years of administrative rulemaking procedures."

Lorey said the dissenting opinion should provide a strong basis for the EPA to appeal to the nation's highest court.

Levels of acidification in rain and snow falling in the Adirondacks have declined in the past decade or so as prior rules have required new power plants to meet stricter emissions standards, but Lorey said there's little sign so far of biological recovery.

"We're still at the tipping point," Lorey said. "We're not to the point where we're seeing large lake fish populations recover."

Driscoll, of Syracuse University, has studied the impact of acid rain for decades, and he sees some signs of recovery. He said there's been "an amazing improvement in lake chemistry. In marginally impacted lakes, we're seeing some improvements in fisheries."

Acid rain also does damage to the Adirondack soils: It drains calcium and other beneficial minerals from the soil, taking nutrients from the food chain. It also converts nontoxic forms of mercury found in power plant emissions into organic forms of mercury that are toxic, causing brain and nerve damage. The soil damage can be lasting.

"Soil recovers over a much longer period of time than water," Driscoll said.

Driscoll said the problem with current efforts to regulate air pollutants is that they're piecemeal rather than being comprehensive.

"Talking to Congress and to the EPA, they're frustrated with each other," Driscoll said.