

Federal court orders EPA to reconsider its rollback of Ohio pollution law

[cleveland.com/news/2023/02/federal-court-orders-epa-to-reconsider-its-rollback-of-ohio-pollution-law.html](https://www.cleveland.com/news/2023/02/federal-court-orders-epa-to-reconsider-its-rollback-of-ohio-pollution-law.html)

February 10, 2023



FILE - Emissions rise from smokestacks. (AP Photo/Charlie Riedel, File)AP

By

Sabrina Eaton, cleveland.com

CINCINNATI – A federal court on Friday ordered the U.S. Environmental Protection Agency to reconsider its 2020 decision to gut an Ohio rule that lets citizens bring federal nuisance lawsuits against industrial air polluters.

Before the EPA action, Ohio residents were able to invoke the state’s “air nuisance rule” to bring cases against polluters like coal and steel plants whom they say endanger the public health. The rule was part of Ohio’s U.S. EPA-approved implementation plan to comply with the federal Clean Air Act.

But just after the November 2020 election, the EPA under then-President Donald Trump finalized a rollback of Ohio’s rule. Rather than undertaking the regular rulemaking process, the EPA sought to repeal the rule under an “error correction” provision of the Clean Air Act.

When it overturned the rule, EPA contended it had been approved in error nearly 50 years ago because it has “no connection” to the attainment of federal air quality standards established by the law.

Environmental groups and air pollution victims who took the EPA to court argued the rollback unfairly blocked neighbors of major polluters from asking federal courts to mitigate damage from the pollution. After the lawsuit was filed, the EPA – now under new leadership – told the court it wanted to reconsider its decision, without undoing the rule change.

Circuit Judge Jane B. Stranch ruled that the lawsuit's plaintiffs have standing to challenge the decision, and ordered it to remain in place while EPA reconsiders it. She noted EPA overruled the Ohio policy soon after the change was requested by the Perkins Coie law firm, which represented SunCoke Energy, a company operating a coke-making plant in Ohio that was facing a citizen lawsuit under the Clean Air Act.

Her decision said that by removing the citizen lawsuit provision from Ohio's clean air state implementation plan, "EPA has wholly prevented Petitioners from using it to challenge pollution in Ohio, without regard to the hypothetical outcome of such suits. The EPA's actions are unquestionably a link in the chain of causation and redressability."

An attorney for one of the environmental groups that brought the lawsuit, the Sierra Club, said the organization was pleased the court ordered EPA to reconsider its removal of the Air Nuisance Rule, although it would like EPA to reinstate the old rule instead of merely reconsidering whether it should do so.

Attorney Megan Wachspres said plaintiffs in the SunCoke case settled their dispute, but others affected by pollution need the rule reinstated so they can seek redress. They include a woman named Donna Ballinger, who was listed as a plaintiff in the appeal of the EPA's decision. She wants to sue a facility in Middletown whose emissions deposit particulates on her property and makes it difficult to breathe outside her home.

"We urge the EPA to act quickly to reinstate the rule as part of Ohio's SIP (State Implementation Plan) so that Ohioans like Donna Ballinger can address the ongoing harms of air pollution in their communities," said a statement from Wachspres.

Ballinger's attorney, David Altman, said the EPA's 2020 decision took away a remedy that Ohioans had used for 50 years to protect themselves from nuisance air polluters.

"At this point, it is a slightly different EPA from a different administration," said Altman. "They ought to quickly return this vital tool to the state implementation plan, so citizens can use the tool again to protect themselves."

Cleveland.com has reached out to the Environmental Protection Agency for comment. If you purchase a product or register for an account through one of the links on our site, we may receive compensation.