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COURT BARS DELAY IN CLEANING UP AIR

Finds Ruckelshaus Erred in Giving 17 States a 2-Year Extension of Deadline

By E. W. KENWORTHY
Special to The New York Times

WASHINGTON, Feb. 1—The United States Court of Appeals for the District of Columbia Circuit has ordered the Environmental Protection Agency to rescind its decision allowing 17 states, including New York, two additional years to come into compliance with air pollution limits.

In an order issued late yesterday, the court said that William D. Ruckelshaus, administrator of the agency, had acted "in the best of faith" in granting the extensions. Nevertheless, the court said that he had violated the "strict requirements of the Clean Air Act of 1970" and had thereby interfered with "the Congressional purpose of attaining clean air" by May 31, 1975, subject to certain "limited and well-defined statutory extensions."

The court directed Mr. Ruckelshaus to inform the 17 states that they must submit to him by April 15, 1973, corrected plans to comply fully with the requirements of the Clean Air Act for meeting primary standards by the 1975 target date, rather than two years later.

Such plans, the court said,

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must include proposals for transportation controls, as required by the law. Mr. Ruckelshaus had extended not only the time for meeting the air quality standards but also the time for submitting plans for transportation controls to reduce pollutants.

According to informed sources, the environmental agency will almost certainly not seek to appeal the ruling to the Supreme Court.

In another case involving the 1970 act, a Federal District Court here ordered Mr. Ruckelshaus yesterday to promulgate within 60 days emission standards for three hazardous substances — asbestos, beryllium and mercury. Under the law, Mr. Ruckelshaus was required to issue these final standards last June 7. On Dec. 4, the Environmental Defense Fund filed suit to compel compliance with the law.

Under the 1970 act, states were required to submit by Jan. 31, 1972, their plans for meeting by May, 1975, the primary ambient standards that the environmental agency set for six polutants — particulate matter (soot), sulphur oxides, carbon monoxide, hydrocarbons, nitrogen oxides and photochemical oxidants (smog).

A primary ambient standard is one designed to protect public health by limiting the amount of pollutant in the surrounding air.

The law permitted the administrator to grant a two-year extension if he found, upon a Governor's request, that one or more emission sources were unable to comply with the state plan because the control technology was not available or "alternative" methods of reducing the pollutants, such as traffic controls or mass transit, were not developed.

On May 31, 1972, Mr. Ruckelshaus, in announcing which state plans were acceptable or unacceptable, said that he had granted the request of 17 states for a two-year extension for compliance. The states asked for extensions because of inability to meet limits on carbon monoxide and photochemical oxidents.

The states, besides New York, are Alabama, Arizona, California, Colorado, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, Ohio, Pennsylvania, Texas, Utah and Washington.

Mr. Ruckelshaus said that the extensions for carbon monoxide and oxidants had been granted because they were directly related to the need for transportation controls, such as exhaust control devices on automobiles already in use, vehicle inspection, traffic flow, car pooling and increased use of mass transit systems.

Reasons for Extensions

Mr. Ruckelshaus said that the extensions were warranted because the "state of the art" on control of auto emissions was not sufficiently developed and the states had not obtained enough data or experience on transportation controls to meet standards that depend on such controls.

For this reason, Mr. Ruckelshaus said, he advised the states in August, 1971, that they could defer from Jan. 31, 1972, until Feb. 15, 1973, that portion dealing with transportation controls.

A week after the announced extension on compliance for 17 states, the National Resources Defense Council filed a suit contending that Mr. Ruckelshaus had violated the law by granting the two-year extension without an adequate showing that compliance was not feasible, and by extending the time for submitting a transportation plan. The case was argued last Jan. 22. The court agreed with the plaintiffs.

The court directed that Mr. Ruckelhaus approve or disapprove the amended plans by June 15. If an amended state plan will not, in the administrator's judgment, achieve primary standards by May, 1975, then the administrator must prepare a plan for the state by Aug. 15.

Further, the court ordered the administrator not to grant any state an extension on attainment of a primary standard without determining that compliance is impossible for want of techology or alternative means of meeting the standard.

Finally, the court ordered the agency to review the plans of all states to insure that they provide for maintenance of the standards after May 31, 1975. If they are found deficient as to maintenance, revised plans must be submitted by April 15, 1973.

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