

EPA Can Use Only Health Factors To Set Emissions Levels, Court Says

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brought the case, said the decision is only a partial victory because the judges ruled it might be possible to allow a "safe" level of emissions for non-threshold toxic pollutants—those for which any exposure is a risk. The NRDC had sought a complete ban on such emissions.

In addition, the court ruled that the EPA may consider cost and technological feasibility in setting the "margin of safety," which Congress mandated as a hedge in case scientific estimates of pollutants' hazards are wrong and they prove more dangerous than thought.

The NRDC had asked the court to rule that only health factors could be considered both in assessing safe emissions levels and in considering the margin of safety. Vinyl chloride has been shown to cause brain and liver cancer.

"We continue to believe that a person exposed to any level of a cancer-causing chemical is not safe," Doniger said.

"But the court has said that officials can no longer turn people's lives and health into ordinary commodities like wood or plastic" by

using a cost-benefit analysis to determine safe levels of dangerous substances, Doniger said.

Doniger predicted that the ruling will result in tougher emissions standards for many toxic pollutants.

Chris Rice, an EPA spokesman, last night said it was too early to determine if the agency will appeal the ruling. Technically, the appeals court vacated the EPA's 1985 decision to withdraw amendments proposed in 1977 to the vinyl chloride emissions standards, Rice said.

The EPA now must decide whether it must supplement those amendments, Rice said. He said the law requires the agency to propose new standards in six months and finalize them in another six months, but noted that the agency has never met those deadlines.

The court's decision will also have an immediate impact on emissions levels proposed last month for coke ovens, used in steelmaking, Rice said. He did not know how long it might take to revise those standards.

The court did not suggest a specific method for EPA Administrator Lee M. Thomas to determine what is a safe level of emissions, saying only that it must be based on an "expert

judgment" and may take into account "scientific uncertainty."

An attorney for the Vinyl Institute, a trade organization comprising major chemical companies including B.F. Goodrich, Occidental Petroleum and Dow Chemical, praised the decision, which he said embraced the approach to standard-setting that the group had espoused as an intervenor in the lawsuit.

Gary H. Baise, the Vinyl Institute's lawyer, said his group believes that even using the new criteria, the EPA "will affirm that the current levels of vinyl chloride emissions are not only safe but provide an ample margin of safety to protect the public health."

In the decision last November upholding the EPA's use of cost and technological capability in determining safe emissions levels, Bork seemed to favor the free-market approach. The EPA's method was not precluded by Congress, he said, and ensured that "costs do not become grossly disproportionate to the level of reduction achieved."

Yesterday Bork wrote that the EPA's current method is "contrary to clearly discernible congressional intent."