



NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, Corporation Counsel

Press Release

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For Immediate Release

**NEW YORK CITY FILES SUIT  
CHALLENGING THE EPA'S CLEAN AIR ACT RULES**

***CITY CHARGES THAT RELAXED POLLUTION CONTROL REQUIREMENTS FOR EXISTING POWER PLANTS AND OTHER INDUSTRIAL POLLUTERS COULD WORSEN AIR QUALITY AND NEGATIVELY AFFECT THE HEALTH OF NEW YORKERS.***

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New York, March 3, 2003 -- New York City announced today that it was filing suit in the Federal Court of Appeals in Washington, D.C., challenging the United States Environmental Protection Agency's (USEPA's) recent changes to regulations under the Clean Air Act. Those changed regulations could result in increased air pollution and prevent the City from meeting national air quality standards. New York City is being joined in its suit by the City and County of San Francisco. More than 10 states, including New York, have already filed petitions for review of the new regulations which the EPA announced on Dec. 31, 2002.

"This is a critical step in ensuring that New Yorkers have clean air to breathe," said Michael Cardozo, Corporation Counsel of the New York City Law Department. "It will also ensure that the City meets its required national standards for air quality." The Law Department's Environmental Law Division is representing the City in the suit.

For the past 25 years, the Clean Air Act required older pollution sources, such as power plants, to install modern pollution control equipment whenever they make changes that would increase emissions under what is known as the "New Source Review" (NSR) program. In addition, if a proposed facility is located in an area that does not currently meet the EPA's air quality standards, prior regulations required these facilities to offset increased pollution by reducing emissions from other sources. Revised regulations would allow many older, more polluting facilities to increase air pollution emissions over current levels without having to install modern pollution control equipment or offset increased emissions.

New York City Department of Environmental Protection Commissioner Christopher Ward fears the long-term impacts of the proposed rule change. "The City has worked for thirty years to help ensure the Clean Air Act's promise of improved air quality," he said. "The proposed NSR rule contradicts common sense policy and sets back air quality gains, not just for the City but for the whole country."

The most significant change that will occur as a result of the new regulation that the City is challenging is how facilities measure an increase in emissions to trigger the New Source Review. Under the previous regulation, facilities were required to measure proposed increases in emissions against the two-year period immediately preceding a proposed modification. If that measurement showed a significant increase, then the New Source Review was triggered. Under the new rule, the EPA would allow facilities to compare projected increases in pollution from a proposed change to the dirtiest two-year period in the previous 10 years. "This relaxed method of measuring emissions increases would allow polluters, who have otherwise reduced emissions within the last 10 years, to significantly increase emissions over current levels -- without being required to install state of the art pollution controls," according to Susan Kath, Chief of the Corporation Counsel's Environmental Law Division.

The City filed the petition challenging the EPA's changes to the New Source Review program, because City residents

could be particularly harmed by increased pollution -- both from local sources and from sources in the Midwest, which is transported into the City by prevailing winds. Although air quality in the City has improved substantially in recent decades, the City, along with many other urban areas in the northeast, currently does not meet national health-based air quality standards. Increases pollution from facilities that are not upgraded under the New Source Review program could prevent the City from attaining these air quality standards.

"There is a considerable body of scientific research demonstrating that particulate matter, ozone and other air pollutants can cause asthma attacks and other health problems. Obviously, increases in this pollution, much of which is produced by sources outside the region would have a harmful effect on the health of New York City residents. This impact would be especially great in vulnerable populations, including the estimated 700,000 adults and 300,000 children in New York who have been diagnosed with asthma," according to New York City's Health and Mental Hygiene Commissioner, Dr. Thomas Frieden.

While the EPA has claimed that its revised regulations would not result in increased pollution, this claim is belied by the rules themselves, and it is not supported by the evidence before the EPA when it considered the rule changes. In addition, the rule changes are contrary to the Clean Air Act's intent to reduce pollution over time, as well several Court decisions interpreting the Act.

The case will be handled for the City by Susan Amron, Deputy Chief; and Christopher King and William Plache, Assistant Corporation Counsels, of the Law Department's Environmental Law Division.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top three largest law offices in New York City and the top three largest public law offices in the country. Tracing its roots back to the 1600's, the Department's 650-plus lawyers handle more than 100,000 cases and transactions each year in 17 separate legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. Its web site can be accessed through the City government home page at [www.nyc.gov](http://www.nyc.gov) or via direct link at [www.nyc.gov/html/law/home.html](http://www.nyc.gov/html/law/home.html).

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