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Federal Court Strikes Down Illegal Permit for Avenal Power Plant in California

Ruling Is Victory for Health, Air Quality, the Climate and Environmental Justice

SAN FRANCISCO— The 9th Circuit Court of Appeals today struck down an illegal permit that would have allowed Avenal Power to build a new gas-fired power plant in Avenal, Calif. In 2011, the U.S. Environmental Protection Agency (EPA) issued a permit for the project that illegally waived its need to comply with air quality safeguards. Had this permit gone through, the plant would have been built in one of the most polluted and economically disadvantaged areas of the San Joaquin Valley.

In today's ruling, the court admonished the agency, saying the applicable Clean Air Act statute "does not permit EPA to waive ... requirements whenever it finds it convenient to do so."

"This is a great victory for our communities that already suffer too much from pollution," said Maricela Mares Alatorre, Kettleman City resident and member of El Pueblo. "This decision should convince the company to drop this polluting project."

The legal action against US EPA was brought by Greenaction for Health and Environmental Justice, Sierra Club and Center for Biological Diversity, all represented by Earthjustice, and by El Pueblo Para el Aire y Agua Limpia/People for Clean Air and Water of Kettleman City who are represented by Center on Race, Poverty and the Environment.

While Avenal Power's application for the "prevention of significant deterioration" (PSD) permit was pending, new air-quality standards came into effect to protect against harmful nitrogen dioxide emissions and greenhouse gases. When regional EPA officials told Avenal Power to comply with the new standards, the company sued the EPA for not having issued the permit within a year. The EPA's national office then took over permitting and issued the permit based on the old standards, arguing that it could "grandfather" the project and ignore the new air-quality standards.

"Low-income people of color living near the proposed power plant are already burdened by birth defects and infant mortality, diesel traffic fumes, pesticides, and the largest toxic dump in the west," said Bradley Angel, executive director of Greenaction for Health and Environmental Justice. "We applaud the court's decision that stopped EPA's violation of the law."

"We're delighted with this victory for the environment, public health and the Clean Air Act," said Vera Pardee, senior attorney at the Center for Biological Diversity. "This decision once again makes clear that the EPA cannot exempt polluters at whim."

Because the court vacated the permit, Avenal must now comply with all of the new standards, construct a smaller plant that does not need a federal PSD permit, or abandon the project.

The plant would generate annually 144.3 tons of nitrogen oxides, 80.7 tons of fine particulate matter and 1.71 million metric tons of carbon dioxide.

"EPA was willing to ignore the law to allow this project to go forward in one of the hardest hit communities in one of the most polluted regions in the country, and it was a shameful decision," said Paul Cort, Earthjustice attorney. "Today's court ruling -- that EPA is not free to waive statutory requirements that it finds inconvenient -- is a great victory for this community and for the rule of law generally."

"California can meet its energy needs through clean energy. The San Joaquin Valley is already leading when it comes to rooftop solar and other clean energy development - there's simply no need for dirty and polluting power plants when so much cost-effective clean energy is available. We're encouraged the court saw the need for environmental safeguards to protect the health and well-being of Californians," said Deb Nardone, Director of the Sierra Club's Beyond Natural Gas Campaign. "The court's decision today will hold the EPA accountable for following the rules they established to support the most vulnerable from the dangers of pollution."