



## Federal court slaps down lawless EPA

By [Josiah Neeley](#) 9:14 AM 12/14/2011

### ADVERTISEMENT

The Environmental Protection Agency is in the midst of a regulatory spree of unprecedented proportions. Claiming that it is acting in support of public health, the EPA has brushed aside procedural requirements and due process concerns to enact a slew of new environmental regulations set to go into effect over the next three years. On Friday, however, the EPA's disregard for due process came back to haunt it when a federal court threw out new restrictions on the manufacture and storage of cement.

In a unanimous ruling, a three-judge panel for the U.S. Court of Appeals for the District of Columbia found that the EPA's actions in adopting the regulation were "arbitrary and capricious," in that it had failed to give adequate notice to manufacturers.

EPA's proposal would have set emissions standards for the manufacture and storage of Portland Cement, a type of cement produced in domestic kilns. The industry currently employs around 17,000 Americans at more than 100 facilities in 36 states. According to the Portland Cement Association, which brought the legal challenge to the new rule, the proposed restrictions could result in the closure of as many as 18 plants and cost 15,000 jobs.

EPA attempted to excuse its procedural errors, arguing that immediate adoption of the restrictions was necessary to protect public health. Trace amounts of mercury are emitted during the cement production process. And at certain levels of exposure, mercury is a well-known

Ironically, the cement rule would not have reduced emissions so much as moved their location. China is a major exporter of cement to the United States, and under the new rule imports of cement from China were expected to double, to around half of all new cement used in the United States. Because of looser environmental standards and practices in China, is it not clear whether the rule would have reduced emissions at all.

The cement rule is only one of more than 10 new EPA regulations scheduled to go into effect over the next three years. Described as the EPA's "train wreck," each of the rules carries a multibillion-dollar price tag, will cost hundreds of thousands of [jobs](#) and could result in the loss of 8 percent of the U.S.'s current electricity generating capacity.

The cement rule is not the most consequential of the "train wreck" rules. It is, however, the first of these rules to be reviewed on the merits by a federal court. Several of the other new rules are also currently being challenged in the federal courts. EPA's procedural errors in these cases make the defects in the Portland Cement challenge look like [hair-splitting](#) by comparison. Hopefully the court's decision may serve as an indication of what is to come once EPA's recent overreach is finally subject to judicial scrutiny.

Following the requirements of the Administrative Procedures Act can be tedious. But it is nevertheless fundamentally important. Democracy is incompatible with granting an agency arbitrary power, subject only to its own claims to be pursuing public safety. As the court noted in overturning the cement rule, "reasoned decision-making is not a dispensable part of the administrative machine that can be blithely discarded even in pursuit of a laudable regulatory goal." The EPA badly needs to be reminded of this fact.

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