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Adoption of loopholes a mistake

Lots of bad news befell West Virginians this month, at least those West Virginians who want to breathe the air.

High levels of mercury emissions led to state fishing advisories for every stream, river and lake in West Virginia. The major source of that mercury is from coal-fired power plants.

Then on Friday, EPA announced that all or parts of 15 counties fail minimum health standards for fine particle pollution. This "nonattainment" designation means it is not safe to breathe the air. Charleston, Huntington, Wheeling, Parkersburg, Fairmont and numerous other areas face this designation, and will face restrictions on economic development, new highway funding, and more.
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But the designations are actually good news.

Nonattainment designations help protect us. The designations give citizens legal tools needed to insist on pollution reductions at the big, dirty power plants in those counties. This saves lives, and saves money on health costs.

Many old plants like John Amos, Kammer, Fort Martin, Phil Sporn and others have been exempted from modern emissions standards because they were built before those rules took effect. In spite of years of complaints, the plants claimed they were operating legally and no one had a means to force them to clean up.

Because of the new nonattainment designations, citizens now have the legal basis for insisting on installing modern pollution controls. Not only does that mean cleaner air and healthier children, it means hundreds of new construction jobs. Everybody wins.

That brings us to the biggest embarrassment of this whole issue.

Under the Clean Air Act, those old dirty plants would have been forced to clean up years ago under a provision called "new source review." The EPA under the Clinton administration began legal action to force those old plants to finally clean up.

But under the Bush administration, the EPA proposed changes to new source review rules, creating numerous complex loopholes that made them essentially unenforceable. If those plants had been cleaned up, it is unlikely that any West Virginia counties would now be designated nonattainment.

And the really embarrassing part is that the West Virginia Department of Environmental Protection now wants to adopt these same new source review loopholes here in West Virginia.

Under rule changes proposed this year, DEP wants to incorporate the Bush administration exemptions and rollbacks into West Virginia's air pollution rules.

DEP is proposing to create complex new "plantwide applicability limits" that make it almost impossible to monitor emissions. This so-called "bubble bill" had already been rejected by the Legislature, but DEP wants to impose through rulemaking what it could not get through legislation.

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DEP wants to change the rules so that power plants could use the highest emissions of the last 10 years as a "baseline," giving power plants a break that other businesses don't get.

DEP wants these rule changes to apply in areas already designated as "nonattainment," meaning it will be even harder to get air quality back to healthy standards and remove the economic sanctions in these areas.

And the process will be so cumbersome that average citizens will have no meaningful opportunity for input.

The Legislature will review the rule changes in its 2005 session. Legislators in some areas have already pledged to fight the rollbacks.

Now is clearly the time to move forward and clean up the power plants, but it is the worst possible time to roll back the rules that could protect us from continued pollution.

Kotcon is a leader of the West Virginia Chapter of the Sierra Club.