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U.S. Supreme Court Hears Red Dog Case Oct. 8
Case is fundamental state's rights issue

(Juneau) –The U.S. Supreme Court will hear Alaska's case challenging the Environmental Protection Agency's authority under the Clean Air Act to invalidate a permit issued by an "approved" state because it prefers the use of different technology.

"The Supreme Court granted Alaska's petition to hear this case, we believe, because it's a fundamental state's rights issue that can have a major impact on all other states," said Governor Frank Murkowski. "If EPA has approved a state's program and then second-guesses a state's decision, it upsets a state's ability to manage and protect its environment, upsets normal business practices for permitting and business enterprises, and creates an uncertain business environment."

Alaska contends that Congress clearly gave "approved" states authority to make permit decisions, as long as national air standards are met. In this case, Alaska's permit to the mine would have produced better environmental results at less cost using a more proven technology.

Attorney General Gregg Renkes said that it is the state's authority under federal law to administer its federally approved plan that is at issue in this case (*Alaska Department of Environmental Conservation vs. Environmental Protection Agency*).

"Congress clearly intended to give the states authority to protect air quality in the most cost-effective way, with the least impact on the local economy," Renkes explained. "There is no point to a federally approved state clean air program if the EPA can veto state decisions."

The Clean Air Act requires a state to determine best available control technology when a new major project is built or when an existing project goes through a large expansion. In this case, that piece of equipment is a diesel engine used to generate electric power.

"We believe that the Clean Air Act provides for the state to be the prime decision-maker in determining what technology is appropriate to achieve protection of air quality and balance economic interests," DEC Commissioner Ernesta Ballard said.

The EPA disagreed with DEC over what pollution control strategy meets the best available control technology requirement for a new diesel engine that Teck Cominco, the owner of the Red Dog Mine, installed. The EPA wanted to force the use of a more expensive technology, even though it would not be any cleaner than the state's approach. The state will argue that the Clean Air Act provides it broad discretion to make that decision, following EPA's 1983 approval of Alaska's program.

The Clean Air Act clearly lays out that the state's pollution control technology decision consider environmental results, economic impacts, and energy considerations -- Alaska made those considerations in this permit. EPA decided with little or no concern for economic impacts, that a more expensive technology should have been required because it was technically feasible. DEC's decision also reduced emissions from existing equipment providing for overall lower air pollution emissions. The Supreme Court will decide whether the state's decision is final or whether EPA can step in on a case by case basis, second guess its decision, and stop new development projects.

Attorney General Gregg Renkes will represent Alaska before the U.S. Supreme Court along with assistant attorney general Cameron Leonard and Washington, D.C. attorney Jonathan Franklin. One hour has been dedicated for oral argument.

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