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Georgia Judge Cites Carbon Dioxide in Denying Coal Plant Permit

By [MATTHEW L. WALD](#)

A judge in Georgia has thrown out an air pollution permit for a new coal-fired power plant because the permit did not set limits on carbon dioxide emissions.

Both opponents of coal use and the company that wants to build the plant said it was the first time a court decision had linked carbon dioxide to an air pollution permit.

The decision's broader legal impact was not clear, either for the plant, proposed to be built near Blakely, in Early County, Ga., or for others outside Georgia, but it signaled that builders of coal plants would face continued difficulties in the court system as well as with elected officials in many states.

In the ruling released late Monday afternoon, a state judge relied on a decision by the [Supreme Court](#) last year that carbon dioxide could be regulated as a pollutant. Carbon dioxide, which is colorless, odorless and not directly harmful to animals or plants, is not now regulated, and the Bush administration has signaled that it would not issue such regulations before the president leaves office.

But the judge, Thelma Wyatt Cummings Moore in Superior Court in Fulton County, Ga., said that federal air pollution control laws required pollution permits to cover all pollutants that could be regulated under the Clean Air Act, not just those for which there is "a separate, general numerical limitation." The case had been brought by the [Sierra Club](#) and a local environmental group, Friends of the Chattahoochee.

Judge Moore sent the case back to the Georgia Department of Natural Resources, which had issued a permit in May 2007. The builders had planned to break ground on the \$2 billion project later this year.

A spokeswoman for that department said late Monday that lawyers there had not finished evaluating the decision.

Michael F. Vogt, the project manager, said that his company would appeal. The plant is a joint venture of LS Power Group and [Dynergy](#).

Judge Moore said in her decision that the permit would have to require "best available control technology" for all emissions that could be regulated, including carbon dioxide. But Mr. Vogt said that in contrast to pollutants like soot, nitrogen oxides and sulfur dioxide, there was no commercially available carbon control technology, nor a government-set limit on emissions.

"There simply are no regulations out there to tell us what we would have to do," he said. "The [E.P.A.](#) is wrestling with this right now, as is Congress."

Bruce Niles, who heads the Sierra Club's campaign against coal, said the plant could use a boiler that produced more energy per pound of coal, or burned a combination of coal and biomass, both of which would cut carbon dioxide per kilowatt-hour.

Robert Wyman, a partner in the Los Angeles office of Latham & Watkins, the law firm, who has represented power producers in previous cases, said of the decision: "I would be surprised if it had much of an impact. I'm not sure other jurisdictions will pick up that opinion." He said that, despite the Supreme Court finding, federal regulators had not issued the finding required before a pollutant can be regulated.

Vickie Patton, the deputy general counsel at the [Environmental Defense Fund](#), however, argued that the judge's reasoning might prove persuasive to other courts facing similar issues.

Felicity Barringer contributed reporting.

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