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AIR POLLUTION

Conservationists open new front in fight over soot rule

[Sean Reilly](#), E&E News reporter Published: Tuesday, February 9, 2021



A conservation group says soot pollution harms the Pacific pocket mouse, among other endangered species. Cheryl Brehme/U.S. Geological Survey

The Trump administration's decision to leave Clean Air Act standards for soot unchanged has come under legal attack for allegedly disregarding evidence of the harm to human health.

And now EPA faces a challenge on grounds that it failed to adequately weigh the threat to imperiled plants and animals.

Under the Endangered Species Act, EPA should have consulted with other agencies before opting last December to leave the current regimen in place, the Center for Biological Diversity said in a [petition](#) filed this morning asking acting EPA Administrator Jane Nishida to reconsider. The nonprofit group also brought a parallel [lawsuit](#) in the U.S. Court of Appeals for the District of Columbia Circuit.

The Arizona-based group described the suit in a news release as the first of its kind and says it aims to ensure that EPA "consults with agencies responsible for wildlife and plant protection to ensure its action does not drive any endangered species to extinction."

Following a legally required review that critics charged was rigged in favor of keeping the status quo, EPA issued the final rule in the waning weeks of former President Trump's term ([Greenwire](#), Dec. 7, 2020).

The Biden administration has already targeted the rule as one of 48 EPA actions up for scrutiny ([Greenwire](#), Jan. 20).

More technically known as fine particulate matter, or PM2.5, soot is linked to a variety of ailments, including asthma attacks, heart arrhythmia and premature death under some circumstances. In deciding to keep the primary annual exposure standard of 12 micrograms per cubic meter of air, EPA political appointees overrode career staffers' conclusions that the scientific evidence warranted cutting it to as low as 8 micrograms to prevent thousands of early deaths each year.

Those findings have been the focus of states and environmental groups already fighting the rule in federal court ([E&E News PM](#), Jan. 19).

But in comments filed last year on what was then EPA's proposal, the Center for Biological Diversity argued that there was also evidence that long-term soot exposure may hurt the lung development of endangered species like the Pacific pocket mouse, found in San Diego County, Calif.

"EPA, in consultation with the expert wildlife agencies, must determine what levels would adversely impact or jeopardize" species listed as threatened or endangered, Robert Ukeiley, a senior attorney with the group, wrote in the comments.

In their response, EPA officials countered that they were under no obligation to carry out an Endangered Species Act consultation because their proposed soot rule kept the status quo. They also argued that the potential impact on plants and animals fell under a separate review relating to "the ecological effects of PM deposition, including effects on species and habitats."

In the reconsideration petition filed today, Ukeiley called that argument factually faulty because the center had submitted evidence showing the soot inhalation harms mice and other listed

species. And because the Endangered Species Act requires consultation early in the process, "EPA was required to consult long before it knew that it was going to leave" soot standards unchanged, he wrote.

Soot particles are known as PM2.5 because they are no bigger than 2.5 microns in diameter, or one-thirtieth the width of a human hair. Under the Clean Air Act, particulate matter is one of a half-dozen pollutants for which EPA is required to set and periodically review its ambient air quality standards based on the current state of research on their health and environmental effects.

While the primary annual soot standard is set at 12 micrograms per cubic meter of air, the secondary exposure standard is 15 micrograms. For both standards, the daily exposure threshold is 35 micrograms per cubic meter of air.

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