

Environmental group asks EPA to impose stricter limits

The group says proposed pollution limits could have saved at least 3,000 lives

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WASHINGTON — If the government required deeper cuts in air pollution from power plants, at least 3,000 lives would be saved and 140,000 children would avoid asthma and other respiratory ailments, an environmental group said Tuesday.

Environmental Defense, a New York-based group, urged the

Environmental Protection Agency to require more pollution reductions than EPA plans to impose in December.

"The benefits outweigh the costs by a 20-to-1 ratio," said Michael Shore, a senior air policy analyst for the group. "This is clearly a great benefit for society."

Dan Riedinger, a spokesman for the Edison Electric Institute, a utility trade group, said complying with EPA's new rule will lead to "a very substantial reduction (in pollution) on top of the cuts we've already made" — 40 percent since 1980.

"There are always going to be critics who say no matter how much we cut,

they want us to do more," he said. "We think the reductions proposed by the administration are very aggressive but workable in the long run, so we would question the need to go much further than that."

Soot and smog from power plants are blamed for pollution that causes respiratory problems that lead to thousands of deaths each year. The very young and old are most susceptible.

The EPA plans to require power plants to gradually cut acid rain-causing sulfur dioxide and smog-causing nitrogen oxide. It's expected that businesses will spend \$48 billion to comply with the changes, which are to be fully implemented by 2015.

EPA Administrator Mike Leavitt has said the changes would reduce sulfur pollution nearly 70 percent and the smog-causing chemical 40 percent. It's estimated those changes will save 13,000 lives and lead to 860,000 fewer asthma and respiratory cases in children.

Leavitt said Tuesday he is "committed to accelerating the progress of cleaning the air" and considers the proposal for power plants aggressive.

"States have been battling transported pollution for too long, and we are committed to providing a solution," he said.

Environmental Defense described the EPA's plans as a step forward but

urged the agency to require industry to invest a minimum of up to 50 percent more, or a total of \$72 billion. Such an investment, the group said, would save 3,000 more lives and shield 140,000 more children from respiratory ailments.

The group used EPA's method to calculate the costs and benefits. It is based on an economic model that compares the cost of reducing each ton of pollution with how much pollution there is. Then that cost is compared to the health benefits from cleaning the air.

John Heilprin is a writer for the Associated Press.

High court ruling to have 'enormous' impact on Oregon

A Supreme Court ruling on sentencing guidelines spawns 'uncertainty'

PORTLAND — A U.S. Supreme Court ruling that "enhanced" sentences must be decided by juries, not judges, has prosecutors scrambling to reindict some defendants while other sentences are delayed until the ruling is clarified this fall.

The court ruled that facts

supporting sentences that have been lengthened because of aggravating circumstances have to be decided by juries, not judges.

The case, *Blakely vs. Washington*, dealt with Washington's sentencing guidelines. But because they mirror federal sentencing guidelines as well as those in nine other states — including Oregon — the ruling has created widespread confusion on how to proceed.

"There is a lot of uncertainty right

now all over the country," Barry Sheldahl, first assistant U.S. attorney for Oregon, told *The Oregonian*. "Every sentence we do may or may not be right. Everyone feels the same uncertainty — judges, defense lawyers and prosecutors."

In state court, Salem defense lawyer Jesse Barton, who has written manuals about the state sentencing system, said the implications for Oregon are "absolutely enormous."

"There are hundreds of guys in

prison right now doing unconstitutional sentences under *Blakely* — hundreds, maybe thousands," Barton said.

Although *Blakely* is not likely to have a significant impact on the most serious crimes, such as the violent person-to-person offenses that fall under Measure 11, state prosecutors said it may impact the way serious property crimes are handled.

In federal court in Portland, prosecutors are reindicting some defendants in cases in which they plan to ask for longer sentences because of the facts of the case.

In a bank robbery case, for example, the indictment might include whether the defendant used a gun, how much money was stolen and whether the victim was restrained — facts that might be used by prosecutors during sentencing to ask for a stiffer penalty.

So far, federal prosecutors have asked for juries to be impaneled to decide the sentencing in three cases.

But impaneling juries for sentencings is more time-consuming and complicated, according to defense lawyers and prosecutors. Sentencings would resemble trials, with juries reviewing evidence and hearing arguments from both sides.

Federal sentencings before juries must be unanimous and require the "beyond a reasonable doubt" standard of proof. Judges, however, can use any relevant evidence that they consider trustworthy and reliable, Barton said.

Across the country, federal appellate courts are translating the high court's ruling in contradictory ways.

The 9th U.S. Circuit Court of Appeals, which includes Oregon, said *Blakely* renders portions of the federal sentencing guidelines

unconstitutional.

Jeffrey L. Fisher, the Seattle lawyer who won the *Blakely* case before the U.S. Supreme Court, predicts that *Blakely's* impact will be softened once states amend sentencing procedures over the next year or so.

One option would be to adopt the Kansas model, where juries already decide criminal cases in two phases — first deciding guilt and then, in a second phase, whether a sentence should be enhanced, Fisher said in a July interview with *The Oregonian*.

"Once these fixes happen, (*Blakely* is) not a case that people will talk about every day," he said, though he noted that for the interim some defendants may receive lighter sentences than prosecutors desire. "The good news is that it doesn't destroy the guidelines system."

Earlier this month, the Supreme Court said it would clarify this fall whether *Blakely* applies to the federal sentencing guidelines.

On Oct. 4, the first day of its new term, the court will hear two cases, one out of Maine and the other out of Wisconsin, that deal with the guidelines.

Douglas A. Berman, a law professor at Ohio State University and an expert in federal sentencing law, said that until then, federal sentencings that have been handed down since the June ruling may be in doubt and ripe for appeal.

"I think any defendant and defense attorney who is unhappy with what happens during this period of uncertainty will certainly be entitled to walk into court and say, 'I'm entitled to a do-over,'" he said. "Whether they get a do-over is a separate question, but they will certainly have a leg to stand on."

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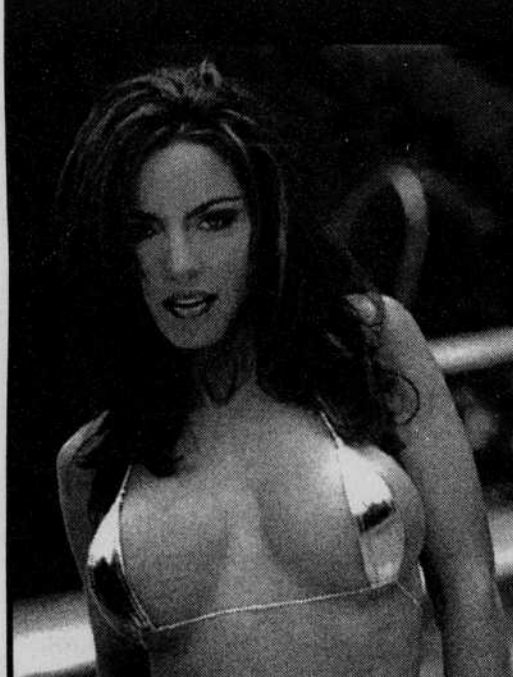
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NEWS BRIEF

Portland closes dog park, citing suspicious meat

PORTLAND — An off-leash park for dogs has been closed after park workers discovered dead chickens and chunks of meat hidden in the bushes.

Last summer, at least a dozen Portland dogs died after they ate what veterinarians believe was poisoned meat left at Laurelhurst Park, and park officials told reporters Tuesday they were worried about a possible copy-cat.

The meat found this week at Willamette Park in Southwest Portland was sent to a laboratory for testing and the situation is being investigated by Multnomah County

Animal Services, Portland park spokeswoman Sarah Bott.

"It's very similar (to last year), and so we're going to take it very seriously and clearly someone has made a statement. So we'll collect it as evidence and have the meat analyzed and we'll see what we come back with," said Mike Klein with Multnomah County Animal Control.

John Rowton, shelter manager at Multnomah County Animal Control, said he did not know of any dogs or other animals being sickened from eating meat at the park.

On Monday, park maintenance workers said they discovered 20 pounds of sausage and hamburger products scattered in the off-leash area. On Tuesday, they found several whole fryers in the park.

— Associated Press

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