

Christine Whitman
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Ms. Whitman:

I resign today from the Environmental Protection Agency after twelve years of service, the last five as Director of the Office of Regulatory Enforcement. I am grateful for the opportunities I have been given, and leave with a deep admiration for the men and women of EPA who dedicate their lives to protecting the environment and the public health. Their faith in the Agency's mission is an inspiring example to those who still believe that government should stand for the public interest.

But I cannot leave without sharing my frustration about the fate of our enforcement actions against power companies that have violated the Clean Air Act. Between November of 1999 and December of 2000, EPA filed lawsuits against 9 power companies for expanding their plants, without obtaining New Source Review permits and the up to date pollution controls required by law. The companies named in our lawsuits emit an incredible 5.0 million tons of sulfur dioxide every year (a quarter of the emissions in the entire country) as well as 2 million tons of nitrogen oxide.

As the scale of pollution from these coal-fired smokestacks is immense, so is the damage to public health. Data supplied to the Senate Environment Committee by EPA last year estimate the annual health bill from 7 million tons of SO₂ and NO₂: more than 10,800 premature deaths; at least 5,400 incidents of chronic bronchitis; more than 5,100 hospital emergency visits; and over 1.5 million lost work days. Add to that severe damage to our natural resources, as acid rain attacks soils and plants, and deposits nitrogen in the Chesapeake Bay and other critical bodies of water.

Fifteen months ago, it looked as though our lawsuits were going to shrink these dismal statistics, when EPA publicly announced agreements with Cinergy and Vepco to reduce Sox and Nox emissions by a combined 750,000 tons per year. Settlements already lodged with two other companies – TECO and PSE&G – will eventually take another quarter million tons of Nox and Sox out of the air annually. If we get similar results from the 9 companies with filed complaints, we are on track to reduce both pollutants by a combined 4.8 million tons per year. And that does not count the hundreds of thousands of additional tons that can be obtained from other companies with whom we have been negotiating.

Yet today, we seem about the snatch defeat from the jaws of victory. We are in the 9th month of a "90 day review" to reexamine the law, and fighting a White House that seems

determined to weaken the rules we are trying to enforce. It is hard to know which is worse, the endless delay or the repeated leaks by energy industry lobbyists of draft rule changes that would undermine lawsuits already filed. At their heart, these proposals would turn narrow exemptions into larger loopholes that would allow old “grandfathered” plants to be continually rebuilt (and emissions to increase) without modern pollution controls.

Our negotiating position is weakened further by the Administration’s budget proposal to cut the civil enforcement program by more than 200 staff positions below the 2001 level. Already, we are unable to fill key staff positions, not only in air enforcement, but in other critical programs, and the proposed budget cuts would leave us desperately short of the resources needed to deal with the large, sophisticated corporate defendants we face. And it is completely unrealistic to expect underfunded state environmental programs, facing their own budget cuts, to take up the slack.

It is no longer possible to pretend that the ongoing debate with the White House and Department of Energy is not effecting our ability to negotiate settlements. Cinergy and Vepco have refused to sign the consent decrees they agreed to 15 months ago, hedging their bets while waiting for the Administration’s Clean Air Act reform proposals. Other companies with whom we were close to settlement have walked away from the table. The momentum we obtained with agreements announced earlier has stopped, and we have filed no new lawsuits against utility companies since this Administration took office. We obviously cannot settle cases with defendants who think we are still rewriting the law.

The arguments against sustaining our enforcement actions don’t hold up to scrutiny.

Were the complaints filed by the U.S. government based on conflicting or changing interpretations? The Justice Department doesn’t think so. Its review of our enforcement actions found EPA’s interpretation of the law to be reasonable and consistent. While the Justice Department has gamely insisted it will continue to prosecute existing cases, the confusion over where EPA is going with New Source Review has made settlement almost impossible, and protracted litigation inevitable.

What about the energy crisis? It stubbornly refuses to materialize, as experts predict a glut of power plants in some areas of the U.S. In any case, our settlements are flexible enough to provide for cleaner air while protecting consumers from rate shock.

The relative costs and benefits? EPA’s regulatory impact analyses, reviewed by OMB, quantify health and environmental benefits of \$7,300 per ton of SO₂ reduced at a cost of less than \$1,000 per ton. These cases should be supported by anyone who thinks cost-benefit analysis is a serious tool for decision-making, not a political game.

Is the law too complicated to understand? Most of the projects our cases targeted involved big expansion projects that pushed emission increases many times over the limits allowed

by law.

Should we try to fix the problem by passing a new law? Assuming the Administration's bill survives a legislative odyssey in today's evenly divided Congress, it will send us right back where we started with new rules to write, which will then be delayed by industry challenges, and with fewer emissions reductions than we can get by enforcing today's law.

I believe you share the concerns I have expressed, and wish you well in your efforts to persuade the Administration to put our enforcement actions back on course. Teddy Roosevelt, a Republican and our greatest environmental President, said, "Compliance with the law is demanded as a right, not asked as a favor." By showing that powerful utility interests are not exempt from that principle, you will prove to EPA's staff that their faith in the Agency's mission is not in vain. And you will leave the American public with an environmental victory that will be felt for generations to come.

Sincerely,

Eric V. Schaeffer, Director
Office of Regulatory Enforcement