

FOR IMMEDIATE RELEASE
November 5, 2003

Contact: Michael Kharfen
202-478-6175,
202-262-3996 (c),
Mkharfen@mrss.com

ADMINISTRATION PULLS PLUG ON CLEAN AIR ACT ENFORCEMENT CASES Utility Lobby Buys Polluter Friendly Clean Air Act

Yesterday, in a rush to act before incoming EPA Administrator Mike Leavitt takes office, the Bush Administration issued what amounts to a Presidential pardon to a collection of power companies, refineries, and other manufacturers accused of violating the Clean Air Act. EPA's Assistant Administrator for Enforcement J.P. Suarez, apparently acting under orders from higher ups, informed EPA's enforcement staff at a Seattle meeting that the government would drop all enforcement actions for violations of the Clean Air Act's New Source Review rules that were in effect until this year, unless those cases have already been filed in federal court. More specifically:

* EPA will not file any New Source Review complaints against approximately 50 facilities that EPA has determined are in violation of Clean Air Act New Source Review requirements. The companies include Dayton Power Company in Ohio, the Xcel Corporation in Denver, the Exxon-Mobil, Sunoco, Phillips, and Citgo refineries, and Kerr McGee, Dupont, Cargill and Kennecott Copper. Violations at these and other companies allegedly led to an increase of thousands of tons of sulfur dioxide and nitrogen oxide, which are linked to smog and fine particle pollution believed to trigger asthma attacks and heart disease.

* EPA will drop pending investigations of over 70 power companies for violations of the same rules. That list includes a number of large power companies like Detroit Edison (visited by President Bush in September) and Reliant, whose former executives are "Pioneers" that have raised hundreds of thousands of dollars for the President's reelection.

* The Justice Department will apparently try to pursue the few cases already filed in federal court by the previous Administration, but will be playing with a much weaker hand. Because EPA recently weakened New Source Review rules, the government's lawyers have already abandoned their strongest argument, informing the court in a pending case against Illinois Power that the U.S. could no longer argue that defendant's conduct was a black-and-white violation of the statute itself. Now the Justice Department will have to explain why the law should be obeyed by a few defendants when the government has abandoned its enforcement against anyone else.

THE LAW:

New Source Review prohibits major modifications at power plants and manufacturing operations that are expected to significantly increase emissions, unless companies first obtain permits and install pollution controls. Exceptions to this general rule were narrow. Enforcement of these requirements led to a series of settlements over the last four years that will reduce sulfur dioxide pollution by an estimated 557,500 tons per year, nitrogen oxide pollution by an estimated 242,300 tons per year, and smog-forming volatile organic compounds, particulate matter and other pollutants by approximately 11,300 tons per year. Vice-President Cheney's energy task force ordered a review of these cases in May, 2001, but Attorney General Ashcroft ruled that the enforcement actions were legally sound the following January.

THE LOOPHOLES:

On December 31, 2002, and August 27, 2003, energy lobbyists and their agents in the Bush Administration effectively eliminated these laws by carving out a series of new loopholes. For example, companies can now replace up to 20% of a production unit with a single project, no matter how much emissions increase, without triggering New Source Review permit

requirements. As a token gesture, Mr. Suarez apparently informed EPA staff that enforcement could continue against any company whose past conduct somehow couldn't be squeezed through the new loopholes, but there is little chance of that happening.

In testimony before Congress, and in the new regulations themselves, EPA assured skeptics that these new rules would be prospective, and would not relieve companies of liability for past violations under the more restrictive standards that were replaced by the new rules. EPA's action yesterday eliminated any further pretense of enforcement, and simply wiped the slate clean for companies that violated emission standards that have been in effect since the Clean Air Act became law over twenty years ago.

THE ENERGY LOBBY:

In some ways, the latest decision is a case study in how money and influence peddling in the Bush Administration distort our laws in favor of the rich and well connected. Executives of three power companies that have been taken to court for NSR violations (Southern Company, Dynegy, and First Energy) and executives from two more under investigation (Reliant and Mid-American Energy Holdings) are on the "Pioneer" list of Bush fundraisers. Lawyers for defendants Sigeco, Duke and Alcoa are also on the Pioneer list, as well as representatives of the Edison Electric Institute and the lobbying firms representing Cinergy, AEP, TVA and Southern Company, among others, in the forefront of the campaign to weaken New Source Review. Campaign contributions from utilities approached \$5 million in the 2000 campaign.

EPA's actions yesterday rewarded some of the President's most loyal supporters, and will no doubt reap more big contributions from companies that no longer have to spend money on pollution control.

REFERENCE DOCUMENTS:

Here are some documents you might find useful in understanding the Bush Administration's actions, all of which can be found on the Environmental Integrity Project's website.

- * The list of power plants, refineries and other companies with notices of violations for NSR;
- * A list of power companies with plants still under investigation for NSR violations;
- * A summary of emission reductions obtained under NSR enforcement actions to date;
- * A list of "Pioneer" contributors to President Bush from energy companies involved in NSR enforcement actions, and their law firms and lobbyists;
- * A chart of 2001 emissions at select facilities with outstanding NSR violations; and
- * Public Citizen's report "EPA's Smoke Screen: How Congress Was Given False Information While Campaign Contributions and Political Connections Guttled a Key Clean Air Act Rule" (Oct. 2003)