

Coddling the 'Big Dirties'

by Sidney A. Shapiro, J.D.

A major Bush Administration announcement about the environment slipped largely under the radar last week, drowned out by the passage of the Homeland Security bill and the President's trip to Europe. The announcement: an interagency working group, led by the Office of Management and Budget, acceded to energy industry pressure and agreed to weaken an important program for reducing air pollution.

The program, known as "New Source Review," requires new facilities that produce air pollution in significant amounts – such as new factories and power plants – to install the best technology available for controlling air pollution. It also requires operators of older plants to install such technology when they undertake major modifications to their plants. When Congress passed the Clean Air Act in the 1970s, it exempted then-existing power plants, now known as the "big dirties," from the best-technology requirement in response to complaints from industry that retrofitting plants would be unreasonably expensive. Instead, the law takes an approach similar to many local housing codes: when you remodel or rebuild, you bring it up to code. Industry took the deal at the time, but has been trying to escape from it ever since, and the Bush Administration has finally granted their wish.

This "old source review" was often ignored, until the 1990s when the Clinton Justice Department began bringing lawsuits alleging that the owners of dozens of old power plants and oil refineries had broken the law by undertaking major renovations or other work *without* installing the best new pollution control technology. The lawsuits were just starting to bear fruit when the Bush Administration, barely a few months in office, endorsed a recommendation from Vice President Cheney's secretive, industry-dominated task force on energy policy to reconsider the program. In response, the Administration has now formally embraced changes weakening the program and threatening to undermine further efforts to require old sources to clean up their act.

At least two aspects of the Administration's decision are profoundly troubling. First, the decision undermines a major pollution-control program that produces huge health benefits. Research indicates that thousands of deaths each year can be attributed to older power plants' failure to install the best available pollution control technology. One study of nine older plants affecting Chicago's air quality, concluded that installing the best new pollution-control technology available could save as many as 600 lives, and prevent 2,000 emergency room visits, 10,000 asthma attacks, and 400,000 adverse respiratory effects, in a 500-square mile area around Chicago each year. Another study completed ago for the Clean Air Task Force concluded that reducing all U.S. power plants' emissions by 75 percent—about what would be achieved by installing the best available technology on the grandfathered plants—would save 11,000 lives every year. Such large life-saving opportunities are rare in any regulatory program; it's rarer still for an Administration to squander them.

The second disturbing aspect of the Administration's decision is the process. The influence of the Vice President's industry-friendly task force was only the beginning. Some months after it completed its work, a Republican congressional staffer sent an email to key industry groups, soliciting suggestions for regulations they would like to kill. New Source Review made

industry's wish list. Soon after, the Office of Management and Budget (OMB) put the program on a "hit list" of regulations, implying it would ask EPA to consider weakening it.

OMB's leading anti-regulatory force is John Graham, director of its Office of Information and Regulatory Affairs. Graham has routinely denounced environmental, health and safety regulations on the grounds that they are based on shoddy and incomplete data about their costs and benefits. Now we learn that when it comes to *deregulating*, incomplete and shoddy data are just the thing! OMB gave no detailed reason for or evidence supporting its decision to put New Source Review on its hit list. And when EPA's weakening reforms came to his office for approval, it required no proof that the benefits of weakening the program outweighed the costs. Only one kind of agency action, it appears, requires detailed analysis, and that's the kind that cleans up the environment.

Now that the President's party has control of both houses of Congress, and with it the reins to Congress's oversight agenda, it may well be that other important environmental, health and safety regulations will meet a similar fate. Particularly where the energy industry is involved, it appears that Graham and the Office of Management and Budget are all too willing to put corporate profits ahead of human health.

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