

AGENDA #3a(1)

-----Original Message-----

From: Avram Friedman [mailto:avram@canarycoalition.org]
Sent: Monday, September 08, 2003 6:54 PM
To: Town Council
Subject: resolution

Attention Chapel Hill Town Clerk:

I would like to request a spot on the agenda, for the Town meeting on September 22, to introduce a resolution.

In February, the Town of Chapel Hill passed a similar resolution to Attorney General Roy Cooper, urging him to join a multi-state lawsuit against a rule change to the Clean Air Act made by the EPA. That action on your part, and several other municipalities who passed similar resolutions, reverberated around the state and had a very positive impact in opening a meaningful dialogue with the Attorney General's office. Although the AG chose not to join in that lawsuit, he was compelled to pledge that he would take the second rule change being proposed more seriously.

On August 27, the EPA finalized a second rule change to the New Source Review provision of the Clean Air Act that is even more sweeping and damaging than the earlier rule change. This rule change re-defines the term "routine maintenance" when applied to grandfathered power plants, factories and refineries, enabling these facilities to retain their status in perpetuity as exempt from modernizing emission control systems, even if they are completely rebuilt and expanded. Once again we are reminding the AG of his responsibility under section 10 of the NC Clean Smokestacks Act to use "all available means" to protect North Carolina citizens from air pollution originating outside our state's borders.

The deadline for states to file a Petition for Review against the EPA ruling is October 27. Already states in the northeast are lining up to join this lawsuit. It's essential that the southeast be represented in this legal battle to geographically diversify the plaintiff's case.

North Carolina is the only state in the southeast likely to act. I'm asking the Town of Chapel Hill to once again let its voice be heard by the Attorney General. This time, in the same resolution, we are also asking the NC congressional delegation to co-sponsor legislation that will reverse the EPA decision.

The resolution and cover letter are attached. Please inform me if you need more information. Also, please inform me if the resolution will be on the agenda and if I will need to appear to make a presentation on September 22.

Thank you for your consideration.

Avram Friedman
Executive Director of the Canary Coalition avram@canarycoalition.org toll free 1-866-4CANARY www.canarycoalition.org

Resolution:

- 1) To urge NC Attorney General Roy Cooper to file a petition for review against the EPA's "Routine Maintenance" Rule Change in the New Source Review Provision of the Clean Air Act
- AND**
- 2) To urge the entire North Carolina congressional delegation to co-sponsor legislation in Congress to repeal the EPA's "Routine Maintenance" ruling.
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Whereas the United States Environmental Protection Agency has issued a rule change to the New Source Review Provision of the Clean Air Act that re-defines the term "routine maintenance" to include an annual investment valued at up to 20% of the total value of older power plants, factories and refineries,

And whereas these facilities are exempt from installing modern emission control systems as long as they are not upgraded in any way beyond "routine maintenance,"

And whereas this new rule change would allow the total replacement of a facility in a five year period without losing its exempt status under the new definition of "routine maintenance,"

And whereas this policy will create a perpetual exempt status for tens of thousands of heavily polluting industries, in clear contradiction to the intent of the congressional law that created the New Source Review provision,

And whereas, this policy will result in smokestack emission levels that will adversely affect the health of hundreds of thousands of North Carolinians and people throughout the country,

And whereas Section 10 of the North Carolina Clean Smokestacks Act legally obligates state officials to protect North Carolinians, using "all available means," from air pollution originating outside this state's borders,

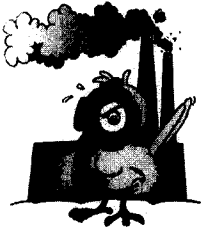
Therefore be it resolved that we urge Attorney General Roy Cooper to act immediately, before the deadline of October 27, 2003, on his obligations under section 10, to file a Petition for Review, on behalf of North Carolina, against the EPA's "routine maintenance" rule change to the New Source Review Provision of the Clean Air Act.

Further, be it resolved that we urge all members of the North Carolina Congressional delegation to co-sponsor legislation in Congress to repeal the EPA's "routine maintenance" ruling.

signed

Title

Date



The Canary Coalition

PO Box 1556, Whittier, NC, 28789 • toll-free 1-866-4CANARY • fax/phone 828-586-4620

canarycoalition@earthlink.net • www.canarycoalition.org

August 29, 2003

Canary Coalition Calls for Mobilization to Stop EPA's "Routine Maintenance" Ruling

On August 27th, the US Environmental Protection Agency (EPA) took an action that has been widely anticipated for more than a year by industry and environmental groups alike. EPA has finalized a rule change that redefines "routine maintenance" in the New Source Review (NSR) provision of the Clean Air Act for factories, refineries and power plants. This action will allow for the perpetuation of grandfathered status for thousands of polluting industries across the country, and will almost certainly result in higher levels of emissions from smokestacks. These industries can now replace up to 20% of each facility every year without having to install modern emission control systems. After five years a factory or power plant can be completely rebuilt and these upgrades would fit the new definition of "routine maintenance".

The EPA has clearly disregarded the legislative intent of the NSR provision for older power plants and factories to eventually be brought into compliance with modern emission control standards as the plants themselves are modernized and expanded. Normally only an act of Congress can legally redefine the provisions of a law in such a sweeping manner. But, unless the EPA's action is successfully challenged in court, or overturned by congressional action, the new rule will stand and our air quality will further deteriorate.

Under Section 10 of the NC Clean Smokestacks Act, North Carolina state officials are obligated to use all available means to protect our state from air pollution originating elsewhere. This EPA ruling clearly threatens North Carolina's air quality and should be immediately challenged by our state officials by filing a Petition for Review with the US Court of Appeals.

We call on the citizens of North Carolina to advise their state government officials that they are responsible for performing their duties under section 10 of the NC Clean Smokestacks Act.

We call upon the NC Division of Air Quality, Governor Easley, city and town councils, county governments and other local officials to send resolutions to the NC Attorney General's office urging a lawsuit be filed against the EPA's decision. Further, we urge local government entities to consider filing Petitions for Review, independently, with the US Court of Appeals, against the EPA's action.

Further, we call on all members of North Carolina's congressional delegation to co-sponsor legislation that will overturn the "routine maintenance" rule change.

See reverse side for a list of public officials to contact:

The Honorable Governor Michael F. Easley
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301
1-800-662-7952 valid in North Carolina only
(919)733-4240, or (919)733-5811.
Fax: (919)715-3175 or (919)733-2120

NC Office of the Attorney General
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
e-mail: agjus@mail.jus.state.nc.us
Telephone: (919) 716-6400
Fax: (919) 716-6750

Secretary Bill Ross
NCDENR
1601 Mail Service Center
Raleigh, NC 27699-1601
919-733-4984
FAX: 919-715-3060

Senator Elizabeth Dole
403 Dirksen Senate Office Building
Washington, D.C. 20510-3301
Telephone (202) 224-6342
Fax (202) 228-1339

Senator John Edwards
<http://edwards.senate.gov>
United States Senate
225 Dirksen Office Bldg.
Washington, DC 20510
Telephone (202) 224-3154
Fax (202) 228-1374

Frank W. Ballance-District 1
<http://www.house.gov/ballance>
2440 Rayburn HOB
Washington, DC 20515-3301
Telephone (202) 225-3101

Bob Etheridge-District 2
<http://www.house.gov/etheridge>
1533 Longworth HOB
Washington, DC 20515-3302
Telephone (202) 225-4531

Walter B. Jones-District 3
422 Cannon HOB
Washington, DC 20515-3303
Telephone: (202) 225-3415

David E. Price-District 4
<http://www.house.gov/price>
2162 Rayburn HOB
Washington, DC 20515-3304
Telephone: (202) 225-1784

Richard Burr -District 5
<http://www.house.gov/burr>
1526 Longworth HOB
Washington, DC 20515-3305
Telephone: (202) 225-2071

Howard Coble-District 6
<http://www.house.gov/coble>
2468 Rayburn HOB
Washington, DC 20515-3306
Telephone: (202) 225-3065

Mike McIntyre-District 7
<http://www.house.gov/mcintyre>
228 Cannon HOB
Washington, DC 20515-3307
Telephone: (202) 225-2731

Robin Hayes-District 8
<http://www.hayes.house.gov>
130 Cannon HOB
Washington, DC 20515-3308
Telephone: (202) 225-3715

Sue Wilkins Myrick-District 9
<http://www.house.gov/myrick>
230 Cannon HOB
Washington, DC 20515-3309
Telephone: (202) 225-1976

Cass Ballenger-District 10
<http://ballenger.house.gov>
2182 Rayburn HOB
Washington, DC 20515-3310
Telephone: (202) 225-2576

Charles H. Taylor-District 11
<http://www.house.gov/charlestaylor>
231 Cannon HOB
Washington, DC 20515-3311
Telephone: (202) 225-6401

Melvin L. Watt-District 12
<http://www.house.gov/watt>
2236 Rayburn HOB
Washington, DC 20515-3312
Telephone: (202) 225-1510

Brad Miller - District 13
<http://www.house.gov/bradmiller>
1505 Longworth HOB
Washington, DC 20515-3313
Telephone: (202) 225-3032
Fax: (202) 225-0181