

22

ATTACHMENT 4

Joyce Smith

From: Avram Friedman [accesstore@friedman-sun.com]
Sent: Saturday, February 08, 2003 3:29 PM
To: avram@canarycoalition.org
Cc: Kevin Foy; ed.harrison@mindspring.com; dverkerk@mindspring.com; ftbatema@aol.com; mark@cdpl.org; windsorcircle@mindspring.com; patevans@bellsouth.net; billstrom@nc.rr.com; edithwiggins@nc.rr.com; Joyce Smith
Subject: Re: Monday's City Council Meeting

Dear Mayor, City Council members and Town Clerk:

I have been informed that Chapel Hill is a Town rather than a City. Please forgive my earlier ignorance. I am re-submitting (below) a corrected resolution proposal that I will be asking you to consider at Monday's meeting.

Thank you.

Respectfully,

Avram Friedman

Executive Director of the Canary Coalition

Town of Chapel Hill (Proposed) Resolution

Urging Attorney General Roy Cooper to Act on EPA's New Source Review Final Rule

Dear Attorney General Cooper,

The Town Council of Chapel Hill urges you to file a Petition For Review, in behalf of the State of North Carolina, against the United States Environmental Protection Agency for revising the New Resource Review (NSR) provision of the Clean Air Act in its Final Rule filed on December 31, 2002.

Last year North Carolina passed the Clean Smokestacks Act in an effort to improve the air quality in our state. Section 10 of that Act directs state agencies to use all available means to influence similar policy changes outside of North Carolina because air pollution travels to our state from elsewhere. This EPA ruling undermines that aspect of the NC Clean Smokestacks Act, by reducing the effectiveness of NSR in the following ways:

- Under the old rules, cement kilns, incinerators, refineries, and other factories could not modify their plants in a way that significantly increased emissions above their average levels in the past two years, without getting a permit and installing pollution controls. Under the new rules, plants can increase pollution without a permit or pollution controls so long as their emissions don't exceed their highest level in the past ten years. Examination of a refinery and steel mill by the Environmental Integrity Project showed how allowing companies to return to historically high pollution levels could increase emissions by hundreds of tons at a single plant site.
- Under the old rules, past emissions were calculated assuming normal plant operations. Under the new rules, companies can include emissions from past accidents, even industrial catastrophes, to justify higher emissions in the future. In other words, a company can increase pollution without a New Source Review permit or pollution controls so long as that increase does not exceed its worst pollution in the past ten years from normal operations and industrial accidents.

2/10/2003

(23)

- Under the old rules, an industrial plant could avoid a major permit review by limiting emission increases to minor levels. But companies were expected to report the steps they would take to limit emissions, and these limits were made part of their permit. Under the new rules, companies can decide on their own that their emissions will not increase, and are not required to report to state permit authorities or agree to permit limits. These emissions calculations must be kept on site for a limited time, but are no longer accessible to the public and violations become much harder to find and prosecute.
- Under the old rules, a plant subject to New Source Review had to install the best available pollution control technology. Under the new rules, “substantial equivalence” (or something less) is considered good enough.
- The EPA claims that pollution will not increase under the new rules, but has rebuffed requests from Congress to explain how they will affect emissions and human health. Some parts of the final rule – like allowing past accidents to justify future pollution increases – were never even proposed for public comment.

For the above reasons the Town Council members of Chapel Hill have voted to urge you to act now in filing a Petition For Review against the US EPA for its Final Rule filed on December 31, 2002.

_____ (signed and sealed by the Mayor of the Town of Chapel Hill) _____

24

Sandy Cook

From: Canary Coalition [canarycoalition@earthlink.net]
Sent: Wednesday, February 05, 2003 3:30 PM
To: Sandy Cook
Subject: Agenda item

Dear Ms. Cook,

Attached is an article that helps explain the issue that Mr. Avram Friedman, our Executive Director, wants to speak to with the Council, to try to gain more support from North Carolina's cities and counties to protect our air quality. While this is a federal issue, it threatens the implementation of our states Clean Smokestacks Act, that was just passed last year, giving NC the strongest law in the nation regarding coal-fired power plants. It is our hope that a progressive community like Chapel-Hill would be willing to take a stand to protect our states air quality by at least approving a resolution in support of the action other states and cities are taking, or perhaps go even further and formally join the lawsuit mentioned in the article. For additional information and clarification as to just what New Source Review (NSR) is and other details please visit our web site or call our office at the numbers below.

Thank you for your consideration in this matter, Paul Tapley

Paul Tapley - Asst. Dir.
The Canary Coalition
PO Box 1556
Whittier, NC 28789
1-866-4CANARY
voice/fax (828) 586-4620
www.canarycoalition.org

Town of Chapel Hill (Proposed) Resolution (25)

Petition
2-10-03 # 3a(1)

Urging Attorney General Roy Cooper to Act on EPA's New Source Review Final Rule

Dear Attorney General Cooper,

The Town Council of Chapel Hill urges you to file a Petition of Review, in behalf of the State of North Carolina, against the United States Environmental Protection Agency for revising the New Resource Review (NSR) provision of the Clean Air Act in its Final Rule filed on December 31, 2002.

Last year North Carolina passed the Clean Smokestacks Act in an effort to improve the air quality in our state. Section 10 of that Act directs state agencies to use all available means to influence similar policy changes outside of North Carolina because air pollution travels to our state from elsewhere. This EPA ruling undermines that aspect of the NC Clean Smokestacks Act, by reducing the effectiveness of NSR in the following ways:

- Under the old rules, cement kilns, incinerators, refineries, and other factories could not modify their plants in a way that significantly increased emissions above their average levels in the past two years, without getting a permit and installing pollution controls. Under the new rules, plants can increase pollution without a permit or pollution controls so long as their emissions don't exceed their highest level in the past ten years. Examination of a refinery and steel mill by the Environmental Integrity Project showed how allowing companies to return to historically high pollution levels could increase emissions by hundreds of tons at a single plant site.
- Under the old rules, past emissions were calculated assuming normal plant operations. Under the new rules, companies can include emissions from past accidents, even industrial catastrophes, to justify higher emissions in the future. In other words, a company can increase pollution without a New Source Review permit or pollution controls so long as that increase does not exceed its worst pollution in the past ten years from normal operations and industrial accidents.
- Under the old rules, an industrial plant could avoid a major permit review by limiting emission increases to minor levels. But companies were expected to report the steps they would take to limit emissions, and these limits were made part of their permit. Under the new rules, companies can decide on their own that their emissions will not increase, and are not required to report to state permit authorities or agree to permit limits. These emissions calculations must be kept on site for a limited time, but are no longer accessible to the public and violations become much harder to find and prosecute.
- Under the old rules, a plant subject to New Source Review had to install the best available pollution control technology. Under the new rules, "substantial equivalence" (or something less) is considered good enough.
- The EPA claims that pollution will not increase under the new rules, but has rebuffed requests from Congress to explain how they will affect emissions and human health. Some parts of the final rule – like allowing past accidents to justify future pollution increases – were never even proposed for public comment.

For the above reasons the Town Council members of Chapel Hill have voted to urge you to act now in filing a Petition of Review against the US EPA for its Final Rule filed on December 31, 2002.

_____ (signed and sealed by the Mayor of the Town of Chapel Hill) _____

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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
DEC 8 1 2002
RECEIVED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NEW YORK, STATE OF)
CONNECTICUT, STATE OF MAINE,)
STATE OF MARYLAND,)
COMMONWEALTH OF)
MASSACHUSETTS, STATE OF NEW)
HAMPSHIRE, STATE OF NEW JERSEY,)
STATE OF RHODE ISLAND, AND STATE OF)
VERMONT,)

Petitioners,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

02-1387

Docket No. 02-_____

PETITION FOR REVIEW

Pursuant to Rule 15 of the Federal Rules of Appellate Procedure and § 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), New York, Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont hereby petition the Court to review the final rule of the United States Environmental Protection Agency entitled "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Baseline Emissions Determination, Actual-To-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects." The final rule has been published at 67 Fed. Reg. 80185 (December 31, 2002), to be codified at 40 C.F.R. §§ 51.165, 51.166, 52.21, and 52.24.

Dated: December 31, 2002

Respectfully submitted,

A copy of the Federal Registry for the EPA's NSR Final Rule may be obtained on the internet at:

<http://www.epa.gov/air/nsr-review/02-31899.pdf>

Contact information

NC Office of the Attorney General Roy Cooper
North Carolina Department of Justice
P.O. Box 629
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James Gulick
Senior Deputy AG
Environmental Division
716-6600

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

Assistant Attorney General for the State of New York Michael J. Myers
Environmental Protection Bureau
The Capitol
Albany, New York 12224
518-402-2594

NEW YORK ATTORNEY GENERAL ELIOT SPITZER
CONNECTICUT ATTORNEY GENERAL RICHARD BLUMENTHAL
MAINE ATTORNEY GENERAL G. STEVEN ROWE
MARYLAND ATTORNEY GENERAL J. JOSEPH CURRAN, JR.
MASSACHUSETTS ATTORNEY GENERAL THOMAS REILLY
NEW HAMPSHIRE ACTING ATTORNEY GENERAL STEPHEN J. JUDGE
NEW JERSEY ATTORNEY GENERAL DAVID SAMSON
RHODE ISLAND ATTORNEY GENERAL SHELDON WHITEHOUSE
VERMONT ATTORNEY GENERAL WILLIAM H. SORRELL

Contact:

For immediate release:

NY - Marc Violette, 518 473 5525 December 31, 2002
CT - Maura Fitzgerald, 860 808 5324
ME - AG G. Steven Rowe, 207 822 0260
MD- Sean Caine, 410 576 6357
MA - Sarah Nathan, 617 727 2543
NH - Jennifer Patterson, 603 271 3679
NJ - Carol Gaskill, 609 292 4791
RI - Judy Keams, 401 274 4400
VT - Erick Titrud, 802 828 5518

**NINE STATES SUE BUSH ADMINISTRATION
FOR GUTTING KEY COMPONENT OF CLEAN AIR ACT**

Nine states today filed a lawsuit challenging new Bush Administration regulations that gut a key provision of the federal Clean Air Act. The Administration's action represents the first major weakening of the landmark federal environmental law since it was signed into law by President Nixon in 1970.

The changes initiated by the Bush Administration would exempt thousands of industrial air pollution sources, including coal-fired power plants, from the New Source Review provision of the Clean Air Act. New Source Review requires power plants and other industrial facilities to add modern air pollution controls to smokestacks when the facilities are upgraded or modified and substantially increase air pollution.

New Source Review is the foundation of a series of lawsuits brought by the states, the federal Environmental Protection Agency and environmental groups in 1999, 2000 and 2001 against dozens of old coal-fired power plants and other industrial sources.

From its first days in office, the Bush Administration has criticized New Source Review and sought to undermine its implementation, despite the prior filing of the clean air lawsuits by the federal government and despite the conclusion of U.S. Attorney General John Ashcroft's Department of Justice that the New Source Review lawsuits are legally sound.

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By adopting new regulations that will lead to dirtier air, the Bush Administration is violating the Clean Air Act. Congress passed the Clean Air Act intending that the Environmental Protection Agency use its powers to sharply reduce air pollution across the nation. Since 1970, successive Democratic and Republican administrations have either strengthened the Clean Air Act or left it untouched. The Bush Administration is the first in three decades to attempt deliberately to gut key components of the Clean Air Act.

The changes made today are particularly damaging because, unlike the draft version of the regulations, the Bush Administration has made the new rules effectively mandatory for all states, potentially undermining any state's ability to adopt stronger clean air protections. Also, the final regulations give facilities – including those that EPA and the states accuse of violating the law – significant unmonitored discretion to determine when the law applies.

New York Attorney General Eliot Spitzer said: "The Bush Administration has taken an action that will bring more acid rain, more smog, more asthma, and more respiratory disease to millions of Americans. This action by the Bush Administration is a betrayal of the right of Americans to breathe clean, healthy air. I join my colleagues from other states to challenge this assault on the Clean Air Act and continue the fight to achieve the goals that the law intended."

Connecticut Attorney General Richard Blumenthal said: "It seems that the Bush Administration's New Year's resolution is to appease the energy industry by sacrificing the lives of people in the Northeast. In effect, the Administration is saying: 'Northeast Drop Dead.' The NSR standards are a matter of life and death to countless citizens of the Northeast who receive all of the pollution but none of the power from these contaminating coal burning plants in the Midwest. Our fight in court and elsewhere will be to uphold the letter and spirit of the Clean Air Act, endorsed by the first Bush Administration and now eviscerated by the second."

Maine Attorney General G. Steven Rowe said: "I find it incredible that we would have to resort to a lawsuit to prevent the Bush Administration from gutting the Clean Air Act. Our national government should be looking out for the health interests of American people, rather than the corporate financial interests of dirty power plants."

Massachusetts Attorney General Thomas Reilly said: "On the eve of the New Year, EPA officials have published new regulations that weaken the Clean Air Act and threaten the health of Massachusetts' residents as well as millions of Americans in the coming years with the creation of dirtier air, more smog and pollution. We will not sit back and allow the Bush Administration to put the industry's short-term interests before the health of the American public."

Acting New Hampshire Attorney General Stephen J. Judge said: "Industry made a social contract with the American public thirty years ago to install state-of-the-art pollution controls if they modernized worn out equipment. Some have broken that contract, and we have sued them because our lakes, forests and streams are being degraded by the acid attack of their emissions. EPA is rewriting the contract and environmental policy. Now the courts must decide whether the regulators and industry are meeting their obligations under the Clean Air Act."

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New Jersey Attorney General David Samson said: "These new rules will allow old, dirty plants to continue to operate and will provide a disincentive for building new and more efficient facilities that emit less pollution. New Jersey and the other states joining in the lawsuit have fought hard for necessary pollution controls to protect the health of our citizens. We will not go backward on this issue."

Rhode Island Attorney General Sheldon Whitehouse said: "It is outrageous and deeply frustrating that the Bush Administration has ignored the concerns of the Northeast and is now implementing regulatory changes that, if left unchallenged, would actually increase rather than decrease the amount of pollution from Midwestern power plants that spew pollution into Rhode Island and threaten our health, and the health of our kids. We are standing up to the Bush Administration and pursuing our legal options to prevent the EPA from making it easier for power plants to continue to pollute our air, make Rhode Islanders sick and damage our quality of life."

Vermont Attorney General William H. Sorrell said: "We have to fight this fight. We cannot sit back and let acid rain cause more damage to our environment."

The states are united in opposing these changes because they are hard hit by the damaging impacts of smog and acid rain, both caused by nitrogen oxide and sulfur dioxide emissions from coal-burning power plants and other industrial sources.

The lawsuit challenges the "clean unit" exclusion, the new emissions test, the revised approach for calculating baseline emissions, and the plant-wide applicability limits. The Attorneys General believe that these changes are so sweeping and damaging that the Environmental Protection Agency can not make them without Congressional approval. The rollbacks violate both the Clean Air Act itself and the Administrative Procedure Act, which sets forth the process government agencies must follow to promulgate regulations.

The following elements of the new rules are being challenged by the states' lawsuit:

"Clean unit" exclusion. This rule creates an exemption from New Source Review for facilities that install the equivalent of what was considered to be "Best Available Control Technology" at the time. Such "clean units" would then be exempt for

up to ten years from New Source Review. As a result, these facilities could undertake projects that would increase emissions without having to install newer, more effective, pollution devices on their smokestacks.

New Emissions Test. Under the new rule, facilities will be able to exclude from the test for new pollution controls those emission increases that they attribute to increased demand for their products. The new rule provides for little independent oversight by the government of this determination by the polluter.

Revised approach for calculating baseline emissions. EPA would allow facilities (other than power plants) to set their "baseline" emission levels at the highest polluting level of any two consecutive years out of the last ten years. Thus, polluters could significantly increase their air pollution over current levels without installing pollution controls.

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-4-

Plant-wide applicability limits. EPA will exempt polluters from New Source Review if they agree to a cap on their air pollution. The cap on a given facility could be set far higher than the facility's current emissions, allowing pollution to increase far above current levels and remain uncontrolled even though the Clean Air Act intended air pollution to decrease over time.

The regulatory changes, which were threatened for months, were announced by Environmental Protection Agency Administrator Christine Todd Whitman on November 22, 2002 ? the Friday before Thanksgiving ? and were published in the Federal Register today ? New Years Eve. The lawsuit was filed today in federal court in the U.S. Court of Appeals for the District of Columbia Circuit.



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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

WHY THE CLEAN AIR ACT NEEDS NEW SOURCE REVIEW

By Leon G. Billings
(from the Clean Air Trust)

President Bush has proposed to repeal a critical component of the Clean Air Act, a component designed to achieve the law's key objectives, including protection of public health.

As a counter to the "spin" by the White House and its fund-raising friends in the energy industry, it might be useful to recall why and how Congress adopted this provision in the first place. The dispute is over "new source review" -- techno-speak for one of the 1970 Clean Air Act's most innovative provisions.

When Congress wrote the landmark 1970 law, then Senator Edmund Muskie of Maine, the law's primary parent, sought to make sure that public health protection was its legal foundation. But when it came to specific regulation of the electric power industry, Muskie faced two competing realities: (1) the influence of the coal industry and Midwestern senators, including his committee chairman, Jennings Randolph of West Virginia; and (2) the economic realities of air pollution investment.

Randolph did not want to impose any pollution controls on electric power plants if that would jeopardize the jobs of unionized high sulfur coal miners in Appalachia. His kinship with both the mining industry and the mine unions made him a formidable foe of aggressive regulation of power plant emissions. And Randolph knew that the power companies would be able to disperse their pollution through super-tall smokestacks and so could probably minimize actual pollution controls.

At the same time, Muskie knew it would be a hard sell to require pollution controls on major existing sources of pollution because companies had already made significant investments in those facilities. But he also knew that when business wanted to invest in a new plant, it would be harder for them to argue against state-of-the art pollution controls. Muskie also knew that the unions and most of his colleagues didn't want companies to be free to shop for "pollution havens" and to relocate jobs in states where pollution control was not a priority.

And so Muskie forged a compromise -- one aimed not only at protecting public health, but at promoting the development of pollution control technology and assuring its widespread application over time. His plan, adopted unanimously by the Senate, required new industrial facilities, including electric power plants, to use the best available pollution control technology.

In a logical extension of that theory, Muskie and his colleagues also demanded that best available control technology be required for any manufacturer or electric company which invested in a "major" modification of an existing plant. That way, as companies modernized factories and power plants, they would also invest in modern air pollution controls -- and thus reduce their pollution over time. Muskie and his colleagues intended that, as industry rebuilt existing factories, new, modern pollution controls would be installed.

As the Clean Air Act evolved, this "new source review" provision took on added importance. In 1977, Congress decided that new plants -- or major plant upgrades -- should be reviewed to make sure that they did not harm communities with existing air pollution problems. Similar reviews were required to prevent pollution that could damage national parks and wilderness areas. Later, during the Clinton Administration, **new source review** became the mechanism by which new sources were reviewed to make sure that they did not mar scenic vistas in national parks.

In 1999, following a massive investigation, the Justice Department brought suit against major electric power companies and other big polluters, accusing them of illegally ignoring **new source review** and, in effect, rebuilding dozens of electric power plants without installing modern pollution controls. Were he alive today, Ed Muskie would have applauded the decision to enforce the law, finally.

But now, the Bush Administration seeks to eliminate the requirement that new pollution control technology follow new plant investment. And no wonder: powerful polluters such as the Southern Company are betting that their political connections -- including paid lobbyists Haley Barbour, Republican National Committee Chairman Mark Racicot, and former White House Counsel C. Boyden Gray -- can get them off the hook.

For nearly three decades, Clean Air Act antagonists have tried to undermine health-based clean air standards. The courts have now slammed the door on those attacks. So, the opponents of clean air have found a new approach to minimize pollution control investment and maximize the opportunity to pollute the environment.

Without **new source review**, there will be no protection for America's endless vistas in the West. Without **new source review**, there will be no protection for our parks and wilderness areas. Without **new source review**, a fundamental technology-forcing aspect of the Clean Air Act will disappear. And without **new source review**, there will be no requirement that either new or significantly altered existing pollution sources maximize their pollution reduction.

(Leon G. Billings, president of the nonprofit Clean Air Trust, was the top environmental aide to Senator Edmund Muskie. He also serves as a member of the Maryland Legislature. Contact him by phone at 202-785-9625)

“Determined to Bring Clean Air
Back to Our Region”

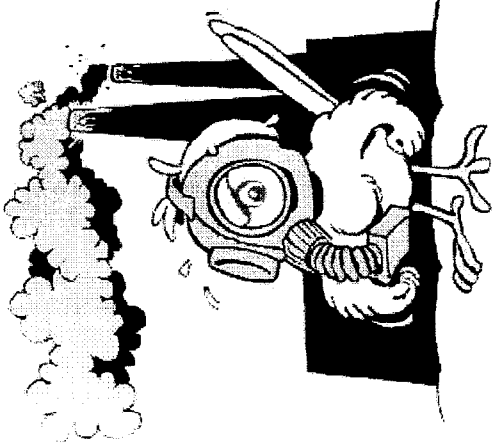
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*Air pollution is threaten-
ing the health of people,
the environment and the
economy, from the coastal
regions to the mountains.*



*Like the song of the canary in a
coal mine our health is indicating
the extent of damage to the envi-
ronment caused by power plant
emissions.*

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city, state, zip _____
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individual sponsor : \$25 - 100
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Can we list you on the webpage? yes

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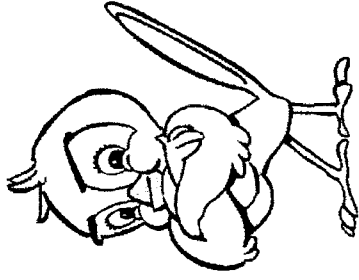
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Whittier, NC 28789-1556

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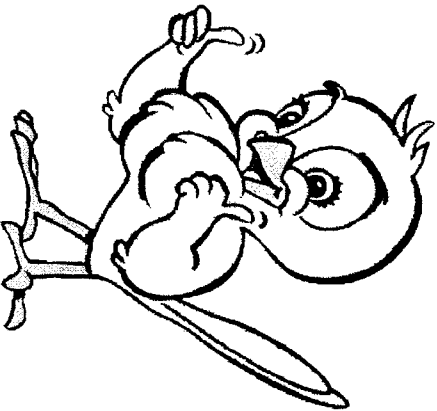
Canary Website!
www.canarycoalition.org

*If you're like most people
you work hard to ensure
that you and your family
have a good life.*

*You're trying to provide a
safe environment where
your children can play,
learn and thrive.*

*Good health is important
to you...*

23



*...and you're becoming increasingly
alarmed by the frequent air quality
alerts in the news.*

NOx, SO₂ and mercury emissions from
under-regulated coal burning power
plants are having these effects:

The health of people has become a major
concern. There has been a dramatic rise in
the rates of asthma, chronic bronchitis and
emphysema. Seafood is contaminated with
mercury posing the threat of neurological
damage especially to fetuses and young
children.

Millions of trees are weakened and
dying from the effects of acid rain. Rivers
and farmland are being damaged by excess
nitrogen deposition.

Over the past 30 years average
visibility has diminished in the Great
Smokys and the Blue Ridge Parkway from
60 miles to less than 15 miles. The nation's
most visited national parks have the worst
air quality according to the National Park
Service. Air pollution is posing a threat to
the region's tourism industry and general
economy.

Air pollution is costing our region billions
of dollars annually in health care costs,
environmental damage and lost revenues.

**By joining the
Canary Coalition
You are making a
powerful statement...**
*...and taking an effective
action to make this region a
healthier place to live and
breathe for your family, your
neighbors and yourself.*

The Canary Coalition coordinates
public events to focus national attention
on the air quality crisis in our region.

The Canary Coalition works with
groups and individuals in other regions
to combine our strength and influence on
the state and federal levels.

The Canary Coalition keeps you in-
formed of the latest air quality related
developments on the WEB at
www.canarycoalition.org.

The Canary Coalition is in the news
often. Our press releases are taken
seriously and published by major news
media outlets.

Join the Canary Coalition to add your
name to the Email Action Network and
become part of the clean air movement.

Lets get started.

New Source Review Revisions Draw Fire

By Cat Lazaroff
Environmental News Service

WASHINGTON, DC, January 16, 2003 (ENS) - A utility charged with violating the new source review provisions of the Clean Air Act is arguing in court that revisions to the regulations invalidate the case against the company. The legal argument adds new ammunition to lawmakers and state officials who charge that the planned revisions will increase air pollution and make it harder to police polluting industries. In court papers filed January 8, Southern Indiana Gas & Electric Company (SIGECO) urged the U.S. District Court for the Southern District of Indiana to dismiss the government's lawsuit against the utility, citing the U.S. Environmental Protection Agency's (EPA) revisions of the Clean Air Act.

Posted in the Federal Register on December 31, 2002, the revisions include changes in new source review (NSR) rules that require updating or expanding facilities to install state of the art emissions controls. Critics of the revisions say the new rules may exempt thousands of industrial air pollution sources, including some coal fired power plants, from the NSR provision, allowing increased emissions of sulfur dioxide and nitrogen oxide, which cause acid rain, smog and an increase in respiratory disease. EPA Administrator Christie Whitman said the old rules "deterred companies from implementing projects that would increase energy efficiency and decrease air pollution." The new rules are slated to take effect on March 3.

Lawyers for SIGECO have argued that the upgrades made to its power plants, which the government has cited under the NSR provisions, were legal and routine maintenance activities that did not trigger requirement for new emissions control equipment. Last month, the EPA proposed to revise the definition of "routine maintenance."

"EPA now admits what is obvious: industry, including SIGECO, has not been provided ascertainable certainty regarding what is 'routine'," the court papers state. If SIGECO wins a dismissal of the government's case, it could have chilling effect on all EPA efforts to enforce Clean Air Act cases under the new source review regulations. Already, several utilities that were nearing settlements with the EPA have slowed or cut off talks, waiting to learn if the cases against them will become moot.

In the meantime, more and more government agencies are joining a lawsuit challenging the EPA's NSR revisions. Nine states filed suit against the new rules, and they have now been joined by dozens of cities and towns in those states.

The lawsuit argues that this "major weakening" of the Clean Air Act will further degrade air quality in the Northeast and Mid-Atlantic states," regions already struggling with dirty air caused in significant part by industrial pollution carried into the region on prevailing winds."

At a press conference today, Connecticut Attorney General Richard Blumenthal was joined by the mayors of New Haven, the city of Groton, Hartford, East Hartford and Middletown, which among the more than dozen Connecticut cities and towns planning to join the lawsuit. The NSR changes would "essentially grant a presidential pardon to some of the worst polluters in the United States," Blumenthal said.

Three Democratic presidential hopefuls - freshman Senator John Edwards of North Carolina, John Kerry of Massachusetts and Joe Lieberman of Connecticut - are planning to introduce legislation that would block the NSR revisions. The legislation would take the form of a rider attached to an omnibus federal spending package, covering 11 uncompleted spending bills for fiscal year 2003, that is now before the Senate.

"The president's new rules have put the interests of insider industries before the health of children and seniors," Senator Edwards said today. "These rules must be stopped." The amendment to the appropriations bill would prevent the final rules from taking effect until the National Academy of Sciences completes study of the rules' effect on pollution levels.

Also today, the presidents of two state and local air pollution program consortiums wrote to Administrator Whitman, expressing "serious concerns" about the "highly complex and controversial" rules and the "adverse impact these changes would likely have on the ability of states and localities to achieve and sustain clean, healthful air."

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) asked Whitman to consider delaying the effective date of the new regulations for one year, to allow time for a review of the revisions and for state and local authorities to adapt to the changes.

Date: January 16, 2003 -

Nine Northeastern states that have challenged the Bush administration's reforms to the Clean Air Act's new source review (NSR) permit program are seeking to broaden the coalition of states challenging four of five final regulations aimed at easing NSR requirements. These regulations require that major sources of pollution install state-of-the-art emissions controls when modifying plants.

Led by New York Attorney General Eliot Spitzer, the nine Northeastern states followed through on their threat to file suit challenging the reforms on the day they were published in the Federal Register. The states filed suit in the U.S. Court of Appeals for the District of Columbia Circuit Dec. 31, challenging the rules. Other states involved in the legal action include Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island and Vermont.

But a Spitzer source says other states -- particularly those outside of the Northeast -- are being "romanced" to join State of New York, et al. v. United States Environmental Protection Agency and have until the end of the month to do so.

At least one state, Delaware, is in the midst of an internal battle over whether to join the litigation, with Gov. Ruth Ann Minner (D) leaning toward joining the lawsuit over the objections of Attorney General Jane Brady (R), according to press reports. California may also join the Northeast states' suit (see related story).

Additionally, environmental groups say they will take steps to join the states' suit as well as file their own independent petition with the court within 60 days of the state filing that will

challenge all five final reforms.

The states are challenging a so-called clean unit exemption, which allows plants that have installed best available control technology within the last 10 years to modify plants without complying with NSR. Other changes being challenged include: a new emissions test that allows facilities to exempt pollution caused by increased demand for products by comparing actual-to-actual emissions rather than actual-to-potential; a revised approach to calculating the baseline emissions, which allows facilities other than power plants to set their baseline at the highest polluting level of any two consecutive years over the past decade; and a plantwide applicability limit, or PAL, program that exempts facilities from NSR if they agree to and comply with an overall air pollution cap. Relevant documents are available on InsideEPA.com.

The states did not challenge the rule that exempts pollution-control projects at facilities other than electric utilities. A Maryland source says the attorneys general did not believe a legal challenge to that reform could be won in court. But environmentalists will fight that regulation too, according to a source with the Natural Resources Defense Council (NRDC), who says that portions of the final rule adopted by EPA were not included in the original 1996 proposal.

Specifically, the final rule includes a first-time eligibility definition that grants the exemption to a pollution-control project based on whether a unit's emissions rate improves but that does not take into account whether the unit's hours of operation subsequently increase. The NRDC source says because the changes were not first proposed, the groups will have to file a petition for reconsideration with EPA before taking it to the courts.

In announcing the litigation, Spitzer said in a statement that the reforms "are particularly damaging because, unlike the draft version of the regulations, the Bush administration has made the new rules effectively mandatory for all states,

potentially undermining any state's ability to adopt stronger clean air protections. Also, the final regulations give facilities -- including those that EPA and the states accuse of violating the law -- significant unmonitored discretion to determine when the law applies."

The states' petition to the court is brief, with articulated legal arguments not due for several months. But in the Spitzer statement, the states said, "The attorneys general believe these changes are so sweeping and damaging that the Environmental Protection Agency cannot make them without congressional approval. The rollbacks violate both the Clean Air Act itself and the Administrative Procedures Act."

Meanwhile, industry sources are gearing up to help the Bush administration defend the changes, and may join EPA in the litigation. The National Association of Manufacturers (NAM) is seeking contributions of between \$500 and \$5,000 from member companies for the effort, according to a NAM memo sent to members. The memo is available on InsideEPA.com.

"NAM participation in the litigation and public comment process is imperative to achieving regulatory improvements in the NSR program for existing facilities. Please contact me with your organization's interest in contributing to this effort or to learn more about the specific funding levels and actions to be taken," the memo says.

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Excerpt from another related article

In the meantime, more and more government agencies are joining a lawsuit challenging the EPA's NSR revisions. Nine states filed suit against the new rules, and they have now been joined by dozens of cities and towns in those states.

The lawsuit argues that this "major weakening" of the Clean Air Act will further degrade air quality in the Northeast and Mid-Atlantic states, "regions already struggling with dirty air caused in significant part by industrial pollution carried into the region on prevailing winds."

At a press conference today, Connecticut Attorney General Richard Blumenthal was joined by the mayors of New Haven, the city of Groton, Hartford, East Hartford and Middletown, which among the more than a dozen Connecticut cities and towns planning to join the lawsuit.

The NSR changes would "essentially grant a presidential pardon to some of the worst polluters in the United States," Blumenthal said.

