

***A Free Ride for the Big Dirties***  
**by Lisa Heinzerling**

The Bush Administration's anti-environmental colors are showing through again. Even while President Bush was in the northwest the third week of August proclaiming brazenly to be working on behalf of the environment, his Administration acceded to energy industry pressure and agreed to weaken yet another important program for reducing air pollution.

The program, known as "New Source Review," was created as part of the landmark Clean Air Act. It 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. When Congress passed the Act in the 1970s, it exempted then-existing power plants, now known as the "big dirties," from this 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. Accordingly, when plant operators undertake major modifications of plants that result in increased emissions, the law requires that they install new, cleaner technology.

During the Reagan and Bush I years, this "old source review" provision of the law was largely ignored, and industry seemed to get accustomed to weak enforcement. But in the 1990s the Clinton Justice Department and several states (Connecticut, New Jersey, New York and Vermont) began bringing lawsuits alleging that the owners of dozens of old power plants and oil refineries had undertaken major renovations without installing the best new pollution control technology. The lawsuits were just starting to make headway when the Bush Administration, barely a few months in office, endorsed a recommendation from Vice President Cheney's secretive, industry-dominated energy task force to reconsider the program. Then the White House Office of Management and Budget invited the Environmental Protection Agency late last year to issue changes that would weaken the program. EPA did as prompted then, and now it has gone the extra anti-environment mile, and all but eviscerated it.

At least two aspects of the Administration's latest 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 completed 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 by which an apparently effective, life-saving regulation was abandoned.

The Administration's leading anti-regulatory force is John Graham, director of the White House Office of Management and Budget's Office of Information and Regulatory Affairs. Graham has routinely denounced environmental, health and safety regulations, asserting that they are based on shoddy and incomplete data about costs and benefits. Now we learn that when it comes to deregulating, shoddy and incomplete data are just the thing! OMB gave no detailed reason for, or evidence supporting, its decision to invite EPA to weaken New Source Review. And when EPA saluted smartly and served up a draft of weaker regulations, the office required no proof that the benefits of weakening the program outweighed the costs. It appears that only one kind of agency action requires the detailed scrutiny John Graham professes to support: the kind that cleans up the environment. Regulations that weaken environmental protections, on the other hand, get a free ride.

A sad irony in this saga is that just a couple of weeks before the Administration announced its gutting of the New Source Review program, a federal court in Ohio handed down the first court ruling in the Clinton-era power-plant cases, ruling against a private utility company for failing to meet the standards that EPA has just gutted. The court's meticulous opinion documenting the company's failure to follow Clean Air Act requirements blamed EPA along with the company itself. Referring to the generating plant involved in the case, the court stated: "By any standard, the enforcement of the Clean Air Act with regard to the Sammis Plant has been disastrous." With the Bush Administration's latest environmental rollback, we can expect more disasters like this one.

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