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Fouling the Air

Members of Maine's congressional delegation and state officials had some choice words for a Bush administration plan to weaken a provision of the Clean Air Act to allow manufacturing plants to make major upgrades without installing new pollution-control equipment. The act now requires that new plants have state-of-the-art pollution control technology but allows older plants to continue operating as long as new emissions controls are added when work beyond "routine maintenance" is done.

Rep. Tom Allen, author of a bill to do just the opposite by closing this loophole, called the new rule "an outrage." Sen. Olympia Snowe expressed "deep concern." Attorney General Steven Rowe was the most indignant: "This is eviscerating the law, not clarifying it."

The source of their rightful anger is Bush administration plans to sign into law this week a rule allowing thousands of plants and refineries to make major improvements without installing new pollution-control equipment if the cost of the upgrade is less than 20 percent of the cost of essential equipment, according to a copy of the rule leaked to the Natural Resources Defense Council. A White House official said there was no cause for worry because the routine maintenance exemption will be "50 percent or less." That's far from reassuring. As Attorney General Rowe points out, if the 20 percent exemption holds, this means a power plant can be totally rebuilt within five years without any effort made to reduce emissions of harmful pollutants.

Administration officials say the change is needed to clarify the current rule allowing plants to perform "routine maintenance" without having to install the best available pollution control technology. However, the new rule clearly goes beyond clarifying by allowing facilities, including highly polluting decades-old coal-fired power plants, to make hundreds of millions of dollars worth of improvements without having to make the accompanying emissions improvements.

Highlighting the underhanded nature of the rule is the timing of its enactment. The acting Environmental Protection Agency administrator, Marianne Horinko, is expected to sign it this week, so that President Bush's pick to head the agency, Utah Gov. Michael Leavitt, does not have to take the heat for the move, which is - no surprise - widely cheered by industry and derided by environmental groups.

The timing is also odd given that a federal judge earlier this month ruled that an Ohio utility had violated the Clean Air Act by making upgrades without installing new pollution control equipment. Also, earlier in the year, the Bush administration said it would continue to prosecute companies that do not adhere to the law. Now, it plans to change the law although 225,000 people objected to the rule during the public comment period when the threshold for making pollution control improvements ranged from zero to 50 percent of the cost of replacing major equipment.

Given the Bush administration's determination to help industry - this time at the expense of states like Maine, where the asthma rate is the nation's highest - it is too late to prevent the

rule from being signed. But, that doesn't mean it will go into effect without a fight. Attorney General Rowe has already been in contact with his counterparts in 13 other states to talk about a lawsuit. Thirteen states sued the EPA for weakening the law last year and now Maine and others are ready to sue again to stop the weakened law from taking effect.

The rule change also gives Maine's delegation some important questions to ask Gov. Leavitt during his confirmation hearings this fall. Does the governor support weakening laws to allow the nation's dirtiest plants to continue emitting millions of tons of pollutants? Does he support making substantial rule changes under the cover of darkness when there is a short-term acting administrator at the EPA?

Until there is real clarity, Maine is right to keep the heat on.