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## Cinergy, Southern to Gain From Bush Relaxation of Clean-Air Law

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By Alex Canizares

Washington, Jan. 2 (Bloomberg) — The Environmental Protection Agency will relax Clinton-era interpretations of environmental laws to let operators of coal-fired power plants upgrade facilities without adding pollution controls, the agency official in charge said.

An EPA proposal under review at the White House and Energy Department would allow companies such as Southern Co., Duke Energy Corp., and ChevronTexaco Corp. to add or replace equipment without getting pollution permits from the federal government, William Harnett, the official overseeing the changes, said in an interview.

The revisions to the New Source Review program were advocated by power suppliers, coal companies and other industry groups. They would affect hundreds of oil refineries, and power, steel and pharmaceuticals plants. Industry officials have complained that the Clinton administration reinterpreted the rules in 1998, resulting in confusion over what companies are required to do.

"Right now, one of the fundamental problems is that people don't understand what the rules are," Harnett said. "That is something we are focused on, to make sure that the changes would help bring some clarity."

### ***Part of Energy Plan***

The changes, which may be announced this month, carry out part of President George W. Bush's May 17 energy plan to boost U.S. production by easing regulations on industry. It is also part of a broader effort by the Bush

administration to scale back environmental and workplace standards — including ergonomic rules and requirements for government contracts — that companies say are too strict.

The pollution proposals are likely to fuel a debate in Congress. Congressional hearings were held in July and about 130,000 public comments have been received by EPA. Senate Democrats are seeking information on who EPA consulted before deciding on its proposals.

Some state officials are also critical. "The administration is imposing such weakening changes that they seem very unacceptable to state and local agencies," said Bill Becker, director of the State and Territorial Air Pollution Administrators, after being briefed on the plan.

The EPA proposals will be carried out administratively, Harnett said, meaning Congress can't block them unless it passes new legislation, which is unlikely given Republican control of the House of Representatives and Bush's power of the veto.

Some of the changes can be implemented quickly because they are based on 1996 proposals, Harnett said.

### ***Clean Air Act***

At issue is a section of the Clean Air Act that requires facilities that upgrade or expand to install new pollution controls. In lawsuits against 51 coal-fired plants in the late 1990s, the Clinton administration charged Southern, Cinergy Corp., and Duke Energy Corp. with illegally polluting for decades after making changes to their plants. The companies say the actions were part of their routine maintenance.

These companies say the New Source Review program discourages repair of outdated equipment and threatens to disrupt electricity supplies. The program has strong support among state attorneys general in the Northeastern U.S. They have joined lawsuits

against power plants in Midwestern states for pollution that drifts eastward.

### ***Changes Explained***

Harnett said the EPA is likely to make several changes. They include:

- A new rule that would allow utilities to make equipment changes below a certain cost threshold without having to install new pollution controls, including devices to remove nitrogen oxide from smokestack emissions.
- A 1996 proposal that would allow facilities that have already installed state-of-the-art pollution controls within the last 10 years to replace equipment without getting permits. Those changes were advocated by the American Petroleum Institute, which represents refiners.
- Another 1996 proposal that would set a single emissions limit for a plant, instead of the current limit on emissions from each smokestack. This would allow a plant to add or replace parts without having to install new pollution controls as long as it stayed below the cap for total emissions.

“The benefit to that is they can respond much quicker to the marketplace, and can make changes to the plant and not worry about getting a permit,” Harnett said.

- A 1996 proposal that would change the criteria EPA uses to judge whether a certain facility's emissions have increased. Harnett said plants probably will be allowed to choose any one year over the last 10 years as the baseline for establishing whether emissions have increased, compared to the current baseline of the previous five years.

### ***Exemptions***

Harnett said the EPA is considering another exemption that would allow certain equipment to be replaced as long as it is similar. For example, the exemption would allow replacement of fan belts without a permit, he said.

“There are some changes that you could argue ought not be treated as a new source” of pollution, Harnett said.

The program's critics, particularly coal-fired utilities with higher levels of pollution than others, say the Clinton administration interpreted the rules too strictly.

Joel Maness, Sunoco Inc.'s senior vice president for Northeast refining, said his company wants clarification after receiving a notice of possible violation two years ago.

“We've been operating under the Clean Air Act for 20-plus years and we thought we were doing everything just right,” Maness said. “We're saying tell us what the speed limit is and we'll follow it.”

Environmental groups say the changes would gut the Clean Air Act.

“Added up, this is the biggest roll back of this program that has ever occurred, hands down,” said John Walke, a lawyer with the Natural Resources Defense Council. “This is a way to allow power plants to rebuild from the inside out, increase pollution by infinite amounts and escape control.”

Senate Environment and Public Works Committee Chairman Jim Jeffords has asked the EPA to turn over all documents related to New Source Review, including information on meetings with industry officials.

Harnett rejected suggestions that the EPA has shut out environmentalists. “We had five or six meetings with representatives of environmental or public interest groups,” he said. “We've got a tremendous record of having met with them.”