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## EPA Will Reconsider Enforcement Policies

Lawsuit Spurs Retreat on Clean Air Act Provisions

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Just when it appeared that the nation's manufacturers and refineries had won a major relaxation of air pollution rules, the Bush administration late last week agreed to reconsider provisions of the new regulations in response to legal pressure from state attorneys general and environmental groups.

The decision represents an extraordinary retreat by the Environmental Protection Agency, which had announced "final" revisions to the Clean Air Act's "New Source Review" enforcement policies last New Year's Eve that would enable tens of thousands of smokestack plants and refineries to update or expand their facilities without having to install expensive anti-pollution equipment, as they now are required to do by law.

EPA officials and industry advocates said the new rules would encourage plant improvements and investment, provide greater regulatory certainty and reduce dangerous emissions.

But nine northeastern states ranging from Maine to Maryland and led by New York Attorney General Eliot L. Spitzer (D) immediately filed suit claiming the administration's rule-making far exceeded its legislative authority and would neutralize one of the few effective programs for combating industrial pollution and dirty air. The EPA announced Friday evening that it had agreed to review six aspects of the new rules, while stressing that this "does not mean that EPA had decided to change any aspect of the rule at this time."

The reconsideration process will include a 30-day public comment period and a public hearing. "Even though we don't agree with the petitioners and believe we provided ample opportunity to comment, we believe public comment is an integral part of the New Source Review process, so we've allowed them some additional time," Lisa Harrison, an EPA spokeswoman, said yesterday. "That does not mean we are reconsidering all portions of the rule at this time."

Environmental groups and some Democratic critics of the EPA hailed the announcement and said it would embolden efforts to try to derail the administration's three-year effort to weaken clean air regulations governing aging coal-fired industrial plants and utilities and refineries that are a source of health-threatening pollutants. Northeastern states are concerned about the rule changes because they blame much of their air pollution on utilities and other industrial sites in the Midwest that spew smog and acid rain-forming pollution into easterly winds.

"I think the significance of this announcement is that the Justice Department looked at the case and realized they were very likely to lose in court because the rule changes are flatly illegal," Frank O'Donnell of the Clean Air Trust said yesterday. "We think the rule changes would just illegally grant exemptions from the Clean Air Act that would allow smokestack industries to pollute more."

Connecticut Attorney General Richard Blumenthal (D), one of the plaintiffs, said the EPA's concession "shows that EPA is heeding the drumbeat of outrage and anger about its sell-out to energy special interests.

"But the key question will be whether EPA has really heard the message and changes the substance, not just the form, of its misguided, destructive new NSR program."

Sen. John Edwards (N.C.), a Democratic presidential candidate and strong critic of the EPA, said he would offer an amendment this week to pending energy legislation to block the administration from making states go along with the final rules unless the EPA can show that they would be more effective than current law in reducing air pollution. A similar measure offered by Edwards earlier this year failed by four votes.

Environmentalists have disputed EPA analyses showing that the rule changes would help reduce emissions. They cite Abt Associates Inc. studies, commissioned by the watchdog group Environmental Integrity Project, showing that plant pollution would increase under the new rules. Eric Schaeffer, who heads the watchdog group, said, "I'm hoping [the Friday announcement] is a sign they're going to look at the underlying rule itself and make some changes if they can't show it won't increase emissions."

The Clean Air Act requires new plants and utilities to install the best available pollution control technology. However, older plants and refineries are exempt unless they make improvements to extend a plant's life and thereby create a "new source" of emissions.

During the Clinton administration, federal and state authorities sued more than 50 power plants in 12 states and scores of refineries nationwide.

The final rules announced Dec. 31 would allow industrial plants to upgrade or expand their facilities -- and possibly increase their emissions -- without the threat of lawsuits and without having to add new anti-pollution equipment.

The changes, for example, would set higher thresholds for the amount of pollution that could be released by calculating emissions plant-wide instead of for individual pieces of equipment. The EPA would let many facilities set new baseline pollution levels at the highest pollution level of any two consecutive years over the past 10 years, thus allowing some to exceed their current air pollution levels.

The EPA is considering separate rule changes that would benefit older coal-fired power plants, but those proposals were not affected by last week's announcement

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